



**City of Sebastopol**  
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Planning Department  
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## **UNAPPROVED DRAFT MINUTES**

PLANNING COMMISSION  
CITY OF SEBASTOPOL  
MINUTES OF August 9, 2022

### **PLANNING COMMISSION:**

The notice of the meeting was posted on August 4, 2022.

- 1. CALL TO ORDER:** Chair Oetinger called the meeting to order at 6:00 P.M. and read a procedural statement.
- 2. ROLL CALL:**
  - Present:** Chair Oetinger, Vice Chair Fernandez, and Commissioners Burnes and Kelley
  - Absent:** Commissioner Fritz (excused)
  - Staff:** Kari Svanstrom, Planning Director  
John Jay, Associate Planner
- 3. COMMENTS FROM THE PUBLIC ON ITEMS NOT ON AGENDA:** None.
- 4. STATEMENTS OF CONFLICTS OF INTEREST:** None.
- 5. PUBLIC HEARINGS:**
  - A. CRV Temporary Use Permit** – The applicant is requesting an extension to the approved temporary use permit granted at 1000 Gravenstein Highway North for a CRV recycling kiosk. This extension would allow for the approval of this use until June 30, 2024. The operation has been up and running since the City originally approved it in February of 2022.

Associate Planner Jay presented the staff report.

Chair Oetinger asked for Planning Commission questions of staff. Seeing none, Chair Oetinger opened the public hearing.

The applicant gave a presentation and was available for questions.

Chair Oetinger asked for Planning Commission questions of the applicant.

**Evert Fernandez, Vice Chair**

If someone brings in material that is not CRV, do you provide a receptacle for them to dispose of that, or do they need to take those back with them?

**Dennis Blong, UCPNB**

If it's one or two bottles we gladly take them and dispose of them for them, but if they bring in large volumes of non-CRV, or any plastics #2 through #7, or bimetal cans that we just couldn't handle at that facility, they are required to take them home with them. We have posted signs explaining how many pounds of aluminum cans, PET #1 plastic bottles, and CRV glass bottles each individual can bring per day. It's been a bit of education training the local populous. At first there were a lot of people that had two year's worth of materials stored in their back yard or barn due to the pandemic, and we did everything we could to process even over the given limits by CalRecycle to accommodate them, or they just kept coming back week after week until they had gotten rid of all their material. But no, we cannot take other non-CRV materials at our Petaluma facility where we process everything. We used to take cardboard, newspaper, newsprint, small metal things, all sorts of items, but we just can't handle it anymore. We are doing so much CRV in Sonoma County, we're actually looking for a new expanded facility right now with Zero Waste Sonoma to expand our infrastructure to handle more CRV, and Zero Waste Sonoma is looking to set up a recycling facility for household hazardous waste as well, so we're working on a lot of fronts, but based on CalRecycle's mandates there are certain things that we're not allowed to take, and non-CRV is one of them. Being where we are, we've had a million people ask why we can't take wine bottles? But there is legislation currently going through the California senate to start including both wine and liquor bottles and put CRV on them as well, so one of these days I'm assuming we'll handling those materials.

**Linda Kelley, Commissioner**

Is it okay to donate our recyclables that are CRV just to help your cause out?

**Dennis Blong, UCPNB**

What we are currently doing is a manual process, so when a customer shows up we set up an account on our computer, we weigh their material, and we cut them a check or pay them on PayPal. Eventually we are going to be changing the way we do business and just receiving from our customers' bags of material, which will then be transported back to Petaluma to be processed. It's called a "bag drop process," and it will eliminate the noise that the current neighbor is experiencing, and rolled into that process is some very interesting opportunities. No one will be paid in cash or check; it's going to be all electronic. We'll have your name, address, phone number, and however you want your payment done, whether it's PayPal or something else. The company that's helping us set this up has all sorts of other options, including you can just donate whatever that money is to 1) UCPNB, 2) a conglomerate of ten not for profits in Sonoma County, or 3) a program where people can apply it to their kids' college fund or a variety of other applications. That's all coming down the road, but it's probably four or five months away.

**Linda Kelley, Commissioner**

That was a very informative answer in that it deals with the neighbor who has been having issues. How close to the facility is that resident, and was the resident satisfied with your answers?

**Barbara Johanson, Community Church of Sebastopol**

I'm not privy to all that has happened, and I think he also met with someone else. Dennis, did the neighbor meet with you specifically? I think it wasn't just meeting with our minister. Has he directly come to the Planning Commission yet?

**Kathy Oetinger, Chair**

I'm not aware.

**John Jay, Associate Planner**

I have spoken to, I'm pretty sure, the same neighbor. He is about two parcels down from the site on Danmar Drive. The complaint was in regard to noise, mostly coming from weighing the glass bottles and stuff like that. It was an easy conversation I had with him and just let him know that it's not going to be a permanent thing, it is within a residential district and requires a use permit for its operation, but he seemed to take those comments well. Other than that, as far as the in-person conversation, I believe Dennis might have spoken with him, or it could be somebody else.

**Linda Kelley, Commissioner**

Have you had any problems with people just dropping off things, maybe things that shouldn't be brought to you all? Is that a big problem?

**Dennis Blong, UCPNB**

I can address that, and I'll also address the situation with the neighbor. I've had multiple emails with him. If he hears the noise, he lets me know. I worked out a process with our workers there to try to mitigate the noise as much as possible, and I explained to him that we will be eliminating that noise as soon as we have this new equipment in place, so I think he is in a good spot with it. Believe me, it's irritating when you're pouring that glass into our weighing bins, and then we put it on a scale, and then we have to put it in another bin to load it on the truck, so it does create some noise. I wish we didn't have to take it, but it's part of the package. The guy's name is Benjamin; he's really a very nice guy and understanding, so I don't think we'll be hearing from him much more because of what we've done already and his confirmation that he understands. Any time he's got any questions or problems, he immediately contacts me, so it's a good relationship.

**Linda Kelley, Commissioner**

And the issue regarding people just dropping things off?

**Dennis Blong, UCPNB**

I was told that for ten years there was a Good Will container there, so a lot of people have the habit of going there and trying to drop off donations. The first three people that showed up when we opened all wanted to donate. Interestingly enough, we have a thrift store in Rohnert Park, which is manned by a lot of our folks with disabilities as well as staff members, so we have been accepting some things, clothes and whatever we can. There have been some rather unsavory people that have dropped off things like couches and junk on the side of the trailer, not very much, but we just put it on our truck and take it back. We deal with that type of situation very easily because we've been doing it for literally 12 years, running thrift stores from Santa Cruz to Sacramento. So we do get stuff, it's not that often, and we just handle it. Nobody has dropped off anything dangerous or hazardous or anything of that nature yet. Back at our Petaluma recycling center we have large dumpster bins that we can just toss stuff into if it's real trash, which mostly it is. On the other hand, if people want to donate something for a thrift store and it's not junk, we do take it and we'll take it back to our store in Rohnert Park, which is good for the community.

**Linda Kelley, Commissioner**

One last question to the church. Are you still doing your safe parking in that parking lot?

**Barbara Johanson, Community Church of Sebastopol**

We do safe parking in a different parking lot; it's right on the church campus near our buildings. We have two huts and we have space for three cars. The safe parking has always been right around our church, not in the open parking lot on Danmar.

**Kari Svanstrom, Planning Director**

That way they have access to restrooms and such.

**Evert Fernandez, Vice Chair**

When you do your payouts, I know that sometimes that's how unhoused individuals supplement their income, and some of the centers have paid cash, which makes it easy for them. If someone who shows up doesn't have the ability to have a PayPal or other source, has that been an issue, or how does that work?

**Dennis Blong, UCPNB**

We're mandated by CalRecycle to only allow people from the State of California to use our recycling operations, so what we've done is we've set up a system where anybody that's got a State ID or a drivers license, we scan the barcode on the back of the card and it gives us their name and address. We ask them for a phone number, because the next time they come back we only use phone numbers. What we have done with the folks that come in that are not housed, they all have a phone and they have some sort of address, and as long as it's in California we can set them up an account, and then they come in and they get a check on Exchange Bank, which is literally 200 feet down the road, so I don't think it's a big problem. Not one of them has ever asked for cash when they see the sign that says PayPal or check, and it's always worked out. We have had to mandate that they do not bring shopping carts to the parking lot, because normally they're stolen from some retail store and then they're left somewhere, and we've had that problem everywhere. We just have to tell everybody we don't mind taking your material, but there is no sorting of material onsite and you can't bring shopping carts. The no sorting of material onsite is due to the fact that if you allow people to come in, that's when you start getting a lot of trash in the parking lot because they're throwing this and that out, and the bottle caps are everywhere. So if they're unhoused, our facility is still easily accessible; we know who they are. There are probably six or eight of them that are there every single week, and they're good people.

**Evert Fernandez, Vice Chair**

Using PayPal, they take their 3% cut?

**Dennis Blong, UCPNB**

Three percent, that's correct.

**Evert Fernandez, Vice Chair**

So if someone brings in material, they're going to get a payment less 3%?

**Dennis Blong, UCPNB**

That's correct.

**Evert Fernandez, Vice Chair**

Is there any other way to mitigate that?

**Dennis Blong, UCPNB**

We're going to set up Venmo as well, and they don't charge anything. Initially a year ago we were going to set up and use debit cards, but their rates are much, much higher, like 12% per transaction, and we didn't feel like that would be fair to the people that are there

that really need the money, so we went with PayPal at 3%. The checks are not dinged at all. Most of our customers are in my age group. There are a lot of elderly folks in Sebastopol that use our facility and not a lot of them like or use PayPal, so we do pretty much all checks and maybe 5% are PayPal transactions.

Chair Oetinger asked for further Planning Commission questions for the applicant. Seeing none, she opened public comment. Seeing no speakers, Chair Oetinger closed public comment.

Vice Chair Fernandez made a motion to approve an extension to the approved temporary use permit granted at 1000 Gravenstein Highway for a CRV recycling kiosk, subject to the findings and conditions contained in the staff report exhibits.

Commissioner Burnes seconded the motion.

AYES: Chair Oetinger, Vice Chair Fernandez, and Commissioners Burnes and Kelley.  
NOES: None  
ABSTAIN: None  
ABSENT: Commissioner Fritz.

- B. Smokehouse BBQ Use Permit** – Request for a Temporary Use Permit to allow live music on site. Music is proposed Wednesday nights from 4:30PM-7:30PM as part of the Peacetown events. It is also proposed for music to be played on Saturdays and Sundays from 1PM-4Pm and 5PM-8PM. Band sizes range from one single person to a group of five members. The music played ranges from genres including Jazz, Rockabilly, Blues, Classical, Traditional Hawaiian, Pop, Country, and Bluegrass.

Associate Planner Jay and Director Svanstrom presented the staff report.

Chair Oetinger asked for Planning Commission questions of staff.

**Kathy Oetinger, Chair**

Page 57 of the revised report lists a number of solutions and comments, but I don't know who the author of that document is. It was suggestions for acceptable levels of music sounds.

**Kari Svanstrom, Planning Director**

Those came from a member of the public, and I think after I had had discussions with them, and they expressed to me that they weren't necessarily opposed to some of the music, but it was really loud bands with electric guitars and horns and drums that were way too loud and really disruptive, and John and I reviewed those. I don't know if we included all of those in, but some of them seemed very helpful, at least a discussion point for the Commission to start their discussions.

**Linda Kelley, Commissioner**

I'm a little concerned about how the stage was. Did it need permits? I'm worried about safety, trip hazards, all that good stuff, so if staff has any information on that and then maybe the applicant can address that in a bit.

**John Jay, Associate Planner**

The Building Department went out and reviewed the stage and its ADA compliance and found that there were no negative issues or concerns with the stage itself, and didn't feel that any additional provisions in that regard would need to be added to this permit.

**Linda Kelley, Commissioner**

For staff, I know there was a suggestion of using straw bales to attenuate the noise level. Are there safety issues with using that with combustibility? I know they're used for sound around generators out in the country a lot, but we're in town and I wanted to address it.

**Kari Svanstrom, Planning Director**

We can check with the building official, but I think with the open air nature of this and being far enough from the building, I don't think there would be a concern with that.

**Deborah Burnes, Commissioner**

Kari, I'm not sure if I misunderstood, but the original permit was for how many days a week for the music?

**Kari Svanstrom, Planning Director**

It was not specified. It was just that the limit of where you could hear it was 50 feet away, so the other side of Laguna Park Way.

**Deborah Burnes, Commissioner**

I couldn't find like how many days a week. Do we know how many days a week they currently have music? I also read the hours were between 4:30PM and 7:30PM. Is that accurate?

**John Jay, Associate Planner**

The hours within the staff report, 4:30PM and 7:30PM, are on Wednesday nights, unofficially part of the Peacetown concert series, and then the other two nights a week, a Saturday and Sunday, from 1:00PM to 4:00PM, and then from 5:00PM to 8:00PM, so those would be the three nights per week that they're offering live music in the summertime. When we did speak to Larry out there he mentioned that in the wintertime it's a little bit harder for them to do live music with the weather, so the summertime is typically when they're most busy with outdoor live music.

**Deborah Burnes, Commissioner**

Looking for solutions for both the residents who are affected by the music and the business owner who would like to provide music. In a use permit can we make provision for hours, and also how many days per week?

**Kari Svanstrom, Planning Director**

Absolutely, yes.

**Evert Fernandez, Vice Chair**

The Wednesday night Peacetown falls under a separate arrangement. Would that allowable music fall under the Peacetown approval rules, and then the rest of the days would it go under this permit?

**John Jay, Associate Planner**

They would be subject to their own rules and regulations, so whatever conditions were set for this project. Because they're not an official part of the Peacetown concert series they

would not be subject to the same rules and noise level allowances that the Peacetown series is unless you were to condition the project in such a way.

**Kari Svanstrom, Planning Director**

That is correct. The reason John was calling it an unofficial part of Peacetown is because they were not part of the Peacetown application, however, the Peacetown application is subject to the Noise Ordinance.

**Evert Fernandez, Vice Chair**

Then the music on Sundays from the farmers market, is that permitted as well?

**Kari Svanstrom, Planning Director**

There are no permits for that, that's just a free use of a City park that's happening. I know there are people that meet there on a regulation basis and do that. They do not have any City permits for that. That would require a special event permit, have a use permit of some sort like the farmers market itself has, because that is not permitted, and yes, I'm aware that that is somewhat loud and I know our police department also gets calls from that venue quite a bit.

**Linda Kelley, Commissioner**

I have one question to follow from Vice Chair Fernandez, and that is this application is for Wednesdays and the weekend, but it's sort of is being offered that it's a piggyback onto the Wednesday nights, but it sounds like it doesn't stop the performances on Wednesday nights unless the weather starts getting bad. Is that true?

**John Jay, Associate Planner**

It is not part of the Peacetown concert series; it's just something that they offer for their patrons as additional live music on top of what The Barlow has with the Peacetown concert series.

**Kari Svanstrom, Planning Director**

Commissioner Kelley, I think another way of stating that is if you wanted to permit the Wednesdays to be consistent with the Peacetown concerts, then yes, you would need to clarify that for the conditions, because right now the request is for any and all Wednesdays. There's no limit for the application request, it's simply Wednesday and Saturday and Sunday, as John described.

Chair Oetinger asked for further questions for staff. Seeing none, she opened public hearing.

The applicant gave a presentation and was available for questions.

**Evert Fernandez, Vice Chair**

I'll see if we can answer Mr. Vito's question regarding the same level of noise as Peacetown.

**Kari Svanstrom, Planning Director**

I don't know that the police department has gotten any complaints about that. We don't go out and proactively measure; we do that when there is a complaint, and we have not gotten complaints. I did talk to Jim Corbett as we were going through the Peacetown permitting process, and obviously it's in the conditions of approval, so they should be aware of the noise limit. If they don't have professional sound engineers, that's certainly something we can communicate to them, but I do recall Larry asking me that question and after that I did communicate with Jim Corbett, the organizer for the Peacetown events. If he is not abiding

by that, then again, we don't do code enforcement based on proactive, because we don't have a code enforcement officer in the City. The police do regularly respond to noise complaints and we address those. I am doing one for another business right now, so this is in no way an unfair treatment of Mr. Vito. We have regulations and we're doing our best to implement them, and now that I understand that they're still above their noise limits, I will talk to Jim again about that.

**Larry Vito, Applicant**

I'm not ratting out Jim. I think his music is at an appropriate sound level for a concert. I think it's great. I like the music down there.

**Evert Fernandez, Vice Chair**

Mr. Vito, you had met with the staff, Planning Director, and Associate Planner and you guys talked about some suggestions or ideas to maybe mitigate some of the sound, such as turning the stage or speakers, and I wanted to get your input on some of those suggestions and if you are able to implement those and how you feel about them.

**Larry Vito, Applicant**

It's fine with me. I think for the most part they do turn their amps south, and I don't know if there have been complaints lately about the music, so I don't know if that's helping or not. But we haven't had a large band here in over a month. We had Bitter Blues here a while back, but most of the time it's just one or two people, and for the most part our musicians are senior citizens or close to it, and we also have people who really wouldn't get paid or wouldn't be able to perform anywhere else, because they're not that interesting and that good; it's all local artists and their friends come out to hear them and it's really nice. I've sent numerous videos to Kari. But in answer to your question, I don't know if people are still complaining, because since our meeting the bands, which we've had maybe one or two, have pointed their music that way; when we have one or two performers they don't turn their amp, but I don't know if that's bothering anybody.

**Evert Fernandez, Vice Chair**

For example, turning the amplifiers more toward The Barlow, and any other ideas that come up to try to allow you to continue to do your music and minimize the noise. You're not going to eliminate it and it's part of living downtown, I think, for a lot of people. I can hear the football games from my house, but that's part of living in the City and its activities. But that was just my question and encouragement, that if you see any opportunities to do that I would encourage you to think about that.

**Larry Vito, Applicant**

Absolutely. The larger bands are plenty loud for the people sitting here. I think it's 40 feet from the stage to the other side of our outdoors seating area.

**Deborah Burnes, Commissioner**

I think Vice Chair Fernandez was on the same path that I was where I would love to see if we could come to some type of win-win as best as we can compromise by turning the speakers, and the hay bales. My question is what are some of the mitigation issues that you can think of that won't put you out of business, but will help with some of the sound, whether it be making sure that the amplification is at a certain level, making sure the bands are turning the amps, limiting the hours so it's not going until 8:00 o'clock at night? What are some of the things that you could do that you think would make a difference? Because it sounded like some of the bands are doing it and some of the bands are not, and you don't know if it's making a difference, but what would you be willing to make sure is happening to help try to mitigate?



**Larry Vito, Applicant**

When it's one or two people, I don't think it's necessary to turn the amps. They're not playing rock and roll. Most of the artists don't make that much noise in my opinion, and I don't know if anyone has complained lately about them. We have some really wonderful couples and I don't think it's very loud. I agree, when we have a rock and roll band like Doc Kraft, they are noisy, and we ask them to turn their speakers that way and I don't know if that's bothering people on Taft Street or not.

**Deborah Burnes, Commissioner**

Could you reduce the sound?

**Larry Vito, Applicant**

We do. They like to play loud, and we tell them to turn it down, and then it seems like it gets louder, and we say, "Please turn it down or you're going to have to leave," and they'll turn it down grumpily, and they'll also say, "Why should we when Peacetown is playing right over the top of us?" I get pretty incredulous looks from these guys when I'm asking them to turn down the music and it's loud elsewhere in town.

**Deborah Burnes, Commissioner**

I totally hear you're in an awkward position. Maybe if there's some way that they could understand this is what we need to do, it's not you.

**Larry Vito, Applicant**

We do tell them. We don't have anybody scheduled on weekends. It's a larger band that's probably not going to offend anybody. It's mostly on Peacetown night, and that helps us a lot when people turn out for Peacetown and come and sit here; our sales quadruple. It's Tuesday night, and as you can see, there is nobody in this seating area.

**Linda Kelley, Commissioner**

You were asked if you went along with any of the recommended conditions of approval or how you felt about it, and the City staff has put together Exhibit B, but it didn't sound like that's what we are talking about, because it was saying only acoustic music, no amplification, and I'm pretty sure that you're not going along with it, but it's not real clear which parts aren't you going along with?

**Larry Vito, Applicant**

Every single musician that shows up here has an amp. They're playing outdoors, and they're plugged in and they're amplified so people can hear them. They're all amplified. They might be playing acoustic instruments that are plugged into an amplifier. There's a difference between an electric guitar and an acoustic guitar.

**Linda Kelley, Commissioner**

That means that you are not willing to accept the conditions of approval that were in Exhibit B?

**Larry Vito, Applicant**

No, that's not going to work for us, these drums, horns, or accordions, two singers, and limit days to three days a week. We have a guy who shows up here randomly often on Tuesdays, Wednesdays, and Thursday nights all by himself and just sits over there on the stage and plays softly. Musicians just show up and play here, but they don't play loud enough to bother anybody. No drums, horns, or accordions. Any band of four or five people is probably going to have drums. Horns, we had a jazz group here last week; they had a

horn. That's really going to limit the bands if they have a horn. Or accordions; I don't know what's wrong with an accordion. Are they loud, or do the people in town not like accordions? We are trying to not have large bands on weekends, and we are asking the larger bands to turn their amplifiers towards The Barlow. If we have a band, they're going to have drums, and sometimes they have horns. Sebastopol is growing and a lot of people don't like it. It's good and bad things that came with The Barlow, and it's hurting some people, including us, and we're trying to make the best of it, and if you can't beat them, join them. I'm sorry to probably not make you happy.

**Kathy Oetinger, Chair**

No, this is good. I'm important for us to hear your situation, and we do understand it. I'm very confused as to how to proceed here, but I have some questions myself. You're saying that musicians show up and they all have amplification, so Item A is not going to work for you, and they have drums, horns, and not usually accordions, so that's not going to work for you.

**Larry Vito, Applicant**

We have a nice relationship with the street band The Hubbub Club, and they have lots of horns, but that's I hope a special night, because there are fireworks going on and I hope nobody minds that.

**Kathy Oetinger, Chair**

Then one or two singers. You've already mentioned the groups are of all different sizes. Do you have any plans for reasonable methods of attenuating the noise, things that will deflect the noise or absorb it?

**Larry Vito, Applicant**

Yes, I have. That's not our property over on the other side to move the stage. They're facing that way. I'd like to know, have there been complaints lately about the music we have? I invite anybody to come down here anytime on any Wednesday or weekend night. It's pretty manageable, these groups and the families and the kids and the people dancing. It's really laid back; we're not Jasper's at 3:00AM.

**Kathy Oetinger, Chair**

Going back to my question, we have an Item D that's suggesting you employ reasonable measures, but I don't hear specifically, have you turned your speakers away from the hillside? You're pointing over there, but I can't tell what direction that is?

**Larry Vito, Applicant**

If you think of The Barlow, McKinley Street, that is south of us, and so the one time lately that we've had a larger band we asked them to turn the speakers south towards McKinley Street, and I don't know if people were still complaining or not. I'm sure people on Taft Street are feed up, so if they hear a pin drop over here they might be on the phone with the police department.

**Kathy Oetinger, Chair**

So that is something that you have done, you have turned the speakers away?

**Larry Vito, Applicant**

Yes.

**Kathy Oetinger, Chair**

And you have asked people to turn the speakers down.

**Larry Vito, Applicant**

And we haven't had any big bands on weekends for quite some time, several months.

**Kathy Oetinger, Chair**

And have you considered some other noise barriers, such as the straw bales along the Park Way side of the venue?

**Larry Vito, Applicant**

I don't know if the people over on Johnson Street and in that area are offended by the music. If they were, yes, we could put up hay bales over there, but it seems like the problem is towards the police station, and the people working in the police station told me they like to come outside and sit on the lawn and eat their lunch, because they like the music. You can't please all of the people all the time, and nobody knows it better than the Planning Commission.

**Kathy Oetinger, Chair**

I'm just looking at some of the other issues here, because we've got some conditions of approval that clearly don't sit well with you, so that's really difficult.

**Larry Vito, Applicant**

It's not me, it's the bands and it's the people who come here. I've got people who have played here for years, and one of them plays the trumpet; he doesn't blast it. You should come down here and listen to the level of music and to see what's going on here to really understand how inoffensive it is 95% of the time.

**Deborah Burnes, Commissioner**

I am struggling a teeny bit here as well. On one hand, my heart goes out to you hearing that if you can't have the music you'll have to close, and I know the difficult time businesses have gone through during the pandemic; and on the other hand I'm struggling with if it's an option between closing your business or working with us on some of these issues, I would like to ask you to work with us. I hear you that it's not you, it's the bands and your patrons, but part of the job is to be the boss of this situation and say these are the mitigation issues I need to do. It's an all or nothing kind of a situation, so while the volume might be as loud, we might have to go to 7:30 instead of 8:00 and we might have to turn the speakers. I think some of these things are very reasonable.

**Larry Vito, Applicant**

Seven-thirty isn't a problem.

**Deborah Burnes, Commissioner**

I did want to say in your defense, it is true that there is a difference between an acoustic guitar that is amplified to a lower decibel than an electric guitar that is amplified, from a folk singer that is amplified to a whole rock band with horns. I think the acoustic is tripping people up and we should focus more on decibels and duration, because if there is someone sitting there playing their acoustic guitar, even if it's amplified, I can't imagine that that is what is bothering the neighbors. Obviously, we'll hear from the neighbors, but this amplification is throwing things.

**Kari Svanstrom, Planning Director**

I think what you're sensing is the same kind of struggle that staff had trying to work through this, so we crafted conditions that are, for this project more than others, a starting point to begin to have a discussion and I think this will take the Commission some

interaction, so we'll see where that goes. I would advise opening the public hearing so you can hear the other side of the story prior to going down the path of more discussion unless there are questions for the applicant.

**Kathy Oetinger, Chair**

I really wanted to bring out the fact that we have this conundrum with findings or conditions that aren't working right now so that people who are speaking can address those, and in particular in the public comment period those of you who are speaking, if you could indicate whether going from two hours, is it two hours in the afternoon, or do you want two hours in the evening, or do you not want it at all? It's important for us to know the level that it's bothering the people who are here to speak in particular and others who aren't here tonight, because I do care about your level of tolerance for this, so helping us understand that is really important.

Chair Oetinger opened public comment.

**Josh Brent**

I am a neighbor and live at the end of Johnson Street at the far end, and I work from home so I'm in my laundry room every day and my windows are open. I hear Peacetown starting up on their Wednesdays, and I will just close my windows and mute myself on my Zoom calls. It's not really a struggle. I also hear the Smokehouse Bar B Que and I find the music to be totally inoffensive and not a problem for me, although I'm on the far end of the street, so just as a neighbor in town, I am agreeing with the Smokehouse Bar B Que as not really being a problem at all.

**Lyn Dillin**

I really appreciate that we're talking about this finally, because it's important, and it's important that everybody's needs be met. I'm on Taft Street, and if you're on Taft Street it looks like you're looking at buildings on a flat plane, but the backs of our houses go downhill and all of our gardens and yards go downhill to the back yards of Johnson Street. It's at about the same place where Johnson Street starts to curve away towards the last speaker's home, which is quite a distance and around a corner from the Smokehouse Bar B Que. I think if anyone was in our home or in our back yard when there is amplified music playing they would understand the stress it causes, and if you read the letters from all my neighbors here, you'll understand that we're not making this up; it is seriously difficult for us. We don't know when the music is going to be played and we don't know for how long, and it's at different times, maybe Thursday, maybe Friday. A couple of weeks ago there was a five-piece horn band. It wasn't amplified, but I had wanted to sit in my back yard in the afternoon, but I couldn't sit out there because it was loud. It gets louder and distorted as it comes up that hill, and our neighbors at the bottom of the hill actually can barely listen to their televisions when the music is playing. I wish it wasn't a problem, and I understand that it's difficult, but I've put 33 years of time and money and love into living here, and my other neighbors have been here 35 years. There's a young couple that just bought a home two years ago, and who spent a lot of money on their home, who went into shock when Smokehouse Bar B Que and Peacetown erupted one Wednesday. I mean maybe the value of our homes goes down. I want to live here in peace, and be in peace with all my neighbors and all my business neighbors too, so I hope we can work something out.

**Steve D.**

I'm affiliated with Lyn Dillin. and our back yard as it goes down towards the police station and actually a little bit past our house is a strange acoustic phenomena that is based on the topography of that kind of swale that goes up our hill, and I have heard loud music and thought if it's loud here I'm going down to the barbecue place and listen to how loud it is

down there because it must be deafening down there, and it's not that different. The barbecue place and our back yard sound about the same. Larry said when he walked up Taft Street, it's not the front yard—the front yard is the drummers in the plaza and stuff like that—but the back yards are strangely acoustically tied together, and many times we and our neighbors have had to leave our back yards, close our windows, and either go away or stay in the house or something, and it's not fair to expose us to that on a regular basis. I was really happy to see the Exhibit B in the recommended conditions of approval, and I saw Section 1 and I go wow, that will probably work, meaning no amplified music, so there would be no discussion of hay bales and where you point the speakers. That seems like that has to get hashed out, because I would be totally in favor of Exhibit B, Section 1. The inability to control the musicians, I'm a musician, I know everybody likes to get loud, but it's untenable because you don't know what you're going to get, and musicians get loud, and so that's kind of a basic defect of allowing that to be unmanaged. With Section 1, I'm in good shape, otherwise, I don't know what will go on.

### **Lyn Dillin**

You asked that we address Exhibit B and I didn't do that in my original comments. I would like to reiterate that I agree with those conditions and I think we could make that work, especially knowing that it was three days a week for two hours each rather than all afternoon every Saturday and Sunday from 1:00PM to 8:00PM. I could never have people over if that happened. I couldn't work in the back yard on the weekend if that happened. I do agree with the recommendations. I hope Mr. Vito can work with us on that and try to mitigate the sounds and keep a lovely amount of music going so that his customers like to be there. I want it to work out.

Chair Oetinger closed public comment.

The Commission discussed the application as follows:

### **Kari Svanstrom, Planning Director**

This is why I struggled with it and couldn't really figure it out on my own. A couple of suggestions related to our code that may be workable. One is what you did with Peacetown and the parking situation, which is a six-month review period. This may be something where if the Commission is interested in allowing amplification but making sure that that works with appropriate sound mitigations, we could do a review in a month or something like that after there's been a chance to really implement some of these, and by that I mean always turning the amps around. If it doesn't seem like it's loud, those days no one hears anything are only going to increase the patience of those days when it's a little bit louder. I think these conditions can't be just when it's a loud band, it needs to be consistent measures as you're going through your discussions. One of the other things you could consider is issuing this with a downtown noise permit so there are two times per months that allows for three hours you can exceed, so there are two times a month that allow their band this loud basically, but that also includes all the sound attenuation, so I wanted to provide some food for thought given what our codes are. In downtown we do have that provision, and unlike The Barlow, which cannot have a downtown noise permit, this is actually maybe one where we can assist Larry a little bit with controlling The Barlow and their noise levels, but the downtown is allowed to do that twice a month where they exceed the Noise Ordinance, but it's only by ten decibels, so it's perhaps some guidance in that code.

### **Kathy Oetinger, Chair**

Thank you, that does give us some other options.

**Evert Fernandez, Vice Chair**

Of the complaints that are received, how many are complaints about exceeding the noise ordinance, versus someone can hear the music and it's too loud for them? Is there any way, or do we know that information?

**Kari Svanstrom, Planning Director**

This is a really difficult one because of the ambient noise levels. If you remember the car wash, if you have a louder ambient noise then it's measured in a slightly different way. Our police department has not done that; that would require a professional to come in and do those measurements. I believe that's actually why the police department on most of these older permits was wise enough to put in a distance from the site from which it can't be heard. I know the HopMonk Tavern has a similar condition. That is an area we regularly have to address as well, because it's a little bit more measurable and understandable than a noise ordinance when there is more ambient noise from downtown. So I could ask the police department. I don't know if they've done noise measurements on this, but I do know that they've received a number of complaints.

**Evert Fernandez, Vice Chair**

I can certainly understand the neighbors' situation, and I would imagine that the sounds from the football game are probably louder than oftentimes the music there. I can hear the band from my house two miles away, but it's not necessarily exceeding the Noise Ordinance. I can empathize with the neighbors hearing the loud music, but is Mr. Vito exceeding the Noise Ordinance, or is it just simply noise that is loud and you can hear it, but it's not exceeding the Noise Ordinance? I can understand the neighbors wanting to know what hours and so forth, so that would be something that I would certainly want made clear that it's certain days and hours, so at least the neighbors can know that. My take is that I've been to the establishment and it is very community minded. There are families there, there are people enjoying themselves there, there is a whole petition full of people that enjoy it, but I know that at any given event or music you will find some people that just don't like it, don't want it, and we usually end up mitigating to those few, but you've got a lot more other people that do enjoy it and appreciate it. When you go there, it's a sense of community and it does draw you there. Oftentimes we've chosen to go there because of that atmosphere. It's downtown, and it's an establishment that I don't think is exceeding the Noise Ordinance most of the time. Eliminating the loader music in some way, which is part of the attraction to bring people in, also limits the people who are going to go there. If it's just one person up there with a guitar and very light music, maybe he's not going to get the people to go there. But it is living across the street from downtown, so there is going to be noise and activity, but it's not at 2:00AM or 11:00PM. I'd like to figure out a way to instigate certain hours, certain days, certain mitigations, whether it's to always have the stage turned a certain way or making sure it does not exceed certain decibels from the Noise Ordinance, but I think we also need to take into consideration the positives that it brings and the people that do enjoy it. I know it's not a popular thing to say with some of the neighbors who do not enjoy it, but do we stop the football game because some people would say it is disruptive? You're not going to make everyone happy, but there are certain things that are just going to be, it's just part of living in town. I don't know how we're going to make everybody happy on this. We have a responsibility to do our best, but we can't mitigate everything to please everyone and exclude a large portion of the population that also enjoy a community event.

**Deborah Burnes, Commissioner**

Kari, you said maybe you can hear it from your house, and also Vice Chair Fernandez said that's he's been there, and there was the public comment that from their house the decibels weren't any different than it was at the restaurant itself, so I'm wondering what is the

purpose of this? There's a difference between background music at a restaurant and a music venue that is having concerts. Is this light background music while people are eating, or is this a music venue, because if it's so loud that people can't hear their TV, how are people talking at the restaurant?

**Kathy Oetinger, Chair**

Are you suggesting that on Peacetown Wednesdays night in the summer, when there is loud music elsewhere, it might be okay to have the loud music, but all other times it shouldn't be loud?

**Deborah Burnes, Commissioner**

Yes, it sounds like Peacetown's use permit is for a music venue, and so that seems like the evening where it's a music venue. But Kari, for the restaurant do they have music venues or is it background music? Is there a difference between concerts as opposed to dining music? I'm not sure if I understand it correctly, but the amount of sound if you can't hear yourself that far away, could the diners really be having conversations? Has it become a concert venue, and does that make anything different with a use permit?

**Kari Svanstrom, Planning Director**

In terms of our code, if it's a music venue, no, that doesn't give it a different set of requirements in terms of what the City's noise criteria would be other than the downtown noise permit, which we discussed a little bit, because that is specifically for outdoor music in downtown and that would allow it two times a month to exceed the Noise Ordinance. So that was considered, and that came out of the General Plan, the community vitality and the other policies that are listed there regarding the balancing of noise between business and community vitality and the residential areas.

**Kathy Oetinger, Chair**

Did you say two times per week or per month?

**Kari Svanstrom, Planning Director**

It's two time per month for no more than three hours. It's on page 2. They do have some specific hours. It doesn't include the Wednesdays, but I think that's our code not recognizing Peacetown, a summer concert series kind of a thing.

**Kathy Oetinger, Chair**

It went to 9:00 o'clock on Saturday. Those are different hours completely. That's a music venue.

**Kari Svanstrom, Planning Director**

Yes, this is at downtown for a recurring event no more than twice a month.

**Linda Kelley, Commissioner**

This is a big issue. I've been dealing with putting conditions on music venues for a long time, including Aubergine. It had to not have its doors open, because the neighborhood was complaining. Had to do it for Jasper's, had to do it for the HopMonk before it was the HopMonk, and all of them had to comply with the 50 feet, and they were indoors as well, so the doors just couldn't be open towards the residential area. It seems that we're looking at making an exception that I think could set a precedent. I believe that the louder events that are there, even though enjoyable to the public, has to go by our ordinance. There was a past resident on Johnson, across from your business, who unfortunately ended up moving away because of all of the noise everywhere, and it wasn't fair and he shouldn't have had to move away. We have to look after our residents. We knew when The Barlow got put in there

that there were going to be issues, and the way that's oriented towards the neighborhood, that should have never happened. I've been apologized to, and the neighbors have been apologized to, but unfortunately it's already built. I'm fine with the acoustic music, maybe a little amplification, but the horns. I just don't think you can equate what The Barlow is doing and that you have to be louder to attract. To me that's not an adequate response. I feel like you think you're a little bit picked on and that the 50 feet is ridiculous, and I just don't know that I trust that you're really listening to what the neighbors are saying. They've complained up on Taft before, but yours is facing directly towards them, so I'm sorry, but I can't see that turning the amplifiers towards buildings is going to make any difference; the sound just moves all over the place. It's unfortunate, because I'm a very big music lover and I've been very sad since Aubergine was closed down, but you might need to think of other ways to increase your patronage. I think the space is too small and I don't know if you're going to be able to mitigate this. I don't feel any proof or trust, and when I hear that you can't control the musicians, well guess what? You're their boss for the time they're there, and that is not okay. I don't know what we can come up with, but so far I can't go with anything more than what the City staff has created in their Exhibit B.

**Kathy Oetinger, Chair**

I'm kind of in that place too, all the things Commissioner Kelley said. I feel like this is a restaurant, and restaurants cannot magically turn into music venues, although restaurants sometimes do have musicians who play it's usually quiet enough that I can hear anyone I'm dining with rather than it being a music venue for a concert. However, since Wednesday is Peacetown it does seem that the music could be a little louder or of a different type during those Peacetown hours. Even though you don't have a permit for that it really seems silly to try to say you can't make the music when the people next to you are making it. I don't know how to write that exception in, but I agree with you, it doesn't make any sense to say you have to be quieter than Peacetown. That said, I do like the idea of specifically limiting the number of days and the number of hours, and I think the three days a week, allowing you to do Wednesday when Peacetown is doing Wednesday, but Saturday and Sunday you can pick an afternoon or an evening on either day and not do both. That's what I think Item C is saying, except that I wouldn't at that same time discuss how many singers or instruments there are. If you just strike that out and look at the days of the week and the hours and specify what those are going to be, so that residents can plan. I would eliminate the requirement that instruments be acoustic, because they all are amplified, but it might be okay if they're played at a reasonable level during those specific hours. I don't know about not allowing drums, horns, and accordions, because again, if we do that during specific hours, that should be okay. It's a limited amount of time and the neighbors can accept that on that day, only during those hours, they aren't going to be able to enjoy their back yard. The other important element is Item D, which are the reasonable methods to attenuate the noise. I really believe that you must make an attempt to get the permit to agree to move the stage, straw bales, definitely turn the speakers, and reduce the sound of the speakers so that on your property they are no louder than a certain decibel level, and then I would be comfortable saying you can have music at your restaurant under those conditions. Again, I don't think the Saturday and Sunday should be as loud as Peacetown, because it's not a concert venue, it is a restaurant, and although people do like to come to music they also like to eat on other days and not have loud music. I think that's where I'm leaning. I don't know whether anyone else has support for those concepts. Staff might be able to answer that question. If any construction is needed to modify the sound at the stage level, if it needs to be moved or anything, we're saying here that they need to get permits or provide drawings, is that true, Kari? I would think if they were going to make modifications that the Planning Department should approve those modifications.



**Kari Svanstrom, Planning Director**

We don't actually have approved plans for this other than what was submitted, but yes, I would read this to mean that if you guys are requiring them to orient the stage in a different way, then they need to follow that.

**Kathy Oetinger, Chair**

And what kind of requirements should we have for the restaurant owner's responsibility to measure the decibels of his performers at the exterior area of his venue or across the street? Should that be something that he should take responsibility for? Because I don't want him to go to all this trouble and then have X number of complaints—that's another thing we need to talk about—and have this permit revoked. There ought to be some accountable way. Maybe it's coming back in a month after they're implemented to see if that makes a difference. I don't know how else to write that in. Require him to take readings at certain locations? During those Peacetown hours, what are you going to do? That concept of Wednesdays when Peacetown is in effect, that's a different situation. Even though he doesn't have a permit to have a Peacetown stage, we have to recognize that essentially he's competing with Peacetown and needs to make some noise.

**Kari Svanstrom, Planning Director**

That's a little difficult, because it is subject to the Noise Ordinance. This may be one where we have to try a few things that are easy and see if it works. You can get hay bales from the feed store pretty easily, and the stage is crates, so it's not an expensive thing to relocate to the other side.

**Kathy Oetinger, Chair**

If the sound is going up to this particular group of people on Taft Street, it seems like angling the speakers down or having some buffer on the speaker. Well, I know it will angle and bounce off another building. I'm on Fircrest, and I don't hear the high school in my front yard but I hear it in my back yard, because it bounces back and forth between the house and the garage, so I understand it's going to bounce all over the place and that's just a condition, but if it's only for these few hours, I think that's a different situation. I had a question about the X number of valid complaints. I don't know how we can do that. We have a certain number of complaints already. I don't know at what point those people will be satisfied. Usually if it's noise and it involves stress and the loss of enjoyment of one's yard, you can't compensate for that, unless maybe by specifically defining the hours, because it allows that person the opportunity to plan and choose when they want to be in their yard, or when they want to go away, or come on down and have some ribs and enjoy the music. Other than that, I don't know of any other way to not just end up shutting the business down, and I'm not happy with that.

**Evert Fernandez, Vice Chair**

We've talked about a couple of different things on here. I'm wondering if it would make sense to take some of these suggestions and modify the conditions as we did, for example, with the alcohol license a few weeks back, to allow the staff to meet with the applicant to see if there are things that we can agree on before it comes back. I'd be willing to meet with Mr. Vito and see if we can come up with some solutions to see if we can make this work. I would not feel comfortable making a decision tonight. I think there are too many other factors that we need to think about and come back with some different conditions and see what would work and what wouldn't. We want to give the applicant at least a chance to see what things can be done that he can agree to that might work. I don't know if he's prepared for that tonight, especially because we've been talking about a lot of different things and different angles, but that's my suggestion.

**Deborah Burnes, Commissioner**

I was going to basically say the exact same thing, except with the caveat that it was my understanding from a comment the applicant made in the beginning when we talked about those conditions that that would not work for him, the horns, the drums, so I was going to say in light of that can we put all this together and do the same thing? Have someone try to work with him to see if we can come back at a later meeting and come to an amicable, cohesive compromise. I wouldn't feel prepared to vote tonight. I'd like to give him a chance to come up with a compromise.

**Kari Svanstrom, Planning Director**

I do have some concerns with that, because I have been in communication with Mr. Vito for over a year and he hasn't implemented any tests at all. I think other than since the last time when John and I were outside it sounds like he may have turned the amps for some of the louder bands but not the quieter ones, and so I do have some concerns about our ability to work through that. We can do that, but I would want some more clear direction from the Commission.

**Deborah Burnes, Commissioner**

I think there's a bigger issue here too, which is the sense of responsibility. When these bands are playing there he is their boss, so a buy-in that he is comfortable letting them know what the parameters are for playing. Any venue has parameters to play there, so we need the buy-in, because I keep hearing that he can't tell them what to do. Knowing a lot of musicians, they want any opportunity to play, so if they are told the decibel can't be above a certain level, they know this is it. If your team members turn the volume up when you walk away, that makes me feel uncomfortable; it's like there's no leadership there. The fact is these are the established rules for this regulation, and they're abided by or he asks the band to stop playing. I don't think the neighbors need to be the police force. I also have an issue with being able to be taken this away by any complaint, because it's a very difficult situation, so if there are a set of guidelines like you're talking about, and one of them is the buy-in that he will manage his team, including the bands and the decibels, I think sound is an issue. I also don't have an issue with drums or other instruments if we're working on a decibel level. I don't know why it matters what it is if we can have the decibels.

**Kathy Oetinger, Chair**

With respect to the number of days and the hours, if he's only doing during those few hours he's going to be very specific about who is playing and what they're playing, because it's very limited. I don't know whether that will work for Mr. Vito, but I think that's important to know, because what's the point of doing this if that issue alone, three days a week and two hours each, and then whether he wants to pick a time, whether it's Saturday or Sunday, so that the property owners can know when to enjoy their back yards and when not to, if those kinds of things can't be resolved, then nothing else really matters.

**Deborah Burnes, Commissioner**

That's true, although can I interject one other thing. If it goes well with the three days a week, could we have a caveat that maybe he could add a day later on, like if the complaints aren't there and it's working out and the decibels are handled? Does that make sense, Chair Oetinger?

**Kathy Oetinger, Chair**

Yes, it does, when he comes back after a specified period of time we could consider more days.

**Kari Svanstrom, Planning Director**

This is maybe another option to that, so that understanding what the days and hours would be, and yes, maybe acoustic music without amplification, that very low background music, Mr. Vito did say there are times when he does have that and that's when he's not orienting the speakers away from the neighborhood, and so if those were done, that may be an option and may be workable.

**Kathy Oetinger, Chair**

Mr. Vito, would you respond to some of the ideas we've had?

**Larry Vito, Applicant**

I know there's the problem and I appreciate your compassionate, in depth look at this. I know how irritating music can be. The older I get, the less tolerant I am for music that I don't like or that's too loud, so I get it. Reducing the hours reduces our revenue, and I have the same bills to pay. I have to pay my rent, my bills, my vendors, and my staff every month, and so if you cut out the hours on the weekends for the lunchtime, then there goes a portion of our lunch business and vice-versa. I guess we need feedback from Steve about what's too loud and what isn't. When we have one or two people playing here, I don't know if that is audible out there. It sounds like the acoustics generated by the landform and the buildings is kind of an oddity that channels the sound up there and drives those people crazy when they're trying to enjoy their yards; I get that. I don't know that it's necessary to turn the speakers when we have just one or two people playing, I don't know if that's a problem, so I'd like to work with Steve and his neighbors and hear what is too loud. I'd also like to have Mr. Fernandez or anyone to come down. I have a sound meter and we could listen to what it is there and across the street, but I find that 65 dB is completely unrealistic, because like I said, I can stand on the sidewalk hear on Laguna Park Way and the cars going by are 65 dB.

**Kathy Oetinger, Chair**

If you were allowed three days a week and two hours each day, the one day of the week being Peacetown and the other two days being weekend afternoon or evening on either day, would it be okay then to have unamplified music at other times, like at the lunch hour on a Thursday where it is acoustic and it is very quiet ambient music?

**Larry Vito, Applicant**

Most music that is played here shouldn't be audible up on Taft Street. Most of it is acoustic, because they are acoustic instruments that are amplified, and it's one to three singers, so I don't know what's problematic or isn't. I'm sure that when a band like Doc Kraft gets here they can be heard up the street, but so can Peacetown.

**Evert Fernandez, Vice Chair**

And Chair Oetinger, you mentioned two hours on Wednesdays. I don't see why he should be limited. He should have at least the same amount of hours as Peacetown.

**Kathy Oetinger, Chair**

That's true. We would only need to separate those two ideas, if those are even workable. I'm trying to decide whether this is workable, and I keep hearing it's not because of the nature of music, and it's not a music venue.

**Larry Vito, Applicant**

There's also the drum circle on Sundays. They're loud, really loud, super loud, so how come they can make a lot of noise and we can't?

**Evert Fernandez, Vice Chair**

That's a fair question.

**Kari Svanstrom, Planning Director**

And as noted, the police talk to them quite often as well.

**Larry Vito, Applicant**

I haven't seen an officer down here this entire year, and the ones that did come last year said, "Wow, this is so good, I can't believe they don't like it."

**Kari Svanstrom, Planning Director**

Chair Oetinger, I communicated with our police chief to see if they had done decibel readings per Vice Chair Fernandez's question, and his response was that when officers have responded to the location the music would stop rather than decibel readings being noted, and I don't know why it stopped versus being turned down.

**Larry Vito, Applicant**

They show up and say somebody complained, and the music is playing while they're there. One time one officer did take a reading and he said, "Well, you're in compliance," and he went away.

**Kari Svanstrom, Planning Director**

Not to get too far down the road on decibels, but the general way that it's calculated is you take whatever the sound level is, let's call it 85 decibels at the source, so five feet away, or maybe it's actually 100 decibels at 10 feet away from someone sitting at a table listening to it; means that at 65 feet, which is across the street, it is still going to be 83 decibels. This is not accounting for any of the oddity of the topography at all. I do know there is some, because if the sound waves are actually going up and through, it's a little bit different, but across the street there is no hill, so this is looking at that original condition that Commissioner Kelley talked about of the 50 feet away rule and why. So you could do 95 decibels at the site.

**Larry Vito, Applicant**

We don't have 95 decibels. Peacetown rarely gets to 95 db when you're in the parking lot. Most of the time they're around 90 dB, and they've got bands and amplified and they're loud. Down here a loud band might be 80 dB in front of them, and then the sound mitigates as you move across and up the street. Generally the music that's played here is probably 75 dB, and a block away it's 65 dB, and so I don't know if it's a problem up there on Taft Street. I'd like to get some feedback on weeknights when John Truby (phonetic) shows up and sets up his amp and plays for an hour or two and then goes away.

**Evert Fernandez, Vice Chair**

I would like to offer to work with the applicant and the planning director. Let's see if we can work this out. Kari, I know that you've spoken with Mr. Vito several times and maybe there hasn't been the response you were looking for, but give me a chance to see if I can assist in this endeavor and save nine jobs, because it's not fair for them either to lose their job over this, and see if we can come up with something that Mr. Vito can agree to. It can't be sometimes turn the speakers and sometimes no; let's figure out something that happens all the time. I like the idea of also working with the neighbor to see if we can figure something out to make this work. We've got some of the ideas here, some possibilities, and maybe we don't come up with anything, maybe it's not workable, but I'd like to give it a chance and see if I can help.

Commissioner Burnes made a motion to allow Vice Chair Fernandez work with the applicant, planning director, and neighbors to resolve the music noise issues satisfactorily.

Chair Oetinger seconded the motion.

**Linda Kelley, Commissioner**

Are we continuing the application for a temporary use permit, or that's not part of this motion?

**Kari Svanstrom, Planning Director**

It would need to be continued, yes, because you're not making a decision tonight. I am going to check with our City Attorney quickly to make sure it's appropriate for a sitting Commissioner who is going to be voting on the item to interact in this way, and if nothing else, staff can interact with Vice Chair Fernandez. I'm just not sure if a commissioner inserting himself into the process is completely kosher, so I want to ask for some legal advice on that one, because the Commission would be asked to make a decision and he may be biased at that point, so I just want to make sure that's not the case.

**Evert Fernandez, Vice Chair**

I'm aware of that, and I'm sure there are certain parameters that I would have to abide by, but I think that's a good point for some guidance and direction. If it got to that point, I'd be willing to see what I can do and recuse yourself; I think it's that important. We could decide to continue it and then either I'll be involved in some manner, or somehow the planning director will speak to the applicant. But are we in agreement to continue so that we don't have to necessarily wait on the particulars of what I possibly can and cannot do?

**Kari Svanstrom, Planning Director**

You could continue the application. In that case I'd do it to a date certain.

**Evert Fernandez, Vice Chair**

I want to make sure that would work with Mr. Vito.

**Larry Vito, Applicant**

Oh yeah, absolutely.

**Kathy Oetinger, Chair**

So we could do that at this time then. Commissioner Burnes, are you interested in retracting your motion?

Commissioner Burnes retracted her previous motion.

**Deborah Burnes, Commissioner**

Can I then say can we put off until we have a chance for the planning director and the applicant to work together, or are we just tabling it? What would be helpful right now?

**Kari Svanstrom, Planning Director**

What would be helpful in terms of a motion would be to continue the application and direct staff to work with the applicant and the neighbors. I just got a response from our City Attorney. He says if I were giving the direction from the entire Commission to do it, it would be okay; it's basically an ad hoc committee in that case. Any action must await a subsequent meeting, which obviously we would be doing, so Commissioner Burnes, if you wanted to remake your original motion, it sounds like that is okay. It's an ad hoc committee of one, working with the staff, applicant, and neighbors.

Commissioner Burnes made a motion to allow Vice Chair Fernandez to work with the applicant, planning staff, and neighbors to resolve the music noise issues satisfactorily, and to continue the public hearing for Smokehouse Bar B Que to a date certain of August 23, 2022.

Chair Oetinger seconded the motion.

AYES: Chair Oetinger, Vice Chair Fernandez, and Commissioners Burnes and Kelley  
NOES: None  
ABSTAIN: None  
ABSENT: Commissioner Fritz

**Lyn Dillin**

While this permit is being considered, is the music allowed to continue to occur, and if so, what type and how often?

**Kathy Oetinger, Chair**

I don't know, are you suggesting that we ask Mr. Vito to be on really good behavior during this time?

**Larry Vito, Applicant**

I thought we had been on good behavior. I don't know, I haven't heard any complaints. Is the music loud up there on Taft Street these days?

**Lyn Dillin**

There was the matter of the horn band.

**Larry Vito, Applicant**

How long ago was that?

**Lyn Dillin**

The end of July.

**Linda Kelley, Commissioner**

Chair Oetinger, I'm uncomfortable with this going back and forth right now.

**Kari Svanstrom, Planning Director**

Yes, I think that's what the continuance of the motion was for. We'll be having this discussion.

**Kathy Oetinger, Chair**

Right, we're going to continue it, and I don't know what happens between now and then.

**Larry Vito, Applicant**

We don't have any large bands booked weekends for the foreseeable future.

**Kari Svanstrom, Planning Director**

It sounded like there was consensus on the Peacetown night.

**Larry Vito, Applicant**

And on Peacetown nights we've just had Ricky Ray playing blues and probably an electric guitar, but I don't know that we've been making a lot of noise down here lately. I can't ask Lyn. Well, Lyn, give me a call and tell me how it's been.

**Kathy Oetinger, Chair**

Legally what should we do, Kari?

**Kari Svanstrom, Planning Director**

Legally the original condition from the alcohol use permit stands, so they're allowed to have music as long as you can't hear it on the other side of Laguna Park Way. If the Commission wanted to allow, like the downtown noise permit allows the Peacetown evenings, then it would probably be helpful to have a motion.

Vice Chair Fernandez made a motion to allow the Smokehouse Bar B Que the same conditions in terms of music as the Peacetown concerts on the evenings when a Peacetown concert occurs.

Commissioner Burnes seconded the motion.

Chair Oetinger seconded the motion.

AYES: Chair Oetinger, Vice Chair Fernandez, and Commissioners Burnes and Kelley

NOES: None

ABSTAIN: None

ABSENT: Commissioner Fritz

**6. REGULAR AGENDA ITEMS:**

**A. Calder Creek Naturalization Project – Final Report/Presentation –**

Presentation by Jessica Hall, Switzer Fellow, on the naturalization of Calder Creek within Ives Park as well as concepts for downtown and east of Abbott Avenue. GHD will also be available to discuss the hydrology report aspects.

Director Svanstrom presented the staff report.

Chair Oetinger opened the public hearing.

Jessica Hall, Switzer Fellow, gave a presentation and was available for questions.

**Kari Svanstrom, Planning Director**

I'd like to introduce Jeremy Svehla. He has done the hydrology report. It's not included in your packet; staff is currently reviewing that. But I did want him to say a few things about it basically testing out what Jessica was doing and working in tandem to make sure that everything that we're doing is realistic.

Jeremy Svehla of GHD gave a presentation and was available for questions.

Chair Oetinger asked for Planning Commission questions of Mr. Svehla.

**Evert Fernandez, Vice Chair**

You had mentioned the sediments and the short-term solution for the flood relief. Is there a way to look at a cost—that you said is very expensive—that the City might have considered

had we not had this plan, to say we need to spend this money for this short-term relief, and instead apply that to the creek restoration and look at it as a longer-term solution and give one more positive way to look at it?

**Jeremy Svehla, GHD**

We would absolutely advocate and recommend that. Some grant funders are going to really look at multiple benefits of a project, so one might put an emphasis on floor reduction, and one might put an emphasis on habitat restoration. Where you can stack these benefits to get the greatest good for the community and for the environment is where a grant application is probably going to be the most successful. Some grant applications, particularly through FEMA—which you now have a Hazard Mitigation Grant plan that’s been approved and this project is in it—actually require that you demonstrate a flood reduction benefit that has to be quantified, and that the cost of the avoided flood damage is equal to or greater than the cost of the project. So there might be a strategy here to not necessarily do the maintenance right now and essentially recognize that the damage that’s occurring will actually help the City in ranking that application through FEMA and through Cal OES; that is just one consideration. Not to say that the flooding isn’t a concern; it does need to be addressed and we recognize that it is an inconvenience and there is damage associated with it, but the point here is that the cost to do that maintenance is pretty high, and wouldn’t those dollars be better spent on maybe a more longer-term fix? I think the City needs to consider that as they think about their strategy in applying for different funds. The way the plumbing of the system is set up right now you can really look at these potential phases independently of one another. Ives Park and the restoration there that’s planned, that could be a very discreet approach with certain grant funders; and because it doesn’t increase or decrease flooding downstream, that downstream reach could be looked at through maybe a different set of grant funders. The point is that there is an opportunity here to consider that and recognize that those dollars for maintenance might be better served for a permanent project.

**Evert Fernandez, Vice Chair**

That’s exactly what I was thinking.

**Kathy Oetinger, Chair**

The use of the boardwalk, are those generally considered to be real wood products or faux wood products, and are they anchored or supported underneath with concrete or something that holds up longer than wood?

**Jessica Hall, Switzer Fellow**

There is a range of options. It can be made with natural wood, fiberglass, steel, or aluminum. A lot of places do use steel graded material, which allows water to pass through if it’s raining, for example, and gives you a little bit of light through the decking material, which helps with habitat below the deck. In the case of what we’re showing, it’s a mix of boardwalks that are cantilevered off of floodwalls and boardwalks that are supported by piers or pilings. The specific detailing on that, including the materials, would come in the future phases.

**Kathy Oetinger, Chair**

Do you have experiences with urban parks like this one, because so much of the creek area will be trampled and kids will dig in the rocks? I know this is a regular maintenance problem, and we’ll probably need to have a group of volunteers who help restore and maintain the landscape, but if that becomes a problem is there any way to put in more hardscape in some areas where that is occurring?



**Jessica Hall, Switzer Fellow**

I don't know that you'd need to put in more hardscape. It may be good to have some areas fenced off temporarily while plants start to get established. A lot of urban park creek restoration projects have a combination of staked willows and cottonwoods. We're not looking at cottonwoods for this site, but we think willows and alders would be very strong candidates. We might plant some container plants, and we can put in a range of sizes, so some will come in larger and take longer to establish and grow, but being larger, people recognize them as trees. Then the seedlings, or the smaller one-gallon sizes or tree pot sized plant material, you put it in the ground and they root establish very quickly and they shoot right up, so the establishment period isn't necessarily very long. Willow is a flood plain plant; it takes a beating on the regular and comes back. Riley has experience on numerous urban park creek restorations in highly urbanized areas with greater population densities than Sebastopol. Riley, do you want to add any notes about what you've seen in the projects that you've worked on in those settings.

**Ann Riley, California Urban Stream Partnership**

Maintenance is always brought up as an issue by cities. I don't know if Kari mentioned that we're trying to help the City get some grant monies to get started. The California Urban Stream Partnership is donating its time to get a preliminary grant proposal in to the Coastal Conservancy. One of the things that we wrote into this proposal is that we would try to prepare an operations and maintenance manual for this creek, and Ives Park in particular, which would probably involve training volunteers, and training the City staff, for how to maintain something that's really different than what we have there now, so it's learning a different paradigm, but your City staff are certainly very capable of maintaining a different kind of a system. I think it will not be a difficult thing in this very enlightened environmental town to find volunteers, or schools or even the junior college to involve students in maintaining it.

**Kari Svanstrom, Planning Director**

We work closely with the Laguna Foundation; they do a lot of restoration and maintenance for us in the Laguna area. But also for like Tomodachi Park, where there are wetlands, our Public Works park staff is trained by Prinsky Chatham and biologists on an ongoing basis to make sure that they are maintaining things, as they should be. For instance, they don't mow the grass out there in certain areas, because they're wetlands and that's habitat. A lot of the things that are better environmentally are a lot less maintenance and may actually be easier, depending on how it's developed.

**Evert Fernandez, Vice Chair**

Not to mention that there would be less chain link fences to worry about painting or replacing.

**Kari Svanstrom, Planning Director**

Correct, and I'm working on the Libby Park one too.

**Evert Fernandez, Vice Chair**

This is all such great information. Is this going to be presented to Council, and how can we get more public involvement to see what's going on? We can try to get the public involved as much as possible, and we think we have them involved, and then at the end it's like hey, nobody told us, or why are you doing this or that? Maybe Riley and Jessica can give us some assistance on a process that works that gets people and stakeholders bought into it and moves things ahead.

**Jessica Hall, Switzer Fellow**

As we've been talking about our pre-proposal and what we want to apply for funds for in the next round, one of the things we would like to do is put together a real public outreach program that includes community design charrettes for these areas of the downtown reach in particular, as well as at Railroad Forest. This is just thought right now, we're not sure that this would work, but we love the idea of hosting a kind of invitational design charrette with your local Sebastopol design professionals and have them vision what could be done around a living creek through downtown. I think things like that would get people to put ideas out there, test them graphically, foster discussions, raise the profile of the creek, and excite people about what's possible. Alongside that we would like to do extensive outreach with the property owners to see what they're comfortable with.

**Kari Svanstrom, Planning Director**

Something has happened since the last time I talked to Jessica. I'll share my screen. These are actually three parcels—and this is in a parcel by itself, probably because it has an easement over most of it, I believe, because of the sewer and the creek—and all of them are for sale right now. I don't know if they would consider selling the one parcel separately, but I have been in discussions with a couple of housing developers interested in the site, so that's no longer necessarily a completely committed site. Could the City buy that parcel? Certainly that's something we can investigate and know what's going on by the time we go to Council, because that would go a long way to having control of that parcel.

**Kathy Oetinger, Chair**

Kari, I know they've designed the creek through Ives Park, the natural area, but the other areas, like the rose garden where the picnic tables are, is that something that also goes through the public process for the new master plan that we've talked about where we can look closer at those areas?

**Kari Svanstrom, Planning Director**

Yes, we will need to do that, and I think we scheduled it in our workplan update that we just did. I think the push was to get this grant for the further development, because if we get this grant from the Coastal Conservancy my understanding is that will kind of get us to the 65% construction stuff for the creek and the park, which basically is considered shovel ready for other grants, and so other grants where you have to have a certain amount of work done we can't apply for. This is one of the few that does do that planning stuff and the engineering side of it, and to keep this ball rolling what we have in the budget for this year is to focus on that, and then while that's happening, because these types of things do take time, the next thing would be all those other elements in the park that are kind of illustrative, they aren't set in stone. What parts of the ball fields, and we know the sculpture area is going to be somewhat over in that area where it is now, since it just opened, but those concrete bases are moveable or replaceable pretty easily if they need to shift. The other elements that need to move because of the creek, we need to work out the revised master plan, and so that would be after this big push on let's try to make the creek naturalization a reality.

Chair Oetinger asked for further Commission questions of staff or the consultants. Seeing none, she opened public comment. Seeing none, she closed public comment.

**Kari Svanstrom, Planning Director**

I will bring up what we're asking you to recommend, because it's a four-point piece. You've received the report, so this would be a motion to recommend that Council approve Phase 1, which is the Ives Park alignment and concept; give feedback on the future phase concepts; approve a service agreement for us to work with California Urban Stream Partnership

(CUSP), and authorize CUSP to submit the grant proposal to the Coastal Conservancy on behalf of the City.

Vice Chair Fernandez made a motion to recommend City Council approve Phase 1, Ives Park alignment and concept; 2) provide feedback on Phase 2 (downtown and east of downtown concepts); 3) approve a service agreement to work with the California Urban Stream Partnership (CUSP) to continue implementation work on Calder Creek Naturalization project, including potential grant applications; and 4) authorize CUSP to submit the grant proposal to the Coastal Conservancy on behalf of the City.

Chair Oetinger seconded the motion.

**Evert Fernandez, Vice Chair**

Kari, any idea when this would go to Council?

**Kari Svanstrom, Planning Director**

I think we're looking at the first meeting in September, which is the earliest, or the subsequent meeting, so it will be soon.

Director Svanstrom noted the Commissioner Burnes had left the meeting for personal reasons, however, the Commission maintained a quorum.

AYES: Chair Oetinger, Vice Chair Fernandez, and Commissioner Kelley

NOES: None

ABSTAIN: None

ABSENT: Commissioner Burnes, Commissioner Fritz

**7. SUBCOMMITTEE UPDATES**

**Ives Park Subcommittee, Chair Oetinger**

Vice Chair Fernandez and I would like the entire Planning Commission and staff to visit other parks in town besides Ives Park and consider maintenance issues and other concerns. Is it also part of the workplan where we're also looking at the master maintenance? Is that something we should schedule with that item on the workplan?

**Kari Svanstrom**

I believe there was something on the workplan that talked about doing an actual site visit to at least one of the parks. And the other committees do this once in a while as well. It's a City location, so there's no problem with that, we can post it as open to the public, and just don't record the meeting.

**Evert Fernandez, Vice Chair**

And we would have a schedule to visit the different areas, right?

**Kari Svanstrom, Planning Director**

Maybe it's something I can work out with both of you as the Parks Subcommittee in an offline meeting just to figure out when that would schedule out. It's nice to do that in the summer, and right now I'm looking at our schedule and it looks like it's packed through September.

**Kathy Oetinger, Chair**

We should not do it in isolation with something else that is related to that, so they work together better.

**Kari Svanstrom, Planning Director**

There are a couple of possibilities, but yes, that definitely makes sense if you're looking at another park to talk about it in total. Or maybe it's one or two parks; logistically you can figure that out.

**Kathy Oetinger, Chair**

Either focus on the ones that need it the most, or pick two here and two there because they're close together.

**8. PLANNING DIRECTOR'S REPORT**

Director Svanstrom and Associate Planner John provided updates.

The Commission asked questions of Director Svanstrom.

**9. ADJOURNMENT:** Chair Oetinger adjourned the meeting at 9:44 p.m. The next regularly scheduled Planning Commission meeting will take place on Wednesday, August 23, 2022 at 6:00 p.m.