

**PLANNING COMMISSION MINUTES OF MAY 12, 2008**

**2008-0245 – Sheri DeCaire** [Applicant] **Peter Van Dyck** [Owner]: Use Permit to allow a vocational school for developmentally disabled adults. The property is located at **230 Commercial St.** (near E. Arques Ave.) in an M-S (Industrial & Service) Zoning District. (Mitigated Negative Declaration) (APN: 205-35-007) SL

**Steve Lynch**, Senior Planner, presented the staff report. He said staff thinks this use is desirable for Sunnyvale, and that this is the wrong site to locate the school. He said, regarding 230 Commercial St., staff feels there is a potential conflict with other uses on Commercial St. He said staff was not able to make the findings and is recommending denial. He said this is a discretionary permit. Mr. Lynch, referred to a letter submitted to staff after the report was completed that was provided to the Planning Commission on the dais this evening. He said the letter is from the applicant's lawyer. He referred to page 1 of the letter that states, "Staff is fundamentally concerned, in light of the fact that the participants are disabled, that they should not be near uses that use hazardous materials and that their presence will inhibit the growth of their industrial neighbors." Mr. Lynch said that this statement is incorrect, that staff is not concerned in light of the fact that the participants are disabled. He said staff is concerned that this is a new school use going into an Industrial zone. Mr. Lynch referred to page 3 section (b) of the letter that states, "This Use Will Not Impair Adjacent Uses" and then "The General Plan policies cited by Staff all are based on the misconception that the participants are "sensitive receptors" commenting that there is nowhere in the staff report that the participants are referred to as sensitive receptors. Mr. Lynch further commented about the same section that the General Plan polices cited by staff, that many of the policies find in favor of this use and that it furthers some of the General Plan policies, and does not further others. He said when staff balanced the two that they found this would not in general, further the General Plan goals and policies.

**Comm. Babcock** asked if this type of school would fall under the "Places of Assembly (POA)" definition. Staff said that this type of school could be considered in a POA zone and in an Industrial zone as an "institution of higher learning" through a Use Permit. He said this type of school would not be required to go in a POA zone. Comm. Babcock asked staff how many acres, parcels or square footage of POA has been approved in the City in the last year or so. **Trudi Ryan**, Planning Officer, said there have been several industrial areas in the City that received the combining district with the POA designation and that she could not recall the amount, noting that it has been approximately a year since that designation occurred.

**Vice Chair Rowe** referred to the page 1 of the letter on the dais from the applicant's attorney, which reads "to make reasonable modification to the Code or Policies, if necessary, to accommodate such use." Vice Chair Rowe discussed this with staff with Ms. Ryan clarifying that this type of use, an institution of higher learning, can be considered in M-S (Industrial and Service) or M-S/POA zoning districts. Ms. Ryan added this type of use could also be considered in many other zoning districts including Public Facility, several Commercial zones, several Residential zones, or Office zones. **Kathryn Berry**, Senior Assistant City Attorney, added that the Commission could allow an institution of higher learning in the proposed zoning district with a Use Permit only if the use is found to be compatible with the proposed location. Ms. Berry said the Commission needs to determine tonight whether this use is compatible or incompatible with this industrial area. Ms. Berry said that the Commission may determine this use is compatible and that staff is not finding this location compatible. Ms. Berry said approving the Use Permit depends on the location, that it is not a matter of right, and said that this is a discretionary decision for the public agency.

**Comm. Simons** asked if a vote tonight is for any educational use on this site, with the user able to exchange it for another type of educational use and whether this use is permanent for this site or is it just for this particular user. Mr. Lynch said a vote tonight would be for any school that could go in on the site. Mr. Lynch said one of the limiting factors is the amount of parking is 52 spaces which would not be able to accommodate a typical school. He said they are not going to limit based on the clientele. Comm. Simons commented that Brooks College, which came before the Planning Commission, that it is located in Industrial zone and confirmed with staff that they did not have a parking issue on their site.

#### **Chair Sulser opened the public hearing.**

**Brandon Coker**, applicant and Creative Director of Mission Bay, said he and his wife Maria, Program Director, have over 20 years combined experience working with developmentally disabled adults. He discussed the need for these types of services and said they have had a similar facility operating in an Industrial area in Santa Clara for the past 4 years. He said having a second site close to their Santa Clara operation would help alleviate upcoming challenges. Mr. Coker said Mission Bay is not a traditional school, and is a facility offering supportive employment and independent living skills. He said their participants are healthy adults, 18 years and older with developmental disabilities such as autism, mental retardation, cerebral palsy and developmental delays. He said participants come to the program to gain skill development and full integration into the community. He said his role is to procure paid contracts with the surrounding industries and to provide meaningful

work for the participants. He mentioned some of the companies the participants have worked for and said that about half of their projects are on-site. He described some of the activities and jobs that the participants are contracted to do through Mission Bay. Mr. Coker said the participants do not drive and Mission Bay will have 11, 12 passenger vans which pick up the participants from their homes and take them to the work site. He said very little parking would be on site and there would be no pedestrian traffic. He said they are licensed by the Department of Social Services and participants are placed by the San Andreas Regional Center. He said participants are supervised by staff, are in small structured groups, and that Mission Bay is mandated to do fire disaster and earthquake drills with staff and participants. He discussed the staff and safety procedures in place. He said their Santa Clara facility is in an Industrial zone and the neighbors in Santa Clara use the same types of chemicals as the neighbors on Commercial Street. He said they present no problem to the Santa Clara neighbors and the program participants are no more sensitive or at risk than the employees of the industries. He said they are a training center with contract work with surrounding industry just like their Industrial neighbors. Mr. Coker introduced, **John Seals**, architect, of Davidson + Seals of Oakland, CA and **Joan Gallo**, attorney, of Hopkins & Carley of San Jose, CA. Mr. Seals commented about the building architecture and described several proposed changes. Ms. Gallo commented about several items that have come up in the discussion this evening. She said the General Plan has several objectives in the policies in the Community Vision Element and the Socio-Economic goals that she quoted in her letter provided on the dais this evening. She said these objectives include that Sunnyvale is a caring community that supports efforts to create employment opportunities for disabled individuals and encourage programs like Mission Bay. She said she hopes these are not hollow words and congratulated Sunnyvale, commenting that she has worked with many General Plans and has never seen better language in terms of sensitivity to the disabled community. She said that this is an application for a Use Permit and conditions can be put with the permit to address issues, i.e. parking, issues related to this school not being a traditional school. She said that this is an amazing operation, and that it is not easy to find a building that is suitable for the needs. She said this is not a traditional school, that it looks more industrial, and that it has to be categorized some way. She reiterated that by use of conditions, the Commission can make sure that the uses remain as proposed. She said that her clients are buying the building and would hope to be a part of the community for a long time. Ms. Gallo said, regarding discrimination, that the intent may not be discriminatory, and that a court would look at the issue in terms of the affect. The City is supposed to give reasonable accommodation to an application for the disabled community. She said it is not a simple matter of saying "somewhere else in our town." She said this building would still look industrial and the students would not be outside. Ms. Gallo made reference

to the "Nine Star University of Health Sciences" that was approved in October 2007. She said the chemical use by Nine Star's neighbors is higher rated than the chemical use on Commercial St. and that this school was approved. She said she understands the concern that the permit runs with the land and said that with the use of conditions that the problems would be solved. She said they would appreciate the Commission's consideration.

**Vice Chair Rowe** commented that the applicant addressed specific emergency plans and asked the applicant to comment about what they would do in a chemical release emergency. Mr. Coker said the City has requirements and this issue is addressed in the mitigated declaration adding that they are inside a building and if needed, can leave quickly. Ms. Gallo said that the applicant is better prepared for a lockdown situation than most industries due to their earthquake preparedness. Vice Chair Rowe confirmed with Ms. Gallo and the applicant that the staff report had been reviewed. Vice Chair Rowe commented that Ms. Gallo addressed the Socio Economic goals of Sunnyvale and asked Ms. Gallo if she read the Business guidelines. Ms. Gallo said yes and said that she does not think there is anything about this use that impedes the industries around the proposed site. She said that some of the neighbors raised the concern that the participants might be sensitive receptors and that the neighbors might not be able to expand their businesses. Ms. Gallo said under the BAAQMD (Bay Area Air Quality Management District) rules the participants are not sensitive receptors. Ms. Gallo said that staff's concerns are misplaced and that the findings can be made. Vice Chair Rowe apologized for reading on the dais and said she was listening and trying to review the material that was provided by Ms. Gallo on the dais this evening. Ms. Gallo acknowledged that it is possible to look at the material and listen at the same time. Mr. Coker added that there are many letters of support included in the information provided tonight from businesses near their Santa Clara site and clients emphasizing that they have not had complaints. Vice Chair Rowe acknowledged that she read the letters commenting there was one letter from a Sunnyvale business and the rest are from Santa Clara and San Jose. Ms. Gallo said the businesses close to their Santa Clara site use similar chemicals to the businesses around the proposed site. Ms. Gallo commented that the proposed school is parallel to the Nine Star University and in fact that the Nine Star University has chemicals nearby that have a higher degree of concern than the proposed site. Vice Chair Rowe discussed with Ms. Gallo and staff about the chemicals with staff adding that staff has not evaluated the applicant's Santa Clara site so no comment can be provided from staff. Ms. Gallo suggested that the Commission could look at what the businesses do which would indicate that they used the same types of chemicals.

**Virginia Grant**, Executive Director of Area Developmental Disabilities Board VII, said they are part of the State Council on Developmental Disabilities. Ms. Grant discussed what their Board involves and spoke in support of this application. She introduced Julie Wilsted who is a typical person who would attend the proposed program and who enjoys working and being productive. She discussed the State's involvement in programs and said the many programs are concerned that people with development disabilities have the opportunity to be productive and engage in employment as other people do. Ms. Grant said that much of the work that Mission Bay participants do is work that is at or for Industrial facilities which are the facilities that staff is concerned about exposing them to. Ms. Grant said she is distressed that there was a letter sent by Applied Materials, and that the corporation has written a letter regarding this sensitive population. She said that she is concerned that the City of Sunnyvale is not giving adequate consideration to what is a vocational training program.

**Comm. Simons** said that he can understand why Ms. Grant would be concerned that staff did not recommend approval of this application and does not understand where Ms. Grant thinks the discrimination has occurred. Ms. Grant said that the activities that are performed at this vocational training program are identical to what is being done in the surrounding business. She said many of the clients travel to similar businesses and perform those duties. Comm. Simons said that staff does not have a concern about the uses, and that there is concern about an educational use on this particular site is the decision being made tonight. Comm. Simons said he appreciates Ms. Grant's comments and feels that the Commission's decision will be based on this use at this particular site. Comm. Simons discussed examples of past projects and the way the Commission has considered them. Ms. Grant reiterated that this is not a traditional school, is a vocational training site, and that it should be given the same consideration as the Nine Star University down the street. She mentioned again that they should not be considered sensitive receptors as mentioned as a concern by a neighbor.

**Vice Chair Rowe** asked Ms. Grant about the program and whether the students train and are sent out and then new students come in. Ms. Grant said some of the students do that and that this case is more of the clients working on the premises. She said the program is not set up where a student attends for a set amount of time. Vice Chair Rowe asked if the students make products at the school. Mr. Coker said they do not make products and do work including, kitting and working for printing companies.

**Debra Van Curen** of San Andreas Regional Center, one of 21 centers in the State, spoke in support of this application. She said the Regional Centers are the funding source for services provided to the developmentally disabled in California. She said

the funding comes from the State to the regional centers and is then provided to the program service providers. Ms. Van Curen said the Cokers are service providers that run an exemplary program for the individuals in Santa Clara. She said she would like to see the Cokers be able to provide a similar program in Sunnyvale adding that the building and industrial area is similar to the Santa Clara site. Ms. Van Curen said they would appreciate the Planning Commission's consideration of the application.

**Barbara Stepp**, a Mission Bay program participant, said she has been a participant for three years and has enjoyed the variety of work she has done and the people she has worked with.

**Julie Wilsted**, a Mission Bay program participant, said she has a disability, and that she lives and works in Santa Clara. Ms. Wilsted said she serves on the State Council on Developmental Disabilities and was appointed by the Governor. She asked why the City of Sunnyvale does not want the handicapped in Sunnyvale. Ms. Wilsted invited the Commission to visit the program in Santa Clara and see what they do. She said she would be happy to show the Commission around. She said she loves to work and never wants to quit. **Cher Goes** assisted Ms. Wilsted with her comments and said she provides facilitation for Julie Wilsted.

**Ms. Gallo** said when dealing with a service to the disabled, the City is required to make reasonable accommodations. Ms. Gallo said that, understanding the concern that the permit runs with the land, she said that the Commission can include conditions that can assure that traditional school does not come in and that that this facility is permitted. She said because this is a disabled community the City has the responsibility to make modifications and not treat a permit exactly the way it is treated in most cases.

**Chair Sulser closed the public hearing.**

**Comm. Babcock moved for Alternative 1 to adopt the Mitigated Negative Declaration and deny the Use Permit. Comm. Hungerford seconded the motion.**

**Comm. Babcock** commended the speakers for attending and for their comments this evening. She said she thinks the school and the program are outstanding. She said she would love to have a similar program in Sunnyvale, just not in the industrial zoned land. She said this is a land use decision and about the protection of Sunnyvale's industrial zoned lands as the City has lost a tremendous amount of industrial land over the years. She encouraged this organization to continue to work with staff to find another location in Sunnyvale and said she thinks the program would be a tremendous asset to the community.

**Comm. Simons** said he would be supporting the motion. He said he makes an effort to be consistent with previous decisions. He said he did not support the Trinity Church land use decision and this is also a land use decision.

**Comm. Hungerford** commented that this is a very difficult decision as the proposed organization is very commendable and performs a valuable service. He said we do want the applicant to locate in Sunnyvale. He said a non-industrial use at this location is incompatible with the surrounding businesses. He said there are elements in the City's General Plan that support that decision, limiting the intrusion of incompatible uses in areas. He encouraged the applicant to work with staff to find a more suitable location.

**Vice Chair Rowe** said this is a difficult decision. She said as a Planning Commission that they can only make their decision based on the findings and discussed those findings. She said she agrees with the Planning Division that this proposal does not meet the findings.

**Chair Sulser** said that this is a very difficult decision as this is a very worthwhile project. He said he would be supporting the motion because the educational use would run with the land. He said that he does not think this is an incompatible use now, that he is concerned that it could become incompatible in the future. He said he hopes to see this application again for a different property.

**ACTION: Comm. Babcock made a motion on 2008-0245 to adopt the Mitigated Negative Declaration and deny the Use Permit. Comm. Hungerford seconded. Motion carried unanimously, 7-0.**

**APPEAL OPTIONS: This action is final unless appealed to the City Council no later than May 27, 2008.**