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**CITY OF BIG BEAR LAKE  
PLANNING COMMISSION MEETING MINUTES  
REGULAR MEETING**

**June 21, 2006**

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**MEETING CALLED TO ORDER:** 1:15 p.m.

**FLAG SALUTE:** Commissioner Zimmerman

**PRESENT:** Chairman Tim Brigham  
Vice-Chairman Rick Hackney  
Commissioner Craig Smith  
Commissioner David Caretto  
Commissioner Anne Zimmerman

**STAFF:** Sandra Molina, City Planner  
David Martinez, Development Services Director  
Neil Braunstein, Associate Planner  
Patrick McLaughlin, Assistant Planner  
Phil Mosley, Chief Building Official  
Jeff Ballinger, City Attorney  
Lynne Rayner, Administrative Secretary

The Planning Commission of the City of Big Bear Lake took the following actions at the June 21, 2006 meeting held in Hofert Hall, Civic and Performing Arts Center, 39707 Big Bear Boulevard, Big Bear Lake, California.

**AGENDA APPROVAL**

Moved by Commissioner Smith, seconded by Vice-Chairman Hackney, to approve the agenda as presented. The agenda was approved unanimously.

**PRESENTATIONS / ANNOUNCEMENTS / INFORMATIONAL ITEMS**

City Planner Molina reminded the Commission that the Joint Workshop originally scheduled for June 26<sup>th</sup> has been rescheduled to July 24, 2006 and that more details will follow in upcoming weeks. She also announced that the Hilton Garden Inn project has been appealed and that the public hearing on the appeal will be held on July 5, 2006 at 6:00 p.m. at the Municipal Water District Board Room.

**PUBLIC FORUM**

No one wished to speak.

**1. CONSENT CALENDAR**

1.1 Approval of the Minutes of the Planning Commission meeting of May 17, 2006.

In addition to typographical corrections, the following correction was made to the minutes of the meeting of May 17, 2006:

Commissioner ~~Smith~~ Caretto asked to return to the subject of trees, stating that when trees are saved there would be a subsequent reduction in the number of trees replaced, or are we still holding the developer to 92 new trees.

Moved by Commissioner Caretto, seconded by Commissioner Zimmerman, to approve the amended minutes of May 17, 2006.

The motion was approved by the following vote:

AYES: CARETTO, ZIMMERMAN, SMITH, HACKNEY, BRIGHAM  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

1.2 Approval of the Minutes of the Planning Commission meeting of June 7, 2006.

Moved by Commissioner Caretto, seconded by Commissioner Zimmerman, to approve the minutes of June 7, 2006 as presented.

The motion was approved by the following vote:

AYES: CARETTO, ZIMMERMAN, HACKNEY  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: SMITH, BRIGHAM

**2. PUBLIC HEARING ITEMS**

2.1 Conditional Use Permit 2006-038

Applicants: Mark Tiblier and Sonia Marrero-Tiblier  
Representative: Same  
Location: 42169 Big Bear Boulevard  
APN: 0311-421-08

Associate Planner Neil Braunstein presented the staff report, stating that the applicants are requesting approval to establish beer and wine sales at an existing retail business, the Big Bear Smoke Shop, in the Stater Brothers Shopping Center.

Associate Planner Braunstein informed the Commission that the proposed use of adding beer and wine sales to the store requires approval from the California Department of Alcoholic Beverage Control, which considers the area of Big Bear Lake an area of over concentration of existing liquor licenses, largely due to the fact that the concentration is based on the number of permanent residents in the

City, and not the much larger tourist and visitor population. Despite the over concentration, it is staff's opinion there will not be any negative impact by issuance of this liquor license. Because of the over concentration, a statement of public convenience and necessity must be made by the Alcoholic Beverage Control Department in their issuance of the liquor license. He stated that the project is consistent with the requirements of the General Plan and the Development Code and that the finding of public convenience and necessity by ABC is appropriate, and staff recommends that the Planning Commission adopt a resolution finding the project exempt from the California Environmental Quality Act (CEQA) and approving Conditional Use Permit 2006-038 based on the findings and subject to the conditions of approval.

Vice-Chairman Hackney asked if the Conditional Use permit is approved if the approval would be transferable upon sale of the business or would a new owner be required to come back to the Commission for approval again. Associate Planner Braunstein replied that the Conditional Use Permit is transferable; it is approved for the specific location so it would go with the property. The liquor license is also transferable but subject to approval by the California Department of Alcoholic Beverage Control.

Commissioner Smith asked if it were up to the Commission to decide if there were too many licenses. Associate Planner Braunstein replied that the State Department of Alcoholic Beverage Control makes the determination of whether the area is over concentrated and they have the final authority to issue or deny the liquor license.

Commissioner Caretto brought up the possibility of the tobacco store being sold and a new business could reopen selling only alcohol. Associate Planner Braunstein replied that this was correct.

Commissioner Zimmerman asked if there were any restrictions in the applicant's lease regarding non-competition limits. Associate Planner Braunstein stated he did not have this information.

Chairman Brigham clarified that even if the store reopened selling alcohol, it would still only be approved to sell beer and wine. Mr. Braunstein stated that with regards to the liquor license this was correct, but with regards to our Conditional Use Permit we do not make that distinction.

At the hour of 1:28 p.m., Chairman Brigham opened the public hearing.

Sonia Tiblier, applicant, stated that the lessor of the shopping center had acquired approval from the other stores, Stater Brothers included, for the Smoke Shop to sell beer and wine, and that it had been notarized and recorded. She stated that she is only adding two refrigeration units, which would be approximately 200 sq. ft. of the store.

Hearing no further comment, at the hour of 1:31 p.m. Chairman Brigham closed the public hearing.

Chairman Brigham stated that he did not see a statement in the Resolution regarding that the Commission is making no comment to the ABC. Associate Planner Braunstein replied that the Resolution does not include that statement, as it has been the practice in the past that the City remains silent if we are making no comment, but if the City is making a comment there would be a reference to it in the Resolution.

City Planner Molina suggested the addition of the following condition with regard to additional review for future changes in the Smoke Shop, and the Commission concurred.

12. In the event that the beer and wine license is modified, the applicant shall file a Conditional Use Permit application for review and approval.

Moved by Commissioner Caretto, seconded by Commissioner Smith, to adopt Resolution No. PC2006-18 approving Conditional Use Permit 2006-038, based on the findings and subject to the amended conditions of approval as follows:

**RESOLUTION NO. PC2006-18**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BIG BEAR LAKE, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, APPROVING CONDITIONAL USE PERMIT 2006-038 TO ESTABLISH A BEER AND WINE SALES AT AN EXISTING RETAIL BUSINESS LOCATED AT 42169 BIG BEAR BOULEVARD (ASSESSOR'S PARCEL NUMBER 311-421-08).**

The motion was approved by the following vote:

AYES: CARETTO, ZIMMERMAN, SMITH, HACKNEY, BRIGHAM  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

2.2 Planning Appeal 2006-073  
Applicants: Sam Baker  
Location: 43412 Ridgecrest Drive  
APN: 0310-411-06

Commissioner Zimmerman stated that Mr. Baker's wife is a client, so she stated she must recuse herself from discussion and vote of Planning Appeal 2006-073 and she left the meeting room at 1:36 p.m.

Assistant Planner Patrick McLaughlin presented the staff report, stating that Mr. Sam Baker filed an appeal with the Planning Division of the City Planner's denial of Home Occupation Permit 2006-052 based on a determination that the proposed Home Occupation Permit was inconsistent with Development Code standards. He stated that information used in making this determination was obtained through application

materials submitted by the applicant and conversations between the applicant and Planning Division staff.

Assistant Planner McLaughlin continued, stating that single family residential zones are primarily intended for single family residential uses but that limited accessory commercial uses are permitted within single family residential zones through additional Planning review and certain City standards. He informed the Commission that the Development Code defines an accessory use as a use of land that is incidental and/or subordinate to a principal use of land or a building, and that based on conversations with the applicant prior to denial of the Home Occupation Permit, it was stated by the applicant that the property was not occupied as a residence but was being used as a place to operate an office use. In addition, the applicant stated that he resided in a different location in town. These two facts established the office as the primary use and not an accessory use in the single family residential zone, inconsistent with Development Code standards.

Assistant Planner McLaughlin stated that after denial of the Home Occupation Permit, the applicant called and informed staff that his stepson was living on the property. Even with this information, the Home Occupation Permit was inconsistent with Development Code standards because the Home Occupation Permit must be conducted by the resident of the dwelling, and the stepson was not conducting the business.

Assistant Planner McLaughlin continued, stating that in the appeal, it was stated by the applicant that staff assumed that the residence was not occupied full time without ever visiting the site. Mr. McLaughlin stated that staff has not visited the site, but made its determination based on conversations with the applicant and the application materials submitted, in which Mr. Baker stated he did not reside in the dwelling.

In conclusion, Assistant Planner McLaughlin stated that based on information obtained from conversations with Mr. Baker, and the Home Occupation Permit materials, staff determined that the Home Occupation Permit was inconsistent with City Codes and Ordinances and therefore staff denied the application. Additionally, Mr. Baker's contention that the residence is now occupied by a resident does not bear on the application, as the Home Occupation must be conducted by the occupant of the residence. Staff recommends that the Planning Commission adopt a resolution denying Planning Appeal 2006-073 and upholding the City Planner's denial of Home Occupation Permit 2006-052.

Commissioner Caretto asked what proof of residency might be, since Mr. Baker owns the home and he would have a gas bill and electric bill in his name.

Commissioner Smith also asked how a proof of primary residence is determined.

Assistant Planner McLaughlin replied that staff made their determination strictly on conversations with Mr. Baker stating that he did not reside at the location. It would be hard to prove or disprove beyond this.

City Attorney Jeff Ballinger added that from a legal perspective, the Development Code does not define residency for this purpose, however, in analogizing it to other legal

definitions of residency for purposes of voter registration and requirements for filling Council seats, the Commission could take into consideration any number of factors including utility bills. He stated that in decisions that deal with residency for other legal purposes, courts and the Attorney General generally reference the intent of the person to stay there.

At the hour of 1:44 p.m., Chairman Brigham opened the public hearing.

Sam Baker, the applicant, gave a brief background of his business and stated that when he called the County seven years ago regarding regulations for operating a business within a residence, they told him if you have fewer than three employees the County does not require any special license. He stated that he had asked the County if their regulations superseded the City of Big Bear Lake and they said they thought they did. He stated that he did live at the residence at the time he started the business, but does not live there at this time. He added that there is no traffic generated by the business, that no signs are posted on the residence, and that he and his wife own the home.

Chairman Brigham asked the applicant why he was applying for a Home Occupation Permit now.

Mr. Baker replied that he believes that after complaints were made to Public Works regarding snow plowing, Public Works might have turned him in to Code Enforcement.

Hearing no further comment, at the hour of 1:47 p.m. Chairman Brigham closed the public hearing.

Vice-Chairman Hackney stated that a strict interpretation of City codes appears to uphold the City Planner's rejection of the application.

Commissioner Smith and Caretto agreed with Vice-Chairman Hackney, and Commissioner Caretto asked City Planner Molina if staff had given the applicant any alternatives as a solution to the problem.

City Planner Molina replied that in the denial letter Mr. Baker was provided several options. One was to move the Home Occupation Permit to his place of residence, and the other was to move his commercial use out of the R-1 zone and into a Commercial zone where it would be permitted as a primary use.

Chairman Brigham stated that he agrees with the other Commissioners, and that it is clear in the Development Code that the person operating the Home Occupation Permit must be the resident of the dwelling, and although Mr. Baker owns the home, he does not reside there, and although the stepson is a resident, he is not the applicant.

Vice-Chairman Hackney added that when determining whether County or City regulations would apply, typically the strictest regulations would apply, and local jurisdictions typically would supersede County jurisdictions.

At the hour of 1:53 p.m., Chairman Brigham reopened the public hearing and asked Mr. Baker to return to the podium.

Mr. Baker stated that the alternatives presented by staff would not work for him, that his home is not set up to conduct business, and although there is not a shortage of office space at this time, when he started the business seven years ago there was a shortage of office space and that was why he started the business at his home.

At the hour of 1:54 p.m., Chairman Brigham reclosed the public hearing.

Vice-Chairman Hackney stated that Mr. Baker had been operating under the radar for seven years, and that he has a viable option of procuring office space in a properly zoned area, that there probably is office space currently available within the City. He added that it was unfortunate that this was allowed to start this way and understands that it is disruptive, but it appears that it should not have been going on at all.

Commissioners Smith and Caretto agreed. Commissioner Caretto asked if this Home Occupation Permit is typical. City Planner Molina replied that it is typical, that the purpose of the Home Occupation Permit is to allow a resident to operate a small business from their home as an accessory use, but it is not intended to supersede the primary use of the dwelling. She stated that in some respects our operating procedures are a little more flexible than other cities and in other areas regulations are tighter.

Commissioner Caretto asked if Mr. Baker could come back at a later date and claim that he does now live there. City Planner Molina replied that it would be difficult to approve a future application, knowing the facts as we now know them, but that the Planning Commission could add a condition to the resolution stating that any future application by the applicant at that residence must provide voter registration proof. She also added that the denial of the Home Occupation Permit precludes the applicant from reapplying for a period of one year.

Moved by Commissioner Smith, seconded by Vice-Chairman Hackney, to adopt Resolution No. PC2006-19 upholding the City Planner's denial of Home Occupation Permit 2006-052, based on the findings contained in the resolution as follows:

**RESOLUTION NO. PC2006-19**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BIG BEAR LAKE, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, UPHOLDING THE CITY PLANNER'S DENIAL OF HOME OCCUPATION PERMIT 2006-052 BASED ON ITS INCONSISTENCY WITH THE CITY OF BIG BEAR LAKE DEVELOPMENT CODE, AND DENYING PLANNING APPEAL 2006-073**

The motion was approved by the following vote:

AYES: CARETTO, SMITH, HACKNEY, BRIGHAM

NOES: NONE

ABSENT: NONE

ABSTAIN: ZIMMERMAN

At the hour of 2:00 p.m., Commissioner Zimmerman returned to the meeting and took her seat at the dais.

### **3. DISCUSSION ITEM**

#### **3.1 Discussion of Story Pole and Flagging Requirements and Guidelines**

City Planner Molina presented the staff report, stating that in December of 2005 the Planning Commission asked an applicant to flag the roof line and depict the bulking and massing of a structure, and the Commission requested staff to create a policy to establish parameters for which the requirement could be applied for future development applications. She stated that the staff report gives background information regarding General Plan, Village Specific Plan and Development Code policies and she asked for input from the Commission as to the type of applications that would make sense for this policy.

City Planner Molina continued, stating that staff would want a combination of story poles and flagging, and also that on some commercial projects it would make sense and on some multi-family residential projects, but that not all commercial and multi-family residential projects would warrant this additional level of review. She stated that staff prepared some guidelines for the Commission's review with some blanks and asked for the Commission's input. She cited examples, for instance, on a height variance, at what point would trigger flagging. Or, on lot coverage variances where potential massing and bulking would come into play, what would trigger flagging. She added that the complexity is that with a certain standard, like 10%, depending on the project, 10% might be a foot or two and perhaps not the intent the City is trying to achieve with the flagging.

City Planner Molina noted that Paragraph H in the draft policy leaves some discretion to the City Planner or the Commission or Council on other projects that might not meet the triggering requirements and as discussed at one time this policy could be subject to the City Planner's, the Commission's or Council's discretion. City Planner Molina stated that she understands what the Commission is looking for when they want a project flagged but to help convey to an applicant, it would make sense to have some guidelines outlined in a policy.

Commissioner Smith stated that his initial reaction is that guidelines are needed for applicants, but defining the guidelines is a challenge.

Commissioner Zimmerman stated that she thought flagging should be required across the board for a variance application, and then give staff the discretion to review a waiver, so that going in applicants will have an expectation that this will be required.

City Planner Molina replied that staff was approaching the policy with the question, what would trigger flagging, and with Commissioner Zimmerman's suggestion, it would always be triggered.

Chairman Brigham stated that part of the problem is too much discretion in the hands of the planner. He stated that he did like the waiver idea, but without some other guidelines he believes this would be subject to a lot of appeals. He added that he does not believe it would be an appropriate use of the Commission's time to try to determine whether or not to flag something.

City Attorney Jeff Ballinger agreed, that it makes it difficult for staff to exercise discretion without guidelines. He stated that from a legal perspective, if staff is going to go that direction, it would probably be better to make it a bright line rule and say any variance application.

Chairman Brigham added that there is a real danger in implying some kind of right to a view that doesn't exist and that he does not have a problem with ordinances that take view into consideration or try to save views, but our city does not have them and it isn't our job to create them, or if we do let's create one and put it into place.

Commissioner Caretto stated he had a problem with paragraph 1 (h) with regard to commercial development, in that it did not indicate public views. City Planner Molina replied that this wording could be changed.

Vice-Chairman Hackney asked if he missed the word variance somewhere, as this discussion is assuming that it is a variance request that triggers flagging, but reading the policy he stated he got the impression that just the magnitude of a project might require some flagging or story poling even if the development was within Development Code requirements. City Planner Molina replied that what staff drafted was language that would allow the Commission to look at things if bulking or massing were an issue also.

Vice-Chairman Hackney cited an example, that if the Hilton was a proposal at a height of 40 feet and all the other parameters were within the Development Code, that it would not necessarily require flagging and story poling, as long as it was within the Code.

City Planner Molina offered as food for thought that Pine Knot Marina was not a height variance, it was within the code limitations for height, but there were concerns for bulking and massing there. She added that this issue has only come up twice in the last six years so perhaps it could be addressed on a case-by-case basis and we can ask the Commission if flagging would be desired.

Commissioner Zimmerman stated that with a variance, everyone is comfortable with the fact that the Commission needs to see what is allowed and what they are trying to do that is not allowed, and an across-the-board kind of trigger would be reasonable.

Chairman Brigham stated he agreed with Vice-Chairman Hackney's statement, that if it is within existing code who are we to say no you can't do that.

Commissioner Smith stated his struggle is that flagging for a variance is a good way to go, that he is a firm believer that the word "may" should be in there for wiggle room, but a bigger issue is, the Code the way it is written with respect to views is so vague that we're trying to tie something to a Code that is not really there.

Commissioner Caretto stated he thought that the Commission should leave this alone and only flag when the Commission thought it necessary.

Chairman Brigham added that these types of projects generally have a long lead time so perhaps it could be a discussion item prior to the public hearing to ask the Commission if flagging would be something the Commission would want to see at the upcoming hearing. This way the applicant could be notified well in advance to make the arrangements.

City Planner Molina said that is what staff did with the Hilton project, that staff felt that the Commission would want the flagging done based on previous discussions with similar projects. She inquired if the Commission would like to keep things the way we have been doing it. If at a later date the Commission felt staff was not identifying flagging projects soon enough the topic could be discussed again.

Vice-Chairman Hackney stated that he would like to see something, perhaps written or maybe just understood, that if a variance is applied for there is a very good chance the applicant will be asked to flag and/or story pole. He added that on other projects that come before the Planning Commission the Commission reserves the right to require flagging and story poling on a case-by-case basis.

City Planner Molina suggested making it part of the development application, a notice the applicant signs, that they are applying for a variance so flagging will have to be done unless waived by the City Planner, or based on the Commission's direction.

City Attorney Ballinger agreed that this can be done, that it might be a little safer and easier for staff to administer if it were a bright line rule, and while he generally likes to afford staff a lot of discretion, when the City is asking applicants for one extra step the Commission should be aware that if you are giving that discretion, the applicant is probably going to be unhappy with it, so it might be safer to make it a bright line rule and say every variance for commercial and multi-family applications will require it.

Commissioner Caretto asked if we can do it now on a case-by-case basis. City Attorney Ballinger replied that any of the options discussed today are legally permissible.

Commissioner Zimmerman asked if the ordinance could be that flagging may be required, but that it would not be required it unless staff anticipates an objection or if an objection arises at the public hearing.

Vice-Chairman Hackney stated he would not want to cause an applicant undue expense for no reason and also would not want to see a lot of nuisance requests from the public for flagging so they could throw more roadblocks into the applicant's way that are not justified. He stated that perhaps maybe it should be on a case-by-case basis, the way it has been, that would be the best way to handle it.

City Planner Molina stated that she understands what the Commission is looking for when it comes to what should be flagged and what should not be flagged, and that staff was looking for more direction because staff needs to be able to explain what the requirement is based on to applicants. She added that an action item can be brought to the Commission in advance to get their concurrence before an applicant expends the funds to flag.

Commissioner Smith offered that perhaps this could be determined in the DRC process so it doesn't slow down the applicant. City Planner Molina replied that if a project is submitted that staff anticipates public concern with, staff could inform the applicant during the DRC process that the project will need to be flagged, and if the applicants are agreeable, they will flag it by a certain date. If the applicants question the flagging and wish the Commission's direction, staff will let the Commission know.

Assistant Planner McLaughlin asked if a resolution would be required to cover the procedure itself. City Attorney Ballinger replied that an adopted resolution would give the procedure more legal credibility.

City Planner Molina informed the Commission that the remainder of the draft policy covers the minimum health and safety standards and ridgeline requirements, guidelines that perhaps the Commission could follow for their site visit. She concluded, stating that staff will bring the draft policy back, staying silent as far as projects that would trigger flagging and story poling, but once it is required, the policy would outline the flagging plan and the health and safety issues, and the Commission concurred.

**4. PLANNING OFFICIAL'S REPORT**

None.

**5. SUMMARY COMMENTS**

None.

**6. ADJOURNMENT**

There being no further comments, Chairman Brigham adjourned the meeting at 2:34 p.m.

MINUTES APPROVED AT THE MEETING OF JULY 19, 2006.