



**REGULAR MEETING OF THE
CITY OF CONCORD
PLANNING COMMISSION**

**Wednesday, March 16, 2016
6:30 p.m. – Council Chamber
1950 Parkside Drive, Concord**

Planning Commission Members:

Ernesto A. Avila, Chair

Jason Laub, Vice Chair

LaMar Anderson, Commissioner

Ray Barbour, Commissioner

Carlyn Obringer, Commissioner

**REGULAR MEETING
6:30 p.m. – Council Chamber**

I. ROLL CALL

II. PLEDGE TO THE FLAG

III. PUBLIC COMMENT PERIOD

IV. ADDITIONS / CONTINUANCES / WITHDRAWALS

V. CONSENT CALENDAR

1. 2/17/16 Meeting Minutes

VI. PUBLIC HEARINGS

- 1. [Concord Recycling Center Appeal \(PL16011 – AC\)](#) – Consideration of Pleasant Paper Recycling Inc.’s (dba “Concord Recycling Center”) Appeal of a Planning Division Interpretation of Concord Development Code Section 18.40.010(D) Regarding Outdoor Storage in the Service Commercial (SC) Zoning District and amendments to Use Permits 01-00 and 03-11 for 1320 and 1313 Galaxy Way to allow outdoor storage pursuant to Development Code Sections 18.200.170.D. and E. The Planning Commission’s consideration of and action on the Appeal does not constitute a “project” within the meaning of Public Resources Code Section 21065, 14 Cal Code Regs. Sections 15060(c)(2), 15060(c)(3), or 15378 because it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Even if such activities did constitute a project under the CEQA, staff believes the activities they fall within the “common sense” CEQA exemption set forth in 14 Cal Code Regs. Section 15061(b)(3), excluding projects where “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” Moreover, even if the activities did not qualify for the common sense exemption, they are exempt from CEQA pursuant to CEQA Guidelines Sections 15301 (Existing Facilities), 15302 (Replacement or Reconstruction), and 15303 (New Construction or Conversion of Small Structures)**

because, among other things, they involve minor alterations to existing facilities, replacement or reconstruction of existing facilities, and construction and location of limited numbers of new small facilities or structures, all as further detailed in the staff report and attachments thereto. **Project Planner: Andrew Mogensen @ (925) 671-3332. This item was continued from the February 17, 2016 meeting.**

VII. COMMISSION CONSIDERATIONS

VIII. STAFF REPORTS / ANNOUNCEMENTS

IX. COMMISSION REPORTS / ANNOUNCEMENTS

X. FUTURE PUBLIC HEARING ITEMS

XI. ADJOURNMENT

NOTICE TO PUBLIC

ADA ACCOMMODATION

In accordance with the Americans With Disabilities Act and California Law, it is the policy of the City of Concord to offer its public programs, services and meetings in a manner that is readily accessible to everyone, including those with disabilities. If you are disabled and require a copy of a public hearing notice, or an agenda and/or agenda packet in an appropriate alternative format; or if you require other accommodation, please contact the ADA Coordinator at (925) 671-3021, at least five (5) days in advance of the hearing. Advance notification within this guideline will enable the City to make reasonable arrangements to ensure accessibility.

APPEALS

Decisions of the Planning Commission on use permits, variances, major subdivisions, appeals taken from decisions of the Zoning Administrator or staff interpretations of the Zoning Code may be appealed to the City Council. Appeals and the required filing fee must be filed with the City Clerk within ten (10) days of the decision.

If you challenge any of the foregoing described actions in court, an appeal first of said actions to the Zoning Administrator, Planning Commission, and/or City Council (as applicable) in the manner and within the time period established in Development Code Chapter 18.510 (Appeals and Calls for Review) is required, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Zoning Administrator and/or Planning Commission (as applicable) at, or prior to, said public hearing.

APPLICANT'S SUBMITTAL OF INFORMATION

Submittal of information by a project applicant subsequent to the distribution of the agenda packet but prior to the public hearing may result in a continuance of the subject agenda item to the next regularly scheduled Planning Commission meeting, if the Commission determines that such late submittal compromises its ability to fully consider and evaluate the project at the time of the public hearing.

CONSENT CALENDAR

All matters listed under CONSENT CALENDAR are considered by the Commission to be routing and will be enacted by one motion. There will be no separate discussion of these items unless requested by a Commissioner prior to the time Commission votes on the motion to adopt.

CORRESPONDENCE

Correspondence and writings received within 72 hours of the scheduled Planning Commission meeting that constitute a public record under the Public Records Act concerning any matter on the agenda is available for inspection during normal business hours at the Permit Center located at 1950 Parkside Drive, Concord. For additional information contact the Planning Division at (925) 671-3152.

HEARINGS

Persons who wish to speak on hearings listed on the agenda will be heard when the hearing is opened, except on hearing items previously heard and closed to public comment. Each public speaker should limit their comments to three (3) minutes or less. The Chair may grant additional time. The project applicant normally shall be the first person to make a presentation when a hearing is opened for public comment. The project applicant's presentation should not exceed ten (10) minutes unless the Chair grants permission for a longer presentation. After the public has commented, the item is closed to further public comment and brought to the Planning Commission level for discussion and action. Further comment from the audience will not be received unless requested by the Commission. No public hearing or hearing shall commence after 11:00 p.m. unless this rule is waived by majority vote of the Commission.

MEETING RECORDS

Planning Commission meetings are available for viewing on the City's website, www.cityofconcord.org and at the Concord Public Library. Copies of DVDs of the Planning Commission Meeting are available for purchase. Contact the Planning Division at (925) 671-3152 for further information.

NOTICE TO THE HEARING IMPAIRED

The Council Chamber is equipped with Easy Listener Sound Amplifier units for use by the hearing impaired. The units operate in conjunction with the Chamber's sound system. You may request the Easy Listener Phonic Ear Personal Sound Amplifier from the staff for personal use during Commission meetings.

ROUTINE AGENDA ITEMS AND CONTINUED ITEMS

All routine and continued items will be considered by the Planning Commission at the beginning of the meeting. There will not be separate discussions of these items unless a request is made prior to the time the Planning Commission considers the motions.

SPEAKER'S CARD

Members of the audience who wish to address the Planning Commission should complete a speaker's card available in the lobby or at the front bench. Submit the completed card to staff before the item is called, preferably before the meeting begins.

TELEVISED MEETINGS

All Planning Commission meetings are broadcast live on Astound Broadband channel 29 and Comcast channel 28. The meeting is replayed on the Thursday following the meeting at 8:00 a.m., 2:00 p.m. and 8:00 p.m. Replays are also broadcast on Fridays and Saturdays. Please check the City website, <http://www.cityofconcord.org/about/citynews/tvlistings.pdf> or check the channels for broadcast times.

NEXT PLANNING COMMISSION MEETINGS:

April 6, 2016: 6:30 pm – Council Chamber

April 20, 2016: 6:30 pm – Council Chamber



MEMORANDUM TO PLANNING COMMISSION

DATE: March 16, 2016

SUBJECT: CONSIDERATION OF PLEASANT PAPER RECYCLING INC.'S (DBA "CONCORD RECYCLING CENTER") APPEAL OF A PLANNING DIVISION INTERPRETATION OF CONCORD DEVELOPMENT CODE SECTION 18.40.010(D) REGARDING OUTDOOR STORAGE IN THE SERVICE COMMERCIAL (SC) ZONING DISTRICT AND AMENDMENTS TO USE PERMITS 01-00 AND 03-11 FOR 1320 AND 1313 GALAXY WAY TO ALLOW OUTDOOR STORAGE PURSUANT TO DEVELOPMENT CODE SECTIONS 18.200.170.D. AND E.

Recommendation: Hear any public comments and continue the item to the April 6, 2016 Planning Commission hearing date.

The Planning Commission continued this item from their February 17, 2016 meeting to allow the appellant additional time to work with staff on a solution for their recycling business. Staff met with the appellant on Wednesday, February 24th at City Hall and made a site visit to the property on the morning of Thursday, February 25th. Following those meetings, the appellant proposed to develop plans to identify a design and location for proposed screening walls around certain portions of the property. The appellant has not yet completed their proposal and has requested a continuance from the Planning Commission in their letter submitted on March 8, 2016 (Exhibit A).

Exhibits:

- A: Letter dated March 8, 2016 from the Appellant, requesting a continuation
- B: Planning Commission Staff Report and Resolution from February 17, 2016

LAW OFFICES OF
RAY T. ROCKWELL

2255 Morello Avenue, Suite 160
Pleasant Hill, California 94523
tel 925 932 7785 fax 925 262 2379

Email: garret@rtrlegal.com

March 8, 2016

Via E-mail (andrew.mogensen@cityofconcord.org)

City of Concord Planning Commission
C/O Andrew J. Mogensen, AICP
1950 Parkside Drive
Concord, CA 94519

RECEIVED
MAR - 8 2016
PLANNING

Re: **Concord Recycling Center, aka Pleasant Hill Recycling Center**

Dear Planning Commissioners:

Concord Recycling Center, also known as Pleasant Hill Recycling Center ("CRC"), respectfully requests that the Commission continue the scheduled March 16, 2016 appeal hearing regarding outside storage to the April 6, 2016 Commission meeting. CRC continues to put forth its best efforts to explore compliance options, and a brief continuance will allow CRC and staff additional time to hopefully reach a mutually satisfactory plan of action. Either Mr. Rockwell or I will of course appear at the March 16, 2016 hearing if the Commission has any questions.

We appreciate the Commission's time and efforts.

Very truly yours,

LAW OFFICES OF RAY T. ROCKWELL



J. Garret Deal



REPORT TO PLANNING COMMISSION

DATE: February 17, 2016

SUBJECT: CONSIDERATION OF PLEASANT PAPER RECYCLING INC.'S (DBA "CONCORD RECYCLING CENTER") APPEAL OF A PLANNING DIVISION INTERPRETATION OF CONCORD DEVELOPMENT CODE SECTION 18.40.010(D) REGARDING OUTDOOR STORAGE IN THE SERVICE COMMERCIAL (SC) ZONING DISTRICT AND AMENDMENTS TO USE PERMITS 01-00 AND 03-11 FOR 1320 AND 1313 GALAXY WAY TO ALLOW OUTDOOR STORAGE PURSUANT TO DEVELOPMENT CODE SECTIONS 18.200.170.D. AND E.

Recommendation: Adopt Resolution 16-13PC (Exhibit A) denying the appeal and amending Use Permits 01-00 and 03-11 for 1320 and 1313 Galaxy Way to allow outdoor storage pursuant to Development Code Sections 18.200.170.D. and E.

I. Introduction

The Planning Commission of the City of Concord, California has received an appeal of the Planning Division's interpretation of Development Code Section 18.40.010(D). The business/property owner, Shusheng "Harry" Luan ("Appellant") operates Pleasant Paper Recycling, Inc. dba Concord Recycling Center, a legal non-conforming processing facility approved by the Planning Commission through Use Permit 01-00 for 1320 and Use Permit 03-11 for 1313 Galaxy Way ("Use Permits" Exhibits H and I, respectively), both established under the prior Zoning Ordinance before the 2012 Development Code ("Development Code") became effective. Through his attorney, the Appellant explains his position that new Development Code Section 18.40.010(D) automatically enables outdoor storage for their business in the Service Commercial (SC) zoning district.

The appeal by Concord Recycling Center was submitted following a series of correspondence between the Appellant's attorney and City staff stemming from a Notice of Violation (CE150444) issued by the Code Enforcement Division on September of 2015. The Notice of Violation contains a number of corrections related to outdoor storage (among other things) pursuant to the conditions of Use Permits 01-00 and 03-11. This is not a code enforcement hearing, and matters unrelated to Appellant's compliance with applicable outdoor storage requirements are not before the Planning Commission at this time.

Because this matter involves the application of the Development Code to facts specific to the use permits for the 1320 and 1313 Galaxy Way sites, the Planning Commission's consideration of and decision on the appeal is a quasi-judicial action, and would amount to an amendment of the Use Permits with respect to outdoor storage.

A. Request

Appeal of the Planning Division's January 5, 2016 interpretation that new Development Code Section 18.40.010(D) as it pertains to outside storage does not apply to 1313 and 1320 Galaxy Way properties (Exhibit E, "Interpretation").

B. Location

Appellant operates its processing facilities at and owns 1313 and 1320 Galaxy Way, APNs 126-020-073 and 126-451-007. The two parcels that comprise the business are located across the street from one another. Both parcels are within the Service Commercial (SC) zoning district.

C. Appellant

J. Garret Deal, Esq., on behalf of
Shusheng "Harry" Luan
1313 & 1320 Galaxy Way
Concord, CA 94520

Business Owner(s)

Shusheng Luan
5017 Mildred Road
Martinez, CA 94553

II. Background

Appellant operates processing facilities at 1320 and 1313 Galaxy Way. The Planning Commission approved Use Permit 01-00 for 1320 Galaxy Way on March 15, 2001. A few years later, the Planning Commission approved Use Permit 03-11 (under Resolution 03-18PC) for Concord Recycling Center's expansion into a second building located across the street at 1313 Galaxy Way because the Center could not maintain operations within the existing building.

Each property received its zoning entitlements under former CMC Section 122 ("Zoning Ordinance"). Both properties are located in the former Special Light Industrial (SLI) zoning district, which, subject to securing a Zoning Administrator's permits, allowed recycling facilities when conducted within a building [Former CMC Sec. 122-522(b)(7)]. Subject to securing a conditional use permit, storage was allowed [Former CMC Sec. 122-522(c)(3)]. Use permits would have had to have been approved at the Planning Commission level. Junkyards, storage or baling of scraps, paper, rags, sacks, or metals, not including recycling centers conducted inside a building, were prohibited at the time. Former CMC Sec. 122-522(d)(2).

The Use Permits contain specific conditions of approval (COA) prohibiting the outdoor storage and outdoor sorting of materials (specifically UP 01-00 COA #2 and UP 03-11 COA #11 and 12). Use Permit 03-11 COA #11 allows the applicant to temporarily store "*a maximum of three, empty metal, shipping-style containers in the east side yard for a period not to exceed 24 hours*" at 1313 Galaxy Way.¹ During both of those hearings, Staff noted in the record that all storage and processing would occur indoors.

¹ But see further discussion below under Section V.D, "Use Permit Amendments."

In 2012, the City Council approved a new Development Code which eliminated processing facilities and created certain outdoor storage rights in the newly established Service Commercial zoning district. Since that time, Appellant has continued operations at both sites as a legal non-conforming use under Development Code Section 18.530 (Nonconforming Uses, Structures, and Parcels) but is prohibited from further expansion.

Appellant's attorney submitted a letter to the City of Concord dated October 29, 2015 (Exhibit B), articulating the position that the Service Commercial zoning district enables them to have outdoor storage and nullifies the Use Permits' outdoor storage prohibitions. On November 18, 2015, the City notified the Appellant in writing (Exhibit C) that they have the option to revisit the conditions of their Use Permits that regulate outdoor storage through an Amended Use Permit application. This process would allow the Planning Commission to reconsider all of the facts pertaining to the business's operations in relation to outdoor storage at a public hearing.

On December 30, 2015, Concord Recycling Center submitted a letter (Exhibit D) to the City requesting an interpretation of Section 18.40.010(D). That letter reiterated their position that changes in the Development Code now allowed outdoor storage at their business. The Interpretation concluded that Concord Recycling Center was not allowed to conduct outdoor storage at either site pursuant to the conditions of their existing Use Permits and advised Concord Recycling Center on their appeal rights.

On January 11, 2016 the Appellant filed a formal Notice of Appeal referencing the Interpretation (Exhibit F "Appeal"), asserting that the Development Code automatically allows outdoor storage in the Service Commercial (SC) zoning and negates any existing use permit prohibitions on outdoor storage.

Assuming Appellant's position has merit, outdoor storage would be governed by Development Code Section 18.200.170 (Standards for Specific Uses, Recycling Facilities), at Subsections B (Large Collection Facilities), D (Processing Facilities) and/or E (All Collection and Processing Facilities), which contain special requirements for such uses.

III. General Information

A. General Plan

The General Plan designation in 2000 and 2003, at the time the Planning Commission approved the Use Permits, was Industrial/Business Park. The current General Plan designation is SC (Service Commercial).

B. Zoning

At the time the Use Permits were approved, the sites were zoned Special Light Industrial and processing facilities were allowed, including with outdoor storage subject to certain requirements as this report discusses in Section II. Background, above. The site is currently

zoned SC (Service Commercial) and processing facilities are prohibited unless they are legal non-conforming uses.

C. CEQA² Status

The Planning Commission's consideration of and action on the Appeal and potential amendments of Use Permit 01-00 for 1320 Galaxy Way and Use Permit 03-11 for 1313 Galaxy Way allowing outdoor storage pursuant to Development Code Sections 18.200.170.D. and E does not constitute a "project" within the meaning of Public Resources Code Section 21065, 14 Cal Code Regs. Sections 15060(c)(2), 15060(c)(3), or 15378 because it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Even if such activities did constitute a project under the CEQA, staff believes the activities they fall within the "common sense" CEQA exemption set forth in 14 Cal Code Regs. Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." Moreover, even if the activities did not qualify for the common sense exemption, they are exempt from CEQA pursuant to CEQA Guidelines Sections 15301 (Existing Facilities), 15302 (Replacement or Reconstruction), and 15303 (New Construction or Conversion of Small Structures) because, among other things, they involve minor alterations to existing facilities, replacement or reconstruction of existing facilities, and construction and location of limited numbers of new small facilities or structures, all as further detailed in this staff report and attachments hereto.

IV. Description of Business

Concord Recycling Center consists of two processing facilities located at 1313 and 1320 Galaxy Way. The facilities accept both commercial (large-scale) and residential (small-scale) deliveries of materials including scrap metals, e-waste, clothing, California Redemption Value (CRV) materials, and non-CRV plastics. According to the information identified in their existing Use Permits, residential drop off of material is conducted at their 1320 Galaxy Way building. Large commercial deliveries are accepted and processed across the street at 1313 Galaxy Way. Processing takes place wholly within their two existing warehouses which are 27,200 and 18,480 square feet in size respectively.

After employee and customer parking areas, driving aisles, and fire clearances are accounted for, both properties have a very limited amount of available space for outdoor storage. Use Permit 01-00 identifies 21 parking spaces at 1320 Galaxy Way, while Use Permit 03-11 identified 32 parking spaces at 1313 Galaxy Way. Use Permit 03-11 COA #11 allows up to three empty containers to be stored for up to 24 hours within the 40'x100'yard located on the east side of the building located at 1313 Galaxy Way. The space available for outdoor storage at 1320 Galaxy Way is limited to a 20'x100' rear yard which is faced by the building's two rear roll-up doors.

² California Environmental Quality Act of 1970, Public Resources Code § 21000, et seq., as amended and implementing State CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations (collectively, "CEQA.")

V. Analysis

Appellant seeks general outdoor storage rights pursuant to Development Code Section 18.40.010(D) (Exhibit D), which describes the purpose of the Service Commercial zoning district as follows:

Section 18.40.010, Purpose

D. SC – Service Commercial. The SC district is applied to areas of the city appropriate for commercial uses such as automobile services, auto-oriented uses, light industry, contractors' yards, and building materials storage, at up to 0.8 FAR. The SC district also allows retail, personal service, restaurant, and offices uses. The SC district is found on Monument Boulevard, Detroit Avenue, Cloverdale Avenue, on the east side of Market Street south of Concord Avenue, and Galaxy Way at Via de Mercados. The SC district provides areas for uses that typically require outdoor storage and activities with higher volumes of truck traffic, noise, and visual impacts. The SC district is consistent with and implements the service commercial (SC) land use designation of the general plan.

The Interpretation concluded that such general outdoor storage rights were an impermissible expansion of a legal non-conforming use. Appellant has appealed the Interpretation and submitted prior correspondence as evidence supporting their position:

- Correspondence from the Appellant dated October 29, 2015 (Exhibit B)
- Correspondence from the City dated November 18, 2015 (Exhibit C)
- Correspondence from the Appellant dated December 30, 2015 (Exhibit D)
- Correspondence from the City dated January 5, 2016 (Exhibit E, Interpretation)
- Notice of Appeal filed on January 11, 2016 (Exhibit F, Appeal)

Appellant did not request an interpretation as to whether it should be accorded limited outdoor storage rights pursuant to Development Code Sections 18.200.170.D. and E.

On January 29, 2016, City staff advised the Appellant that their appeal of the Zoning Interpretation amounts to a de facto request to amend the Use Permits as to outdoor storage (Exhibit G) and that the Planning Commission has discretion to deny the appeal but to amend the Use Permits in order to allow outdoor storage, pursuant to Development Code Sections 18.200.170.D. and E.

A. Authority Regarding Interpretation of the City's Ordinances

The Use Permits were approved at the Planning Commission level; consequently, the Planning Division and Zoning Administrator do not have the authority to effectively amend those Use Permits by allowing outdoor storage. However, the Planning Commission does have that ability, and the Planning Division advised the Appellant that the Appeal would be heard before the Planning Commission as a de facto Use Permit amendment request (Exhibit G). Appellant has agreed to that approach (Exhibit J, Tuesday 2/2/2016 3:59 PM email from J. Garrett Deal, Esq.).

The Development Code constitutes Title 18 of the Concord Municipal Code. Cities have broad latitude to interpret their own municipal codes³ and courts will follow an agency’s interpretation of its own laws and regulations unless clearly erroneous or unauthorized.⁴ Concord’s interpretation of its Development Code is subject to this deference.⁵ As detailed below, the City has satisfied applicable legal requirements with respect to both the Interpretation, and in connection with the analysis in this staff report.

Per Development Code Section 18.10.060, the Planning Division is enabled to interpret any provision of the development code or its application to a specific site. Planning Division decisions are appealable to the Zoning Administrator, but may be referred to the Planning Commission, as is the case here (Development Code Sec. 18.510).

Because the Planning Commission’s review of this matter on appeal is “de novo” under Development Code Section 18.510.050(c), the Planning Commission may consider new materials and testimony in addition to the original application, plans, and related project materials that were the subject of the original decision. Staff has attached the pertinent correspondence to this staff report. However, only the issue of whether or not to allow outdoor storage is before the Commission in this hearing.

B. Development Code Land Use Classifications.

Although the Service Commercial zoning district now contains regulations that permit outdoor storage and activities for certain specific land uses, the regulations do not provide a blanket allowance. Table 18.40.020 expressly identifies Outdoor Storage as being permitted in the Service Commercial zoning district under certain conditions when associated with specific land uses. The table references additional requirements where applicable.

Table 18.40.020 Office and Commercial Districts (Excerpt) Allowed Uses and Permit Requirements						ZC – Permitted Use, Zoning Clearance AP – Administrative Permit Required MP – Minor Use Permit Required UP – Use Permit Required – Use Not Allowed
Land Use Classifications	Permit Required by District					Additional Requirements
	CO	CMX	NC	SC	RC	
Recycling Facilities						
Small Collection Facility	–	–	AP	AP	AP	CDC 18.200.170, Recycling facilities

³ See *City of Walnut Creek v. County of Contra Costa* (1980) 101 Cal.App.3d 1012, 1021; *MHC Operating Ltd. Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 219.

⁴ See *Carson Harbor Village v. City of Carson* (1999) 70 Cal.App.4th 281, 287.

⁵ *Concord Development Code §18.10.060*; See *Dept. of Health Services of County of Los Angeles v. Civil Service Commission* (1993) 17 Cal.App.4th 487, 494.

Large Collection Facility	-	-	-	UP	-	CDC 18.200.170, Recycling facilities
Processing Facility	-	-	-	-	-	CDC 18.200.170, Recycling facilities

C. Interpretation Letter

Appellant asserts that the 2012 Development Code’s creation of the Service Commercial zoning district and allowing outdoor storage in that district automatically supplants those aspects of their Use Permits prohibiting, and that Development Code Section 18.40.010(D) allows Appellant the right to unencumbered outdoor storage.

However, the Development Code concurrently eliminated processing facilities in the Service Commercial zoning district. While Appellant’s processing facilities may continue operations as a legal non-conforming use under Development Code Chapter 18.530 of the Development Code, that chapter also contains specific provisions which limit expansion of legal non-conforming uses, all as further detailed in the Interpretation.

Appellant narrowly reads Development Code Section 18.40.010(D) (Purpose), which contains an establishing statement indicating the nature and type of uses that are typically found in the Service Commercial district. However, Development Code Chapter 18.40 at Table 18.40.020, imposes additional outdoor storage requirements on recycling facilities (under which use category Appellant’s processing facilities fall). Development Code Chapter 18.200 (Standards for Specific Uses) at Sections 18.200.170.D. and E, (Recycling Facilities) contains specific provisions under which processing facilities and recycling centers may have limited outdoor storage. Appellant did not request an interpretation as to whether it should be accorded such outdoor storage thereunder.

The City has a special interest in regulating outdoor storage to prevent nuisances and protect public health, and a legal obligation to enforce stormwater pollution control. Stormwater runoff from materials stored outdoors at a processing facility are not the same as those stored at a commercial nursery or a business selling building materials. For these reasons, it is important to maintain the authority to be able to evaluate and determine appropriate conditions of approval for outdoor storage on a case by case basis.

D. Use Permit Amendments

Under today’s Development Code definitions, based on their operations, both the 1320 and 1313 Galaxy Way facilities would be considered “processing facilities” and thus could be considered legal non-conforming uses since processing facilities are no longer allowed at those locations. However, the previous Zoning Ordinance did not differentiate between types of recycling facilities so that facilities which would be characterized as processing facilities

under the current Development Code,⁶ were subject to the same standards as all recycling facilities.

The Planning Commission issued the Use Permits for each property. It appears from the applicable staff reports that limited outdoor storage was contemplated, as detailed below, which may have been the reason Planning Commission, rather than Zoning Administrator, approvals were secured.

- 1320 Galaxy Way. On March 15, 2000, the Planning Commission approved Use Permit 1-00 for a paper, plastic, glass, and metal recycling facility. A copy of that approval is attached as Exhibit H and incorporated by reference. Although Condition of Approval #2 states that “there shall be no outside storage or sorting of any recycled materials” the staff report (contained within Exhibit H and incorporated by reference) acknowledges that outdoor storage will occur. Specifically, the March 15, 2000 staff report at page 3 acknowledges that loading of recycled materials “could not be accomplished within the building,” and that staff considers outdoor storage of empty containers “acceptable but would prefer the loaders to be stored inside the building when not in use.” It is our understanding that the 1320 Galaxy Way facility has availed itself of those limited outdoor storage exceptions since the project was established.
- 1313 Galaxy Way. On August 6, 2003, the Planning Commission passed Resolution 03-18 PC approving approved Use Permit 03-011 for a recycling facility within a two story building. A copy of that approval is attached as Exhibit I and incorporated by reference. Condition of Approval #11 prohibits outdoor storage and/or sorting of recyclable materials, plastic storage containers, bins, and palettes, but provides an exception for storage of three empty metal shipping containers for a period of 24 hours from delivery. However, Condition of Approval #12 provides that “at the end of each business day, nothing shall be stored outside of the warehouse building including all trucks, trailers, empty dumpsters, contains, bin, pallets, loose paper, scrap metal, glass, and the like” thus suggesting that outdoor storage during business hours is permitted. The August 6, 2003 staff report (contained within Exhibit I) supports the concept that the limits on outdoor storage were flexible in that page 4 describes outdoor delivery and storage of containers filled with materials as well as empty containers, and page 7 allows 24 hour outdoor storage of three empty metal shipping containers (COA #11).

It is within the Planning Commission's discretion to determine that, because the Use Permits allowed limited outdoor storage, Appellant's facilities are allowed outdoor storage pursuant to Development Code Section 18.200.170 (Standards for Specific Uses, Recycling Facilities), at

⁶ Development Code Section 18.20 defines various type of recycling facilities as follows:

Recycling Facilities. “Small collection facility” means a facility that occupies less than 500 square feet and may include a mobile unit, single and bulk reverse vending machines, kiosk-type units that may include permanent structures, and unattended containers placed for the donation of recyclable materials. “Large collection facility” means a facility that occupies more than 500 square feet and may include permanent structures as well as mobile units, bulk reverse vending machines, and kiosk-type units. “Processing facility” means a building or enclosed space that includes equipment for baling, briquetting, crushing, compacting, grinding, shredding and sorting of source-separated recyclable materials, except ferrous metals other than food and beverage containers. This classification includes both light- and heavy-processing facilities, the former of which is typically less than 45,000 square feet.

Subsections D (Processing Facilities) and E (All Collection and Processing Facilities) and that such outdoor storage would not be a disallowed expansion or intensification of a legal non-conforming use under Concord Development Code Section 18.530.030 (Nonconforming uses and nonconforming structures).

Development Code Section 18.200.170 (Standards for Specific Uses, Recycling Facilities), in relevant part, provides as follows:

18.200.170.D. Processing Facilities.

1. Processing facilities shall be located at least 500 feet from an R district or residential use.
2. Processors shall operate in a fully enclosed building, except for incidental storage, or within an area enclosed on all sides by a solid masonry wall not less than eight feet in height and landscaped on all street frontages.
3. If the facility is open to the public, parking shall be provided for a minimum of 10 customers or the peak load, whichever is higher, unless otherwise approved by the review authority.
4. One parking space shall be provided for each commercial vehicle operated by the processing center, in addition to the parking required in Table 18.160.040, Parking Requirements by Land Use.
5. Power-driven processing shall be permitted, provided all noise-level requirements are met.

18.200.170.E. All Collection and Processing Facilities.

1. No facility or storage area shall occupy a required front or corner side yard, and all requirements applicable to the principal structure on the site shall apply to collection and processing facilities except as otherwise provided in this section.
2. A large collection or processing facility may accept used motor oil for recycling from the generator in compliance with California Health and Safety Code Section 25250.11.
3. All exterior storage of material shall be in sturdy containers or enclosures that are fully covered, secured, and maintained in good condition. Storage containers for flammable material shall be constructed of nonflammable material. No storage, excluding truck trailers and overseas containers, shall be visible above the height of the fencing.
4. Noise levels generated by the facility shall not exceed 60 decibels (dBA) as measured at the property line of an R district or otherwise shall not exceed 70 dBA.
5. All facilities shall be administered by on-site personnel during hours the facility is open. If a large collection or processing facility is located within 500 feet of an R district, it shall not be in operation between the hours of 7:00 p.m. and 8:00 a.m.

6. The site of the facility shall be kept free of litter and any other undesirable material. Containers shall be clearly marked to identify the type of material that may be deposited. The facility shall display a notice stating that no material shall be left outside the recycling containers.
7. Except as otherwise provided herein, sign regulations shall be those provided for the district in which the facility is located. In addition, each facility shall be clearly marked with the name and phone number of the facility operator and the hours of operation.
8. No facilities shall collect household waste or flammable waste products.
9. No dust, fumes, smoke, vibration, or odor above ambient levels may be detectable on neighboring properties.

Staff acknowledges that the appellant has a history of code enforcement actions against each of its sites. Some involve the question of the scope of outdoor storage allowed; those issues would be resolved should the Planning Commission find that limited outdoor storage is permitted pursuant to Development Code Section 18.200.170 (Standards for Specific Uses, Recycling Facilities), at Subsections D (Processing Facilities) and E (All Collection and Processing Facilities) once Appellant has demonstrated to the City its plans for compliance with these Code Sections.

As indicated in the Development Code excerpt above, in order to avail itself of limited outdoor storage, Appellant will need to ensure that all exterior storage of material is within an area enclosed on all sides by a solid masonry wall not less than eight feet in height and landscaped on all street frontages. All materials shall be in fully covered, sturdy containers or enclosures. No storage, excluding truck trailers and overseas containers, shall be visible above the height of the fencing. No facility or storage area shall occupy a required front or corner side yard. Staff respectfully suggests that Appellant be allowed four (4) months from the effective date of the Commission's decision in order to make the necessary operational changes and effect necessary fencing and other minor alterations in order to comply with the requirements of Development Code Sections 18.200.170.D. and E.

Should the Appellant not meet the designated timeframe for fulfilling the applicable Development Code requirements, the City, in its sole discretion, may initiate permit revocation proceedings.

VI. Public Contact

Notification was mailed to all owners and occupants of property within three-hundred (300) feet of the subject parcel, and has been published in the Contra Costa Times, as required by the Concord Municipal Code. This item has also been posted at the Civic Center and at the subject site at least 10 days prior to the public hearing.

VII. Summary and Recommendations

General outdoor storage is only permitted for certain specified land uses within the Service Commercial zoning district. The permitting process exists because it is in the interest of the City to be able to review and consider the unique conditions of outdoor storage on a case by case basis. Processing facilities are no longer an allowed use in the Service Commercial District. The Appellant has the right to continue their operations as a legal non-conforming use but must also continue to adhere to the conditions of approval within their Use Permits. Changes in the 2012 Development Code do not automatically apply to Appellant because their operations constitute a legal non-conforming use that cannot be expanded or intensified without an amendment to the Use Permits. In order for Appellant to enjoy outdoor storage, both Use Permits must be amended to allow outdoor storage pursuant to Development Code Sections 18.200.170.D. and E and Appellant must demonstrate to the City's reasonable satisfaction that these requirements can and will met at each Site.

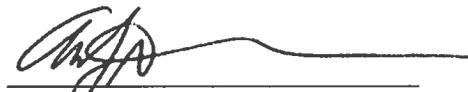
Staff recommends the Commission deny the Appeal by adopting the attached Resolution and amending Use Permits 01-00 and 03-11 for 1320 and 1313 Galaxy Way to allow outdoor storage pursuant to Development Code Sections 18.200.170.D. and E.

VIII. Motion

Denial of Appeal and Amendment of Use Permits With Respect to Outdoor Storage

I (Comm. _____) hereby move that the Planning Commission adopt Resolution 16-13PC denying the Pleasant Paper Recycling Inc.'s (dba "Concord Recycling Center") Appeal and amending Use Permits 01-00 and 03-11 for 1320 and 1313 Galaxy Way to allow outdoor storage subject to conditions, pursuant to Development Code Sections 18.200.170.D. and E. (Seconded by Comm. _____.)

Prepared by:



Andrew J. Mogensen, AICP
Principal Planner
andrew.mogensen@cityofconcord.org

Reviewed by:



Laura Simpson
Planning Manager
laura.simpson@cityofconcord.org

Exhibits:

- A: Planning Commission Resolution 16-13PC
- B: Correspondence from the Appellant dated October 29, 2015
- C: Correspondence from the City dated November 18, 2015
- D: Correspondence from the Appellant dated December 30, 2015
- E: Correspondence from the City dated January 5, 2016 (Interpretation)
- F: Filed Notice of Appeal dated January 11, 2016 (Appeal)

- G: Correspondence from the City dated January 29, 2016
- H: Use Permits 00-1 (Staff Report and Approval⁷)
- I: Use Permits 03-11 (Staff Report and Resolution)
- J: Tuesday 2/2/2016 3:59 PM email from J. Garrett Deal. Esq.)

⁷ Use Permits were approved by resolution after 2001.

BEFORE THE PLANNING COMMISSION
OF THE CITY OF CONCORD,
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA

A RESOLUTION DENYING PLEASANT PAPER
RECYCLING INC.'S (DBA "CONCORD
RECYCLING CENTER") APPEAL OF A
PLANNING DIVISION INTERPRETATION OF
CONCORD DEVELOPMENT CODE SECTION
18.40.010(D) REGARDING OUTDOOR STORAGE
IN THE SERVICE COMMERCIAL (SC) ZONING
DISTRICT AND AMENDING USE PERMITS 01-00
AND 03-11 FOR 1320 AND 1313 GALAXY WAY TO
ALLOW OUTDOOR STORAGE PURSUANT TO
DEVELOPMENT CODE SECTIONS 18.200.170.D.
AND E.

WHEREAS, on January 11, 2016, Shusheng "Harry" Luan, owner of Pleasant Paper Recycling Inc. DBA Concord Recycling Center ("Appellant"), filed an appeal of the Planning Manager's interpretation of Section 18.40.010(D) pertaining to the prohibition of outdoor storage in the Service Commercial zoning district as it pertains to a processing facility business located at 1313 and 1320 Galaxy Way, Concord CA, APNs 126-020-073 and 126-451-007 (individually and collectively, the "Site"); and

WHEREAS, on September 11, 2015, Appellant received a Notice of Violation related to the outdoor storage of materials and equipment, among other things, for use permits UP 01-00 and UP 03-011 ("Use Permits") established for Appellant's processing facilities, and

WHEREAS, this is not a code enforcement hearing, and matters unrelated to Appellant's compliance with applicable outdoor storage requirements are not before the Planning Commission at this time; and

WHEREAS, the Planning Commission approved Use Permit 01-00 for Concord Recycling Center's operations at 1320 Galaxy Way on March 15, 2001; and

WHEREAS, the Planning Commission approved Use Permit 03-11 for Concord Recycling Center's expanded operations at 1313 Galaxy Way on August 6, 2003; and

WHEREAS, both Use Permits established specific conditions of approval prohibiting the outdoor storage of materials at the Appellant's Site; and

1 **WHEREAS**, the current general plan land use designation and zoning for the Site is Service
2 Commercial (SC); and

3 **WHEREAS**, the Concord Development Code became effective on August 23, 2012, at which
4 time the zoning designation for the Site changed from Special Light Industrial (SLI) to Service
5 Commercial (SC); and

6 **WHEREAS**, the current use of the properties constitutes a “processing facility” under the
7 Concord Development Code. Section 18.40.020, Table of Permitted Uses, prohibits processing
8 facilities in the Service Commercial zoning district, thus rendering Appellant’s processing facilities
9 legal non-conforming uses; and

10 **WHEREAS**, Concord Development Code Section 18.530.020 provides that a use of land that
11 was legally established and has been maintained prior to the adoption or amendment of the
12 development code may be continued; and

13 **WHEREAS**, after analysis of relevant facts and provisions of the Development Code in its
14 entirety, the Planning Division determined that Section 18.40.010(D) establishes the purpose of the
15 Service Commercial zoning district but does not contain provisions enabling or regulating the use of
16 outdoor storage for processing facilities; and

17 **WHEREAS**, other sections of the Development Code contain specific provisions regulating
18 the allowed use of outdoor storage for processing facilities; and

19 **WHEREAS**, the Planning Division further determined that all conditions of approval
20 established under the facility’s Use Permits continue to be valid and applicable to the Site; and

21 **WHEREAS**, Appellant did not request an interpretation as to whether it should be accorded
22 limited outdoor storage rights pursuant to Development Code Sections 18.200.170.D. and E; and

23 **WHEREAS**, on January 5, 2016, the Planning Division issued an official interpretation that
24 Concord/Pleasant Hill Recycling Center is classified as a Processing Center, a use which is not
25 allowed under the Service Commercial (SC) zoning that applies to the subject property at 1320 and
26 1313 Galaxy Way. Because the use was approved via the Use Permits prior to the SC zoning
27 designation in 2012, the current use is legal non-conforming. Legal non-conforming uses may not be
28

1 expanded or intensified, and can continue to exist only in compliance with the original permit
2 approval. Furthermore, Development Code Chapter 18.200 (Standards for Specific Uses) at Sections
3 18.200.170.D. and E., contains specific provisions under which processing facilities and recycling
4 centers may have limited outdoor storage (“Interpretation”); and

5 **WHEREAS**, on January 11, 2016, Appellant appealed the Planning Division’s interpretation,
6 specifically requesting an “Interpretation of Concord Municipal Code Section 18.40.010(D)
7 prohibiting outside storage.”; and

8 **WHEREAS**, on January 29, 2016, City staff advised the Appellant that their appeal of the
9 Zoning Interpretation amounts to a de facto request to amend the Use Permits as to outdoor storage
10 (Exhibit F) and that the Planning Commission has discretion to deny the appeal but to amend the Use
11 Permits in order to allow outdoor storage pursuant to Development Code Sections 18.200.170.D. and
12 E; and

13 **WHEREAS**, the Planning Commission, after giving all public notices required by State law
14 and the Concord Municipal Code, held a duly noticed public hearing on February 17, 2016 to consider
15 the Concord Recycling Center Appeal (PL1600011); and

16 **WHEREAS**, at such public hearing, the Planning Commission considered all oral and written
17 testimony, materials, and information received, including the oral reports from City staff and
18 Appellant, the written report from City staff dated February 17, 2016 and all attachments thereto
19 (collectively, “Staff Report”), the Appeal, exhibits of correspondence presented, and all other
20 pertinent plans, documents, testimony, other materials, and information contained in the record of
21 proceedings relating to the Use Permits, the Interpretation, and the Appeal, which are maintained at
22 the offices of the City of Concord Planning Division (collectively, “Record”); and

23 **WHEREAS**, on February 17, 2016, the Planning Commission, after consideration of all
24 pertinent plans, documents and testimony, declared their intent to deny the Appeal (PL1600011) and
25 to amend the Use Permits in order to allow outdoor storage pursuant to Development Code Sections
26 18.200.170.D. and E.

27 **NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:** that the Planning Commission
28

1 does hereby make the following findings:

2 General

- 3 1. The recitals above are hereby incorporated in to the findings by reference.
- 4 2. The Planning Commission has reviewed, considered, and evaluated the Record.
- 5 3. The Planning Commission’s decision is based on its interpretation of the Development Code
6 and the land use aspects of outdoor storage with respect to Appellant’s processing facility use at the
7 Site and the Use Permits; the Planning Commission has not based its decision on any actual or alleged
8 code enforcement violations, as those matters are within the purview of and are being reviewed by the
9 Concord Police Department’s Code Enforcement Division.

10 CEQA

11 4. Pursuant to the California Environmental Quality Act of 1970, Public Resources Code §
12 21000, et seq., as amended and implementing State CEQA Guidelines, Title 14, Chapter 3 of the
13 California Code of Regulations (collectively, “CEQA”), the Planning Commission’s consideration of
14 and action on the Appeal, and amendments of Use Permit 01-00 for 1320 Galaxy Way and Use Permit
15 03-11 for 1313 Galaxy Way allowing outdoor storage pursuant to Development Code Sections
16 18.200.170.D. and E, action does not constitute a “project” within the meaning of Public Resources
17 Code Section 21065, 14 Cal Code Regs. Sections 15060(c)(2), 15060(c)(3), or 15378 because it has
18 no potential for resulting in either a direct physical change in the environment, or a reasonably
19 foreseeable indirect physical change in the environment. Even if such activities did constitute a
20 project under CEQA, the activities fall within the “common sense” exemption set forth in 14 Cal Code
21 Regs. Section 15061(b)(3), excluding projects where “it can be seen with certainty that there is no
22 possibility that the activity in question may have a significant effect on the environment....”
23 Moreover, even if the activities did not qualify for the common sense exemption, they are exempt
24 pursuant to CEQA Guidelines Sections 15301 (Existing Facilities), 15302 (Replacement or
25 Reconstruction), and 15303 (New Construction or Conversion of Small Structures) because, among
26 other things, they involve minor alterations to existing facilities, replacement or reconstruction of
27 existing facilities, and construction and location of limited numbers of new small facilities or
28

1 structures, all as further detailed in the staff report and attachments thereto.

2 5. The foregoing CEQA determination reflects the independent judgment and analysis of the City
3 as the lead agency for this matter.

4 Appeal

5 6. The Planning Commission does hereby deny Pleasant Paper Recycling Inc.'s (dba "Concord
6 Recycling Center") Appeal but amending Use Permits 01-00 and 03-11 for 1320 and 1313 Galaxy
7 Way to allow outdoor storage subject to conditions, pursuant to Development Code Sections
8 18.200.170.D. and E.:

9 i. Concord Recycling Center is classified as a "Processing Facility," a use which is not
10 allowed under the Service Commercial (SC) zoning designation that applies to the subject property at
11 1320 and 1313 Galaxy Way. A "Processing Facility" is defined in Section 18.20.020 to mean "a
12 building or enclosed space that includes equipment for baling, briquetting, crushing, compacting,
13 grinding, shredding and sorting of source-separated recyclable materials, except ferrous metals other
14 than food and beverage containers. This classification includes both light- and heavy-processing
15 facilities, the former of which is typically less than 45,000 square feet"; and

16 ii. Concord Recycling Center's Use Permits 1-00 and 03-11 were approved prior to the
17 Service Commercial (SC) zoning designation in 2012 and the current use of a Processing Facility is
18 legal non-conforming. Legal non-conforming uses may not be expanded or intensified, and can
19 continue to exist only in compliance with the original Use Permit approvals; and

20 iii. As a legal non-conforming use, Concord Recycling Center has continued to exercise its
21 authority to operate under the Use Permits, and must also accept the permits' burdens (conditions of
22 approval); and

23 iv. Concord Development Code Section 18.40.010(D) establishes the Purpose of the
24 Service Commercial zoning district and does not contain provisions enabling or legalizing the use of
25 outdoor storage. Other provisions of the Development Code such as Chapter 18.40 at Table 18.40.020
26 and Sections 18.200.170.D. and E. contains specific provisions for limited outdoor storage.

1 Use Permit Amendments

2 7. The Planning Commission does hereby amend Use Permit 01-00 Condition of Approval #2 for
3 Concord Recycling Center’s operations at 1320 Galaxy Way and Use Permit 03-11 Condition of
4 Approval #11 and #12 for Concord Recycling Center’s operations at 1313 Galaxy Way to read as
5 follows:

6 i. The Conditions shall be replaced with the wording of Concord Development Code
7 Section 18.200.170 (D) and (E), attached to this Resolution as “Attachment A.”

8 ii. The applicant shall have thirty (30) days from the effective date of this Resolution to
9 submit a complete building permit application for the construction of a solid masonry wall not less
10 than eight feet in height and gates for the purpose of screening storage areas in compliance with
11 Section 18.200.170 (D) and (E). The masonry wall shall be constructed and the permit finalized within
12 three (3) months of permit issuance. The City has the option to initiate a revocation of the Use Permits
13 for a failure to comply with this requirement.

14 Effective Date

15 8. In accordance with City of Concord Municipal Code Section 18.500.080, approvals, or other
16 decisions of the Planning Commission shall become effective on the 11th calendar day following the
17 date the decision is rendered, if no appeal is filed.

18 **PASSED AND ADOPTED** this 17th day of February, 2016, by the following vote:

19 **AYES:**

20 **NOES:**

21 **ABSTAIN:**

22 **ABSENT:**

23 _____
24 Laura Simpson, AICP
25 Secretary to the Planning Commission
26
27
28

Attachment A

18.200.170 Recycling facilities.

Where allowed by Division II of this title, Zoning Districts – Uses and Standards, recycling facilities that include collection facilities (reverse vending machines and small and large collection facilities) and processing facilities shall comply with the requirements of this section.

...

D. Processing Facilities.

1. Processing facilities shall be located at least 500 feet from an R district or residential use.
2. Processors shall operate in a fully enclosed building, except for incidental storage, or within an area enclosed on all sides by a solid masonry wall not less than eight feet in height and landscaped on all street frontages.
3. If the facility is open to the public, parking shall be provided for a minimum of 10 customers or the peak load, whichever is higher, unless otherwise approved by the review authority.
4. One parking space shall be provided for each commercial vehicle operated by the processing center, in addition to the parking required in Table 18.160.040, Parking Requirements by Land Use.
5. Power-driven processing shall be permitted, provided all noise-level requirements are met.

E. All Collection and Processing Facilities.

1. No facility or storage area shall occupy a required front or corner side yard, and all requirements applicable to the principal structure on the site shall apply to collection and processing facilities except as otherwise provided in this section.
2. A large collection or processing facility may accept used motor oil for recycling from the generator in compliance with California Health and Safety Code Section 25250.11.
3. All exterior storage of material shall be in sturdy containers or enclosures that are fully covered, secured, and maintained in good condition. Storage containers for flammable material shall be constructed of nonflammable material. No storage, excluding truck trailers and overseas containers, shall be visible above the height of the fencing.
4. Noise levels generated by the facility shall not exceed 60 decibels (dBA) as measured at the property line of an R district or otherwise shall not exceed 70 dBA.
5. All facilities shall be administered by on-site personnel during hours the facility is open. If a large collection or processing facility is located within 500 feet of an R district, it shall not be in operation between the hours of 7:00 p.m. and 8:00 a.m.

6. The site of the facility shall be kept free of litter and any other undesirable material. Containers shall be clearly marked to identify the type of material that may be deposited. The facility shall display a notice stating that no material shall be left outside the recycling containers.

7. Except as otherwise provided herein, sign regulations shall be those provided for the district in which the facility is located. In addition, each facility shall be clearly marked with the name and phone number of the facility operator and the hours of operation.

8. No facilities shall collect household waste or flammable waste products.

9. No dust, fumes, smoke, vibration, or odor above ambient levels may be detectable on neighboring properties. [Ord. 12-5; Ord. 12-4. DC 2012 § 122-630].



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October 29, 2015

VIA E-MAIL AND U.S. MAIL

Victoria Walker
Community and Economic Development Director
City of Concord
1950 Parkside Drive
Concord, CA 94519
E-Mail: Victoria.Walker@cityofconcord.org

**Re: Concord Recycling Center (aka Pleasant Paper Recycling, Inc.)
1320 and 1313 Galaxy Way, Concord**

Dear Victoria:

Thank you again for the time you and your colleagues spent this Tuesday discussing the above-referenced matter. As you know, Miller Starr Regalia, along with the Law Offices of Ray T. Rockwell, represents Shusheng "Harry" Luan, the owner of Pleasant Paper Recycling, Inc., doing business as Pleasant Hill Recycling Center and Concord Recycling Center ("CRC"), located at 1313 and 1320 Galaxy Way (individually, a "Property" and collectively, the "Properties").

CRC operates in the City of Concord pursuant to two Use Permits issued by the Planning Commission, one in 2000 for 1320 Galaxy Way, and one in 2003 for 1313 Galaxy Way. CRC's business is now a legal nonconforming use as a result of the 2012 "Concord Development Code Project," which defines CRC as a "processing facility" and provides that such facilities are not allowed in the Service Commercial Zoning District where CRC resides.

This letter addresses the September 11, 2015 Notice of Violation (Case Number CE15044) the City's Code Enforcement Unit sent to CRC and our Tuesday meeting. In particular, because we understand City staff agree that it makes sense to address the land use issue raised in the Notice of Violation prior to, and separately from, the code enforcement issues that do not relate to land use,¹ this letter focuses solely on

¹ As we discussed, CRC has already resolved several code enforcement issues the City previously raised in connection with the Properties, and it is committed to addressing, and will address, each of the remaining alleged violations promptly upon resolution of the land use issue concerning outside storage.

the outside storage that occurs at the Properties as a necessary part of this successful local business.

The key issue is whether outside storage may occur at the Properties given that the Use Permits prohibit outside storage, while the underlying Service Commercial zoning district allows outside storage as a permitted use. For the reasons explained below, we believe there are two possible interpretations, one of which is fair and reasonable and clearly legal and the other of which is unnecessarily conservative and arguably illegal. We respectfully request that the City choose the fair and reasonable approach, which is warranted because:

- (1) CRC runs a successful recycling operation that employs approximately 25 employees whose livelihoods depend on CRC's continuing viability;
- (2) CRC provides a valuable service to the community, consistent with General Plan Principle PF-1.5, assisting Concord's waste diversion efforts (as the City itself has recognized; see Attachment #1) and decreasing the amount of solid waste that ends up in landfills, littered on streets, or dumped in waterways;
- (3) Concord General Plan 2030 expressly promotes economic development and the pillars of business retention, expansion, and attraction (see, e.g. General Plan at 2-5), and the City's business retention program states that it "greatly values its existing Concord companies and is poised to assist in their growth and expansion" (See Attachment #2);
- (4) CRC would relocate to another community if not allowed to have outside storage at its Properties; and
- (5) Concord is entitled to extreme deference in the interpretation and application of its land use regulations.

The fair and reasonable approach is one that allows CRC to have outside storage at both Properties. It recognizes that while the Use Permits the Planning Commission approved in the early 2000's under the provisions of an earlier zoning district prohibited CRC from storing and/or sorting recyclable materials outside, the Service Commercial zoning district the City Council created in 2012 that now applies to the Properties expressly allows such use. According to the Concord Development Code:

"[t]he SC [Service Commercial] district provides areas for uses that *typically require outdoor storage* and activities with higher volumes of truck traffic, noise, and visual impacts." (Development Code § 18.40.010(D), emphasis added.)

The City's highest legislative body has more recently decided that "outdoor storage and activities with higher volumes of truck traffic, noise, and visual impacts" are appropriate and allowed by right in CRC's zoning district. The City thus has authority, under Article XI, section 7 of the California Constitution, to conclude that CRC's zoning allows for outside storage, irrespective of the Use Permits. There is nothing in the state's Planning and Zoning Laws and nothing in the City's Development Code that compels the City to reach any other conclusion. Indeed, the City is "entitled to considerable deference" in interpreting its own Development Code. See, e.g., *Gray v. County of Madera*, 167 Cal.App.4th 1099, 1129-30 (2008).

If the City desires to work with CRC and for CRC to continue to assist the City's recycling efforts, the City should exercise its discretion to read the foregoing Development Code provision to trump the conflicting provision in the Use Permits. The City has all of the authority it needs to make that fair and reasonable choice, and it is difficult to see why the City would choose an interpretation that gives CRC the Hobson's choice of needing to amend its Use Permits to allow outside storage when it cannot amend the Use Permits because its business is a legal nonconforming use.

The unnecessarily conservative approach is one that applies a narrow reading of the Development Code to an important existing local business simply because one of its provisions potentially allows—but does not compel—such an interpretation. As a result, the unnecessarily conservative approach erects obstacles to the continuing viability of that business. Thus, regardless of the myriad reasons the City *should* choose to work *with* the business, the unnecessarily conservative approach actively makes it more difficult, if not impossible, for that business to succeed in Concord.

Here, the unnecessarily conservative approach is one that concludes CRC cannot have outside storage because the business is a legal nonconforming use and the Use Permits happen to prohibit outside storage, despite the fact CRC is in a zoning district that expressly allows outside storage as well as other more impactful activities.² Given the clear hierarchy of law regulating local land use (see, e.g., *DeVita v. County of Napa*, 9 Cal.4th 763, 772-73 (1995) (quoting *Leshar Communications, Inc. v. City of Walnut Creek*, 52 Cal.3d 531, 540 (1990) and *Neighborhood Action Group v. County of Calaveras*, 156 Cal.App.3d 1176, 1183 (1984); see also *Curtin's California Land Use & Planning Law*, Cecily Talbert Barclay and Matthew S. Gray, Chapter 2 (Solano Press, 34th ed. 2014) and *California Land Use Practice* § 1.12 (Continuing Education of the Bar 2006)), the

² It bears noting that the only reason outside storage is a question, under the Service Commercial zoning, is that the Use Permits prohibit outside storage. But even though CRC is a nonconforming use as a result of the way the Development Code defines recycling facilities, if the Use Permits did not prohibit outside storage and were otherwise the same in every respect, there would be no question that CRC could have outside storage as a normal part of its business.

Victoria Walker
October 29, 2015
Page 4

City Council-approved Development Code sits above the Planning Commission-adopted Use Permits. And because the Service Commercial zoning expressly allows outside storage, the better legal analysis is that the zoning effectively overrides the conflicting provision in the Use Permits.

To the extent Concord has the power to interpret its Development Code in such a crabbed fashion, there is nothing that requires the City to do so and, as highlighted above, there are many reasons the City should instead choose a fair and reasonable interpretation that is equally if not more well supported under the circumstances. For example, the "processing" that occurs at CRC, as that term is defined in the Development Code, takes place *inside* the buildings on its Properties. CRC's core function thus occurs indoors, where its impacts are the least intense. CRC seeks simply to store recyclable materials outdoors until they can be brought indoors for "processing" or, once "processed," until they can be removed from the Properties for delivery to recyclers in other communities.

As we explained during our meeting, and as we hope our efforts demonstrate, we are committed to productively resolving the City's concerns. So that CRC may continue to operate in Concord, we respectfully request that the City reach the fair and reasonable conclusion articulated in this letter.

We greatly appreciate your assistance. Please do not hesitate to contact me if you have any questions.

Sincerely,

MILLER STARR REGALIA



Bryan W. Wenter, AICP

BWW

Attachments: #1 (Copy of plaque from City of Concord)
#2 (Business Retention Program flyer)

cc: Laura Simpson, Planning Manager
Susanne Brown, Senior Assistant City Attorney
Ray Rockwell, Esq.

CITY OF CONCORD
1950 Parkside Drive
Concord, California 94519-2578
FAX:

CITY COUNCIL
Timothy S. Grayson, Mayor
Laura M. Hoffmeister, Vice Mayor
Edi E. Birsan
Daniel C. Helix
Ronald E. Leone

Telephone:



Thomas J. Wentling, City Treasurer
Valerie J. Barone, City Manager

November 18, 2015

Bryan Wenter, AICP
Miller Starr Regalia
1331 N. California Blvd., Fifth Floor
Walnut Creek, CA 94596

RE: Pleasant Hill Recycling Center

Dear Mr. Wenter:

This letter is in response to your letter dated October 29, 2015, to Victoria Walker, Community and Economic Development Director for the City of Concord.

As Victoria indicated in her e-mail to you dated November 2, 2015, because the original Use Permit for the Pleasant Hill Recycling Center was approved by the Planning Commission in a public hearing and because the current conditions of the use are governed by a Conditional Use Permit, any proposed amendments to the Conditional Use Permit will need to be reviewed and considered by the Planning Commission at a public hearing.

Currently there are ongoing Code Enforcement violations related to outdoor activities on your client's property. Please advise us of your client's intent to apply for an amendment to the Conditional Use Permit as soon as possible. Failure to apply for an application by December 31, 2015, will result in renewed Code Enforcement action.

An application to amend a Use Permit may be obtained from the Permit Center located at 1950 Parkside Drive, Building D, in Concord. The planner assigned to this project, should an application be submitted, will be Andrew Mogensen. He may be contacted at Andrew.mogensen@cityofconcord.org or at 925-671-3332.

Sincerely,

Laura Simpson
Planning Manager

cc: Victoria Walker, Community and Economic Development Director
Lance Bayer, Special Counsel
Susanne Brown, Senior Assistant City Attorney

2255 Morello Avenue, Suite 200
Pleasant Hill, California 94523
tel 925 932 7785 fax 925 262 2379

www.rtrlegal.com jstrat@rtrlegal.com

December 30, 2015

Via Hand-Delivery

Victoria Walker
Community and Economic Development Director
City of Concord
1950 Parkside Drive
Concord, CA 94519

Andrew Mogensen
Principal Planner
City of Concord
1950 Parkside Drive
Concord, CA 94519

Re: **Concord Recycling Center (aka Pleasant Paper Recycling, Inc.)**
1320 and 1313 Galaxy Way, Concord

Dear Ms. Walker and Mr. Mogensen:

As you know, our office represents Concord Recycling Center, also known as Pleasant Paper Recycling, Inc. ("CRC"). This letter is a request for an interpretation, pursuant to City of Concord Municipal Code section 18.10.060, to allow CRC to conduct limited outside storage consistent with its applicable zoning status (Concord Municipal Code section 18.40.010(D)). For the reasons below, CRC hereby requests such an interpretation.

CRC operates in the City of Concord pursuant to two Use Permits issued by the Planning Commission, one in 2000 for 1320 Galaxy Way, and one in 2003 for 1313 Galaxy Way. CRC's business is now a legal nonconforming use as a result of the 2012 "Concord Development Code Project," which defines CRC as a "processing facility" and provides that such facilities are not allowed in the Service Commercial Zoning District where CRC resides.

The key issue is whether outside storage may occur at the Properties given that the Use Permits prohibit outside storage, while the underlying Service Commercial zoning district allows outside storage as a permitted use. For the reasons explained below, we believe there are two possible interpretations, one of which is fair and reasonable and clearly legal and the other of which is

unnecessarily conservative and arguably illegal. We respectfully request that the City choose the fair and reasonable approach.

The fair and reasonable approach is one that allows CRC to have outside storage at both Properties. It recognizes that while the Use Permits the Planning Commission approved in the early 2000's under the provisions of an earlier zoning district prohibited CRC from storing and/or sorting recyclable materials outside, the Service Commercial zoning district the City Council created in 2012 that now applies to the Properties expressly allows such use. According to the Concord Development Code:

“[t]he SC [Service Commercial] district provides areas for uses that *typically require outdoor storage* and activities with higher volumes of truck traffic, noise, and visual impacts.” (Development Code § 18.40.010(D), emphasis added.)

The City's highest legislative body has more recently decided that “outdoor storage and activities with higher volumes of truck traffic, noise, and visual impacts” are appropriate and allowed by right in CRC's zoning district. The City thus has authority, under Article XI, section 7 of the California Constitution, to conclude that CRC's zoning allows for outside storage, irrespective of the Use Permits. There is nothing in the state's Planning and Zoning Laws and nothing in the City's Development Code that compels the City to reach any other conclusion. Indeed, the City is “entitled to considerable deference” in interpreting its own Development Code. *See, e.g., Gray v. County of Madera*, 167 Cal.App.4th 1099, 1129-30 (2008).

If the City desires to work with CRC and for CRC to continue to assist the City's recycling efforts, the City should exercise its discretion to read the foregoing Development Code provision to trump the conflicting provision in the Use Permits. The City has all of the authority it needs to make that fair and reasonable choice, and it is difficult to see why the City would choose an interpretation that gives CRC the Hobson's choice of needing to amend its Use Permits to allow outside storage when it cannot amend the Use Permits because its business is a legal nonconforming use.

The unnecessarily conservative approach is one that applies a narrow reading of the Development Code to an important existing local business simply because one of its provisions potentially allows—but *does not compel*—such an interpretation. As a result, the unnecessarily conservative approach erects obstacles to the continuing viability of that business. Thus, regardless of the myriad reasons the City *should* choose to work *with* the business, the unnecessarily conservative approach actively makes it more difficult, if not impossible, for that business to succeed in Concord.

Here, the unnecessarily conservative approach is one that concludes CRC cannot have outside storage because the business is a legal nonconforming use and the Use Permits happen to prohibit outside storage, despite the fact CRC is in a zoning district that expressly allows outside

storage as well as other more impactful activities.¹ Given the clear hierarchy of law regulating local land use (see, e.g., *DeVita v. County of Napa*, 9 Cal.4th 763, 772-73 (1995) (quoting *Leshar Communications, Inc. v. City of Walnut Creek*, 52 Cal.3d 531, 540 (1990) and *Neighborhood Action Group v. County of Calaveras*, 156 Cal.App.3d 1176, 1183 (1984); see also *Curtin's California Land Use & Planning Law*, Cecily Talbert Barclay and Matthew S. Gray, Chapter 2 (Solano Press, 34th ed. 2014) and California Land Use Practice § 1.12 (Continuing Education of the Bar 2006)), the City Council-approved Development Code sits above the Planning Commission-adopted Use Permits. And because the Service Commercial zoning expressly allows outside storage, the better legal analysis is that the zoning effectively overrides the conflicting provision in the Use Permits.

To the extent Concord has the power to interpret its Development Code in such a crabbed fashion, there is nothing that requires the City to do so and, as highlighted above, there are many reasons the City should instead choose a fair and reasonable interpretation that is equally if not more well-supported under the circumstances. For example, the “processing” that occurs at CRC, as that term is defined in the Development Code, takes place *inside* the buildings on its Properties. CRC’s core function thus occurs indoors, where its impacts are the least intense. CRC seeks simply to store recyclable materials outdoors until they can be brought indoors for “processing” or, once “processed,” until they can be removed from the Properties for delivery to recyclers in other communities.

Accordingly, we respectfully requests that the City interpret its applicable Municipal Code provisions to allow CRC to conduct limited outside storage consistent with its applicable zoning regulations.

Very truly yours,

LAW OFFICES OF RAY T. ROCKWELL



J. Garret Deal

¹ It bears noting that the only reason outside storage is a question, under the Service Commercial zoning, is that the Use Permits prohibit outside storage. But even though CRC is a nonconforming use as a result of the way the Development Code defines recycling facilities, if the Use Permits did not prohibit outside storage and were otherwise the same in every respect, there would be no question that CRC could have outside storage as a normal part of its business.

CITY OF CONCORD
PLANNING DIVISION
1950 Parkside Drive, MS/53
Concord, California 94519-2578
FAX: (925) 671-3381



Telephone: (925) 671-3152

January 5, 2016

J. Garret Deal
Law Offices of Ray T. Rockwell
2255 Morello Avenue
Pleasant Hill, CA 94523

Re: Concord/Pleasant Hill Recycling Center

Dear Mr. Deal:

I am in receipt of your letter of December 30, 2015, in which you requested a zoning interpretation to allow your client, Concord/Pleasant Hill Recycling Center, to conduct limited outside storage at 1320 and 1313 Galaxy Way. Pursuant to Concord Municipal Code Section 18.10.060, this letter serves as an official interpretation that Concord/Pleasant Hill Recycling Center is classified as a Processing Center, a use which is not allowed under the Service Commercial (SC) zoning that applies to the subject property at 1320 and 1313 Galaxy Way. However, because the use was approved via Use Permit prior to the SC zoning designation in 2012, the current use is legal non-conforming. Legal non-conforming uses may not be expanded or intensified, and can continue to exist only in compliance with the original permit approval. Outdoor storage was expressly prohibited by the use permit.

You have requested an interpretation to allow the existing business, located at 1320 and 1313 Galaxy Way, to have limited outside storage based on Development Code section 18.40.010(D):

"SC-Service Commercial. The SC district is applied to areas of the city appropriate for commercial uses such as automobile services, auto-oriented uses, light industry, contractors' yards, and building materials storage, at up to .8 FAR. ... The SC district provides areas for uses that typically require outdoor storage and activities with higher volumes of truck traffic, noise, and visual impacts. The SC district is consistent with and implements the service commercial (SC) land use designation of the General Plan."

On November 18, 2015, I responded to a similar letter from Bryan Wenter dated October 29, 2015. Copies of both Mr. Wenter's letter and my letter are enclosed for your convenience. I again cannot make the zoning interpretation you have requested because given the activities undertaken at Concord/Pleasant Hill Recycling Center, that business is classified as a "processing facility" under the current Development Code, which was adopted and became effective in 2012. You and Mr. Wenter both assert that the City Council intended to allow outdoor storage in the SC zoning district via its adoption of the 2012 Development Code. But

you each disregard the fact that the City Council also prohibited all but incidental storage for processing facilities where this use is allowed in other zoning districts, imposed specific restrictions on such outdoor storage pursuant to Section 18.200.170.D and E, and explicitly prohibited processing facilities in the SC zoning district. As such, your client's business was rendered a legal non-conforming use.

Pursuant to Concord Development Code Section 18.530.030 Nonconforming uses and nonconforming structures:

A. Nonconforming uses. A nonconforming use may be continued or replaced; provided that:

1. The use shall not be enlarged or expanded in size or capacity, or extended to occupy a greater area of land or building floor area than it legally occupied before it became nonconforming.

and

2. The use shall not be intensified so that the hours of operation are extended, the number of employees are increased, the occupancy capacity is increased, the volume of traffic or noise generated by the use is increased, or a greater amount of parking is required; and

5. An existing use that is authorized by a previously approved use permit, but is not allowed by the development code in its current location, may continue to exist in compliance with the original permit approval and shall be deemed nonconforming.

Your client exercised its authority to operate its processing facility under the use permit, and must thus also accept the permit's burdens (conditions of operation) (Sports Arenas Properties, Inc. v. City of San Diego (1985) 40 Cal.3d 808, 815). As was indicated in my letter of November 18, 2015, to change the existing conditions of approval, the Planning Commission must amend the existing Use Permit. To request this action, your client may submit a complete application to amend the existing Use Permit to allow outdoor storage. The application would be considered by the Planning Commission at a noticed public hearing.

To the extent that you disagree with this interpretation you have the right to appeal to the Planning Commission. Appeals and the required filing fee must be filed with the Planning Division or City Clerk within ten (10) calendar days of the date of this letter (i.e., by 5:00 p.m. on January 15, 2016). The appeals procedure is set forth in Development Code Section 18.510, a copy of which is enclosed for your convenience. The fee is composed of four elements: 1) Appeal fee to Planning Commission = \$99.00, 2) Public Notice in newspaper = At cost, 3) Poster Board for Site = \$12.00, 4) Mailed Notice to property owners within 300 feet of the site = \$250.00, for a TOTAL of \$361.00 + the cost for the public notice in the newspaper (to be determined after appeal filing).

Please feel free to contact me if you have any questions or would like further information on either this decision or the appeal process.

Sincerely,

Laura Simpson
Planning Manager

Enclosures:

- A: Bryan Wenter letter dated October 29, 2015
 - B: Laura Simpson letter dated November 18, 2015
 - C: J. Garrett Deal letter dated December 30, 2015
 - D: March 17, 2000 Pleasant Paper Use Permit (UP 1-100)
 - E. Requirements for Outdoor Storage
- cc: Victoria Walker, CED Director
Brian Libow, Interim City Attorney
Susanne Brown, Senior Assistant City Attorney



NOTICE OF APPEAL
[Concord Municipal Code 2901(b)]

TO: City Council
City of Concord
1950 Parkside Drive, MS/03
Concord, CA 94519-2578

FOR STAFF USE ONLY	
PUBLIC NOTICE FEE \$	_____
<i>(According to Fees and Charges Resolution)</i>	
DATE PAID	<u>1-11-16</u>
FEE REC'D BY	<u>LV</u>
DATE	<u>1-11-16</u>

I hereby appeal the ^{interpretation} ~~decision / requirement~~ of the Planning Division
(ADMINISTRATOR OR COMMISSION)

in approving / denying the ^{interpretation} ~~application~~ of Pleasant Paper Recycling, Inc.
(NAME OF APPLICANT)

for limited outside storage on January 5, 2016
(TITLE OF ITEM BEING APPEALED)

Please indicate the specific action(s) or requirement(s) being appealed: Interpretation of Concord
Municipal Code section 18.40.010 (D) prohibiting outside
storage. For further discussion in compliance with Concord
Municipal Code sections 18.510.030 (A)(1-4), please see
attached Exhibits. Appellant is willing to have its appeal
heard as soon as possible.

Shuhang "Harry" Luan (PRINT) NAME OF APPELLANT
[Signature] SIGNATURE OF APPELLANT / REPRESENTATIVE

APPELLANT'S ADDRESS <u>1313 & 1320 Galaxy Way, Concord, CA 94520</u>	HOME PHONE	BUSINESS PHONE
ADDRESS FOR NOTICES <u>1320 Galaxy Way, Concord, CA 94520</u>		<u>(925) 689-3900</u>
MY REPRESENTATIVE IS <u>J. Garret Deal, Esq.</u>		BUSINESS PHONE <u>(925) 932-7785</u>

FOR STAFF USE ONLY			
ADDRESS OF PROPERTY INVOLVED <u>1313 and 1320 Galaxy Way</u>			
ASSESSOR'S PARCEL NUMBER(S) <u>126-020-073 and 126-451-007</u>		MUNICIPAL CODE SECTION	
FILE NUMBER <u>PL1600011-AC</u>	FILE TITLE	NAME OF RESPONSIBLE PLANNER	REVIEWED BY (PLANNING STAFF) <u>LV</u>
RECEIVED BY	PROJECT PLANNER <u>A. Mogensen</u>		

CITY CLERK USE ONLY	
Received written appeal on _____	
Scheduled for Council agenda of _____	to set for Public Hearing on _____
<input type="checkbox"/> Copies distributed to appropriate parties	DEPUTY CITY CLERK

CITY OF CONCORD
PLANNING DIVISION
1950 Parkside Drive, MS/53
Concord, California 94519-2578
FAX: (925) 671-3381



Telephone: (925) 671-3152

January 29, 2016

J. Garret Deal
Law Offices of Ray T. Rockwell
2255 Morello Avenue
Pleasant Hill, CA 94523

**VIA EMAIL (Garret Deal, garret@rtrlegal.com)
(Original via Regular Mail)**

Re: Concord/Pleasant Hill Recycling Center

Dear Mr. Deal:

Your appeal of the Concord Planning Division's January 5, 2016 outdoor storage zoning determination is tentatively scheduled for review by the Planning Commission on February 17, 2016. Based upon the facts outlined in your letter of January 11, 2016, upon which the appeal is based, it appears that you are requesting that changes in the Development Code subsequent to the granting of the use permits in this case, which permit outdoor storage in the Service Commercial (SC) District, also be applied to your client's processing facilities at 1313 and 1320 Galaxy Way, so as to allow outdoor storage to take place.

The use permits for both properties prohibit outdoor storage with certain enumerated exceptions. To the extent that you wish to avail yourself of outdoor storage opportunities beyond those specifically identified in either use permit, for all practical purposes your appeal appears to be a de facto request to amend the use permits with respect to outdoor storage. Should the Planning Commission deny your client's appeal by disagreeing that the current code's allowance of outdoor storage in the zoning district applies to the Galaxy Way properties, the hearing will be conducted as a use permit amendment request, limited only to the outdoor storage issue. This will enable the Planning Commission to take meaningful action if it determines that some degree of outdoor storage should be allowed. Given that narrow scope, and so that your client need not pay two application fees for the same request, the Planning Division has opted not to ask that you complete the traditional use permit amendment application or pay additional fees.

If you do want to raise additional use permit issues with the Planning Commission (i.e. other than outdoor storage), you will be required to apply for a use permit modification and pay all related fees. Copies of those applicable forms were previously sent to you by Principal Planner Andrew Mogensen via email on November 20, 2015 and are available

on the Planning Division's website. If you need additional time to submit your application, we would agree to delay the Planning Commission hearing of the Zoning Determination appeal, so that all issues can be considered at the same time. Please be aware that such use permit amendment hearing on issues other than outdoor storage would be conducted *de novo*, which means that all aspects of the 1313 and 1320 Galaxy Way use permits would be open for review and modification, not simply the items your client desires to change.

The Zoning Determination appeal hearing is currently set for February 17, 2016. Please let us know on or before February 2nd whether you wish to seek a use permit amendment/modification for either or both properties beyond the outdoor storage issue. If we do not hear from you by that date, we will conduct the hearing as a use permit amendment relating only to outdoor storage.

For mailing purposes, please also advise us whether Bryan Wenter, Esq. of Miller, Starr & Regalia remains counsel to your client, or whether you have supplanted him.

Please feel free to contact me at (925) 671-3369 if you have any questions or need additional information. We appreciate your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura J. Simpson". The signature is fluid and cursive, with a prominent initial "L" and "S".

Laura Simpson, AICP
Planning Manager

16ltr.008
Cc via email:

Brian Libow, Interim City Attorney
Susanne Brown, Senior Assistant City Attorney
Victoria Walker, Community Development Director
Andrew Mogensen, Principal Planner



REPORT TO PLANNING COMMISSION

DATE: March 15, 2000

SUBJECT: PLEASANT PAPER RECYCLING USE PERMIT (UP 1-00)
Application for a paper, plastic, glass, and metal recycling facility in an existing 18,480 square foot building at 1320 Galaxy Way, parcel 126-451-007. General Plan designation is Industrial/Business Park. Zoned Special Light Industrial (SLI) District.

Report in Brief

This is an application for a public recycling facility for recyclable goods that include paper, plastic, glass, and metals. The use is proposed in an existing 18,500 square foot building and will be open to the public. The only external change to the building will be two roll-up doors at the southwest corner of the building. The interior of the building will be used for storing and packaging the recycled materials and will also be used for an office (See Exhibit A).

Background

The following is a summary of the characteristics of the site, surrounding land uses, and General Plan policies affecting the project site and proposed development.

Site Characteristics

The project site is located on the south side of Galaxy Way (See Exhibit B). The site is .66 acres. There is an existing 18,500 square foot building. There are 21 existing parking spaces at the site. There is some landscaping at the front of the building facing Galaxy Way.

Surrounding Land Uses

Surrounding uses are industrial type uses. An access easement to Via de Mercados is located at the south end of the building.

General Plan Policies

Objective 6.2 Ensure that development within industrial/business park areas is compatible in terms of function, appearance, and safety concerns.

Policy 6.2.1 Promote research and development and similar types of light industrial uses in areas designated for industrial/business park uses.

Policy 6.2.2 Make use of all available fiscal and policy avenues to strongly encourage employment-generating high-technology and light industries wishing to locate in Concord.

Previous Approvals

ZAP 7-78-On May 11, 1978 this site was approved for a storage yard.

Discussion

State law passed in 1989 required cities to reduce waste disposed at landfills by 50 percent by December 31, 2000. Presently, the City has reduced waste disposal by 35 percent. If the 50 percent reduction is not achieved, the City would be subject to fines. The City has implemented new green waste and paper recycling programs that are designed to help the City achieve the required 50 percent reduction.

The City tracks recycling progress through two systems of measurement. One is based on the quarterly reports landfills provided to the County, which the County forwards to the City. If less waste is placed in the landfill from Concord, the City's recycling rate is better. The state also allows the City to track individual recycling to show how much of the total waste stream is recycled. Under state Waste Board rules, the City can use either the first landfill-based tracking method, or the individual tracking method, whichever gives us the higher recycling rate.

Project Description

This is a proposed recycling facility for the public for recyclable goods including paper, plastic, glass and metal. The proposed use would occupy all of the approximately 18,500 square foot building. The only proposed exterior change to the building would be to add two roll up doors at the southwest corner of the building. The interior of the building would be remodeled as a warehouse to store the recycled material. It would also include an office at the northeast side of the building.

The hours of operation are proposed to be 6:00AM to 7:00 PM Monday through Saturday. The facility would be open to the public from 6:00AM to 6:00PM. There are six full time and two part time employees proposed and the anticipated number of customers a day is 30-50. This operation is presently being conducted in Pleasant Hill. The project sponsor has indicated that the majority of the customers are from Concord and are both residents and representatives from local companies.

Traffic

The recycling facility would ship one truckload a day of recycled materials to other facilities that process recycled material to reuse for paper or metal products. The trucks would pull into the site from Galaxy Way and turn into the proposed rollup doors at the southwest corner of the building. Once the truck is loaded, it would exit via the access easement to Via de Mercados. Documentation of the rights to use the access easement that has been provided by the project sponsor (Exhibit C).

Noise

The project sponsor has indicated that noise sensitive activities like the breaking of glass materials would take place inside the building. The General Plan indicates the acceptable levels of new daytime noise sources are 50 dB average hourly, and 65 to 70 dB maximum level. It is unlikely that project generated noise levels would exceed this standard since all breaking of glass would take place inside the building. In addition, most land uses in the vicinity are not highly sensitive to noise. However, staff recommends that the Commission authorize the Chief of Planning to impose additional noise mitigation requirements if the City receives noise complaints about the facility.

Parking

The parking will be sufficient for this project. The ratio for this site is one space per 1000 which would require 19 spaces and there are presently 21 spaces at the site.

Landscaping

There is an existing landscaping strip along the front of the property that is presently well maintained.

Loading

The proposed facility would require the use of two hydraulic loaders to place containers of recycled material onto trucks. The loading of these containers requires substantial clearance and could not be accomplished within the building. The required loading activity is proposed to occur at the rear of the site. The loading activity would not require the dumping of material but rather the loading of filled containers onto a truck. Empty containers are returned to the site for reuse. Staff consider this activity to be acceptable but would prefer the loaders to be stored inside the building when not in use.

Fiscal Impact

There are no significant fiscal impacts that would result from this project.

Public Contact

Notification of this public hearing has been provided as required by State law and the Concord Municipal Code. The agenda for this meeting has been posted.

Environmental Status

The application has been determined to be Categorical Exempt from CEQA, as a Class Exemption, pursuant to Section 15301 of CEQA.

Alternatives for Recommendation

1. Approve the proposed use permit with findings and conditions of approval.
2. Deny the project.

Recommendation for Action

Alternative #1 above.

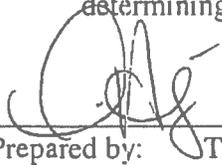
Findings for Approval

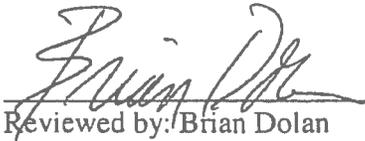
1. The project as conditioned, is compatible with the site and the surrounding areas and is consistent with the goals and objectives of the General Plan.
2. The project complies with the zoning ordinance and other applicable ordinances.
3. The proposed project would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood.
4. The proposed facility would help the City of Concord reach its recycling goals.

Conditions of Approval

1. Project development shall conform to plans submitted to the City dated February 17, 2000 as modified by conditions of approval below.
2. There shall be no outside storage or sorting of any recycled materials.
3. Starting July 15, 2000 and every year after that, the operators of the recycling facility shall provide a comprehensive annual report to the City listing the tonnages of each major category of material accepted for recycling at the facility for the twelve month period of July 1 of the preceding year to June 30th of the reporting year. The annual report shall include all materials accepted for recycling e.g. glass, paper, metal, aluminum, plastic, computer parts, etc. and the totals for each category shall be expressed as total tonnages of these materials accepted for recycling from all sources. This report shall be directed to: City Manager's Office, 1950 Parkside Drive, Concord, CA 94519.
4. If the City receives noise complaints regarding the recycled facility, the Chief of Planning may require additional mitigation measures to reduce average and

impulsive noise levels on the site. The standard presented in Table 2 of the Noise Element of the City of Concord General Plan shall be used as a guideline in determining these measures.


Prepared by: Talin Aghazarian
Planner


Reviewed by: Brian Dolan
Principal Planner

Enclosures: Exhibit A – Site Plan
Exhibit B – Location Map
Exhibit C- Title Report for Access Easement (to be provided at the hearing)
Exhibit D- Engineering Comments
M:\CD\PLANNING\PC\Staff Reports\1999 Staff Reports\recyclingfacility3-15-00.doc



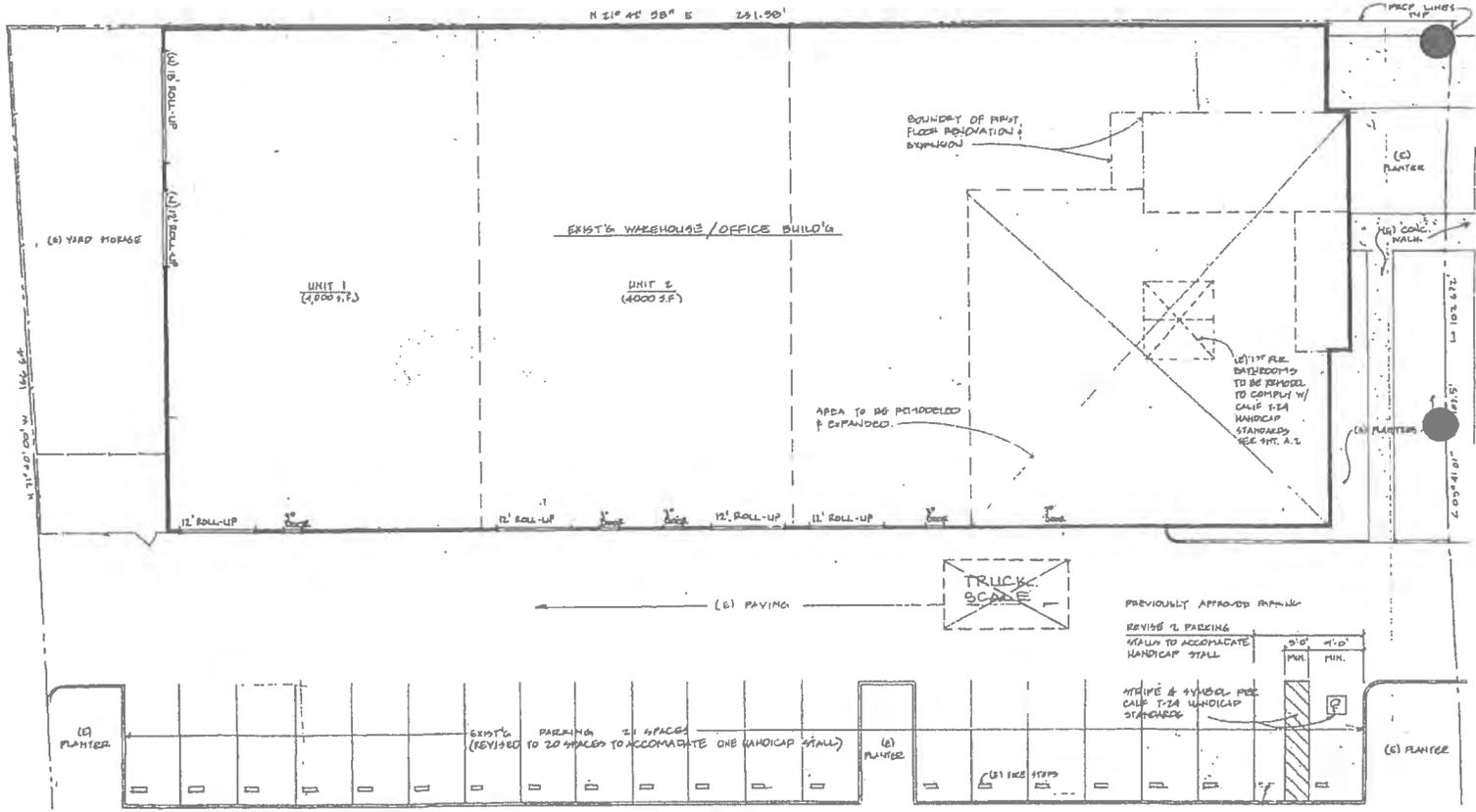
1320 GALAXY WAY CONCORD, CALIFORNIA

Square Footage of Project - First Floor	
Addition	2,880 s.f.
Existing Remodel	2,499 s.f.
Total	5,379 s.f.

Square Footage of Project - Second Floor	
Addition	809 s.f.
Existing Remodel	1,288 s.f.
Total	2,107 s.f.

Occupancy Use - B2	
Warehouse	11,690.5 ÷ 1,500 = 7.8
Office Area	6,474.5 ÷ 1,100 = 5.9
Total	13.7

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CITY OF CONCORD
PERMIT CENTER
1950 Parkside Drive MS/53
Concord, California 94519-2578

Telephone: (925) 671-9454
Fax: (925) 671-9381



CITY COUNCIL
Helen M. Allen, Mayor
Laura M. Hoffmeister, Vice Mayor
Bill McManigal
Mark A. Peterson
Michael A. Pasrick

Lynnet Keihl, City Clerk
Thomas Wendling, City Treasurer

Edward R. James, City Manager

March 17, 2000

Dan Helix
Helix Real Estate Services
4701 Clayton Road
Concord, CA 94520

Re: **PLEASANT PAPER RECYCLING USE PERMIT (UP 1-00)**

Dear Mr. Helix:

At a regular meeting of the City of Concord Planning Commission on March 15, 2000 a public hearing was held on your application for a paper, plastic, glass, and metal recycling facility in an existing 18,480 square foot building at 1320 Galaxy Way, parcel 126-451-007. The General Plan designation is Industrial/Business Park and the property is zoned Special Light Industrial (SLI) District.

We are pleased to inform you that the Planning Commission, on a vote of 4-0, approved the application with the following environmental determination, findings and conditions:

Environmental Status

The application has been determined to be Categorical Exempt from CEQA, as a Class Exemption, pursuant to Section 15301 of CEQA.

Findings for Approval

1. The project as conditioned, is compatible with the site and the surrounding areas and is consistent with the goals and objectives of the General Plan.
2. The project complies with the zoning ordinance and other applicable ordinances.
3. The proposed project would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood.
4. The proposed facility would help the City of Concord reach its recycling goals.

Conditions of Approval

1. Project development shall conform to plans submitted to the City dated February 17, 2000 as modified by conditions of approval below

2. There shall be no outside storage or sorting of any recycled materials.
3. Starting July 15, 2000 and every year after that, the operators of the recycling facility shall provide a comprehensive annual report to the City listing the tonnages of each major category of material accepted for recycling at the facility for the twelve month period of July 1 of the preceding year to June 30th of the reporting year. The annual report shall include all materials accepted for recycling e.g. glass, paper, metal, aluminum, plastic, computer parts, etc. and the totals for each category shall be expressed as total tonnages of these materials accepted for recycling from all sources. This report shall be directed to: City Manager's Office, 1950 Parkside Drive, Concord, CA 94519.
4. If the City receives noise complaints regarding the recycled facility, the Chief of Planning may require additional mitigation measures to reduce average and impulsive noise levels on the site. The standard presented in Table 2 of the Noise Element of the City of Concord General Plan shall be used as a guideline in determining these measures.

Engineering and Transportation Department Conditions

1. Submit grading, erosion control and improvement plans for necessary improvements to the Engineering Division for review prior to approval. Include, at a minimum, the following on the site improvement plans:
 - a. Coverage of the entire property and adjacent areas including existing conditions and proposed improvements.
 - b. Location of existing trees (specifically showing type, diameter, dripline, and elevation at trunk). Clearly delineate trees to be removed by centering a bold "X" at the trunk location.
 - c. Proposed demolition. Clearly indicate those improvements to remain or be replaced.
 - d. Frontage improvements to be repaired or replaced.
 - e. Proposed drainage system that will convey on-site runoff to an adequate downstream facility.
 - f. Provide cross-sections through the site and abutting parcels showing, in sufficient detail, the existing and proposed grades at the site and on abutting properties.
 - g. Utility plans that include backflow preventors on the domestic, fire, and irrigation water lines, and an area drain to the sanitary sewer for any proposed trash enclosures. Clearly identify all existing utilities to be abandoned due to replacement, relocation, or demolition, and state the proposed method of abandonment.
 - h. Proposed signing and striping improvements.

2. Repair and/or replace deficient frontage improvements along the Galaxy Way frontage. The limits of this work will be as determined by the Engineering Division.
3. Construct all new utilities underground and coordinate all work related to the construction.
4. Submit plans showing the location of improvements that could affect sight distance to the Engineering Division for review and approval.
5. Submit a geotechnical report pursuant to CMC Section 4432 that addresses and provides recommendations for any grading, drainage, retaining walls, and pavement structural sections.
6. Design the on-site drainage system so that the existing downstream storm drain system(s) can adequately carry the 10-year peak runoff. Otherwise, replace the existing downstream storm drain to an appropriate size that can adequately carry the 10-year peak runoff. Drainage improvement plans and calculations are subject to review prior to approval by the Engineering Division. Show storm drain lines to be maintained by the City in both plan and profile.
7. Install and maintain fossil filters in all on-site storm drain inlet structures. Plans and maintenance schedules are subject to review and approval by the Engineering Division.
8. Coordinate all required and necessary facility adjustments, relocations, or additions with the appropriate utility companies.
9. Post a security acceptable to the City to secure the implementation of any required erosion control measures.
10. Provide a cash deposit to cover the City's costs associated with monitoring compliance with mitigation measures and conditions of approval. The deposit will be placed in a refundable deposit account and any unused funds will be returned at the completion of all mitigation measures. The amount of the deposit will be estimated based upon the time between environmental clearance and project acceptance following completion of all mitigation measures.
11. Comply with any conditions imposed by the City of Concord Transportation Division.

Municipal Code Requirements

1. Connect all buildings to the sanitary sewer collection facilities of the City of Concord and pay all current sewer connection and service fees before issuance of a Certificate of Occupancy.
2. Comply with the requirements imposed by the Contra Costa County Fire Protection District. The City is not responsible for the collection of fees or enforcement of requirements imposed by the Fire Protection District.

3. Grading, erosion control, and improvement plans are subject to review and approval by the Engineering Division prior to the issuance of grading, encroachment, and building permits. Grading and encroachment permits may be issued prior to approval of completed plans if authorized by the City Engineer.
4. Submit a geotechnical report with the site grading and improvement plans.
5. Include an erosion control plan with the grading plans for review by the Engineering Division. Comply with applicable provisions of the Grading Ordinance and the Storm Water Management and Discharge Control Ordinance.
6. Obtain an encroachment permit from the City prior to performing any work within the public right-of-way.
7. Comply with the requirements of the Contra Costa County Health Department for the abandonment of any existing septic tanks or wells.

Required Fees

1. Pay Offsite Street Improvement Program (OSIP) fees. The OSIP fees shall be the fees in effect at the time the building permit application is filed and is accepted as being substantially complete by the Building Division. The current OSIP fee is \$5.20 (per gross sq. ft.) for commercial, \$4.16 for office, \$3.40 for industrial, and \$0.95 for mini-storage, and shall be paid prior to issuance of a Certificate of Occupancy.
2. Pay the required Grading Permit fee before issuance of a grading permit.
3. Pay the current sewer connection and service fees before issuance of a Certificate of Occupancy.
4. Pay Encroachment Permit fee for any work within the public right-of-way. Prior to the issuance of an encroachment permit, the following are required:
 - a. Payment of inspection fee based on 9% of the estimated cost of improvements.
 - b. Payment of plan check fee based on the rate set forth in the Resolution of Fees and Charges, currently \$63.00 per hour, or at cost if consultant services are required.
 - c. Provision of a "restoration bond" to restore public improvements to their original condition of work is stopped and developer is unable to complete development of the property.
5. Provide a warranty bond in the amount of 15% of the estimated cost of public improvements within the street right-of-way before acceptance of the improvements by the City.

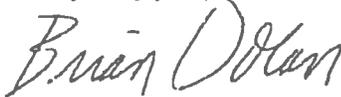
6. Pay the required Drainage fees before issuance of a building permit. The fee is currently \$410.00 per acre.

All items necessary for the application for Design Review Board approval shall be made within 30 days of approval of this Use Permit.

This action of the Planning Commission may be appealed to the City Council within ten (10) calendar days of the date of the Planning Commission action. Forms for this purpose are available in the Planning Division office. Other materials necessary for submittal along with the appeal form include a \$58.00 fee and stamped, addressed envelopes for notification to property owners and occupants within 300 ft. of the project site.

Please contact Talin Aghazarian at 671-3070 if you have any questions regarding the Planning Commission's action.

Very truly yours,



Brian Dolan
Principal Planner

BD/cpd

- c: Alex Pascual, Engineering Division
Bob Clarke, Engineering Division
Cathy Armstrong, Engineering Division
Julie Flowers, Engineering Division
Vance Phillips, Building Division
Bill Lewis, Contra Costa County Fire Protection Dist., 2010 Geary Rd, Pleasant Hill, CA 94523
Peter J. & Helen Frumenti, 1320 Galaxy Way, Concord, CA 94520
Shusheng "Harry" Luan, 305-B Country View Lane, Pleasant Hill, CA 94523



REPORT TO PLANNING COMMISSION

DATE: August 6, 2003

SUBJECT: CONCORD RECYCLING CENTER USE PERMIT (UP 03-011)

Recommendation: Adopt Resolution No. 03-18PC, approving Concord Recycling Center Use Permit (UP 03-011).

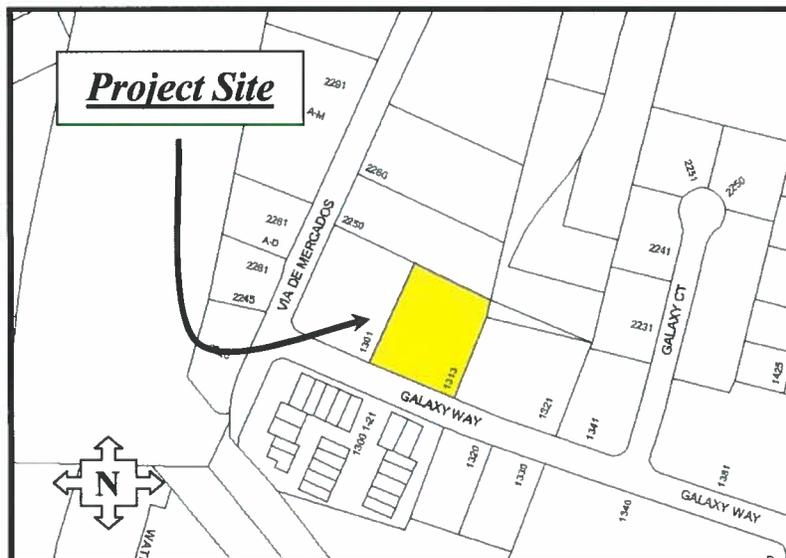
I. Introduction

A. Application Request

Application to locate a 27,200 square foot recycling center and a 6,048 square foot future office within a two-story 33,248 square foot building.

B. Location

The subject site is located at 1313 Galaxy Way; APN: 126-020-073.



C. Applicant
Concord Recycling Center
Attn: Harry Luan
1320 Galaxy Way
Concord CA 94520
(925) 684-3900

Owner(s)
J. Gordon Holmes
3815 Happy Valley Road
Lafayette CA 94549
(925) 284-7303

II. Background

Recently, five uses have been proposed and/or approved at the subject site. In July of 1988, staff approved a business license for York International Paper Company. The company operated a paper and bindery business from the warehouse portion of the building until 1997. Wang Laboratories established an electronic parts and equipment business from the office portion of the building between 1990 and 1999.

A Zoning Administrator's permit was approved November 24, 1998 for the Concord Sports Center to establish a commercial recreation facility with two indoor fields for hockey, volleyball, and soccer at the subject site. During the months that followed, neighborhood complaints were filed with the City regarding the operation of the business and eventually the City Council revoked the Zoning Administrator's Permit in 2001.

In February of 2002, Cooks Collision approached the City to establish an auto body repair facility at the site. The Zoning Administrator confirmed that the business was prohibited under the regulations governing the SLI zoning district. Cooks Collision appealed staff's interpretation of the zoning ordinance on March 29, 2002. The Commission overturned the Zoning Administrator's interpretation of the SLI ordinance May 1, 2002 stating that the proposed automotive use would be appropriate at the site given similar approvals in the area. Cook's Collision did not pursue a use permit application subsequent to the Commission's determination.

The subject application was filed May 27, 2003; the Development Advisory Committee subsequently reviewed the application on June 24, 2003. Staff determined the application was incomplete and required the applicant to revise the project plans and submit additional application materials for staff's review. The project application was subsequently deemed complete on July 9, 2003. Since that time, the project plans have been modified in response to comments from public agencies and staff.

III. General Information

A. **General Plan**

The General Plan land use designation is Industrial/Business Park.

B. **Zoning**

The zoning classification is SLI (Special Light Industrial).

C. **CEQA Status**

Pursuant to the provisions of the California Environmental Quality Act (CEQA) of 1970, as amended, and pursuant to Section 15301 (Existing Facilities), the project is classified as a Categorical Exemption and therefore no further environmental review is required.

D. Site Description

The project site is located along Galaxy Way near Via De Mercados. The site measures 1.27 acres in area and is square in shape with little variation in topography along the length of the site. The north and south frontages measure approximately 200 feet in length and the west and east frontages approximately 260 feet in length. A drainage easement measuring 10 feet in width and approximately 260 feet in length is located along the east property line and is recorded in favor of the City of Concord. It has been determined that the construction of buildings is prohibited in this area, however parking and landscaping is acceptable.

A 33,248 square foot concrete tilt up building is located at the northwest corner of the site. The “L-shaped” building is segregated into a 6,048 square foot, two-story office building (nearest Galaxy Way) and a 27,200 square foot, one-story warehouse building. The building measures 26 feet in height. Surface-level parking is provided along the project frontage and within a fenced side yard area along the east property line. Street trees, shrubs, and ground cover are located along the project frontage and a portion of the side yard areas.

E. Surrounding Land Use

Road One vehicle storage yard and B&D Towing are located to the north of the site. The Independent Electric Supply Company is located to the east of the site beyond Lloyd Wise Drive (see note below). A multi-tenant professional and warehousing building named Mercados Industrial Park is located to the south of the site beyond Galaxy Way. Tom Duffy Company Wholesale Flooring Products is located to the west of the site. All of the surrounding properties have a General Plan land use designation of Industrial/Business Park and a zoning designation of SLI.

Note: Lloyd Wise Drive is a non-exclusive roadway and utility easement that connects Concord Avenue with Galaxy Way (between the Concord Saturn and Acura automobile dealerships) along the project's east boundary.

IV. Detailed Project Description**A. Description of Business**

The proposed business would be an expansion of the Pleasant Hill Recycling Center located at 1320 Galaxy Way, across the street in a southeast direction from the subject site. The existing facility accepts both commercial (large-scale) and residential (small-scale) deliveries of materials, whereas the proposed facility would assume all commercial deliveries (in the amount of 1,000 pounds or greater) of “non-toxic materials including scrap metal, glass, plastic, and paper” for both businesses. Deliveries of less than 1,000 pounds would be refused and redirected to the existing recycling facility at 1320 Galaxy Way however employees would be given the authority to accept smaller deliveries if they were deemed to be of adequate size for processing at the site. Between nine and 15 truck trips are anticipated each day (please refer to the applicant's statement for additional detail regarding the types of vehicle trips and deliveries). All large vehicle traffic would enter and exit the building via a 16-foot wide roll-up door along the south building elevation with the exception of those

vehicles receiving outgoing shipments of materials. Semi trucks receiving outgoing shipments access the building by means of a receiving dock located behind a 12-foot wide roll-up door also along the south elevation. Pick-up trucks would exit the building through a ten-foot wide roll-up door located along the east building elevation.

As recyclable materials are delivered, an employee weighs each vehicle upon entering the building and then directs the driver to the appropriate sorting area within the warehouse to unload the materials. In cases where a large delivery is made, a truck would leave its container (and materials) inside the warehouse for sorting and return to the facility within 24 hours to retrieve the empty container. Once the materials are delivered, they are then sorted and stored in dumpsters and/or freestanding metal bunkers, gathered into bales, palletized, and stored for shipment off-site.

The proposed hours of operation are Monday through Saturday from 3:00 a.m. to 11:00 p.m., although it is anticipated that most activity would occur between the hours of 5:00 a.m. and 9:00 p.m. A total of five employees would be on-site during business hours. One employee would weigh incoming vehicles and direct traffic inside the building, two employees would operate the balers, and two employees would operate forklifts inside the building. The applicant notes that when large deliveries are made or “special projects” are being processed, employees from Pleasant Hill Recycling Center would be asked to assist in the work effort, thereby increasing the number of employees by two or three persons onsite for a short period of time.

The applicant is the “master leaseholder” for the building. The subject use permit is a request to use the warehouse portion of the building only. The 6,048 square foot office space would be marketed for lease to the public should the use permit be approved.

B. Development Regulations

The site is within the SLI District, which allows “light industrial, wholesale, and limited retail uses.” The proposed development regulation standards are listed below as they relate to the proposed project. These development regulations are included as final conditions of approval of the project should the Commission approve the use permit.

Standards	Required (Minimum)	Provided (Minimum)
Lot Area (sq. ft.)	20,000	57,420
Lot Width (ft.)	100	204
FAR	N/A	N/A
Yards (ft.)		
Front	21	18.5*
Side	Aggregate of 20	39
Corner Side	N/A	N/A
Rear	0	1
Building Height (ft.)	35	26
On-site Parking (stalls)	54	32 [†]

*Existing condition

[†]Please refer to the Analysis section for additional information

C. Site Planning/Circulation/Parking

The existing building is located at the northwest corner of the site along the north property line oriented parallel to Lloyd Wise Drive. The building is setback 29 feet from Galaxy Way, 50 and 93 feet from the wholesale flooring products use to the west and the electric supply company to the east, respectively, and one foot from Road One vehicle storage facility contiguous to the north. The building measures approximately 160 feet in width and 240 feet in depth. These setbacks provide for a 18.5 foot front yard landscaped area contiguous to the office portion of the building, a ten foot wide landscape planter along Galaxy Way, and ten- and four-foot wide side yard landscaped areas along the west and east property lines, respectively.

Two, 30-foot wide driveways are located along the project frontage and provide two-way vehicle access to the interior of the site. The entire site would be accessible to the public with the exception of a portion of the east side yard area that would be closed by a fence during non-business hours. Drive aisles measuring approximately 27 to 44 feet in width accommodate two-way vehicle circulation. A raised sidewalk is located along the east façade of the office building providing pedestrian access to the building via an entry door located along the same elevation. Access to the warehouse is provided by an entry door along the south elevation of the warehouse portion of the building.

A total of 32 surface-level parking stalls are provided onsite for use by customers and employees; 28 stalls are located along Galaxy Way and contiguous to the building and four parallel stalls are located within a fenced side yard area along the east property line.

D. Building Architecture

The existing two-story building measures 33,248 square feet in area and 26 feet in height. The building is “L-shaped” and is segregated into a 6,048 square foot office building and a 27,200 square foot warehouse building. The concrete tilt-up building incorporates two unique elevations to distinguish the office use from the warehouse use. The exterior of the office portion of the building consists of painted wood lap siding whereas the exterior of the warehouse portion of the building consists of painted concrete panels. The upper portions of the building and the metal roll-up doors are painted teal to contrast with the gray building body color. The applicant is not proposing to upgrade the exterior of the building.

E. Landscaping/Walls/Fencing

The applicant is proposing to maintain the existing landscaping onsite and augment the perimeter and parking lot planting areas as necessary. The landscape plan provides a front and side yard landscape area contiguous to the two-story office portion of the building and landscape islands throughout the parking lot. “Drake Elm” trees have been planted along the Galaxy Way frontage along with “Nichol’s Peppermint” trees along the west property line contiguous to the building. Shrubs such as “Privet, Xylosma, Star Jasmine, and Escallonia” are planted along the project frontage. “Wild Strawberry” groundcover is used to supplement those areas where tree and shrub planting does not occur.

The applicant proposes to use the existing perimeter chain link fence to secure the site as well as an existing sliding chain link fence to secure the east side yard parking area after hours. The applicant proposes to modify the design of the sliding fence such that one half of the gate would swing open and the other half of the gate would slide. The applicant also proposes to affix a green-colored canvas material (similar to the material used to screen views of tennis courts) to the exterior of the east property line fence to screen motorists views of the east side yard area along Lloyd Wise Drive.

“Wall-Pak” light fixtures are located along the south and east building elevations to illuminate the parking lot areas and to provide security lighting. No new lighting is proposed for use with the building.

F. Signs

The installation of new signs is not proposed as part of the subject use permit application. The applicant has informed staff that he does not want to attract residential (small-scale) deliveries to the site with additional signage. The applicant would inform commercial clients of the new location. Should the applicant determine that tenant identification is needed at a later date, a separate application would be filed with the Planning Division. Staff is proposing a condition of approval that would require the applicant to obtain the City’s approval of a sign permit prior to the installation of any signage at the site.

G. Grading/Drainage/Seismic

No grading or installation of new drainage facilities are proposed as part of the use permit application. An existing storm drain system is located along the south (Galaxy Way) and east (Lloyd Wise Drive) project frontages. Onsite catch basins collect surface water run-off and direct the water to a downstream facility. The project would rely on the existing storm drain system, sewer system, and utilities located along Galaxy Way for service to the building.

V. Analysis

A. General Plan and Zoning Consistency

The site has a General Plan land use designation of Industrial/Business Park. The proposed recycling center is consistent with the identified list of uses in the General Plan such as “light industrial and warehousing uses with limited public access.” Furthermore, the site is within the SLI Zoning District, which allows “recycling centers when conducted within a building.”

B. Description of Business

The applicant explains that the proposed business would represent an expansion of the Pleasant Hill Recycling Center. The Planning Commission approved a use permit for the existing business March 15, 2000 to establish an 18,000 square foot recycling facility located at 1320 Galaxy Way. Over the past 18 months, staff has been working with the applicant to ensure fire and building code compliance and to address the Planning Division’s conditions of

approval. The applicant has made progress in resolving the majority of the code violations and worked to clean up and organize the parking lot areas where outdoor storage is occurring. The applicant explains that the violations are a result of an inadequate tenant space, therefore, it has been necessary to modify the building and store materials outside to accommodate the amount of materials that are being delivered to the site. It is also anticipated that by expanding the business and rerouting all of the commercial-sized deliveries to 1313 Galaxy Way, the remaining violations can be cured.

Pursuant to the SLI ordinance, "recycling centers are conditionally permitted uses when conducted in a building." The applicant explains that a portion of the proposed business operation would be conducted outdoors. Specifically, metal, shipping-style containers would be stored in the east side yard parking area once they are emptied inside the building.

Given the City's experience monitoring Pleasant Hill Recycling Center, it is staff's opinion that the potential exists for similar violations to occur at the subject site. However, it is also staff's opinion that by relocating large-scale commercial deliveries to the proposed building, which is approximately 1/3 larger than the existing facility, many of staff's concerns related to outdoor storage of materials would be addressed given the large size of the facility. Staff recognizes that there may be a need to use a portion of the side yard area to store empty containers and that the use of space would be temporary in nature. The applicant maintains that he understands the intent and purpose of the SLI ordinance and could operate the business pursuant to the restrictions related to recycling facilities. As such, a condition of approval is included that would prohibit the operation of the recycling facility from occurring outdoors, with the exception of those activities noted above. Staff has specified that a maximum of three, empty metal, shipping-style containers may be stored in the east side yard area for a period of time not to exceed 24 hours from the date that they are delivered. Plastic storage containers, bins, wire baskets, palletes, and the like are not permitted outdoors at any time.

C. Site Planning/Circulation/Parking

The site plan design is acceptable in terms of traffic safety, vehicle maneuverability, access, vehicle queuing, and pedestrian circulation. The building is situated on the lot so that parking is provided at the front of the property contiguous to the primary building entries and in the east side yard area for employees of the recycling business. The Transportation Division staff has verified that the existing vehicle circulation provides adequate turning radii for emergency vehicles and large trucks delivering.

The City's parking ordinance provides flexibility in determining the required number of parking spaces by allowing individual uses to be calculated separately. Accordingly, staff has calculated the required number of parking stalls for the office portion of the building separately from the required number of parking stalls for the warehouse portion of the building. The Municipal Code requires that for office "properties located outside of the Central Concord Redevelopment Area, the required parking is one parking space for each 300 square feet of gross floor area." Accordingly, the applicant is required to provide 20 parking stalls for use with the office. In addition, the Municipal Code requires "one (1) parking space for each two (2) employees in the maximum work shift, or one (1) space for each eight hundred (800) square feet of gross floor area, whichever is greater" for wholesale and

warehouse uses. According to the parking requirement mentioned above, staff has determined that the latter of the two requirements would necessitate more parking, specifically, an additional 34 parking stalls would be required for the warehouse use.

According to the applicant, a maximum of five employees would be on-site at any one time. In staff's opinion, the later of the two requirements is unreasonable and conflicts with the intent and design of the proposed project. In particular, it has been demonstrated that there would be a maximum of five employees on-site at any one time and that based on staff's experience processing the use permit application for the applicant's existing use, the proposed recycling center would generate a low numbers of trips and demand very low numbers of parking stalls. Instead, staff recommends that the Commission rely on the parking requirement based on the number of employees. Based on staff's interpretation, the applicant would be required to provide three stalls for use with the recycling center and would therefore exceed the minimum parking requirements for both a future office tenant and the proposed recycling center.

D. Landscaping/Walls/Fencing

The applicant has submitted a previously approved landscape plan to explain to staff what landscaping has been installed at the site. Staff has determined that the plan is comprehensive is its use of trees, shrubs, and groundcover for the site. Based on staff's experience reviewing plant palettes for similar sites, it appears that the use of drought resistant materials has been considered. Staff conducted an inspection of the property and found the landscaping to be in adequate condition however the site has not been properly maintained and requires weeding. Staff also noticed that some of the plantings did not appear to have been installed onsite or have been neglected to a point where additional planting is required or replacement planting is needed.

Staff has included a condition of approval that the applicant install additional landscaping and/or augment that which is existing to reflect the landscape plan that was previously approved for the site. As with all new development projects, staff is also requiring the applicant to enter into a landscape maintenance agreement to ensure that the site is properly maintained in perpetuity.

VI. Fiscal Impact

The proposed would have a negligible fiscal impact on the City.

VII. Public Contact

Notification was mailed to all owners and occupants of property within 300 feet of the subject parcel. The applicant has also contacted neighboring businesses to solicit their support of the proposed

business and will present the Commission with that correspondence at the hearing. The item has been published in the Contra Costa Times, as required by the Concord Municipal Code, and has been posted at the Civic Center and at the subject site at least ten days prior to the public hearing.

VIII. Summary and Recommendations

Staff supports the proposed use permit application as the site plan and building design relates well to the adjacent land uses and minimizes any potential negative impacts. The site plan design is acceptable in terms of traffic safety, vehicle maneuverability, access, vehicle queuing, and pedestrian circulation. Ample parking would be provided for both a future office use and the proposed recycling center while balancing the requirement for landscaping onsite. The proposed use of the property would fill a warehouse vacancy and establish a tenant presence that would maintain the site, the building, and landscaping on a regular basis.

Staff recommends that the Commission consider staff's report, allow the applicant to make a presentation and answer any questions from the Commission, take public testimony, and close the public hearing upon completion of public testimony. Based on the analysis contained in this report, staff recommends approval of the use permit application.

IX. Motion

Project Approvals

I (Comm. _____) hereby move that the Planning Commission adopt Resolution No. 03-18PC approving the Concord Recycling Center Use Permit (UP 03-011) subject to the Conditions of Approval set forth in Attachment A to Resolution No. 03-18PC. (Seconded by Comm. _____.)

Prepared by: _____
 G. Ryan Lenhardt
 Senior Planner

Reviewed by: _____
 Deborah Raines
 Planning Manager

Exhibits:

- A - Planning Commission Resolution No. 03-18PC
- B - Applicant's project description date stamp received June 23, 2003*
- C - Project plan sheets 1-2 and 4 and 6 date stamp received July 15, 2003 and sheets 3 and 5 date stamp received July 16, 2003*
- D - Environmental Impact Fact Sheet date stamp received May 27, 2003*

* *Not available electronically.*

1 **BEFORE THE PLANNING COMMISSION**
2 **OF THE CITY OF CONCORD,**
3 **COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

4 **A RESOLUTION APPROVING CONCORD**
5 **RECYCLING CENTER USE PERMIT UP 03-011**

Resolution No. 03-18 PC

6 **WHEREAS**, on May 27, 2003, Concord Recycling Center submitted an application for a Use
7 Permit to operate a recycling center within a two-story 33,248 square foot building (27,200 square
8 foot recycling center and a 6,048 square foot future office) located at 1313 Galaxy Way; APN: 126-
9 020-073; and

10 **WHEREAS**, on July 9, 2003 the application was deemed complete for processing; and

11 **WHEREAS**, pursuant to the provisions of the California Environmental Quality Act (CEQA)
12 of 1970, as amended; the project is classified as Categorical Exempt pursuant to Section 15301
13 Class 1 "Existing Facilities," and therefore no further environmental review is required; and

14 **WHEREAS**, the Planning Commission, after giving all public notices required by State law
15 and the Concord Municipal Code, held a duly noticed public hearing on the subject proposal on
16 August 6, 2003; and

17 **WHEREAS**, the Planning Commission considered testimony and information received at the
18 public hearing and the oral and written reports from City staff dated August 6, 2003, as well as other
19 documents contained in the record of proceedings relating to the proposed project, which are
20 maintained at the offices of the City of Concord Planning Division; and

21 **WHEREAS**, on August 6, 2003 the Planning Commission, after consideration of all pertinent
22 plans, documents and testimony, declared their intent to approve the subject proposal subject to the
23 Conditions of Approval contained herein as Attachment A.

24 **NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:** that the Planning Commission
25 does hereby approve Use Permit UP 03-011 subject to the Conditions of Approval and further makes
26 the following findings:

27 1. There is no substantial evidence in light of the whole record before the Planning
28 Commission of the City of Concord, that the Use Permit application would have a significant effect on
 the environment.

1 2. The project is consistent with the General Plan policies and land use
2 designation.

3 3. That the project will not be detrimental to the health, safety and general welfare
4 of persons residing or working in the neighborhood of such project.

5 4. That the project will not be injurious or detrimental to property or
6 improvements in the neighborhood in that the project will be designed to be compatible with the
7 adjoining industrial development and that the maintenance of the parking lot, building exteriors and
8 landscaping will be secured through a separate maintenance agreement.

9 5. The project meets or exceeds the performance standards outlined in the City of
10 Concord's General Plan.

11 6. This resolution shall become effective immediately upon its passage and
12 adoption.

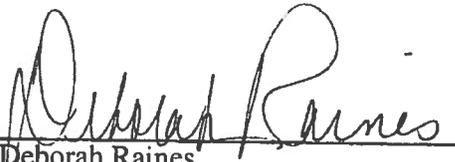
13 **PASSED AND ADOPTED** this 6th day of August, 2003, by the following vote:

14 **AYES:** Commissioners Bjerke, Shinn, Brumley, Sylls

15 **NOES:** Commissioner Costa

16 **ABSTAIN:**

17 **ABSENT:**

18 
19 Deborah Raines
20 Secretary to the Planning Commission

21 Attachments:

22 A – Final Conditions of Approval

23 cc: Bob Clarke, Public Works-Engineering Services
24 Vance Phillips, Building and Neighborhood Services
25 Johnny Young, Contra Costa County Fire Protection District

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ATTACHMENT A
FINAL
CONDITIONS OF APPROVAL
CONCORD RECYCLING CENTER USE PERMIT
UP 03-011

THE PROJECT SITE IS LOCATED AT
1313 GALAXY WAY
APN: 126-020-073

Description

- 1) These conditions apply to and constitute the approval of a Use Permit to operate a recycling center within a two-story 33,248 square foot building (27,200 square foot recycling center and a 6,048 square foot future office); the following uses are permitted. (PLNG)
- Recycling of non-toxic materials including scrap metal, glass, plastic, and paper. This approval does not constitute authorization to use any portion of the 6,048 square foot "office" portion of the building.

The following are the development regulation standards established by these permits: (PLNG)

Total Site Area	57,420 sq. ft.
Building Height	26 feet
Setbacks:	
Front yard setback	18.5 feet
Side yard setbacks (aggregate)	39 feet
Rear yard setback	1 foot
Parking:	
Standard Stalls	32

- 2) The authorized hours of operation shall be Monday through Saturday from 3:00 a.m. to 11:00 p.m. (PLNG)

1 Exhibits

2 3) The following exhibits are incorporated as conditions of approval, except where specifically
3 modified by these conditions: (PLNG)

	<u>Date Received</u>		<u>Sheet Name/</u>
	<u>by City</u>	<u>Prepared by</u>	<u>Number</u>
4			
5	Cover Sheet	July 15, 2003	Gilbert Fitch & Assoc. 1
6	Existing Site Plan	July 15, 2003	Gilbert Fitch & Assoc. 2
7	Proposed Site Plan	July 16, 2003	Gilbert Fitch & Assoc. 3
8	Existing Landscape Plan	July 15, 2003	Gilbert Fitch & Assoc. 4
	Existing Grading & Drainage Plan	July 16, 2003	Gilbert Fitch & Assoc. 5
	Office Space	July 15, 2003	Gilbert Fitch & Assoc. 6

9 *All construction plans shall conform to these exhibits unless minor modifications are approved*
10 *by staff or modified by the following conditions. Where a plan or further information is*
11 *required by these conditions, it is subject to review and approval by the Planning Division,*
Building Division, and/or Engineering Services/Current Development Division as necessary.

12 4) Minor modifications including but not limited to the site design, grading, building design,
13 building colors or materials, and landscape material may be allowed subject to the approval of
14 the Planning Division if found to be in substantial conformance with the approved exhibits.
Substantial modifications shall require appropriate staff approval or applicable approving body
review. (ALL)

15 5) This entitlement is granted for the buildings, roadways, parking areas, landscaping, lighting,
16 colors and materials, and other features that are included as part of the formal application and
17 exhibits. Compliance with these conditions is required for all permits and final inspections
18 associated with this entitlement. Unless specified otherwise in these conditions, upon final
19 inspection of each building, all additions, landscaping, colors, materials, and lighting changes
to individual properties shall be in conformance with the City of Concord Code of Ordinances.
(PLNG)

20 6) Prior to the issuance of a certificate of occupancy, the applicant shall submit an annotated copy
21 of Conditions of Approval noting how each listed and attached condition has been satisfied.
(PLNG)

22 7) All conditions shall be included as a separate plan sheet(s) to be attached to all building,
23 grading, and site work permit plan check sets submitted for review and approval by the City.
24 These conditions of approval shall be attached at all times to any grading and construction
25 plans kept on the project site. It is the responsibility of the applicant/property owner to ensure
26 that the project contractor is aware of, and abides by, all conditions of approval. It is the
responsibility of the applicant/property owner to ensure that the project landscape contractor is
aware of and adheres to the approved construction plans where applicable, the landscape and
irrigation plans, and all conditions of approval. (ALL)

- 1 8) Within 30 days of the date of the Planning Commission's final project approval, the applicant
2 shall submit to the Planning Division two copies of a revised set of project plans that are in
3 substantial compliance with the plans approved by this action and the conditions of approval
4 contained herein. This submittal shall occur prior to filing an application for site demolition,
5 grading, construction, or other like permit. **(PLNG)**
- 6 9) Prior to building occupancy, the applicant shall request, at least two weeks in advance, a field
7 inspection to be conducted and approved by Planning Division staff prior to completion of all
8 site improvements. Such improvements shall be completed and approved by the Planning
9 Division staff, including but not limited to all buildings, streets, driveways, parking lots,
10 landscaping, irrigation, signs, lighting, walls, and trash enclosures. **(PLNG)**
- 11 10) Applicant shall maintain and keep in clean and good condition any and all exterior
12 improvements for the area adjacent to the building out to the street curb. Said improvements
13 shall include but are not limited to landscaping and street trees, sidewalks, parking areas, street
14 furniture, trash receptacles and enclosures, except for landscaped planters and street trees
15 which are maintained by the City. **(PLNG)**
- 16 11) There shall be no outdoor storage and/or sorting of recyclable materials permitted at any time.
17 All deliveries of materials shall occur inside the warehouse building at all times. Exceptions
18 to this condition include the temporary storage of a maximum of three, empty metal, shipping-
19 style containers in the east side yard area for a period of time not to exceed 24 hours from the
20 date that they are delivered. Plastic storage containers, bins, wire baskets, palettes, and the like
21 are not permitted outdoors at any time. **(PLNG)**
- 22 12) At the end of business each day, nothing shall be stored outside of the warehouse building
23 including trucks, trailers, empty dumpsters, containers, bins, pallets, loose paper, scrap metal,
24 glass, or the like with the exception of those items referred to in condition number 11 above.
25 All roll-up doors shall be closed and sliding/swinging fences secured and locked at the end of
26 business each day. **(PLNG)**
- 27 13) Starting July 15, 2004 and every year thereafter, the operators of the recycling facility shall
28 provide a comprehensive annual report to the City listing the tonnages of each major category
of material accepted for recycling at the facility for the twelve month period of July 1st to June
30th of the previous year. The annual report shall include all materials accepted for recycling,
e.g., glass, paper, metal, aluminum, plastic, computer parts, etc. and the totals for each
category shall be expressed as total tonnages of these materials accepted for recycling from all
sources. This report shall be directed to: City Manager's Office, 1950 Parkside Drive,
Concord CA 94519. **(PLNG/CMGR)**
- 14) The Commission's approval of the associated use permit does not constitute the approval of
any signs for the project. A separate application for tenant signage must be submitted to the
Planning Division for their review and determination of the required review process. **(PLNG)**
- 15) No person shall, upon any property owned or leased by him and contiguous to or along any
public street, place, or sidewalk, construct, set up, or maintain any hazardous fence, including
but not limited to any barbed wire, razor wire, ultra barrier, or electrified fence or enclosure.
(PLNG)

- 1
2 16) Staff and the applicant shall report to the Planning Commission no later than February 18,
3 2004 with an update of how Pleasant Hill Recycling Center at 1320 Galaxy Way and the
4 subject business at 1313 Galaxy Way are complying with the conditions of approval associated
5 with their business. (PLNG)

6
7
8
9 ARCHITECTURAL

- 10 17) The installation of television or radio antennae or satellite reception dishes are prohibited
11 unless the necessary Zoning Administrator permit is obtained from the City pursuant to §122-
12 981, "Antennas and Wireless Communications Facilities," or unless said antenna(s) is/are
13 exempt from permit requirements pursuant to §122-982, "Exceptions and Special
14 Regulations." (PLNG)

15 LANDSCAPING

- 16 18) Landscaped areas shall be watered, weeded, pruned, fertilized, sprayed, and/or otherwise
17 maintained as necessary. Plant materials shall be replaced as needed to maintain the site in at
18 least the condition that was identified as part of the approved landscape plan.
- 19 A) Be in compliance with the landscape plan date stamp received by the Planning Division
20 July 15, 2003 as approved by the Planning Commission;
21 B) Be in compliance with the State Model Water Efficient Landscape Ordinance. (PLNG)
- 22 19) Prior to a final landscape inspection, the applicant shall:
- 23 A) Install all landscaping so as to be consistent with the approved landscape plans referred to
24 in condition of approval #3. (PLNG)

25 PARKING

- 26 20) All full-sized perpendicular parking stalls shall measure a minimum of nine feet (9'-0") in
27 width by nineteen feet (19'-0") feet in depth and all full-sized parallel parking stalls shall
28 measure a minimum of nine feet (9'-0") in width by twenty-three feet (23'-0") feet in depth.
All parking stalls shall be striped. Wheel stops shall be provided for perpendicular stalls
unless they are fronted by concrete curbs, in which case sufficient area shall be provided at the
front of the parking stall to accommodate the overhang of automobiles. (PLNG)
- 21 21) Each lot or parking structure where parking is provided for the public as clients, guests, or
22 employees shall include parking accessible to handicapped or disabled persons as near as
23 practical to a primary entrance and in accordance with the standards for number of stalls, size,
24 location, signing, and markings/stripping set forth in Chapter 71 "Site Development
25 Requirements for Handicapped Accessibility" of Title 24 of the California Code of
26 Regulations. (BLDG)

1 LIGHTING

- 2 22) The applicant shall replace the existing building wall-mounted "Wal-Pak" light fixtures with
3 an attractive light fixture approved by Planning staff. Said approval shall occur within 120
4 days (e.g., December 6, 2003) of the approval of the use permit. (PLNG)
- 5 23) All existing and approved exterior building lighting and/or parking lot lighting fixtures shall be
6 installed in a manner that glare is shielded and substantially directed away from surrounding
7 properties and rights-of-way; and exterior lighting is directed to provide illumination for safety
8 without creating excessive light during the evening hours. All exterior light fixtures depicted
9 on this plan shall have fully recessed lenses and cut-off features (i.e. glare shields) that limit
10 illumination at the property line. A note shall be placed on the plan that states, "All down cast
11 light fixtures shall be installed and permanently maintained in a horizontal position." Such
12 plans shall be reviewed and approved by the Design Review Board, Planning Division,
13 Building Division, and Police Department prior to issuance of a building permit and
14 installation at the site. (PLNG/ENGR)

15 SOLID WASTE/RECYCLING

- 16 24) The applicant shall comply with the provisions of the City of Concord Code of Ordinances and
17 the Clean Water Act and consult with the local franchised waste hauler regarding enclosure
18 design, access requirements, and the number of required individual refuse receptacles based
19 upon waste pickup schedules. Verification of these facilities shall be made by the City and
20 approved by the Planning Division prior to building permit issuance and said facilities shall be
21 installed prior to final building occupancy. (PLNG)
- 22 25) All trash enclosures shall consist of a solid masonry wall and incorporate the same
23 architectural treatment and use the same approved exterior materials and colors of the main
24 building. The height of the enclosure walls and door(s) shall be the same or greater than the
25 height of the bins within the enclosure. The trash enclosure shall be covered and include a
26 roof which will be designed to prevent rain water from penetrating the interior of the enclosure
27 and preclude trash from being blown outside of the bins. The trash enclosure shall be sewered
28 to prevent contaminated water from entering the storm drain system. All trash enclosures shall
incorporate opaque gates consisting of solid metal material as determined by the Planning
Division. (PLNG/ENGR)
- 29 26) The trash bins and all refuse shall be stored within an approved enclosure with the doors
closed at all times or located within a building whenever possible except when the bins are
being accessed to be emptied. (PLNG)

30 NPDES/CLEAN WATER

- 31 27) Prevent site drainage from draining across sidewalks and driveways in a concentrated manner.
32 (ENGR)

- 1 28) Verify that the two existing inlets inside the building are connected to a sanitary sewer line. If
 2 not connected, connect the two existing inlets inside the building to a sanitary sewer line
 3 (using Central Contra Costa Sanitary District criteria) in order to prevent contaminated water
 4 from entering the storm drain system. (ENGR)
- 5 29) Install appropriate clean water device at all private storm drain locations immediately prior to
 6 entering the public storm drain system. Implement Best Management Practices (BMP's) at all
 7 times to comply with the CITY OF CONCORD Stormwater Management and Discharge
 8 Control Ordinance. (ENGR)
- 9 30) Comply with the requirements of Regional Water Quality Control Board regarding issuance of
 an Industrial Storm Water General Permit for recycling centers. (Contact person: Alexa
 LaPlant at 510-622-2400.) Submit evidence of compliance to Engineering Services prior to
 issuance of building permit. (ENGR)

9 AGREEMENTS, FEES, BONDS

- 10 31) Within thirty days of billing by the City, the applicant shall pay a Condition Compliance Fee
 11 per City Resolution 02-6042.2, "Fees and Charges for Various Municipal Services." Said fee
 12 shall reimburse the City for implementation of the Planning Division's Conditions of Approval
 13 and shall apply to staff work performed from the time of project approval to issuance of final
 certificate of occupancy. (PLNG)
- 14 32) Upon issuance of the certificate of occupancy, the applicant shall pay a Document Imaging
 15 Fee per City Resolution 02-6042.2, "Fees and Charges for Various Municipal Services." Said
 16 fee shall reimburse the City for implementation of the Planning Division's Document Imaging
 and File Retention programs. (PLNG)
- 17 33) Prior to issuance of the Certificate of Occupancy for the building, the applicant shall submit to
 18 the City for review and approval by the Planning Division and City Attorney's Office, a
 19 "Agreement for Maintenance of Building Exteriors, Landscaping, and Parking Lot Areas" for
 20 all building and landscaping at the site. The agreement shall address the repair, replacement
 and maintenance of all parking and driving surfaces, pedestrian walkways, landscaping,
 irrigation equipment, and building exterior colors and materials. (PLNG)

21 CONSTRUCTION ACTIVITIES

- 22 34) Construction activities shall be:

23	Monday through Friday	7:30 a.m. to 6:00 p.m.
24	Saturday	8:00 a.m. to 5:00 p.m.
	Sunday*	8:00 a.m. to 5:00 p.m.

25 *The Building Official in coordination with the Planning Manager is authorized to modify the
 26 permitted hours of construction under any issued building permit. (BLDG/PLNG)

- 27 35) No equipment shall be started or staging area be established on the streets before or after the
 28 approved and specified hours of construction. (PLNG/ENGR/BLDG)

- 1 36) The applicant is responsible for ensuring that no debris or construction scrap material is placed
2 on any adjoining lot, open space area, or street, and that any such material stored on an
3 adjoining site shall be completely removed and the site cleaned prior to occupancy.
(PLNG/ENGR/BLDG)

4 LEGAL

- 5 37) Applicant shall defend, indemnify and hold harmless the City, its agents, officials, and
6 employees from any claim, action, or proceeding against the City or its agents, officials, or
7 employees in any action to attack, set aside, void or annul, the approval of this permit. The
8 City shall promptly notify applicant of any claim, action, or proceeding and the City shall
cooperate fully in the defense. Further, the City shall select the attorneys who will defend
such proceeding and shall control any litigation thereof. (PLNG)

- 9 38) This action may be appealed to the City Council within ten (10) calendar days of the date of
10 the Planning Commission's action. Other materials necessary for submittal along with the
11 appeal form include a fee and stamped, addressed envelopes for notification to property
12 owners and occupants surrounding the project site (please contact the Planning Division for
specific information regarding this matter). (PLNG)

- 13 39) The permit and approval shall expire in one year from the date on which they became effective
14 unless a building permit is obtained and construction begun within the one year time period.
The effective date of the permit and approval is August 6, 2003. (PLNG)

15 OTHER/MISCELLANEOUS

- 16 40) The location of any outdoor pad-mounted transformers, above-ground and/or at-grade utility
17 equipment, irrigation control boxes, fire district back flow prevention devices, and the like
18 shall be adequately screened or vaulted to eliminate any view of the structures from the public
19 right of way to the satisfaction of the Planning Division and the City Engineer prior to the
20 issuance of the first project permit. (PLNG/ENGR)

- 21 41) Obtain an encroachment permit from the City prior to performing any work within the public
22 right-of-way or public easements. (ENGR)

- 23 42) Comply with the requirements imposed by the Contra Costa Fire Protection District. The City
24 is not responsible for the collection of fees or enforcement of requirements imposed by the
25 Fire District. (ENGR)

- 26 43) Comply with the requirements of the City Standard Plans S-34 and S-36 for sight distance,
27 sidewalk, back up fencing geometrics at intersection, and corner setback requirements.
28 (ENGR)

FINAL

REGULAR MEETING OF THE
CITY OF CONCORD PLANNING COMMISSION
COUNCIL CHAMBER, 1950 PARKSIDE DRIVE
CONCORD, CALIFORNIA
August 6, 2003

A regular meeting of the Planning Commission, City of Concord was called to order by Chair Sylls at 7:00 p.m., Wednesday, August 6, 2003, in the City Council Chamber.

PLEDGE TO THE FLAG

The pledge to the flag was led by
Commissioner Shinn

ROLL CALL

COMMISSIONERS PRESENT:

Chair Gene Sylls; Vice Chair Guy Bjerke;
Commissioner Bill Brumley, Commissioner
Kevin Costa; Commissioner William Shinn

COMMISSIONERS ABSENT:

None

STAFF PRESENT:

Deborah Raines, Planning Manager; Mark
T. Boehme, Assistant City Attorney; Cathy
Munneke; Principal Planner; G. Ryan
Lenhardt, Senior Planner; Eric Luchini,
Assistant Planner; Bob Clarke, Senior Civil
Engineer

PUBLIC COMMENT PERIOD

There were none.

ADDITIONS/CONTINUANCES/WITHDRAWS

Deborah Raines, Planning Manager, announced that public hearing Item 1 is being requested for a continuance.

CONSENT CALENDAR

A) None

PUBLIC HEARINGS

1. **Latter Day Saints Distribution Center Ground Sign (UP 03-010)** - Application for a non-illuminated 30-square foot ground sign at 2400 Monument Boulevard. The General Plan land use designation is Regional Commercial/Industrial Business Park; zoning classification is PD (Planned District); APN: 129-040-015. Project Planner: Nicole Miller @ 671-3083. *(Continued from 7/16 meeting.)*

Chair Sylls opened the public hearing on this item, and seeing none, he brought the matter back to the Commission for action.

Chair Sylls asked for a motion.

Comm. Bjerke moved that the Planning Commission continue Item 1 to the Planning Commission meeting of September 3, 2003.

Comm. Shinn seconded the motion.

AYES: Bjerke, Shinn, Brumley, Costa, Sylls

NOES: None

ABSTENTIONS: None

ABSENT: None

2. **Concord Recycling Center (UP 03-011)** – Application to locate a 27,200-square foot recycling center and a 6,048-square foot future office within a two-story 33,248-square-foot building at 1313 Galaxy Way. The General Plan land use designation is Industrial/Business Park; zoning classification is SLI (Special Light Industrial); APN: 126-020-073. Project Planner: G. Ryan Lenhardt @ 671-3162.

G. Ryan Lenhardt, Senior Planner, summarized the staff report and recommended that the Commission adopt Resolution No. 03-18PC, approving the Concord Recycling Center Use Permit (UP 03-011).

Mr. Lenhardt clarified that three pieces of correspondence from neighboring businesses had been benched tonight. He noted that staff is proposing changes to two of the conditions of approval. One, additional language should be included at the end of the first sentence of Condition 12 to read, "*with the exception of those items referred to in Condition 11 above*" to clarify that the temporary storage of metal bins is acceptable. He also indicated that Condition 40 is not relevant to this so it should be deleted. He further added that staff discussed both changes with the applicant and he had no objection.

Comm. Costa asked Mr. Lenhardt if Mr. Plog's letter reflected all comments expressed to staff. Mr. Lenhardt responded that the letter accurately depicted the conversations he had with Mr. Plog.

Dan Helix, applicant, stated that a number of recycling sites had diminished and the demand for those services has increased significantly. He noted that environmentally it is great that the public, public agencies and private companies have risen to the challenge of recycling rather than wasting precious resources such as metals, plastics and paper. He believed the City of Concord should be commended as a leader in the County as always meeting or exceeding the recycling percentages as mandated by the State of California. He explained that he had several meetings with staff and spoken with several neighbors and customers of the operation collecting over 80 signatures in support of the use. He added that the proposed location would provide the ability for Pleasant Hill Recycling to improve service, guarantee a reduction of the magnitude of the operation at the 1320 Galaxy Way site, and eliminate any safety concerns by moving the paper recycling to a building equipped with a sprinkler system. He further noted that he concurred with the conditions of approval as proposed by staff.

Comm. Bjerke asked Mr. Helix if the nine to 15 truck trips anticipated to this site per day are additional truck trips or redirected truck trips. Mr. Helix responded that it would be a combination of both.

Comm. Bjerke asked Mr. Helix to address the reduction in the magnitude. Mr. Helix responded that reduction in magnitude would occur at the 1320 Galaxy Way site.

Mr. Luan, owner, added that currently they have five trucks per day and they plan for some increase with the new facility. Comm. Bjerke clarified that the nine to 15 truck trips would be moved from 1320 Galaxy Way to 1313 Galaxy Way and that number anticipates some growth in the recycling business. Mr. Luan responded in the affirmative.

Chair Sylls opened the public hearing on this item.

Larry Plog, 275 Brownstone Rd., Oakley, expressed concern for the appearance of the proposed location. He stated that in the General Plan it indicated that recycling centers

should be conducted within a building and provided photographs showing material outside for the Commission's consideration. He also noted that his tenants located in his existing building across the street are complaining about the odor, noise and garage. He further indicated that he is opposed to this project.

Dennis Plog, 1330 Galaxy Way, Concord, stated that the facility smells, it's very noisy and there are several transients going in and out the facility. He explained that no improvements had been done in two years even after the applicant received complaints. He further added that Galaxy Way had changed from industrial to office and believed Galaxy Way is not the appropriate site for a large scale recycling center.

Comm. Brumley asked Mr. Plog what draws the transients to this site. Mr. Plog responded that the transients sell recyclables to this company.

David Weuenschwander, 1300 Galaxy Way, Unit 20, Concord, President of Mercados Industrial Owners Association, stated that they are located directly across from 1313 Galaxy Way. He explained that the units range in size from 1,500 sq. ft. to 3,000 sq. ft. and they have a variety of uses located at the site. He noted that as an Association they recognize the rights of individuals and organizations to engage in lawfully approved businesses. He stated that he appreciated the recycling center, which helped him receive a certification from the County. He further expressed concern for having a salvage operation located across the street and pointed out that the greatest concerns are the appearance, odor, dust, dirt, noise and the transients.

Comm. Shinn asked Mr. Weuenschwander if there had been incidents where transients have posed a threat to staff. Mr. Weuenschwander responded that he had not seen any transient posing a safety threat.

Comm. Bjerke asked Mr. Weuenschwander if the Association had worked with the applicant regarding the 1320 property. Mr. Weuenschwander responded that the Association had not instructed management nor had the Board officially worked with the applicant in any way.

Jeff Paul, 1321 Galaxy Way, Concord, noted that Independent Electric Supply is opposed to this site for the recycling center. He stated that employees, customers and the owner of the property are very concerned about this facility being located at 1313 Galaxy Way. He added that they do not desire the mess, eyesore and odor that would be associated with this facility. He also expressed concern for the decrease in property values due to this recycling center as well as safety and security. He further indicated that many health concerns have been noted from businesses across the street and believed it is in the best interest of this business park and the City of Concord for this application to be denied.

Dan Helix Sr., owner of the building at 1320 Galaxy Way, noted that he purchased the property because it was located in a Light Industrial area. He stated that the recycling center is performing a valuable service for the community and area. He added that recycling is not very active in his opinion and believed that the intent to move the paper

operation within the proposed building is a good faith gesture on the part of the recycling company. He also indicated that the owner of the recycling company would incur great expense to lease the building. He noted that he is pleased because it would significantly reduce the amount of recycling that would occur at the 1320 Galaxy Way site. He believed that by moving across the street they would be in accordance with their use permit. He pointed out that if the recycling center cannot conduct the operation entirely within the purview of that building that they are representing, then the City has the ability to stop operations and rescind the use permit. He further stated that he is very supportive of this application.

Frank Shultz, Saturn of Concord, expressed concern for the transients and truck access to the property. He also expressed concern for the amount of dust that would accumulate on the vehicles parked in the back lot from this facility. He further noted that there is an odor on any given morning depending on the environmental conditions.

Mr. Helix noted that the intent is to remove the paper operation to the other site in order to have indoor room at 1320. He stated that the intent of the owner is to comply with each condition of approval, which was discussed in great length as to what would be realistic. He noted that there are challenges with site and smell, but pointed out that the recycling center is not the only use that has an odor. He explained that the proposed site is larger in order to accommodate the paper operation. He added that the truck access would be through Commerce or Via De Mercados. He further indicated that if the Commission approved this use permit, the neighboring businesses would be pleasantly surprised.

Comm. Bjerke noted that recycling is a permitted use in this zoning district provided that it is operated inside a structure and asked Mr. Helix that by moving into the proposed location that the balance of the business would be conducted indoors. He further noted that Condition 11 relating to hours of operation inside and outside troubles him. Mr. Helix responded that as far as 1313 Galaxy Way is concerned none of that would be outdoors. Comm. Bjerke asked Mr. Helix if the new site were approved, would the balance of the operation at 1313 be able to be conducted indoors. Mr. Helix responded that 1320 drop-off of bottles and metals would be off loaded outdoors and then moved indoors, but 1313 would be conducted indoors.

Mr. Lenhardt added that due to the design of 1313 Galaxy Way it is impossible for customers, public or commercial deliveries to occur inside the building. He explained that the delivery of materials must occur outside the building because the building is not physically large enough to accommodate large vehicles nor is the floor plan designed for drive-through traffic. He also pointed out that staff recognized that the current operation did not comply with the use permit conditions as approved by the Commission in 2000. He noted that the applicant clarified and anticipates that if this use permit were approved and commercial deliveries would be taken across the street, enough space would be freed-up within the exterior of the existing building to accommodate the smaller deliveries being received, therefore eliminating the need to store any excess material outdoors. He further stated that the day-to-day deliveries that are occurring currently would continue to occur in the parking lot.

Comm. Costa expressed concern for approving the first application and receiving something entirely different. Mr. Lenhardt responded that there is no reference in the original conditions indicating where materials should be dropped-off, picked-up or sorted.

Chair Sylls asked Mr. Helix if 1313 Galaxy Way would be the commercial component of what is occurring at 1320 Galaxy Way, so it would be a mixture of glass, plastic and paper or paper alone. Mr. Helix deferred that question to Mr. Luan. Mr. Luan responded that it will be mainly paper.

Chair Sylls asked Mr. Luan what is creating the odor at his facility. Mr. Luan responded that the odor is from garbage being collected in the paper recycling bins. Chair Sylls asked Mr. Luan if glass off-loading could be conducted at 1313 Galaxy Way in order to minimize the noise, since it must happen outside. Mr. Luan responded that the receiving part of glass could happen away from the street and from Mr. Plog's office, if the new proposed location is approved.

Comm. Bjerke asked Mr. Luan if the permit is approved what is the anticipated timeframe to have the new site up and running and the old site to the cleaner standard. Mr. Luan responded that all improvements could potentially be accomplished in one month.

There being no further public testimony on this item, Chair Sylls closed the public portion of the testimony and brought the matter back to the Commission for discussion and action.

Comm. Costa commented that had the City had the staff present today these issues would not need to be addressed. He stated that the area had turned into a very nice industrial park. He indicated that this is a salvage operation and it is having a negative impact on its neighbors. He noted that he visited the site and could not believe the poor appearance of the facility compared to the rest of the neighborhood. He proposed that they deny this with prejudice to allow the applicant to come back at some point, so the issues could be addressed at the current location.

Comm. Brumley believed the intent is to try and clean up the facility by moving across the street. He hoped the applicant would follow through with the intent because he supports that action of locating across the street. He expressed concern for the street and desired a condition prohibiting trucks being left out in the street with garbage. He further believed that the intent is to move the heaviest equipment across the street, which he could support.

Mr. Lenhardt noted that staff met with the owner of the property, operator, and representatives from the City Attorney's office to address this issue because there is a violation of the conditions of approval. He stated that regardless of what action is taken on this application, staff would be pursuing the violations with the applicant, and it is

expected that within 90 days, the site should be cleaned up completely with no outdoor storage whatsoever.

Comm. Shinn expressed concern for the number of code violations surrounding this application and asked staff if they could use Condition 13 as a mechanism for staff to provide a report to the Commission to view the use. Mr. Lenhardt responded in the affirmative.

Comm. Bjerke stated that with the help of facilities such as this, the City of Concord is able to attain the recycling goal mandated by the State. He noted his desire to make the proposed solution work without making the same mistakes that the previous Commission made three years ago. He suggested including a condition of approval that staff would provide a six (6) month status report on the applicant's adherence to the use permit discussed tonight and the previously approved use permit in 2000 in order to evaluate whether or not compliance is occurring. He further noted that he would be supportive of a motion to approve this application with changes to the conditions as represented by staff, with an additional condition asking for a status report on both use permits to come back to this Commission in six (6) months.

Chair Sylls agreed with Comm. Bjerke that this is a potential solution to a problem. He noted that the applicant and business owner indicated that they would do their best to clean up the facility at the existing location and work with the neighbors to be a compatible business. He further noted that he could support the project as well.

Chair Sylls asked for a motion.

Comm. Bjerke moved that the Planning Commission adopt Resolution No. 03-18PC, approving Concord Recycling Center Use Permit (UP 03-011) subject to conditions of approval set forth in Attachment "A" to Resolution No. 03-18PC, with the changes as recommended by staff to Condition 11 and Condition 12; the deletion of Condition 40; and with new Condition 16 that staff would provide to the Commission in six (6) months a report on the status of the conditions of approval with this use permit as well as the use permit previously approved for 1320 Galaxy Way.

Through the Chair, Ms. Raines respectfully requested clarification of the new Condition 16 and suggested modifying the language to read, "*applicant*" rather than "*planning staff*" return with the status report. Comm. Bjerke commented that he had no objection to that addition to Condition 16, but desired planning staff to spend some amount of analysis reviewing what is presented.

Comm. Shinn seconded the motion.

AYES: Bjerke, Shinn, Brumley, Sylls

NOES: Costa

ABSTENSTIONS: None

ABSTENT: None

Chair Sylls announced that the Commission would take a ten-minute recess and then reconvene with the next agenda item.

3. **Olivera Crossing Shopping Center (UPA 03-009, DR 03-016)** – Application to renovate 31,950 square feet of existing retail space and to construct 21,100 square feet of new retail space at the existing commercial center located at the southwest corner of Port Chicago Highway and Olivera Road. The General Plan land use designation is Neighborhood/Community Commercial; zoning classification is NC (neighborhood Commercial); APN's: 110-035-008, -011 and -012. Project Planner: Eric Luchini @ 671-3140.

Eric Luchini, Assistant Planner, summarized the staff report and recommended that the Commission adopt Resolution No. 03-17PC, approving the Olivera Crossing Shopping Center Use Permit Amendment/Master Sign Program (UPA 03-009) and Design Review (DR 03-016).

Mr. Luchini noted recommended changes to the conditions of approval as follows:

- Condition 31 should be eliminated as it is covered in Condition 34.
- Condition 34 should state, *"The guarantee bond shall be posted prior to occupancy."*
- Condition 65 should read, *"Submit necessary details with the site improvement plans to ensure safe ingress and egress for the joint use driveway at the westerly end of the Olivera frontage consistent with the approve site plan."*
- Condition 87 should be eliminated as it is covered through Conditions 90-94.
- New Condition 94 should state, *"Noise producing site preparation and construction activity shall be limited to the days and hours set forth below; Monday – Friday, 7:30 a.m. to 6:00 p.m. Construction on Saturdays shall be based on prior approval of the Planning, Building and Engineering Divisions."*

Comm. Costa asked Mr. Luchini if there was a change regarding the Taco Bell being redesigned and rebuilt as a combined restaurant. Mr. Luchini responded that there was a change subsequent to the study session meeting. He explained that after further discussion with the applicant, they have not completed the final leasing arrangements, so it could be either Taco Bell or Taco Bell combined with another restaurant.

Comm. Bjerke asked Mr. Luchini to address the Key Housing Opportunity site issue for the Commission's review. Mr. Luchini responded that the site is designated the Key Housing Opportunity site and based upon that designation a component of affordable

housing would be required. He stated that the applicant indicated to staff that they wanted to keep this as a commercial center and that based upon that, staff recommended that the applicant conduct a feasibility analysis based upon a mixed-use concept. He further noted that the applicant provided an analysis based on two different mixed-use concepts that indicated it was not economically feasible for residential development to occur on this site.

Gary Ward, 2030 Franklin St., Fourth Floor, Oakland, VP of Mason McDuffie Financial Corporation, stated that they are pleased with the application before the Commission and believed it represents overall what everyone desired. He stated that the existing tenants located at the center have been very patient and they are now solidifying their design to know the cost, then they would discuss the matter with the tenants. He also identified the issue that staff discussed regarding consolidating parcels, which they did not desire and would rather maintain flexibility. He also pointed out that there were some environmental issues attached to the corner parcel and they would assume to isolate it to that one area. He also explained that they felt that the 7-11 driveway is operating correctly and efficiently and believed that the City's Traffic Engineer agreed. He further noted that all the conditions of approval are acceptable.

Comm. Brumley noted that less than 50% is leased at this point in the center and asked Mr. Ward if that would affect the progress of this development. Mr. Ward responded that at this stage 50% is not that terrible and believed the leasing would improve.

Comm. Costa commented that there is a preference from the neighbors to prohibit a second drive-through at the corner, and asked Mr. Ward if the corner would be a gas station or a restaurant. Mr. Ward responded that at this time they did not have that answer. Comm. Costa noted that would be a big concern to the neighbors. Mr. Ward responded that they are working currently with the service station operator, but they still are not there, but did not desire to be in a position where that is the only use at the corner because then it becomes less economically feasible. He indicated that it is currently a vacant lot, which he did not desire and they wished to have the right to install a gas station or a drive-through.

Chair Sylls opened the public hearing on this item.

Shane Mahoney, 2313 N. 6th St., Concord, representing the Holbrook Association, supported the project and believed it would improve the appearance. They agreed not to oppose any fast food restaurants in order to receive improvements at the center. They expressed concern for the hours of operation for the fast food restaurant and suggested modifying the hours to close at 10:00 p.m. Sunday – Thursday and 11:00 p.m. on Friday and Saturday. They asked that the adult materials be restricted and be placed in the back of the store in order for it not to be accessible to minors. They also requested that a building permit for the corner pad not be issued until substantial construction occurs on the main building. They also expressed concern for the driveway situation as discussed earlier and believed there is a serious problem. He also pointed out that the existing use permit condition located in the City Council Resolution dated June 6, 1983, was imposed

for a good reason. He further asked that one of the conditions be that they hold out the possibility of a traffic barrier, if determined by staff, to be both feasible and legal.

Comm. Costa asked if it is possible to delay the building permit for the corner pad. Mr. Luchini responded that the building permits could be phased, so the applicant would be able to provide plans and working drawings for the main building and then once substantial progress is made they could provide working drawings on the corner pad.

Ellen Williams, 2384 Gehringer Dr., Concord, endorsed the project and believed it is really refreshing to see this type of development take place. She further stated that it would add a great deal to the community. She expressed concern about too many fast food restaurants, but in addition the traffic pattern around Taco Bell is significant and hoped that would be well addressed in the new traffic plan. She further added that she is on the Board with the Chamber of Commerce and discussed the matter with them and they are enthusiastic about this project.

Lee Champagne, 2384 Gehringer Dr., Concord, expressed his appreciation to the applicant for establishing a beautiful piece of architecture. He stated that in reviewing the Master Sign Program he had reservations and asked who would be responsible for continued maintenance of the signage. He further requested that language be added to the conditions of approval addressing the maintenance of the shopping center and who would build the signage.

Mr. Ward commented on Mr. Mahoney's requests and stated that the fast food facilities would be larger and desired the ability to extend the hours and they felt that the hours included in the staff report are correct. He also pointed out that restricting adult material of the liquor store is none of his business and if the Commission felt that was not an appropriate act that would be up to the Commission. He commented on the building permit for the corner to be issued only if the main building is substantially under construction and noted that it was his understanding that he was allowed to move forward with the gas station before construction of the main building. He explained that when a deal happens it happens and he would not wish to lose a deal in that regard. He further indicated that the 7-11 driveway works and reiterated that their desire is to keep the design as it currently exists.

Through the Chair, Ms. Raines pointed out that Bob Clarke is in attendance to answer any questions that the Commission might have.

Bob Clarke, Senior Civil Engineer, stated that two driveways right next to each other, even if wide enough, creates unsafe access. He noted that the solution is to separate the driveways and have a sidewalk and gutter separate them, but this creates further circulation and parking problems for both properties. He explained that staff is not aware of any existing safety problems with the current scenario and it is staff's opinion to leave the driveway as it currently exists.

Comm. Shinn noted that in his opinion there is a safety issue due to excessive rates of speed along with traffic congestion and asked if there is a mitigation measure that could be in place. Mr. Clarke responded that speed bumps could be in place along with a different route rather than a straight route in order to reduce the rate of speed.

Mr. Ward discussed the Master Sign Program and noted that incorporated in the lease agreement is that the building signs are the responsibility of the tenant. He added that they provide the electrical connection and platform for the sign, but the tenants would have it installed at their expense along with maintenance. He pointed out that they maintain the common area signs such as the "Olivera Crossing" sign and the monument sign. He also noted that if it is desired to add that to the Sign Program that would be acceptable. He also indicated that the lease requires timely removal.

Chair Sylls asked Mr. Ward how maintenance would be enforced. Mr. Ward responded that he believed it stated timely, but could not be certain and noted that if they desired to add the word "timely" that would be acceptable.

There being no further public testimony on this item, Chair Sylls closed the public portion of the testimony and brought the matter back to the Commission for discussion and action.

Comm. Costa asked the Assistant City Attorney the options for restricting adult materials. Mark T. Boehme, Assistant City Attorney, responded that the regulation of "harmful material" is addressed under State law and property owners are required to use blinders and make this material not accessible to individuals under the age of 18.

Chair Sylls asked how the concerned citizen would go about trying to correct this problem. Mr. Boehme responded that staff would be happy to receive a call from the public and review the law. Comm. Shinn added that there are regulations and suggested contacting the Police Department and discussing the matter with the owner of the liquor store to move the adult material to the back of the liquor store. He also noted that when hours of operations are extended at fast food restaurants it could cause safety issues such as loitering and suggested that the hours be cut back initially, and if matters calm down, then extend the hours at that point.

Comm. Bjerke agreed with Comm. Shinn and believed they should limit the hours of operation of the freestanding pads to what is currently required. He pointed out that the staff report never discussed the hours of operation for the rest of the building and suggested establishing hours of operation for the entire shopping center. He also understood the concerns regarding adult materials and believed they should have some rules in the General Plan and hoped that as Mason McDuffie renewed leases in this shopping center that they might look at that issue in order to mitigate the situation in the future. He agreed with Comm. Costa regarding the building permits and did not have a concern in that regard. He also suggested adding a condition as to who is responsible for sign maintenance.

Ms. Raines stated that the applicant desires to maintain flexibility to allow a grocery store with a 24-hour operation, so staff would defer to the Commission for direction if limits should be placed on the in-line tenants. She noted that if it is the Commission's desire to specify different hours of operation for a gas station at the freestanding pad location, staff would again defer to the Commission in that regard. She also noted that with respect to the Master Sign Program, Condition 47 required the applicant to bring back the Master Sign Program to the Design Review Board for final approval.

Comm. Costa stated that this would be a show piece and would help finish the corridor leading up to the BART station. He suggested a compromise on the hours to 11:00 p.m. Sunday – Thursday and midnight for Friday and Saturday because BART shuts down at midnight. He also agreed with the hours being 24/7 if they decided on a gas station. He stated that the adult materials had been discussed and hoped it could be addressed in the General Plan and Zoning Ordinance. He also commented on a phased building permit and explained that this is a completely different project than Dana Plaza and believed it is not necessary. He pointed out that the driveway was discussed in great length and agreed with Design Review having final review of the Sign Program. He further noted that he is comfortable with moving forward.

Comm. Brumley complimented the applicant for this development and noted that he is very impressed. He also believed that the neighborhood should be proud and hoped they would support that center. He further noted his support for the project.

Chair Sylls believed this is a very handsome project and looks forward to its completion. He expressed concern about the 7-11 driveway, but as indicated there is no solution. He agreed with Comm. Costa's hours of operation. He also noted that at the time of the Dana Plaza project he was a member of the public and the concern then from the neighborhood and Commission was that there was a problem financial situation and the Commission at that time felt that they had to hold the project hostage in order to receive improvements to the rest of the center. He did not believe they are faced with the same type of situation and did not believe it is necessary to add a restriction to the corner pad.

Comm. Bjerke suggested stating, *"that the approved operating hours for a freestanding pad/restaurant pad tenant are as follows:"* with a separate clause stating, *"that a gas station use can be a 24/7 operation."*

Chair Sylls asked for a motion.

Comm. Costa moved that the Planning Commission adopt Resolution No. 03-17PC, approving the Olivera Crossing Shopping Center Use Permit (UPA 03-009) and Design Review (DR 03-016) subject to conditions of approval set forth in Attachment "A" to Resolution No. 03-17PC, with the corrections and deletion provided by Mr. Luchini and the hours of operation that have been discussed, which are as follows: pad restaurants, Sunday – Thursday closing at 11:00 p.m., Friday and Saturday closing at midnight, with a gas station being able to operate on a 24/7 basis.

Comm. Shinn seconded the motion.

Comm. Bjerke indicated that in his opinion the hours of operation should be closing at 10:00 p.m. Sunday - Thursday and 11:00 p.m. Friday and Saturday.

AYES: Costa, Shinn, Bjerke, Brumley, Sylls

NOES: None

ABSTENSTIONS: None

ABSENT: None

COMMISSION CONSIDERATIONS

There were no Commission Considerations.

STAFF REPORTS/ANNOUNCEMENTS

Ms. Raines reminded the Commission that the Planning Commission would be hosting a special meeting on August 20th at 6:00 p.m. meeting in the Council Chamber and then proceeding to the parking lot to begin a bus tour with respect to the City's General Plan update project. She stated that the purpose of the tour is to review proposed opportunity areas that would be the most likely to experience change in the next 20 years. She noted that the Commission would receive documents that staff and the consultant have been working on regarding the opportunities and constraints of the identified areas, as well as a map atlas that provides background information on the City's existing resources. She explained that once those maps are distributed to the Commission they would be made available to the public. She also announced that this is an introduction to a workshop with the Planning Commission on September 3 regarding the opportunity areas.

Ms. Raines also announced that Comm. Costa asked about the status of the razor wire that had been installed at the McCall's Landscaping site and she noted that it had not yet been removed, but they promised that it would be removed no later than next Wednesday.

Comm. Brumley reminded Ms. Raines that he would not be in attendance at the August 20th meeting and asked Ms. Raines to save the material that is provided at that meeting.

COMMISSION REPORTS/ANNOUNCEMENTS

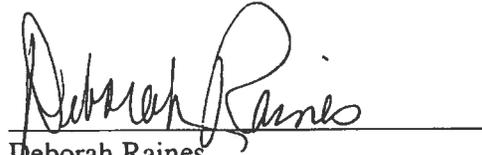
- Liaison Reports

Comm. Shinn noted that Transpac did not have a meeting this month and announced that the next meeting would be on the 13th of September.

ADJOURNMENT

BY ORDER OF THE CHAIR, THE MEETING WAS ADJOURNED AT 10:25 p.m.

APPROVED:

A handwritten signature in black ink, appearing to read "Deborah Raines", is written over a horizontal line.

Deborah Raines
Planning Commission Secretary

Transcribed by Jessica Woods

From: Garret Deal <garret@rtrlegal.com>
Sent: Tuesday, February 02, 2016 3:59 PM
To: Simpson, Laura
Cc: Mogensen, Andrew; Brown, Susanne; brianlibow@gmail.com; ray@rtrlegal.com; mike jennings; Bryan Wenter
Subject: Re: Concord Recycling Center appeal hearing

Ms. Simpson,

Thank you for your letter and for the telephone call today. My client would like to proceed with the February 17 Planning Commission hearing regarding outside storage.

We appreciate your efforts here. Please give me a call if you have any questions.

While Mr. Wenter continues to act as co-counsel, please feel free to take him off your mailing list. We can forward correspondence to him.

J. Garret Deal, Esq.

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