

**CITY OF UNION CITY
MINUTES FOR THE REGULAR PLANNING COMMISSION MEETING
OF JUNE 4, 2009, 7:00 P.M.
IN THE COUNCIL CHAMBERS OF CITY HALL
34009 ALVARADO-NILES ROAD, UNION CITY, CALIFORNIA**

I. ROLL CALL: Commissioners Raymond Gonzales Jr., Jo Ann Lew, Froilan (Roy) Panlilio, Gurnam (Gary) Singh, and Chairperson Tikisa Anderson

STAFF: Joan Malloy (Economic and Community Development Director); Carmela Campbell (Planning Manager); Avalon Schultz (Associate Planner); Farooq Azim (Principle Civil Engineer); Kit Faubion (Assistant City Attorney); Kris Fitzgerald (Administrative Assistant).

II. APPROVAL OF MINUTES: The regular Planning Commission Minutes of May 21, 2009 were approved as submitted.

III. ORAL COMMUNICATIONS: None.

IV. WRITTEN COMMUNICATIONS:

Joan Malloy, Economic and Community Development Director, stated that on June 27, 2009 there will be an InterFaith Festival at Kennedy Park Amphitheater located at 1333 Decoto Road. Ms. Malloy stated that the festival will run from 10:00 a.m. to 6:00 p.m.

Ms. Malloy stated that on July 18, 2009 there will be a “Gathering in the Park” at Kennedy Park.

Ms. Malloy stated that more information may be found at <http://www.unioncity50.com/>

V. PUBLIC HEARINGS:

A. CONTINUED HEARINGS: None.

B. NEW HEARINGS:

- 1. SMART & FINAL, 31070 DYER ST., Zoning Text Amendment AT-02-09 and Use Permit UP-05-09; the applicant is proposing a Zoning Text Amendment AT-02-09 to amend Table 18.39.050 of the Union City Municipal Code to increase the maximum square footage allowed for specialty food stores in the Union Landing commercial district from 20,000 square feet to 30,000 square feet. The applicant is also seeking Use Permit UP-05-09 approval to establish a specialty food store in the former Linen’s n’ Things space located at 31070 Dyer Street (APN: 463-0060-022-05). The project site is located within the CUL, (Union Landing Commercial) Zoning District in the SRSC, (Subregional Specialty Commercial), Subarea. This project is considered categorically exempt under Section 15301, Class 1, Existing Facilities, of the California Environmental Quality Act (CEQA).**

Carmela Campbell, Planning Manager, presented the staff report.

Commissioner Gonzales asked if Smart and Final will have a wholesale permit for sales.

Ms. Campbell deferred the question to the applicant.

Commissioner Lew stated that she was glad to see the application come to the commission.

Commissioner Lew asked if “specialty food store” would be defined in the zoning ordinance in the future.

Joan Malloy, Economic and Community Development Director, replied that there is some element in the zoning ordinance, as it is currently written, that identifies the purpose of the subregional specialty commercial in terms of providing unique products. Ms. Malloy stated that purpose puts it in the Planning Commission’s purview to determine if the project proposed fits into that particular standard. Ms. Malloy stated that if the commission would like to see further definition of “specialty food store” staff can look into that.

Commissioner Lew stated that makes it a judgement call because what has been said about bulk food items can also translate to stores like Costco and Sam’s Club. Commissioner Lew asked when does it become a warehouse.

Ms. Malloy replied that in this case what we have controlling that is the square footage area.

Commissioner Lew referred to condition #3 and asked if that should read “City Council approval” instead of “Planning Commission approval”.

Ms. Campbell replied that it should be corrected.

Commissioner Lew referred to condition #10 and asked if the word “application” should be included after sign permit.

Ms. Campbell replied that is correct.

Commissioner Lew referred to condition #11 and asked if it should also have the word “application”.

Ms. Campbell replied that is correct.

Commissioner Lew referred to condition #20 and asked to add the words “shall be responsible” after the semi-colon.

Commissioner Singh asked if this application is under “specialty food store” or “food store”.

Ms. Campbell replied that it will be a specialty food store. Ms. Campbell stated that for purposes of determining the proposed use met the definition for specialty food store, she broke up the words in the analysis but the intention is that it will be a specialty food store.

Commissioner Singh asked if there will be any modifications needed to the loading dock area.

Ms. Campbell replied that the current loading area is adequate and no modifications are proposed.

Commissioner Singh asked who is responsible for the landscaping.

Ms. Campbell replied that Smart and Final, working with the property owner will be responsible for the landscaping and it will be subject to approval by the Economic and Community Development Department.

Commissioner Panlilio asked who is the applicant.

Ms. Campbell replied that applicant is Smart and Final, LLC.

Commissioner Panlilio referred to condition #8 and asked who will be doing the work.

Ms. Campbell replied that a contractor who will be hired by the property owner or Smart and Final will do the work.

Commissioner Panlilio stated his concerns that the correct party is cited in the conditions of approval.

Ms. Campbell replied that the property owner and the business will work together to make sure that all the conditions of approval are met.

Ms. Malloy stated that the property owner's sign the application and will ultimately be responsible for the maintenance of the property.

Commissioner Panlilio asked if Smart and Final vacates the store in the future and another store like Island Pacific or Seafood City wants to move in would they be considered a specialty food store.

Ms. Campbell stated that each proposal would have to be evaluated on a case by case basis.

Commissioner Panlilio asked if the City would be getting one percent of the total sales tax.

Ms. Malloy replied that it is slightly less than one percent of the total sales tax.

Commissioner Panlilio referred to condition #13 and asked for an explanation.

Ms. Malloy replied that Union Landing has a Business Improvement District that funds police services and the police substation located in Union Landing. Ms. Malloy stated that projects located in Union Landing are conditioned to be a part of the Business Improvement District.

Commissioner Panlilio asked whose responsibility is it to sign up for the district.

Ms. Malloy replied that it is the property owner is the entity that votes for the business district.

Chairperson Anderson asked what is the total space of this site.

Ms. Campbell replied that it is 28,500 square feet.

Chairperson Anderson asked if that is the amount of space to sell merchandise or the size of the entire space.

Ms. Campbell replied that it is the total size of the tenant space.

Chairperson Anderson asked how much space is used for the sale of merchandise.

Ms. Campbell replied about 70% of the space is devoted merchandise sales.

Chairperson Anderson asked if the items that Smart and Final is going to sell are the same as items that could be purchased at Albertsons.

Ms. Campbell replied that is correct, but that Smart and Final provides a larger assortment of sizes. Ms. Campbell stated that they also may have some items that are unique to their stores.

Chairperson Anderson asked how the space is allocated between unique products and other grocery products.

Ms. Campbell referred the question to the applicant.

Chairperson Anderson stated that in the staff report it says that the City Council had determined that this application could be categorized as a specialty food store based on a large amount of bulk foods.

Chairperson Anderson noted that in the Zoning Code, Table 18.39.050, the reference to specialty food store has an asterisk that says that “any store where 50% or more of the total floor area is devoted to prepackage food and grocery sales” is by definition a supermarket or a food store. Chairperson Anderson stated that neither of these two things is permitted in that sub-area of Union Landing.

Ms. Campbell clarified that supermarkets are called out but there is not a specific category for food stores and that the term “food store” is encompassed within specialty food stores.

Chairperson Anderson stated that the definition section of the Zoning Ordinance defines “food store”.

Ms. Campbell stated that is correct but for purposes of this chapter it is referenced as “food store” because of the term “specialty food store”.

Chairperson Anderson stated that the ordinance defines “specialty food store” by what it is not.

Chairperson Anderson stated that any store which has more than 50% of its total floor area space devoted to groceries is a “food store” or a “supermarket”. Chairperson Anderson asked if there is another section of the Zoning Ordinance that makes an exception to food stores for selling bulk sale items.

Ms. Campbell stated that there is not. Ms. Campbell stated that the section with the double asterisks should be further clarified to say “supermarket and specialty food store”.

Chairperson Anderson disagreed. Chairperson Anderson stated that you cannot determine that a food store is a “specialty food store” based on how it packages its items. Chairperson Anderson stated that the definition is based on floor space. Chairperson Anderson stated that if the total floor space used is more than 50% then it is a supermarket and supermarkets and food stores are prohibited in this sub-area of Union Landing.

Ms. Campbell stated that this application must be looked at using the terminology and definitions from 18.39 of the Municipal Code.

Chairperson Anderson stated that he is opposed to this application for the above reason.

Chairperson Anderson opened the public hearing.

Commissioner Gonzales asked if they will have a wholesale permit.

Tony Bernardini, Vice-President of Real Estate, Smart & Final Stores, 600 Citadel Drive, Commerce CA 90040, replied that they don't have a wholesale permit. Mr. Bernardini stated that they do some wholesale sales to businesses of certain items.

Commissioner Gonzales asked if the City would receive sales tax from those sales.

Mr. Bernardini replied that it would if the end customer is also located in Union City. Mr. Bernardini stated that this is a very small part of their business and items like alcohol are always taxable.

Commissioner Gonzales asked what percent of the square footage would be for wholesale sales.

Mr. Bernardini replied that the percentage of sales volume of the store would be approximately no more than 20% and less than 10% of the customers.

Commissioner Gonzales asked what percent of the total floor area will be devoted to prepackaged food and/or grocery sales.

Mr. Bernardini replied that it will be over 50%.

Commissioner Gonzales asked if it would be similar to the Fremont store.

Mr. Bernardini replied that it would be although Fremont has a large paper section and restaurant supplies. Mr. Bernardini stated that it still would be mostly food.

Commissioner Gonzales asked what percentage of the 28,500 square feet of the space will be actual sales space.

Mr. Bernardini replied it would be approximately 80 – 85% sales floor area.

Commissioner Gonzales asked why he thinks this store would be a specialty food store.

Mr. Bernardini replied that they cater to a different shopper than the regular supermarket food store shopper. Mr. Bernardini stated that they carry a wider variety of products in larger amounts which allow customers to stock up. Mr. Bernardini stated that they cater to people doing special events. Mr. Bernardini stated that he thinks the products they sell are very specialized and not available in other stores.

Commissioner Gonzales asked what would be the response if the commission asked them to reduce the percentage of prepackaged food and grocery sales in favor of other items such as culinary items.

Mr. Bernardini replied that it would not be feasible to do because it would eliminate the economies of scale by having different mixes for each store.

Commissioner Lew asked why they chose this location.

Mr. Bernardini replied that they looked at the trade area and felt that there was a need for this type of store in the area. Mr. Bernardini stated that they have stores in Hayward and Fremont and this location

would be almost halfway in between them. Mr. Bernardini stated that they looked at demographics and felt that they would support this store.

Commissioner Lew asked if they were worried that this store would attract customers who previously had shopped at the Hayward or Fremont stores.

Mr. Bernardini replied that they believe there is enough customer support in Union City.

Commissioner Lew asked how much food waste does a typical Smart and Final generate.

Mr. Bernardini replied that there is some waste but they have not measured it.

Commissioner Lew asked if that includes bakery items.

Mr. Bernardini replied that all the bakery items are prepackaged and there is no baking done onsite. Mr. Bernardini stated that when they expire the vendors take them back and replace them with fresh product.

Commissioner Lew asked if it is in their business plan or corporate philosophy to donate to non-profits.

Mr. Bernardini replied that they do sometimes but have to be careful to comply with laws and regulations. Mr. Bernardini stated that sometimes they do donate prior to expiration date.

Commissioner Lew stated that there is a need in the community for donations.

Mr. Bernardini stated that they do donate product to non-profits in the Los Angeles area.

Commissioner Lew asked what percentage of their products are imported from the Far East.

Mr. Bernardini replied that a lot of it comes from Asia and the food products come from different countries.

Commissioner Lew asked if they check the quality of goods that are imported.

Mr. Bernardini replied that they have a very active and proactive quality control office in Los Angeles and they check everything. Mr. Bernardini stated that they have a very aggressive program; in the event that there is a recall they notify stores immediately and product is pulled off the shelves.

Commissioner Singh noted that they have indicated that they will have 75 employees of which 69 will be part-time. Commissioner Singh asked if this was a lot of part-time.

Mr. Bernardini replied that it is the nature of the business. Mr. Bernardini stated that they will be open from 7:00 a.m. until 10:00 p.m. six days of the week and 8:00 a.m. to 9:00 p.m. on Sunday. Mr. Bernardini stated that is a lot of hours to cover. Mr. Bernardini stated that it gives them flexibility in hours for employees. Mr. Bernardini stated that flexibility is important for college students and others and Smart and Final does promote from within for the full-time positions.

Commissioner Singh asked if the store benefits from having part-time employees.

Mr. Bernardini replied that it helps the store manager in terms of flexibility of staffing the store.

Commissioner Singh asked if they would be stocking more culinary equipment at this store.

Mr. Bernardini replied that it will be comparable to the Fremont store.

Commissioner Singh asked if this store was bigger than the Fremont store.

Mr. Bernardini replied that the Fremont store is about 27,800 square feet.

Commissioner Singh asked how they will handle recycling.

Mr. Bernardini replied that they will recycle the food waste because it is a condition of approval.

Ms. Campbell stated that the project has been conditioned for the applicant to meet with Allied Waste and to assess the facility's trash removal. Ms. Campbell stated that staff would also be working with the applicant to let them know about all of the Union City recycling programs.

Mr. Bernardini stated that they will have a cardboard baler in the store because cardboard is the largest waste they produce. Mr. Bernardini stated that the cardboard is sent to a recycler.

Commissioner Singh asked what is the square footage for the non-sales area.

Mr. Bernardini replied that it is approximately 3,000 to 4,000 square feet. Mr. Bernardini stated that it includes the receiving area, where we unload the trucks, the backroom for storage, which is supposed to be large enough to unload a whole truck and keep the product in the backroom until they are ready to put it out to sell.

Commissioner Panlilio thanked the applicant for coming to Union City.

Mr. Bernardini stated that they have joined the Chamber of Commerce and bought a sponsorship of the 50th Anniversary.

Chairperson Anderson asked how many items are in the inventory.

Mr. Bernardini replied that they carry about 13,000 items in the stores now.

Chairperson Anderson asked how many of those items are considered unique.

Mr. Bernardini replied that about 40% are unique items or packaged in unique sizes and the other 60% is similar to what is found in a grocery store.

Chairperson Anderson stated that his opposition to this application is more because of where it is located not because it is Smart and Final or the products they sell. Chairperson Anderson stated that in that one area of Union Landing subarea that type of store is not allowed.

Barry Ferrier, 32212 Allison Way, Union City, CA, stated that he took part in the General Plan effort and this is a store that they would want here. Mr. Ferrier stated that it is good that it can be seen from the freeway and that it will be advertised on the pylon sign. Mr. Ferrier stated that he currently drives to Hayward or Fremont to shop at Smart and Final so he will be glad that he can shop here in Union City.

Mr. Ferrier stated that they carry many unique items and he would like the Planning Commission to approve both applications.

Hugh McNamara, 32238 Mercury Way, Union City, CA, stated that he supports this project. Mr. McNamara noted that many stores have gone out of business lately and we should be trying to keep Union Landing full. Mr. McNamara stated that before the parking lot is redone it should be checked to make sure there is support for the asphalt.

Chairperson Anderson closed the public hearing.

Commissioner Gonzales asked if this application is approved does it permit supermarkets and food stores in that area.

Ms. Malloy replied that in the code under Conditionally Permitted Uses the language states “specialty food stores** less than 20,000 square feet are conditionally permitted”. Ms. Malloy stated that the asterisks directs the reader to a definition that states “supermarkets and food stores shall mean any store where 50% or more of the total floor area of the store is devoted to prepackaged food and grocery sales”. Ms. Malloy stated that there is a standard definition of supermarket in the definition section of the code which says that any store where you purchase food to take away to prepare and eat. Ms. Malloy stated that this definition provides further direction and clarification and is to differentiate supermarkets and food stores from other types of stores, such as drug stores or other merchandise stores. Ms. Malloy noted that when Smart and Final first came in, it was noted that if they sold 60% of their space as kitchen items then they wouldn’t have even been classified as a food store and could have gone in as a general merchandise store. Ms. Malloy stated that she does not believe that by approving this Zoning Text Amendment that you are saying that supermarkets are now permitted.

Chairperson Anderson asked for clarification.

Ms. Malloy replied that they have to be less than 30,000 square feet also.

Chairperson Anderson asked if they are above 50% and they are a food store then they are not a specialty food store.

Ms. Malloy replied that specialty just describes the products.

Chairperson Anderson stated that “specialty food store” describes a food store where less than 50% of the sales.

Ms. Malloy replied that a food store is where you have more than 50%.

Chairperson Anderson stated that it says “specialty” is a store that is less than 20,000 square feet.

Ms. Malloy replied that she understands but the definition just describes a food store it doesn’t describe “specialty”.

Chairperson Anderson agreed with that and added that the zoning code states “anything else that meets the definition that it describes is by definition a food store. Chairperson Anderson stated that it doesn’t describe a “specialty food store” except by area or square feet. Chairperson Anderson stated that anything else is a food store or supermarket that doesn’t fit the definition. Chairperson Anderson stated

that the delineation between food store and specialty food store isn't by packaging technique but instead by floor area.

Ms. Malloy stated that specialty defines the product sold in the store that make it unique.

Chairperson Anderson asked if that is stated in the zoning code.

Ms. Malloy replied that the Council made the interpretation.

Chairperson Anderson didn't agree with that.

Ms. Malloy stated the following as guidance to the commission "specialty is defining a food store; the food store is any store that sells more than 50% grocery products".

Chairperson Anderson asked the City Attorney what the code says regarding a specialty food store.

Kit Faubion, City Attorney, replied that the term "specialty" is used to qualify a food store but it itself is not defined. Ms. Faubion stated that is why the City Council had to provide direction on appeal to tell the Planning Commission what it thought a "specialty food store" was in this particular case. Ms. Faubion stated that there are benefits to having specific definitions because then you know if you are in it or not but then you lose the flexibility to interpret something that is maybe, kind of there or is a new variation on something. Ms. Faubion stated that if you have a strict definition then you lose the flexibility to interpret whether you think something is a "specialty" store and why or why not. Ms. Faubion stated that there is no definition of a "specialty store" but it clearly is a qualifier as to what kind of use along with another qualifier as to size as to what can be conditionally permitted. Ms. Faubion stated that any particular use wanting to fit in to that category has to make a case for being a specialty store. Ms. Faubion stated that case was made previously to the Planning Commission and the City Council and the City Council provided its direction. Ms. Faubion stated that it also has to meet the size qualification.

Chairperson Anderson asked what part of the definition determined that how the food was packaged could make it qualify as specialty. Chairperson Anderson asked if the food is more than 50% but is packaged as a bulk then it is a specialty food store.

Ms. Campbell replied that is why the applicant is seeking the interpretation. Ms. Campbell stated in those situations where it is not spelled out specifically that is where the City Council made a determination of what specialty was.

Chairperson Anderson asked if the City Council wrote a new ordinance for their determination.

Ms. Campbell stated that they provided justification in their approval for granting the appeal.

Chairperson Anderson asked if the City Council's makes a determination about an ordinance does that change the ordinance.

Ms. Faubion replied that it does not change the ordinance; only another ordinance can change an ordinance. Ms. Faubion stated that the City Council like the Planning Commission is called upon to make an interpretation, you use your knowledge of the area, your land use expertise and also pull in what parts of the ordinance can provide guidance. Ms. Faubion stated that in this case the SRSC has a concept statement it is not a definition but it provides direction for you. Ms. Faubion read "A mix of retail uses in a development design that emphasizes pedestrian access, high quality design, sub regional commerce,

promotion of novel, unique or uncommon products not normally found in local neighborhood commercial establishments.”

Chairperson Anderson asked if the City Council makes a determination but does not change the ordinance is the Planning Commission bound by that distinction that the City Council makes.

Ms. Faubion replied that that you have a discretionary decision to make and should consider that guidance from the City Council in making your decision.

Commissioner Gonzales asked how this will affect future decisions.

Ms. Faubion replied that any interpretation is an interpretation but it has to be a reasonable interpretation and it is up to the commission to make a reasonable interpretation based on the facts presented.

Ms. Campbell read back the changes to the conditions of approval:

Change condition #3 – change the words “Planning Commission” to “City Council”.

Change condition #10 – Add the word “application” after sign permit.

Change condition #11– Add the word “application” after sign permit.

Change condition #20 – change the word “will” to “shall” in the second line.

Commissioner Panlilio made a motion to recommend to the City Council approval of Zoning Text Amendment AT-02-09 and Use Permit UP-05-09, making findings 1 – 5, with the modified conditions of approval and the revised resolutions and adopt resolutions confirming this action.

Commissioner Gonzales seconded.

AYES	4 (Gonzales, Lew, Panlilio, Singh)
NOES	1 (Anderson)
ABSTAIN	0
ABSENT	0

- TIBURCIO VASQUEZ. 32970 ALVARADO-NILES RD, STE 760, Use Permit UP-04-09** – the applicant, Tiburcio Vasquez Health Center, is seeking Use Permit UP-04-09 approval for a health service use. The Women, Infants, and Children (WIC) program is proposed to be located at 32970 Alvarado-Niles Road, Suite 760, which is in the ML, (Light Industrial), Zoning District. This project is considered categorically exempt under Section 15301, Class 1, Existing Facilities, of the California Environmental Quality Act (CEQA).

Avalon Schultz, Associate Planner, presented the staff report.

Commissioner Panlilio asked since the WIC program has already moved into the space what would happen if the application is denied.

Ms. Schultz replied that if it was denied the applicant would have the opportunity to appeal the decision to the City Council and if the City Council were to deny the application then they would have to find a new location.

Commissioner Singh asked if there are one or two handicap spaces in front the office.

Ms. Schultz replied that the Dowe Business Park provides handicap parking for all the offices. Ms. Schultz stated that a condition of approval could be included.

Commissioner Singh asked if they keep food in the building.

Ms. Schultz replied that they do not provide food; instead they provide vouchers which can be used at local retailers to purchase food.

Commissioner Lew stated that it looks like there is shared parking all the way around the building and asked why there is a cap on meeting participants at 15.

Ms. Schultz replied that currently there is not a parking issue and 15 is the number asked for by the applicant.

Commissioner Lew stated that if more than 15 people showed up then it would be grounds for revocation of the Use Permit and asked to be more flexible on the number unless the Fire Department has said that more people would be a hazard at the location.

Ms. Schultz stated that if there are eight employees on site along with the 15 participants that would make 23 people, which is starting to be excessive for one space in the Dowe Business Park.

Commissioner Lew asked what that is based on.

Ms. Schultz replied that the parking demand for an office is one space per 200 square feet and for this application that would allow 23 people. Ms. Schultz stated that the business hours are the same as surrounding businesses so there is more demand for parking spaces.

Commissioner Lew stated that she believes there is plenty of parking so unless there is a maximum occupancy requirement she would like to see the number of participants raised.

Ms. Schultz stated that if this use were not subject to a Use Permit then it would be the occupancy that dictated the maximum number of people. Ms. Schultz stated that staff was just trying to make sure that this use doesn't use more than it's fair share of parking.

Commissioner Lew asked why staff used one space per 200 square feet.

Ms. Schultz replied that for a non-industrial use in an industrial zoning district the commercial parking regulations are used.

Ms. Schultz suggested asking the applicant if they need more spaces.

Joan Malloy, Economic and Community Director, stated that the applicant provided us with the number of participants in the meeting and it was part of their program description.

Commissioner Lew stated that she understood that but it doesn't give any thought to future expansion of the use.

Commissioner Gonzales stated that he knows that WIC provides essential services to the public and the new location is very centralized.

Chairperson Anderson opened the public hearing.

Cliff Sherwood, Tiburcio Vasquez Health Center, 32970 Alvarado-Niles Road, Suite 760, Union City, CA, stated that there are two handicap spaces about four doors down from their front door. Mr. Sherwood stated that the number of the participants in the educational classes varies from as few as nine and up to fifteen. Mr. Sherwood stated that the heaviest day is Wednesday. Mr. Sherwood suggested averaging the number of attendees. Mr. Sherwood stated that they are in agreement with the staff report and requested the Planning Commission's approval.

Commissioner Gonzales asked about the type of services that are provided.

Mr. Sherwood stated that this location is strictly for the WIC program and they provide vouchers for healthy food and education classes on purchasing healthy food.

Commissioner Gonzales asked about the educational programs.

Genny Maling, Tiburcio Vasquez Health Center, 32970 Alvarado-Niles Road, Suite 760, Union City, CA, replied that they have many programs and offer referrals.

Commissioner Lew stated that she liked the idea of averaging the number of participants. Commissioner Lew asked how many of the participants are accompanied by their children.

Mr. Sherwood replied maybe about half, it depends on the program.

Ms. Maling stated that it depends on the class.

Commissioner Lew stated that is another problem with limiting the participants because when you have fifteen adults you could have 15 children accompanying them. Commissioner Lew stated that putting the cap on fifteen and not having a good reason seems to be arbitrary. Commissioner Lew asked how many of the clients use public transportation.

Ms. Maling replied about 5% of their clients use public transportation.

Commissioner Lew stated that there is a bus stop near the new facility.

Ms. Maling stated that it is a requirement that they be accessible by public transit.

Commissioner Lew asked if it is safe to walk from the bus stop to the facility, is the landscaping cut back to allow for walking on the sidewalk, etc.

Ms. Maling stated that it was all looked at prior to them moving in.

Commissioner Lew asked if they are partners with any area hospitals or medical facilities.

Ms. Maling replied that they work with Tiburcio Vasquez and Kaiser.

Commissioner Singh asked what number is good for the classes.

Mr. Sherwood replied that Wednesday is probably the busiest day and they might go over 15 on that day.

Commissioner Singh asked if 20 would be sufficient.

Mr. Sherwood replied that it might be better to look at it on a weekly basis rather than a daily basis.

Commissioner Panlilio asked what counts in the number.

Mr. Sherwood stated that they don't count anyone who accompanies the client.

Ms. Malloy stated that the intent was only to cover the participants in the program.

Ms. Malloy suggested "Group classes shall be limited to an average of 15 adult participants per day". Ms. Malloy stated that the intention is to insure that this use does not negatively impact the surrounding uses in the business park. Ms. Malloy suggested looking at it on a class by class basis rather than a weekly basis.

Chairperson Anderson asked if it was necessary to have the condition at all since he did not think that they would have so many participants that it would create a negative impact on the other businesses in the area.

Ms. Malloy stated that the intention is that if the use of the site changes over time then this condition would ensure that there were limitations on their impact on the site. Ms. Malloy suggested providing some parameters, if not 15 then 20 which seems to be adequate to the applicant as well.

Mr. Sherwood stated that these gatherings are only for 15 – 20 minutes so they are not parking there all day.

Juan Gomez, Tiburcio Vasquez Health Center, 32970 Alvarado-Niles Road, Suite 760, Union City, CA, stated that he is the president of Tiburcio Vasquez Health Center and he is pleased to hear the positive comments tonight. Mr. Gomez thanked staff and the commission for looking at this application.

Chairperson Anderson closed the public hearing.

Commissioner Lew stated that if one class went over 15 participants then it would be grounds for revoking the permit.

Chairperson Anderson asked which suggestion would be appropriate; using the average over the week or having a higher number.

Commissioner Lew would like to see a higher number she felt that using an average would be very difficult. Commissioner Lew stated that the majority of the participants take public transit and would not impact the parking.

Commissioner Lew stated that she thinks it should be 25.

Commissioner Singh stated that he thinks 20 should be enough.

Commissioner Gonzales asked what does the Fire Code permit for occupancy of that room.

Ms. Schultz stated that she does not know.

Chairperson Anderson stated that parking impact would only occur over time.

Commissioner Panlilio asked if they could only schedule 20 participants to come in for a meeting or do they just drop in.

Mr. Sherwood stated that they are scheduled to come in.

Commissioner Panlilio stated that he would use the number 20.

Commissioner Lew stated that there is a growing need for services and she believes that Union City can and should step up to the plate. Commissioner Lew stated that 15 is an arbitrary number, it may correlate with the parking standards, but it doesn't correlate with reality.

Chairperson Anderson asked what number she would recommend.

Commissioner Lew replied that she recommends 25 and she thinks that may be a little low.

Chairperson Anderson polled the commission and stated that the majority of the commission prefers 25.

Ms. Malloy stated that the revised condition will read "Group classes shall be limited to 25 adult participants".

Chairperson Anderson asked if that covered the children that may come with the parent.

Ms. Malloy replied no, just the adult participants.

Commissioner Panlilio stated his objections because if each adult participant brings a child then there could be a fire code or health issue.

Chairperson Anderson stated that this condition was trying to address parking and maybe another condition should be added to deal with the occupancy of the space.

Commissioner Panlilio stated that he prefers 20 because more than that then they will need a bigger space.

Chairperson Anderson polled the commission again and the number was changed to 20.

Chairperson Anderson asked if the commission wants to add a condition concerning building occupancy limits.

Commissioner Singh stated that should be up to City staff.

Ms. Malloy stated that the Fire Code would dictate the maximum occupancy and when there is a concern from the Fire Marshall that they may exceed occupancy, then they will be required to post it. Ms. Malloy stated that in uses such as this it has not come up through the review and a condition can be included if they choose.

Chairperson Anderson polled the commission on this issue.

Commissioner Lew asked if there has ever been a fire there.

Commissioner Gonzales stated that it would be responsible to have a Fire Code limitation posted somewhere.

Chairperson Anderson asked for a suggested condition.

Ms. Malloy suggested “The applicant shall post maximum occupancy of the tenant space per the Fire Marshal’s determination.”

Commissioner Gonzales stated that was acceptable.

Chairperson Anderson asked to have it added to the conditions of approval.

Commissioner Lew made a motion to approve Use Permit UP-04-09, making findings 1 – 3, with the modifications to the conditions of approval and adopt a resolution confirming this action.

Commissioner Panlilio seconded.

AYES	5 (Anderson, Gonzales, Lew, Panlilio, Singh)
NOES	0
ABSTAIN	0
ABSENT	0

VI. SUPPLEMENTAL STAFF REPORTS:

A. CONTINUED REPORTS: None.

B. NEW REPORTS: None.

VII. REDEVELOPMENT AND ECONOMIC DEVELOPMENT REPORTS:

VIII. COMMISSION MATTERS:

A. Follow-up on Planning Commission referrals to the City Council.

B. Upcoming applications for the Planning Commission meeting for June 18, 2009.

IX. GOOD OF THE ORDER:

Commissioner Lew stated that the City does a good job of top coating or slurry sealing the streets but there is a problem where the coating seam meets the curb. Commissioner Lew stated that it needs to be smoothed out because she almost came off her bicycle. Commissioner Lew stated that on Union City Boulevard on the southeast corner right before Rocklin there is a very large seam and it needs to be smoothed out.

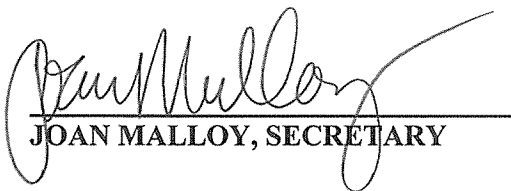
Commissioner Gonzales thanked the UC 50th committee for their great job on the parade and car show. Commissioner Gonzales stated that the new children’s park at Kennedy Park is great.

X. ADJOURNMENT: 9:15 p.m.

APPROVED:


TIKISA ANDERSON, CHAIRPERSON

ATTEST:


JOAN MALLOY, SECRETARY