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*PLANNING*  *COMMISSION*

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**MEETING MINUTES**

**DATE:** August 21, 2012

**CALLED TO ORDER:** 4:58 P.M.

**MEETING LOCATION:** City Council Chambers  
450 East Latham Avenue  
Hemet, CA 92543

**1. CALL TO ORDER:**

**PRESENT:** Chairman John Gifford, Vice Chairman Vince Overmyer, and Commissioners Nassar Moghadam, Michael Perciful, and Greg Vasquez

**Invocation and Flag Salute:** Chairman Gifford

**2. APPROVAL OF MINUTES: (None)**

**3. INTRODUCTION OF NEW CITY OF HEMET BUILDING OFFICIAL AND CODE COMPLIANCE MANAGER**

**A. Jeff Thomas, Building Official**

Jeff Thomas, a resident of Hemet, comes to us from the cities of Wildomar and Eastvale, where he was plans examiner and deputy building official. His goals will focus on mobile home parks and completion of their state mandated inspection, staff training, and close interaction with all city departments.

**B. Todd Morris, Code Compliance Manager**

Todd Morris comes to Hemet from the City of Eastvale, with prior experience in Alhambra, and has a building inspection background. In conjunction with Mr. Thomas, he hopes to help revitalize the community through the ROCS program and other city initiatives.

**4. PUBLIC COMMENTS**

There were no members of the public who wished to address the Commission regarding any items not on the agenda.

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**REVIEW AND ACTION ITEMS**

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**5. SITE DEVELOPMENT REVIEWS FOR HEMET AUTO MALL (SP-87-28):**

APPLICANT: J&G Gosch LLC and VAM Investments  
AGENT: Brent Behringer — Horizon Solar Power  
LOCATION: 150 and 350 Carriage Circle Drive, Hemet Auto Mall  
PLANNER: Carole Kendrick, Assistant Planner

- A. SITE DEVELOPMENT REVIEW NO. 12-004 (INLAND CHEVROLET)** – A request for Planning Commission review and approval of a site development review application for the installation of photovoltaic systems on existing roof tops and new carport structures located within the Hemet Auto Mall Specific Plan (SP 878-29 at 350 Carriage Circle Inland Chevrolet).
- B. SITE DEVELOPMENT REVIEW NO. 12-005 (GOSCH FORD)** – A request for Planning Commission review and approval of a site development review application for the installation of photovoltaic systems on existing roof tops and new carport structures located within the Hemet Auto Mall Specific Plan (SP 87-28).

The staff report was presented by Assistant Planner Carole Kendrick, who gave a visual presentation concerning the project. She indicated that the six carport structures would come through the building plan check process, and referred to the revised Conditions of Approval that had been distributed prior to the start of the meeting.

Commissioner Vasquez questioned how the solar film screens would be used, and whether the electricity would be stored on the premises, or be used to generate electricity for lighting. He was also concerned about the glare interfering with any kind of aircraft, and questioned Condition No. 19 concerning the reporting of glare incidents.

Mr. Papp commented that the airport managers were provided a conceptual site plan and drawings of the project. The response that he had received from them was that this was not a project that would require review of the Airport Land Use Commission. Based on the type of glass that would be used, they felt that it would not create a problem for the airport.

Commissioner Vasquez also questioned the applicant's reluctance to coat the material of the carports that the screens were going to be mounted on.

Mr. Troy Matthews with Horizon Solar Power was asked by Chairman Gifford to comment on the reflectivity of the panels, how they configure, and how they take into account the aircraft, including landing and takeoff. He also requested an explanation as to how and what they would be used for. He cited concerns, including battery, storage, and electricity.

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Mr. Matthews responded that the system, in total, would offset about 80 percent of the current electric usage for each facility. The system is going to be producing all this power which will be back-fed into the Edison grid in the form of credits that are going to be issued. The cabling will run down the poles and everything will be run underground.

Mr. Papp indicated that, in regard to the specific plan colors and materials for any structures, they should match the existing buildings for each dealership. The architectural review committee had recommended that they go with the galvanized material.

Commissioner Moghadam inquired regarding the angling of the solar panels, to which Mr. Matthews responded that the panels on the roof would be angled at 15 degrees, with the carport structures at 10 degrees. They are primarily angled to the south, with some angled to the west.

Commissioner Moghadam commented that after 30 years of studying environmental design, it was refreshing to finally be using technology that was then not affordable.

When asked by Chairman Gifford if the applicant had any objection to the changes in the conditions, Mr. Matthews indicated that they had no objections.

Chairman Gifford asked for a motion.

It was **MOVED** by Vice Chairman Overmyer and **SECONDED** by Commissioner Perciful to **ADOPT** Resolution Bill No. 12-019 approving SDR 12-004 subject to the revised conditions of approval.

The MOTION was carried by the following vote:

- AYES:** Chairman Gifford, Vice Chairman Overmyer, and Commissioners Moghadam, Perciful, and Vasquez
- NOES:** None
- ABSTAIN:** None
- ABSENT:** None

***(Adopted Planning Commission Resolution No. 12-015)***

It was **MOVED** by Vice Chairman Overmyer and **SECONDED** by Commissioner Perciful to **ADOPT** Resolution Bill No. 12-020 approving SDR 12-005 subject to the revised condition approval.

The MOTION was carried by the following vote:

- AYES:** Chairman Gifford, Vice Chairman Overmyer, and Commissioners Moghadam, Perciful, and Vasquez
- NOES:** None
- ABSTAIN:** None
- ABSENT:** None

***(Adopted Planning Commission Resolution No. 12-016)***

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**DEPARTMENT REPORTS**

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6. **CITY ATTORNEY REPORTS:** *Verbal reports from Assistant City Attorney Steven McEwen on items of interest to the Planning Commission.*

Assistant City Attorney McEwen had no report to provide at this time.

7. **COMMUNITY DEVELOPMENT DIRECTOR REPORTS:**

A. **Verbal Report on City Council actions from the August 14<sup>th</sup> and August 16<sup>th</sup>, 2012 meetings.**

CDD Elliano reported that at the August 14<sup>th</sup> joint meeting of the City Council and Planning Commission, a Work Study had been held regarding the Ramona Creek Specific Plan, which was the initial introduction for a project that would be coming back from time to time as more detail becomes available. There were also work studies held on neighborhood livability and the receivership program.

CDD Elliano explained that receivership is a last step in remediation when other tools for improving a derelict property are not working. The city then goes to court and asks for an appointment of a receiver to bring the property back into compliance. Going to court is a drastic remedy because it results in a judicial foreclosure sale, so courts expect it to be used sparingly. It is a great remedy for properties that have been abandoned or that are under an ownership that simply will not respond to efforts by the city to get compliance. There are procedures that the city must go through to get notice to the property owner before going to court. Once that is done, the judge is asked to appoint a receiver who is usually someone that the city has lined up in advance, and who is willing and qualified to act as a receiver. The court appoints that person as the receiver, who can then take over the property and deal with the tenants as necessary, and rehabilitate the property, with everything approved by the court. Once that process is completed and the property goes through a sale, the receiver gets a priority lien on the property so that when the sale goes forward, they are able to collect their costs as well as the city's fees.

Commissioner Perciful asked how a receivership differs from eminent domain.

It was explained that eminent domain is an acquisition action and does not guarantee that the property is going to come up to standards; it just means the ownership has been passed on to the public. It is dangerous because with eminent domain, you have to be able to prove that there is a public purpose for the use of the land.

Vice Chairman Overmyer asked if an appointed receiver typically tended to be a real estate company or an individual.

It was clarified that people in real estate can serve as receivers, but that it is typically attorneys who specialize in serving as receivers.

Commissioner Moghadam asked if receivership could include commercial, residential, and industrial land, or any land that is not kept up and poses a health and safety concern.

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1 It was explained that it could potentially be used for any type of property and that this  
2 is one of the tools that the city can use, along with other avenues such as citations and  
3 court injunctions, to bring properties into compliance. Code enforcement officers,  
4 working with the city attorney, are also involved in the process.  
5

6 Another action item during the afternoon session of the council meeting was identified  
7 by CDD Elliano, who reported that there had been a vacancy on the City Council due  
8 to the resignation of Council Member Franchville. Two gentlemen – Robert Epps and  
9 Marvin Nottingham – had thrown their hats into the ring to be interim Councilmen until  
10 the next election. Ultimately, Robert Epps was chosen.  
11

12 There were also work study sessions on the Valley Public Safety concern with  
13 continuation of that topic at a later date. Staff took copious notes and will be coming  
14 back to the Council and the Hemet ROCS Citizens Advisory Committee with  
15 responses to the community concerns. It is very helpful to be hearing what some of  
16 the priorities are in the community. We recognize the problems, but there is a different  
17 emphasis when it goes out to the general public.  
18

19 A public hearing was held on the Parolee Probationer Housing Ordinance, which was  
20 approved unanimously, and there was also approval by the City Council for three  
21 additional police officers for a three year period. Two of them will be assigned  
22 specifically to the Hemet ROCS Taskforce.  
23

24 There was also a grant proposal for \$40,000 to assist in alcoholic beverage control  
25 enforcement, which will be handled by the police department.  
26

27 Finally, City Manager Brian Nakamura has accepted a position with the City of Chico,  
28 so there was a series of special meetings, one on the 16<sup>th</sup> and another on the 20<sup>th</sup> of  
29 August, and the City Council has appointed Assistant City Manager Mark Orme as the  
30 Interim City Manager.  
31

### 32 **B. Cancellation of the September 4, 2012 Commission meeting.**

33  
34 Staff is recommending a cancellation of the September 4<sup>th</sup> meeting, with the next  
35 Planning Commission meeting to be held on September 18, 2012.  
36  
37

## 38 **8. HEMET ROCS CITIZEN ADVISORY COMMITTEE REPORT**

39  
40 Chairman Gifford reported that most of the issues considered at the last Hemet ROCS  
41 meeting had already been referenced earlier in tonight's proceedings. However, a  
42 large portion of the discussion at the last ROCS meeting had to do with public  
43 outreach – the concern in the committee being how the message would be relayed to  
44 the citizens of the community. There was a suggestion by some that a Facebook, or  
45 other social media page be created, which was a suggestion that had already been  
46 put into practice by the police department. We also heard about the basis for the  
47 smoke shop and smoking lounge ordinance. In addition we heard that the City of San  
48 Jacinto had passed an interim urgency ordinance placing a moratorium on hookah  
49 lounges and smoke shops, which was an indication of cooperation between Hemet  
50 and San Jacinto for the benefit of the Valley. Also, Hemet ROCS is now on the city's  
web site.

1 **9. PLANNING COMMISSIONER REPORTS**

- 2  
3 A. Chairman Gifford: (No additional report)  
4 B. Vice Chair Overmyer: (Nothing to report)  
5 C. Commissioner Moghadam: (Nothing to report)  
6 D. Commissioner Perciful: (Nothing to report)  
7 E. Commissioner Vasquez: (Nothing to report)  
8  
9

10 **10. FUTURE AGENDA ITEMS**

- 11  
12 A. North Hemet Specific Plan

13  
14 CDD Elliano reported that this item would be presented either at the end of September  
15 or the first part of October.

- 16  
17 B. Report on Industrial Development Opportunities

18  
19 This item and all others will be considered at future meetings.

- 20  
21 C. Proposed Fence Ordinance — Part II  
22 D. Temporary Sign Provisions —Part II  
23 E. Other items as requested by Planning Commissioners  
24  
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27 **PUBLIC HEARINGS**

28  
29 **11. ZONING ORDINANCE AMENDMENT NO. 12-2004 (SMOKE SHOPS &**  
30 **HOOKAH LOUNGES**

31  
32 APPLICANT: City-initiated  
33 LOCATION: City-wide  
34 PLANNER: Emery Papp — (951-765-2375)  
35

36 **DESCRIPTION:** A request for Planning Commission review and  
37 recommendation to the City Council regarding a Zoning Ordinance Amendment  
38 to modify Section 90, Article III, and Section 90-892 of the Hemet Municipal  
39 Code regulating Smoke Shops and Smoking Lounges, with consideration of an  
40 environmental exemption pursuant to CEQA Guidelines Section 15061. This  
41 ordinance is a component of the Hemet ROCS (Restoring Our Community  
42 Strategy) Program for the City of Hemet.  
43

44 The staff report was presented by Principal Planner Emery Papp, who provided  
45 various details regarding the proposed zoning ordinance amendment.  
46

47 Chairman Gifford requested clarification as to the difference between this ordinance as  
48 compared to the interim urgency ordinance that had placed a temporary moratorium  
49 on these facilities. Were there changes to the ordinance, or is it basically the same  
50 thing?

1 CDD Elliano responded that the moratorium essentially prohibited the filing of any  
2 application for tobacco stores or smoking lounges which previously could be approved  
3 via a Conditional Use Permit. That moratorium will expire in October of 2012.  
4 Therefore, the alternatives are as follows:

- 5
- 6 A. Take no action, which would mean that the existing codes would be back in  
7 place. Therefore, tobacco stores would be allowed by Conditional Use Permit  
8 in the C1 and C2 zones, but with no locational standards, no additional  
9 findings, and no separation requirement, as is written in our current ordinance.  
10
- 11 B. Adopt the ordinance before the Commission which includes a one-thousand  
12 foot separation, as well as zoning requirements for smoking lounges that  
13 would allow them only in specific zones with a Conditional Use Permit, and  
14 prohibit them in others.  
15
- 16 C. Redraft the ordinance prohibiting smoking tobacco stores as a use.  
17

18 Presently there are five existing smoke shops/tobacco stores within the City that would  
19 become legal non-conforming uses since they were legally permitted at the time of  
20 their establishment prior to 2006. They are non-conforming in that they cannot  
21 enlarge, expand, or move. Normally a non-conforming use can continue if there is no  
22 more than a six-month separation between one ownership and the next one. Staff  
23 recommends restricting that further if the true intent is to gradually deny and remove  
24 tobacco stores as a conditional use permit. If the commission adopts this ordinance,  
25 the two existing shops in the C1 zone would be non-conforming, but grandfathered in  
26 and could continue operating. The three in the C2 zone would continue to operate.  
27

28 Commissioner Vasquez asked if, from a constitutional standpoint, we are on firm  
29 ground for prohibiting smoking lounges.  
30

31 City Attorney McEwen responded that there would be no provision in the federal or  
32 state constitution that would prevent the Planning Commission from taking action or  
33 prevent the city from enforcing the proposed ordinance. This is something that would  
34 be subject to what they call "rational basis." If there is rational basis for the city's  
35 action, then it would be supportable in court.  
36

37 Commissioner Vasquez referred to General Land Use Policy 15.5 which deals with  
38 creating and updating regulations. One of Hemet ROCS' recommendations was to  
39 outlaw smoking establishments. He wondered if the Commission has the authority to  
40 do so under 15.5.  
41

42 City Attorney McEwen explained that under the California Constitution, unless there is  
43 some exception or some first amendment or other constitutional basis, a city can make  
44 a decision that a particular land-use is not appropriate for the community, which is  
45 basically the same battle that the City of Hemet is fighting in the area of medical  
46 marijuana. It should be up to the city to make the determination regarding whether  
47 they allow or deny a use. Even though it is legal to have a tobacco store, it doesn't  
48 mean a city would have to allow it.  
49

50 Chairman Gifford clarified that the Hemet ROCS recommendation had to do with  
hookah lounges and not tobacco stores.

1 Mr. Papp responded that any number or formula would be open to scrutiny by any  
2 number of people, so rather than try to determine a number, staff felt it was more  
3 appropriate to develop a standard and criteria for the Planning Commission.  
4

5 Chairman Gifford commented that if this ordinance were adopted, then to have a  
6 tobacco store in Hemet, the applicant would have to bring it to the Planning  
7 Commission for a Conditional Use Permit.  
8

9 Commissioner Perciful asked how many people have come to the city to request a  
10 Conditional Use Permit in the two years since the moratorium had been in place.  
11

12 CDD Elliano reported that there had been no requests in the City of Hemet for a  
13 Conditional Use Permit for this type of use; however, the assistant city manager of  
14 San Jacinto had reported that they recently had a tobacco store open there since it  
15 could not open in Hemet.  
16

17 Commissioner Perciful wondered what the fiscal impact for Hemet would be with an  
18 outright moratorium.  
19

20 CDD Elliano thought the impact would be modest.  
21

22 Commissioner Perciful felt that putting restrictions on where they can be is useful, but  
23 ultimately in a free market system, the market would drive the demand for the use.  
24

25 Mr. Papp agreed, stating that a year ago there were seven stores within the city limits  
26 and that two had closed within the last year, thereby indicating a decrease in the  
27 demand.  
28

29 Commissioner Moghadam asked what determines that a smoke shop is actually a  
30 smoke shop versus a grocery store that sells tobacco products.  
31

32 Mr. Papp explained that it was primarily the amount of floor area dedicated to the sale  
33 of tobacco products that determined whether a store could be identified as a smoke  
34 shop.  
35

36 Commissioner Moghadam queried regarding the amount of square footage that was  
37 required for that identification to be made.  
38

39 Mr. Papp responded that in the new, draft ordinance, it was spelled out fairly precisely  
40 regarding the amount of floor space and shelf space that could be dedicated to  
41 tobacco.  
42

43 CDD Elliano indicated that if a store has a minimum of 15 percent of floor area  
44 dedicated to tobacco or tobacco products, they are defined as a tobacco store.  
45

46 Commissioner Moghadam stated that the non-conforming businesses would have to  
47 go back to request a CUP when they transfer or sell their business due to the  
48 thousand-foot requirement; therefore, none of these are going to be approved by the  
49 CUP because of the regulation.  
50

1 CDD Elliano explained that if the ordinance is adopted, only the two in the C1 zone  
2 would be grandfathered, non-conforming uses. The ones in the C2 zone would be  
3 allowed to continue; however, the uses would not be transferable.  
4

5 Commissioner Moghadam then requested a definition of a smoking lounge.  
6

7 CDD Elliano indicated that a smoking lounge or hookah lounge is any place where  
8 smoking or flavored tobacco is actually used.  
9

10 Mr. Moghadam wondered if establishments, such as restaurants that allow outside  
11 smoking areas, would be considered smoking lounges, and therefore be affected by  
12 this ordinance.  
13

14 CDD Elliano suggested that there would have to be a definition clarification according  
15 to the current definition. For example, businesses that are dedicated to the inhalation  
16 of tobacco products, including but not limited to establishments known variously as  
17 cigar lounges, hookah lounges, tobacco clubs, private smoking lounges or tobacco  
18 bars, would be affected by the ordinance.  
19

20 Vice Chairman Overmyer asked if a lounge outside a restaurant would be prohibited.  
21

22 CDD Elliano responded that if it is dedicated as a smoking lounge, or known to be  
23 such, it would be prohibited. She noted, however, that some restaurants do have  
24 smoking allowed on their patios, which is not associated with the restaurant and not  
25 dedicated to smoking. These would not be affected.  
26

27 Vice Chairman Overmyer commented that even though all commissioners come from  
28 different sets of circumstances and bring different sets of values, our goals pretty  
29 much coalesce when we say we want to make the city a better place. He does not  
30 believe we should legislate morality. Can we legislate against hot dog shops or ice  
31 cream stores? He needed to be convinced by staff and by other commissioners that  
32 he should vote for this.  
33

34 CDD Elliano explained that always with land use regulation, the cornerstone is that  
35 there has to be a public purpose for the regulation.  
36

37 Chairman Gifford stated that Commissioner Overmyer's comments were both good  
38 and on point. He further clarified that there were four different choices to be made:  
39

- 40 1. We can recommend approval of the zoning ordinance as it is which will ban  
41 hookah lounges, head shops, and allow tobacco stores with the CUP;
- 42 2. We can recommend that they will be non-conforming, but grandfathered in or  
43 we can recommend this in a changed version—things we want to add, take  
44 away, etc.;
- 45 3. We can decide that this should just be a ban on all of this;
- 46 4. We can do nothing and the moratorium will expire. However, it is a  
47 recommendation we are making because it is the City Council that will make  
48 the final decision.  
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50 Chairman Gifford asked if there was anything that would preclude the City Council  
from going back and revising the ordinance, should it move forward and be adopted.

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CDD Elliano responded that the City Council always has that ability.

Commissioner Moghadam asked for further clarification regarding non-conforming businesses that might be sold. Would the new owner be required to get a CUP? And if the moratorium were to continue, would the owner be losing his/her privilege of gaining profit from the business since no one can purchase it?

Commissioner Perciful agreed, and stated that at that point, the city has legislated the owner's equity right out of their business.

CDD Elliano referenced Section 90-88 which states that a tobacco stores' permit is not transferable. This being the case, if that provision is taken out, then those non-conforming uses will come under the same rules in that they can continue to operate regardless of ownership if they reestablish the business within six months and obtain the state license, county license, and all of the appropriate licensing. It would only be if they were vacant after six months that they could not renew those permits. They would, at that point, have to come before the Commission.

Chairman Gifford opened the public hearing and immediately closed it as there were no members of the public wishing to speak. He also restated that the task of the Commission was to make a recommendation to the City Council. He asked for a motion.

It was **MOVED** by Vice Chairman Overmyer and **SECONDED** by Commissioner Perciful to **ADOPT** *Planning Commission Resolution Bill No. 12-018, RECOMMENDING APPROVAL* to the City Council of Zoning Ordinance Amendment No. 12-004, with a request that the Council review Section 90-88 to see if it has ramifications on existing businesses that could be detrimental.

The MOTION was carried by the following vote:

- AYES:** Chairman Gifford, Vice Chairman Overmyer, and Commissioners Moghadam, Perciful, and Vasquez
- NOES:** None
- ABSTAIN:** None
- ABSENT:** None

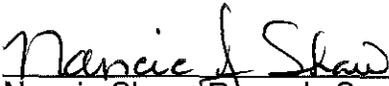
***(Adopted Planning Commission Resolution No. 12-017)***

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**12. ADJOURNMENT:** It was unanimously agreed to adjourn the meeting at 7:01 p.m. to the regular meeting of the City of Hemet Planning Commission scheduled for **September 18, 2012 at 6:00 p.m.** to be held at the City of Hemet Council Chambers located at 450 East Latham Avenue, Hemet, CA 92543.

  
\_\_\_\_\_  
John Gifford, Chairman  
Hemet Planning Commission

ATTEST:

  
\_\_\_\_\_  
Nancie Shaw, Records Secretary  
Hemet Planning Commission