

**CITY OF ANTIOCH
PLANNING COMMISSION MINUTES**

**Regular Meeting
6:30 p.m.**

**June 5, 2013
City Council Chambers**

CALL TO ORDER

Chair Sanderson called the meeting to order at 6:32 p.m. on Wednesday, June 5, 2013, in the City Council Chambers. She stated that all items that can be appealed under 9-5.2509 of the Antioch Municipal Code must be appealed within five (5) working days of the decision. The final appeal date of decisions made at this meeting is 5:00 p.m. on Thursday, June 13, 2013.

ROLL CALL

Present: Commissioners Azevedo, Motts, and Baatrup
Vice Chair Hinojosa and Chair Sanderson
Absent: Commissioners Miller and Westerman
Staff: Community Development Director, Tina Wehrmeister
City Engineer, Ron Bernal
City Attorney, Lynn Tracy Nerland
Minutes Clerk, Cheryl Hammers

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS

None.

CONSENT CALENDAR

1. **Approval of Minutes:** May 15, 2013

On motion by Commissioner Azevedo, and seconded by Commissioner Baatrup, the Planning Commission approved the Minutes of May 15, 2013.

AYES: Sanderson, Azevedo, Motts, Baatrup
NOES: None
ABSTAIN: Hinojosa
ABSENT: Miller, Westerman

END OF CONSENT CALENDAR

NEW PUBLIC HEARINGS

2. **DAVIDON HOMES** is requesting approval of a Development Agreement applicable to the approximately 170 acre property generally located east of Canada Valley Road and west of State Route 4 (bypass). Davidon Homes has entitlements to develop the subject property with 525 single family homes.

CDD Wehrmeister provided a summary of the staff report dated May 30, 2013, and introduced Karen Murphy, Consulting Land Use Attorney.

OPENED PUBLIC HEARING

Applicant, Jeff Thayer, thanked staff for completing the development agreement and stated that he was present to answer questions.

Commissioner Baatrup asked applicant that presuming this item gets passed to the City Council what was the time frame involved as well as what are the details on Laurel Road. Mr. Thayer responded that final engineering is a big undertaking which will take nine to twelve months and then they need to firm up with CFD. He said the market is improving and if it keeps improving, this will help them get started as quickly as possible. That they can go up to 123 units and upon 124 units are obligated to be done with engineering on Laurel Road to get it finished. He said that once under way, he can see the project moving through steadily.

Commissioner Baatrup then asked applicant his perspective on improvement of housing movement and the lack of supply for the demand to which Mr. Thayer said that this was a horrible recession but for the first time in five years there are a lot of positive indicators. He said that a lot of people were on the fence but now prices seem to be going up.

CLOSED PUBLIC HEARING

Commissioner Baatrup asked staff about the term of the agreement extending out to 2027 and asked if this 15 years was a typical duration for these agreements.

CDD Wehrmeister responded that with some historic agreements they have frequently seen 15 years or longer terms and that this is the norm in her experience.

Ms. Murphy interjected that given the recent market conditions, this is an appropriate term and that she has seen longer recently.

Commissioner Baatrup stated that he has seen this project before and there was good input at that time.

RESOLUTION NO. 2013-09

On motion by Commissioner Baatrup and seconded by Commissioner Azevedo, the Planning Commission recommends to the City Council approval of the Development Agreement between the City of Antioch and Davidon Homes for the Park Ridge Subdivision Project.

AYES: *Sanderson, Hinojosa, Azevedo, Motts, Baatrup*
NOES: *None*
ABSTAIN: *None*
ABSENT: *Miller, Westerman*

3. **UP-13-05 – EDWARD GIVANS** requests approval of a Use Permit to establish a martial arts and tutoring center. Hours of operation would be Monday through Friday from 3:45 P.M. to 9 P.M and Saturday from 10 A.M. to 3:00 P.M. The project site is located at 4851 Lone Tree Way, Suite A1, in the Williamson Ranch Plaza (**APN 056-011-048**).

CDD Wehrmeister provided a summary of the staff report dated May 30, 2013.

Vice Chair Hinojosa asked staff if there was anything in the Zoning Code about combined uses to which CDD Wehrmeister said that there was not .

Vice Chair Hinojosa said that it is hard to understand the attachments regarding the combined uses but that if they were to approve the project, would this use be locked in at this location and be allowed to stay indefinitely.

CDD Wehrmeister responded that the use runs with the land so it would be specific to that space. That if this tenant left and another tenant came in with the exact business model, the business could establish there as well.

Commissioner Motts asked staff if another business came in with a mixed use of a different kind, would they require a different use permit to which CDD Wehrmeister said that with this use is specific to martial arts, they would consider possibly a dance studio the same use but not something completely different.

Commissioner Baatrup asked staff about the visit to the site and if the business looks primarily martial arts, primarily tutoring or physical therapy.

CDD Wehrmeister responded that it appeared to be primarily martial arts, that there was no separate tutoring area but that applicant was present to discuss the floor layout tonight.

Commissioner Baatrup asked staff about the primary use and if that was open to discretion to which CDD Wehrmeister said that was open to discretion and that there were a variety of factors to consider such as the amount of square feet taken up by the use. With martial arts needing a large floor space and tutoring needing less, there is discretion there.

Chair Sanderson questioned staff about the provision of physical therapy requiring some sort of license to which CDD Wehrmeister said that she doesn't have knowledge of specific requirements but would assume that a physical therapist does need a license.

Chair Sanderson then confirmed with staff that there were previously real estate offices at that location and the uncertainty as to how long that space has been vacant.

OPENED PUBLIC HEARING

Applicant, Edward Givans, said that he started the program in 2003, that he has been in Antioch for ten years, and that in this facility there could be two sides of the building, one for martial arts and the other side would be individual rooms for tutoring and physical therapy. He said that the physical therapy would be to help kids get back into sports through stretching and that the tutoring part would be older kids helping younger kids. He said that he hasn't moved forward with the other side of the project until this issue was resolved with the use permit. That the property has been vacant for eight years and that there are about eight spaces still empty.

Commissioner Azevedo asked applicant that given he is not a licensed physical therapist if he would be working with a therapist and treating injuries to which Mr. Givans clarified that students would go to physical therapy and would then come there for rehab such as stretching and flexing to get back on track but that they don't treat injuries.

Commissioner Azevedo asked applicant about the students tutoring other students on homework and if anyone not part of the martial arts was tutored to which applicant said that in addition to students some of the teachers are Antioch teachers and that they do offer the tutoring to siblings of students as well.

Commissioner Azevedo then clarified with applicant that the physical therapy stretching was only offered to martial arts students.

Commissioner Baatrup asked applicant about staffing to which Mr. Givans said that he was the main instructor, that he has two front desk people, that there are parents to assist kids and that some students who are very smart are in his honor roll program which entails keeping track of kids with report cards and helping them if they fall behind.

Commissioner Baatrup asked applicant how long he has been in the space and was he aware that the studio was inconsistent with zoning.

Mr. Givans said that he has been there sixty or ninety days; that yes he was aware of that but he used bad judgment in listening to a real estate company who gave him bad advice.

Vice Chair Hinojosa clarified with applicant that his intent is to own and build his own facility someday but that this location is the best location for now and he does intend to stay until he builds or finds another suitable location.

Chair Sanderson asked applicant about his previous Bluerock space to which Mr. Givans said that space was too small, only 1400 sf, and that they needed more space for the tutoring aspect.

Chair Sanderson then clarified with applicant that kids come anywhere from 45 minutes to an hour early for tutoring and that the total time spent at the facility varied anywhere from an hour to three hours. Applicant stated that his business has grown from 15 to 200 kids in the last five years. Mr. Givans said that he originally started in the Somersville Mall and had to move due to the Chinese buffet, that parents wanted a space closer to where the homes are located and that it has been very hard to find a space large enough to do what they would like.

Chair Sanderson then clarified with applicant that the term of his lease was a maximum of nine years but that he can terminate in three.

Commissioner Motts asked applicant if there was space dedicated for physical therapy to which applicant said not right now but that the other side is an empty space and they would like to put in massage chairs and different things to help them.

Commissioner Baatrup clarified with applicant that their matted area for stretching is approximately 1500 sf, that they have a front area and that the back area for homework is about 600 sf.

Commissioner Azevedo confirmed with applicant that he has read and agrees with the resolution for approval.

CLOSED PUBLIC HEARING

Commissioner Azevedo stated that he was struggling with this, that this project comes across as Taekwondo with some ancillary activities and that they are not able to meet item 2. He said that it is a stretch to say that this business meets this finding and that unless he is convinced otherwise by fellow commissioners, he is leaning toward denial.

Commissioner Baatrup questioned staff about properties in the 2500 sf range located in appropriate zones and if there was a barrier for martial arts in Antioch.

CDD Wehrmeister responded that she has had conversations with Mr. Givans, that there is significant vacancy in appropriate zones, that there is a particular corridor Mr. Givans wants making it difficult with his parameters but that there was quite a lot of space available.

Commissioner Baatrup stated that he was also struggling with this proposal being against the standard established for that area. That although Mr. Givans is doing a great service, there is also a need to be careful how we view where people locate uses in order to be consistent and fair, but that this looks like an exception.

Commissioner Motts clarified with staff that no comments were received from the surrounding businesses.

Vice Chair Hinojosa said that she too is struggling, that she cannot see how the current business fits into the type of uses intended for this area, and that she is hung up on the clause that uses similar to those may be approved or permitted by the planning

department. That the Commission could condition the business to allow them to use the space for the next three years or to try to condition the business to more closely align with permitted uses in this area but that the business plan needs to have a licensed physical therapist.

CDD Wehrmeister said that applicant has mentioned the space next door which is vacant and that time can be given for him to expand his lease and establish components that could be conditions of approval.

Vice Chair Hinojosa stated that applicant also mentioned licensed massage therapy and stated that he can come back with a stronger business plan to prevent a complete denial.

Chair Sanderson said that looking just at the tutoring element asked staff what tutoring services in general would be consistent with the use list to which CCD Wehrmeister gave the example of the Sylvan Learning Center which was located in the Venture Commerce Center, not the Williamson Ranch Center, but had been established in a professional business center and that use would be considered appropriate for the zone.

Commissioner Azevedo stated that this is trying to take a square business and put it in a round hole, that right now their hands are tied but that possibly another avenue to follow would be either changing the uses permitted there or adjusting them to accept a health and exercise center. That he doesn't believe this fits now but maybe they could look at health and exercise fitting into medical office.

CDD Wehrmeister stated that the Planning Commission can recommend to the City Council a zoning change. She said that option was discussed with applicant but that his desire was to attempt to address this issue without bringing in the landlord but that may be a conversation that needs to happen with his landlord and address paying for changing the zoning at that site.

Chair Sanderson clarified with staff that there is an option to continue the hearing to give applicant a chance to beef up the tutoring services and to speak with his landlord regarding the zone change. She said that she is having a hard time with the information before them to make findings in the resolution for approval. That she is a fan of the business but at the same time can't throw the zoning code out the window.

Commissioner Baatrup questioned staff about if we follow this path of revising the zoning, what does that do with current efforts under way of getting two nonconforming businesses to locate where they do meet requirements and that if it were changed for martial arts, would it be changed for other uses thereby boxing them in to consider them equally.

CDD Wehrmeister said if this was the route decided, she would imagine that the Planning Commission would make findings as to what appropriate uses would be in a professional office which would be compatible with those uses, and that perhaps retail would not be compatible as would health in medical zones.

Vice Chair Hinojosa clarified with staff that the cost for a zoning change would require the same deposit, that applicant would still be charged for time and materials but that the time is inherently longer depending on how controversial and how much staff time is needed.

Vice Chair Hinojosa clarified with staff that there is sufficient stock for these businesses in the City and that they would not be taking away from potential opportunities in this area if they could go in another area.

Commissioner Baatrup asked if a martial arts studio would fit into the zoning at the Venture Commerce Center to which CDD Wehrmeister said that all centers have they own master use list and that has not been studied.

Chair Sanderson said that if the Planning Commission were to continue the hearing, applicant could be given the options to withdraw, beef up their business plan to provide evidence that they meet the current uses, or could pursue a change to the zoning code. She asked staff what the proper amount of time would be to which CDD Wehrmeister said that the next hearing has been cancelled, that they will not be a meeting on July 3rd due to the holiday, so the next meet would be the second meeting in July. She said that if the continuation was due to clarification it could be continued to a date specific but that if it was due to a zoning change, it would need to be renoticed. She said there was no penalty to continue the business while this is pending. Chair Sanderson said that perhaps we are just postponing a difficult decision.

City Attorney Nerland said that if the Planning Commission denies this request, another option is that applicant can appeal to the City Council.

Commissioners Azevedo, Baatrup and Chair Sanderson all agreed that the request needs to be denied but that direction has been given to applicant on different ways to address and Commissioner Baatrup made a motion to deny.

Commissioner Azevedo asked if the hearing could be reopened for comment from the applicant.

REOPEN PUBLIC HEARING

Applicant asked for clarification that if his program had a bigger after school program that is more in line with criteria of zoning. He said that he is very workable, that the tutoring center is part of their actual plan and why they moved there and that he can put in a larger tutoring center offered to everyone and secondarily can do martial arts.

Commissioner Azevedo stated that if tutoring was more the primary use and more robust, if they advertised for tutoring, not part of martial arts and just not a service for martial arts students with teachers overseeing and charge for it, it could fit into existing zoning or they can get zoning changes to include health and exercise businesses.

RECLOSE PUBLIC HEARING

CA Nerland reminded the Planning Commission that there was a motion pending.

RESOLUTION NO. 2013-10

On motion by Commissioner Baatrup and seconded by Commissioner Motts, the Planning Commission denied UP-13-05 for a martial arts and tutoring center.

AYES: Sanderson, Hinojosa, Azevedo, Motts, Baatrup
NOES: None
ABSTAIN: None
ABSENT: Miller, Westerman

ORAL COMMUNICATIONS

Vice Chair Hinojosa clarified that the next Planning Commission meeting would be the second meeting in July which is the third Wednesday.

WRITTEN COMMUNICATIONS

None.

COMMITTEE REPORTS

None..

ADJOURNMENT

Chair Sanderson adjourned the Planning Commission at 7:45 p.m.

Respectfully Submitted,
Cheryl Hammers