PLANNING COMMISSION MINUTES OF JANUARY 23, 2006

2005-1174 – KC Associates [Applicant] **AIP Steward Inc.** [Owner]: Application for a Use Permit on a 2.6-acre site to allow a new seminary within 7,200 square feet of an industrial office building. The property is located at **850 Stewart Drive** (near DeGuigne Dr) in an M-S (Industrial & Service) Zoning District. (Negative Declaration)(APN: 205-26-003)RK

Ryan Kuchenig, Assistant Planner, presented the staff report. Mr. Kuchenig said the applicant had originally noted that the site would be occupied by five employees during typical business hours and up to 20 adult students during seminars. The applicant indicated today that he would like to increase the enrollment capacity to 50 students and has submitted a letter, provided on the dais, requesting this increase. Staff recommends approval of this project subject to the Conditions of Approval (COA) recommended by staff. Mr. Kuchenig provided supplemental information to the Commission by adding COA 1.H. that reads "The Use Permit is valid for a maximum 5 employees and 20 adult students at any one time. Any expansion of the approved use shall require approval at a public hearing." Staff noted when City Council approved the moratorium on places of assembly and provided an exemption for seminary uses, that the moratorium included a limit of 40 enrolled students for this use.

Comm. Babcock commented that this is not considered a place of assembly but, it appears to be a school. Ms. Ryan said, though educational uses are included in the moratorium, that this particular type of use, places providing religious instruction limited to 40 enrolled students, is specifically exempted from the moratorium. Comm. Babcock confirmed that the proposed use would have been considered adult education. Comm. Babcock asked staff what the City's guidelines are for placing adult education centers in industrial zoned areas. Ms. Ryan said the City requires a Use Permit. Comm. Babcock asked for clarification regarding the two parking requirement charts on pages 6 and 7 of the report. Staff explained the parking requirement charts and discussed the specific parking situations related to this application including the code requirements, combinations of parking ratios, the flexible parking ratio "as conditioned" with the narrower use as defined by the applicant requiring 25 parking spaces, and COA 1.G. requiring a Miscellaneous Plan Permit for an alternative mix of uses to consider the parking requirements. Comm. Babcock referred to the applicant's letter, Attachment E page 2, which indicates "a team of four faculty members and four to six administrative staff members," commenting that the report indicates only five staff members. Ms. Ryan said proposed numbers are to be limited to five staff members and 20 enrolled students at any one time which would require 25 parking spaces allocated for this use. Comm. Babcock asked if staff was still advocating a limit of 20 enrolled students. Ms. Ryan said there is some flexibility, but the maximum enrolled students cannot exceed 40 under the current

moratorium definition. If the enrolled number of students is increased, to a maximum of 40, the parking requirement would need to be adjusted.

Chair Hungerford confirmed with staff that there would be no persons staying overnight at the site.

Chair Hungerford opened the public hearing.

Kevin Chiang, project architect and applicant, said they would be able to comply with the COAs. He said he is requesting an increase in the amount of enrolled students from 20 to 50 including five employees, based on projected enrollment over the next five to 10 years. He said that allowing this increase now would prevent the need to return in future years with a request to increase the student numbers allowed. He commented on the parking calculations and explained how, if the increase in student enrollment were allowed, the parking requirements could still be met by coordinating with a neighbor and sharing 17 spaces. He said most of the students would be part-time adult students and their attendance would be staggered throughout the day with the majority of the students attending in the evening.

Chair Hungerford responded that the maximum number of students the Planning Commission could approve tonight would be 40 enrolled students. If the number of enrolled students exceeded 40 then the project would be subject to the moratorium. Ms. Ryan confirmed this, so no more than 40 enrolled students could be considered.

Harriet Rowe, resident of Sunnyvale, commented that the applicant is requesting a 2 ½ times increase to the number of the enrolled students and suggested that possibly the Planning Commission should have more time to review the effects of the difference. She commented that she has been confused about the definition of school versus non-schools and places of assembly. She said she has no problem with the parking situation and the incapability of the industrial use, but she does have a problem with this use in an industrial area. She referred to Attachment E of the report and commented on various sections including the applicant's intent to purchase the office, the possible uses of the other condos on the property, and some of the proposed goals for the seminary. She expressed her concern about the loss of tax dollars if Sunnyvale loses the industrial use of this land.

Mr. Chiang commented that the use is not a church or an assembly hall, but the use is primarily for education.

Chair Hungerford closed the public hearing.

Comm. Klein referred to the staff addition of COA 1.H., asked for clarification of the moratorium and asked if staff's recommendation is for 20 enrolled students or

20 students on the site at one time. Ms. Ryan said staff's recommendation refers to total enrollment. She read the following portion of the moratorium to better define the seminary, "Applications for seminary shall continue to be accepted and processed consistent with current regulations which require the issuance of a use permit. For purposes of this exemption a seminary is an institution providing classes solely for adult religious education of not more than 40 enrolled students. It does not apply to seminaries where students or teachers reside or religious services are offered to anyone who is not an enrolled student in the seminary." Comm. Klein asked if staff suggests that the clarification for 40 enrolled students be part of this or does the moratorium language cover the clarification. Ms. Ryan said a larger study regarding the moratorium is scheduled for March, 2006 which will provide other direction, but the Planning Commission has several choices whether to provide clarification on this issue.

Vice Chair Fussell said the application is for 20 students and the applicant has requested an increase to 50 enrolled students. He asked how the increase might change things for the Planning Commission regarding what action they can take. Ms. Ryan said the Commission cannot approve more than 40 enrolled students. Vice Chair Fussell said if 20 enrolled students are approved, what would the applicant's course of action be to increase the enrollment to 50 students. Ms. Ryan said the applicant would have to wait until the moratorium was lifted and apply for a new permit based on the outcome of the moratorium. Ms. Ryan said this specific application was accepted as an exception to the moratorium and cannot be approved for more than 40 enrolled students. Vice Chair Fussell confirmed with staff that the applicant would have to apply for a new use permit if the moratorium was lifted and the new regulations would allow more than 40 enrolled students.

Chair Hungerford asked staff if it is possible to calculate the parking requirements for the site as if there would be 40 enrolled students and five staff members on the site at one time. Ms. Ryan said this could be calculated, and that setting a limit on the total number of students present on site is recommended. The calculations result in seven additional unaccounted for parking spaces.

Comm. Klein said the applicant mentioned an agreement with a neighboring facility for parking and asked if, with these additional parking spaces, would staff's recommendation change. Ms. Ryan said COA 1.G. would allow staff to consider some other changes on the square footage up to a certain number of students. Comm. Klein asked if a new application would have to be applied for this kind of a change or does COA 1.G. cover it. Ms. Ryan recommended that the Planning Commission make the decision very specific about what intensity of use is appropriate for this site as this is a sensitive type of use.

Chair Hungerford asked staff who the other tenants are in this building and are they owners or renters. Staff referred to Attachment E page 4, showing a list of

the tenants in the Stewart Office Condominiums and said that staff believes they are all renters and that the condominiums are still under one ownership. The Use Permit will cover the entire site, not just this one tenant space.

Comm. Babcock moved for Alternative 3 to adopt the Negative Declaration and deny the Use Permit. Comm. Simons seconded.

Comm. Babcock said she was unable to make the findings to allow this project to go into this industrial zoned area. She said she does not find the project compatible with the neighborhood and the adjacent land uses and that the parking issue will become a stronger issue if the seminary were to grow.

Comm. Simons said he has concerns about the proposed use at this particular site. He said that with the applicant asking for the maximum number of enrolled students, in what appears to be a sub-utilized facility, that it gives the impression that the intended use would fall under the present moratorium.

Final Action:

Comm. Babcock made a motion on 2005-1174 to adopt the Negative Declaration and deny the Use Permit. Comm. Simons seconded.

Motion carried unanimously, 6-0.

This item is appealable to City Council no later than February 7, 2006.