

PLANNING COMMISSION MINUTES OF SEPTEMBER 22, 2008

2008-0756 – International Technological University [Applicant] DPM San Aleso LLC [Owner]: Application for a Use Permit to allow an institute of higher learning to occupy approximately 9,156 square feet of tenant space within two existing industrial office buildings. The property is located at **744 & 756 San Aleso Avenue** (near N. Mathilda Ave.) in an M-S (Industrial & Service) Zoning District. (Mitigated Negative Declaration)(APN: 204-01-007 & 204-01-015) RK

Gerri Caruso, Principal Planner, presented the staff report. She said staff was able to make the required findings and recommends approval subject to the conditions in Attachment B.

Comm. Sulser asked staff about the site plan. He said he visited the site and it appears that this school would be a portion of two different buildings. Ms. Caruso confirmed that the proposed school would occupy separate space in two separate buildings. Comm. Sulser asked what percentage of the two buildings the school would require. Ms. Caruso referred to the site plan in Attachment D, page 1 and said there are three buildings divided into four tenant spaces and the proposed use is taking up 25% of the two buildings it occupies.

Vice Chair Chang referred to page 7 of the report regarding the applicant drafting and submitting Mitigation Measure #2 for review and asked if the landlord is responsible for the enforcement of Mitigation Measure #2. Ms. Caruso said the landlord is required to implement the plan that they submit and the City approves. She said if the Measure is not carried through, the City always has code enforcement powers. Vice Chair Chang referred to Attachment B, page 2, condition 3.A.2 and confirmed with staff that is the Mitigation Measure referred to on Page 7 of the report regarding the applicant acknowledging in writing that they are locating in an industrial area and what that may result in.

Comm. Klein asked staff about parking. He said he would like a better idea of the number of spaces allotted for this site. Comm. Klein discussed with staff the rates used to determine parking. She said for this application staff based the calculations on the number of students provided by the applicant in their description. She said the rest of the buildings are industrial type tenants and with this school the buildings still meet the code for parking. Chair Klein said from a percentage standpoint this proposed use of the site takes almost 50% of the parking and the floor area proposed is only about a 6th of the site. He said he is concerned that if another use came in that the parking might be inadequate. Ms. Caruso explained that the application process should give opportunity to review the affects of a particular application on the parking. Comm. Klein asked what might be the worst use parking-wise that might want to go locate at this site.

Ms. Caruso said that probably an office use would be the worst discussing why, and added that staff thinks the parking is adequate even if a non-special permit use would go onto this site.

Chair Rowe said on her site visit she saw many students walking across the tree roots to get through the median to get to the classes. She asked if any consideration was given to providing a cut through between the trees to protect tree roots. Ms. Caruso said that it would be appropriate to add a condition for staff to review whether a cut through should be provided.

Yau Gene Chan, Executive Vice President, and **Mickel Duffy**, Director of Campus Affairs, applicants, thanked the Commission for their time. Mr. Chan said the International Technological University was started by his father in Santa Clara as he was the Dean of Engineering at Santa Clara University for over 30 years. Mr. Chan said his father had the idea for a global university network around the world that would have a global model for education and that is what they have built in Sunnyvale. He said primarily this site is their Administrative Headquarters for what is mostly an on-line school. He said about 70% of their students attend on-line. Mr. Chan said parking is always an issue for most universities, but most of their classes are offered between 6:00 p.m. to 9:00 p.m. and on weekends and they have had no issues with parking since they have been at this site. He said most of the cars on-site belong to staff. Mr. Chan said primarily their students are from overseas and take public transit. Mr. Chan mentioned there is a traffic fee that was assessed and he said since most of their students are not physically at the campus, the applicant wondered if the Commission could reconsider this fee. He said there is also a requirement for a sprinkler system and he asked if the Commission could reconsider this requirement as they are currently only using one of the buildings for classrooms. He said they are a non profit university and receive no endowments from the State and they are dependent on tuition for revenue. He said it would be a burden to put in a big sprinkler system unless it is absolutely necessary. Mr. Chan said they would like to stay in Sunnyvale. He said he understands that this is a mixed use site and there could be future nearby uses with hazards, but he said they feel that since there are Denny's and Hobee's Restaurants, and three hotels in the immediate area that this area should be safe for them. Mr. Duffy added that they confirmed with their landlords that they would provide two accessible parking spots as required in the conditions, that bike racks would be provided, and that a plan would be created to deal with potential hazardous situations.

Comm. Sulser asked staff if the Commission could do anything about reconsidering the requirement for the sprinkler system. Ms. Caruso said that the requirement comes from the fire marshal and the building division. She said if someone feels the code is being applied in error that discussions could be facilitated. She said the applicant could

bring in their own code expert to have discussions with the different City staff. Comm. Sulser asked if the Commission is allowed to give a break to the applicant on the Traffic Impact Fees. Ms. Caruso said an opening for further discussion with the Traffic Division to make sure the trip rate is used can be facilitated, but the Planning Commission does not have the authority to waive the fee.

Comm. Travis asked staff about the fire sprinkler system and whether this would be the responsibility of the tenant or of the building owner. Ms. Caruso said that typically the tenant is responsible for their own tenant improvements unless they can negotiate with the landlord to provide the improvements.

Comm. Klein asked staff if the fire sprinkler is being required because of the classroom portion of the use and asked what determines the requirements. Ms. Caruso said that part of the project review process includes staff from various divisions, including the fire marshal, and providing related comments based on the information provided. Ms. Caruso said sometimes a dialog is opened with appropriate staff if the applicant provides additional pertinent information, and said that she does not know if the fire sprinkler is being required because of the classroom.

Comm. Hungerford asked staff if the fire sprinkler requirement condition could be changed to "require compliance with the building code sprinkler system as determined by future discussions." Ms. Caruso said some reinterpretation of the conditions can occur, but the applicant is still being held to the fire code regardless of the wording. Ms. Caruso referred to Attachment B, page 1, condition 1.A that is a catchall that allows minor changes to be considered and approved by the Director of Community Development. Comm. Hungerford said that the traffic fee condition does say an estimated fee so there is some wiggle room. Ms. Caruso said yes, and sometimes applicants can provide more specific trip generation information which may affect the fee, and the fee currently indicated is the estimate based on our current practices.

Kathryn Berry, Senior Assistant City Attorney, added that the Director of Public Works can adjust the fee if there is good cause, that that is already built into the code, and an additional condition does not need to be included.

Comm. Klein asked the applicant to elaborate on how the bus pass program works that is provided by the University to the students. Mr. Duffy said that when a student first registers they are given bus cards, and every year the VTA (Valley Transportation Agency) provides stickers to be put on the bus cards. Mr. Duffy said for \$30 a student can purchase a sticker that allows the student to take the VTA buses on any route they want to for a whole year. Comm. Klein asked Mr. Duffy if he knows how many students actually use the buses. Mr. Duffy said that a lot of their students are on-line students and do not travel regularly to class. Mr. Duffy added that he would estimate maybe 50%

to 70% of the students who attend classes use the bus because very few of their students have driver's licenses or own cars as they are foreign students.

Chair Rowe asked the applicants why there was notice of a class cancellation on one of the nearby buildings. Mr. Duffy said that they do not have a lot of bulletin board space so students used the vacant building to help advise of the class cancellation.

Chair Rowe closed the public hearing.

Comm. Klein moved for Alternative 2, to adopt the Mitigated Negative Declaration and approve the Use Permit with modified conditions; to add a condition 5.B that the applicant review with staff the landscaping for possible addition of a pass through or sidewalk going with the natural flow that the students are already taking; and to add language to the beginning of condition 10.3 that the applicant work with staff and the fire marshal to evaluate the condition of buildings in excess of 3600 square feet in relation to the need for fire sprinklers. Comm. Hungerford seconded the motion.

Comm. Klein said he was able to make the appropriate findings for this Use Permit. He said this project utilizes an industrial area that is not being well used. He said this is a noble use and commended the applicant for working with VTA, and for taking steps far above most to deal with parking issues and to get students to utilize public transit. Comm. Klein said he thinks this is a good use for this space and cleaning up the permitting issues with this use results in a good addition to the community.

Comm. Hungerford added that on his site visit that he wanted to make sure that this was a university that qualified as an educational institution of higher learning, and he obtained a course list. He said it demonstrated to him that this is an institution of higher learning as some of the courses included Semi Conductor Physics, Integrated Circuit Design and Method, Linear Algebra, etc. which he said the course titles alone convinced him this must be an institute of higher learning.

Comm. Sulser said he would be supporting the motion. He commented that the Planning Commission considered a similar higher education application several months ago that the Commission denied and he wanted to address why he feels this Use Permit should be approved versus the past application that was denied. Comm. Sulser said that he feels in this case that he does not see a number of industrial uses that would be impacted by this application and that is why he is able to make the findings for this application.

Comm. McKenna commented that when she saw that the University was located by the restaurants that she thought they selected a good location because students seem

to always be looking for food. She said above and beyond that, she was impressed with the many on-line classes and that many of the students use public transit.

Comm. Klein said he also wanted to describe some of his reasoning for approving this application. He said the proposed site is on the edge of an industrial area with no current chemical uses. He said the Commission looked at a similar educational facility several months ago and that one of the issues was that it was located in the center of a large industrial area. He said the application this evening is located near restaurants, hotels and residential uses and is on the edge of the industrial zone. He said any new industrial use that would try to bring in chemical uses would have issues with the location due to the nearby uses.

Vice Chair Chang encouraged the applicant to continue to work with staff on the fire sprinkler system and the Traffic Impact Fee concerns. He commented that the code enforcement is in place for the applicant's safety and he thinks if the applicant works with staff that the site should be a great campus.

Chair Rowe thanked Comm. Sulser and Comm. Klein for bringing up the issue she was concerned about regarding the application the Commission denied several months ago. She said she agrees with both Commissioners on their reasoning on why this proposed site is a better location than the site for previous application.

ACTION: Comm. Klein made a motion on 2008-0756 to adopt the Mitigated negative Declaration and approve the Use Permit with modified conditions; to add a condition 5.B that the applicant review with staff the landscaping for possible addition of a pass through or sidewalk going with the natural flow that the students are already taking; and to add language to the beginning of condition 10.3 that the applicant work with staff and the fire marshal to evaluate the condition of buildings in excess of 3600 square feet in relation to the need for fire sprinklers. Comm. Hungerford seconded. Motion carried unanimously, 7-0.

APPEAL OPTIONS: This action is final unless appealed to the City Council no later than October 7, 2008.