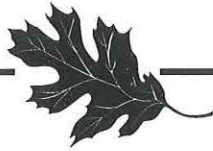


OAKLEY

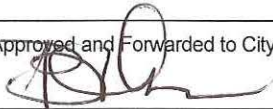


CALIFORNIA

Agenda Date: 04/26/2016
Agenda Item: 4.2

STAFF REPORT

Date: April 26, 2016
To: Bryan Montgomery, City Manager
From: Kenneth W. Strelo, Senior Planner

Approved and Forwarded to City Council:

Bryan Montgomery, City Manager

SUBJECT: Daub 4 Kidz Bingo Hall (CUP 01-16) – Recommendation of Denial

Summary and Background

This is a request by Francine McMahon (“Applicant”) for approval of a Conditional Use Permit to operate a non-profit Bingo Hall (Assembly, Public) within a 6,000 square foot space located at 2105-2107 Main Street (former Diablo Water District Offices within the Cypress Square Shopping Center) (“Project”). The applicant proposes to operate up to four sessions a week, including Tuesday and Friday nights, and Saturday and Sunday afternoons. Up to 100 players, 12 volunteers, and 1 security guard may be present during any given sessions. The site is zoned C (General Commercial) District.

Staff recommends the City Council adopt a resolution denying the proposed project.

General Plan and Zoning

- General Plan Land Use Designation: *Commercial (CO)*
- Zoning District: C (General Commercial) District

Each land use designation in the Oakley 2020 General Plan (General Plan) includes one or more compatible zoning districts. In order to process a discretionary entitlement on any given site, the zoning district must be compatible with the overlying General Plan designation. Per Table 2-6 of the Oakley 2020 General Plan (General Plan/Zoning Compatibility Matrix), the C District is found to be compatible with the (CO) General Plan land use designation.

In regards to zoning compliance, the bingo hall use has been determined similar to that of the conditionally permitted assembly use in the C District; therefore, requiring approval of a Conditional Use Permit, subject to Oakley Municipal Code (“OMC”) section 9.1.1602 (Variance and Conditional Use Permits). In addition to any land use requirements, OMC Chapter 4.8 (Gambling) sets forth additional requirements for establishing a bingo hall use.

Application and Processing History

The application for a conditional use permit to operate a bingo hall at 2105-2107 Main Street was submitted to the City Planning Department on January 13, 2016. In early November of 2015 (prior to submittal of the application), a real estate agent had contacted the Planning Department with a general inquiry regarding the permitting of bingo halls within the City of Oakley. Staff responded to the agent with a link to OMC Chapter 4.8, which regulates bingo halls through a permit process with the Police Department, as well as information that a bingo hall would require discretionary approval of a conditional use permit ("CUP") in order to operate in the City's Commercial Districts. Through further communication with the agent, Staff learned the possible location was that of this request, confirmed a CUP would be required, and sent additional application submittal information to the agent. Since no application had been filed, no additional analysis was conducted at that time.

After the application was received on January 13, 2016, the Planning Department routed the project information to other departments and outside agencies for comments and/or conditions of approval. Staff also held internal meetings to discuss the application. Once Staff reached a consensus of recommending denial (see Analysis section for more background) the applicant was notified of Staff's direction by phone on February 17, 2016, and again by email on February 19, 2016. In the follow up email on February 19, the applicant was given the reasons Staff would recommend denial as well as options to consider at that time. The options included, 1) continue processing the application with an understanding of Staff's recommendation for denial, or 2) withdraw the application and request a refund of the remaining deposit. It was stated to the applicant that they were being notified early on so as to give them options prior to additional charges to the project account. Staff clarified it would not continue processing the application based on a recommendation for denial and charging time to the project deposit without first receiving consent from the applicant. On March 3, 2016, the applicant notified Staff to continue processing the application.

Project Site and Surrounding Uses

The project site is 2105-2107 Main Street, which is made up of two tenant spaces within the existing Cypress Square Shopping Center, which is anchored by Raley's Supermarket. The tenant spaces are the former location of the Diablo Water District offices, and are located on the far southern portion of the shopping center that faces Carol Lane. Adjacent and nearby tenants sharing the same side of the shopping center main building (in relation to Raley's) include Mountain Mike's Pizza, Providence Bar and Grill, and Step 2 This Dance.

Other nearby uses include: Les Schwab Tire Center and the relocated Diablo Water District offices to the south across Carol Lane; Bank of the West, Allstate Insurance, and Autumn Lake Dental sharing the center's building pad in the southeast corner at Main Street and Carol Lane; Round Table Pizza and Starbucks across Main Street to

the east; and affordable senior and family apartments to the west at the end of Carol Lane.

Proposed Use

A background of the organization and a description of the proposed use have been submitted by the applicant and are attached for further reference. In summary, the proposed use consists of a non-profit bingo hall of up to 100 participants, 10 volunteers, and a security guard. The use is proposed to operate up to four sessions a week. Specific hours of operation are requested as Tuesday and Friday from 4:00 P.M. to 11:30 P.M. and Saturday and Sunday from 11:00 A.M. to 6:30 P.M. In addition to the regular standing sessions, there would be 3-4 additional special events throughout the year, typically coinciding with holidays.

Analysis for Recommendation of Denial

It is important to note that the recommendation of denial is only related to the proposed use at the specifically proposed location. Based on the applicant's project description, it is apparent Daub 4 Kidz, Inc. has a positive relationship with other local organizations and that the results of the operation may have direct or indirect positive benefits to other aspects of the community. However, conditional use permits are tied to the land, rather than a specific operator. Just as Staff may not be biased against a specific applicant, Staff must also not be biased for a specific applicant. To analyze this request fairly, Staff must base analysis on the conditional use permit on its own merits and in conjunction to the applicable required findings.

Conditional Use Permit Defined

A conditional use permit is defined as a "[p]ermit allowing a use under specified conditions that will assure the use will not be detrimental to the public health, safety, and welfare, and will not impair the integrity and character of the zoned district."¹

Required Findings

In order to approve a conditional use permit, the [City Council] must make all of the following findings ([OMC Section 9.1.1602\(f\)](#)):

1. That the site for the proposed use is adequate in size and shape to accommodate the use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this title to adapt the use with land and uses in the neighborhood;

¹ Cecily Talbert Barclay and Matthew S. Gray. *Curtin's California Land Use & Planning Law*. (Solano Press, 34th ed. 2014)

2. That the site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use;
3. The proposed use will be arranged, designed, constructed, operated and maintained so as to be compatible with the intended character of the area and shall not change the essential character of the area from that intended by the general plan and the applicable zoning ordinances;
4. That the proposed use provides for the continued growth and orderly development of the community and is consistent with the various elements and objectives of the general plan;
5. That the proposed use, including any conditions attached thereto, will be established in compliance with the applicable provisions of the California Environmental Quality Act.

(CO) Commercial General Plan Land Use Designation Description

Per the Oakley 2020 General Plan, the description for CO is as follows:

“This designation allows for a broad range of commercial uses typically found adjacent to residential neighborhoods, downtowns, and freeways. The particular form of commercial zoning for different areas of the City will depend, among other factors, on the characteristics of surrounding land uses. General types of commercial uses include retail and service facilities, and limited office uses. Through sensitive design, commercial uses can be located near single-family residences with minimal disruption or impact. Typical uses will vary widely in size and purpose and include large-scale retail, regional-serving retail, grocery and convenience stores, salons, professional offices, restaurants, drug stores, dry cleaners, post office facilities, banks, and other uses of similar character and impacts.

C (General Commercial) District Purpose and Intent

The purpose and intent of the C District ([OMC Section 9.1.506\(a\)](#)) is:

“...to create and maintain major commercial centers accommodating a broad range of commercial uses (e.g., office, retail, and personal services) of community-wide or regional significance typically found adjacent to or along major travel corridors, such as Main Street, O’Hara Avenue, Laurel Avenue and Empire Avenue. Typical uses will vary widely in size and purpose and include large-scale retail, regional-serving retail, performance of services, including repair facilities, offices, small wholesale stores or distributors, limited processing and packaging, the manufacture or treatment of goods from raw materials, large-scale grocery and convenience stores, professional offices, restaurants, laundry facilities, and other uses of similar character and impacts.”

Recommendation of Denial Summary

When analyzing the proposal in relation to the required findings, consensus was reached by the City Manager, Planning Manager and Senior Planner to recommend denial of this request for a conditional use permit based on inability to make Required Findings 3 and 4 from the list above. Additional discussions on those reasons, as well as brief discussions on Findings 1, 2 and 5 follow.

In regards to Required Findings 1 and 2, the use is proposed in an existing, fully developed shopping center. Analysis on the lot size and shape, and yards, fences, etc. is usually reserved for single use lots or new construction. Had this use been recommended for approval, Staff believes there would be consistency with Findings 1 and 2, except additional analysis on off-street parking would need to be completed.

In regards to Required Findings 3 and 4, a) the proposed use would not be operated so as to be compatible with the intended character of the area and would change the essential character of the area from that intended by the general plan (CO designation) and applicable General Commercial (C) District, and b) the proposed use would not provide for the continued growth and orderly development of the community and is not consistent with the various elements and objectives of the general plan in that:

- The purpose and intent of the C District is clearly to accommodate office, retail and personal services. Operation of a bingo hall in the C District does not fully comply with the purpose and intent of the C District, and it is even less compliant when occupying tenant spaces within a shopping center designed for retail, office and service uses (i.e. grocery, restaurant, dance, etc.).
- A bingo hall is not an ideal use in this specific location and not compatible with the businesses that are located within and expected to locate within this retail shopping center. Shopping centers are best reserved for retail, office, and food oriented businesses, which operate 5-7 days a week, provide part-time and full-time employment opportunities, and directly provide goods and services to the community.
- A bingo hall could be a good fit in other locations in the City, such as an assembly building that can lease space for the 3-4 times a week and couple of hours the bingo hall would operate. There are other non-shopping center locations within the C District where a bingo hall may be more compatible.

In regards to Required Finding 5, project recommended for denial are exempt from further analysis under the California Environmental Quality Act. Since this is a recommendation for denial, making a finding of consistency with this required finding is not applicable.

Daub 4 Kidz Bingo Hall (CUP 01-16)
April 26, 2016

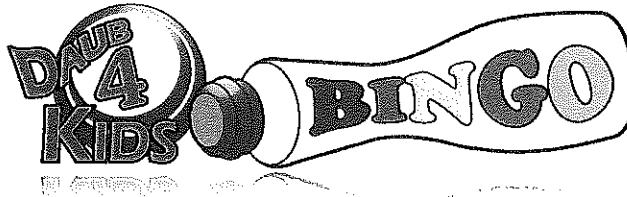
When applying the above discussion and analysis it is apparent that all of the required findings cannot be made to approve the conditional use permit to operate a bingo hall at 2105-2107 Main Street.

Recommendation

Staff recommends the City Council adopt the proposed resolution denying the request for a Conditional Use Permit to operate a bingo hall located at 2105-2107 Main Street (CUP 01-16).

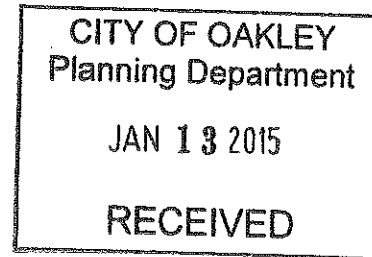
Attachments

1. Applicant's Project Description and Company Background
2. Public Hearing Notice
3. Proposed Resolution for Denial



Daub4KidsBingo.com

January 6, 2016



City of Oakley
Planning and City Council Members
Oakley, CA 94561

Re: Conditional Use Permit - 2105 & 2107 Main Street, Oakley Cypress Square Shopping Center (former water department).

Dear Planning and City Council Members:

Daub 4 Kidz Inc. is a newly formed non-profit organization formed solely for the purpose of helping the children in our local community by donating to the local schools and community sports programs. We are a registered 501(C)(3) charity organization, registered with the State of California, Department of Justice and the Internal Revenue. Our Tax Id #47-1599528. We are compliant with the California Bingo Regulations 326.5.

Our organization was founded in August of 2014. As the President, I have been involved in charitable, non profit organizations since 1999, including Good Shepard, St. Peter Martyr School, Terrapins Swim Team, Love 2 Dance and most recently resigned from the East County Hot Shots, to open my own non profit organization. We have been their fiscal sponsor and donated large sums of money, we felt our time and efforts could be utilized more efficiently reaching out to more organizations than be exclusive to one. We now can reach out to our local schools and local sports programs.

Our goal is to reach out to more children, schools and sports programs by providing the additional assistance and funds needed. We will help pay for new uniforms, travel, equipment, field repairs, hardship tuitions, scholarships, indoor training facilities that the kids can go to practice and improve there skills. We are very proud of all our previous accomplishments to date and would love to make our new home in Oakley, CA.

Every year in October, we kick off our canned food drive, every player comes in with a canned food item and receives \$ 5.00 off there buy in for bingo, to date all canned food items have gone to Shelter Inc. in Bay Point, CA. In November and December each year we do our " Toys for Tots ", again each player brings in a toy, receives a discount on there buy in. If no toy is brought in, a donation goes into the kitty that is used to

purchase bikes and helmets for the less fortunate children in our community. In Mid December, we take the toys and bikes to the local "Toys for Tots" location to be distributed.

We have worked together with Sam Billeci, President at the Flor-Do Oakley Bingo Hall in Oakley, Ca. We have a verbal agreement in place not to operate on each others nights. Flor- Do Oakley Bingo operates on Monday and Thursday evenings. Should you have any questions, please feel free to contact Sam at 916-801-2546, he fully supports our operations and can speak on behalf of our organization.

Our request is to have 4 sessions a week of Bingo. Our preference is to operate Tuesday and Friday Nights and Saturday and Sunday afternoons. During our evening sessions, doors open at 4:00 p.m., with bingo beginning at 6:30 p.m., and ending between 10:30 p.m and 11:30 p.m. For our afternoon sessions, doors open at 11:00 a.m, bingo begins at 1:00 p.m. and ending between 5:30 and 6:30 p.m. Based on the attendance we receive at the new location, we might change the afternoon session to Saturday and Sunday evenings. This to be determined at a later time. We typically run special events 3-4 times per year, New Years Eve, New Years Day, Presidents Day, and 4th of July.

Our use is for regular bingo sessions and compliant with the California Bingo Regulations section 326.5. On any given session, our attendance ranges from 50-100 players. Many have been our regular players for years.

We are staffed with 10-12 volunteers, including myself, our Board of Directors and Members. We have 1 paid security guard on the premises at all times during bingo.

We truly believe that we are a perfect fit at this location, our customers will use the local shopping center for food, grocery shopping, we will use the local restaurants for our special events that will generate additional money to the City of Oakley. We hope to have a fair opportunity to have our permit request reviewed and approved by the City of Oakley Planning and Council members. We would love to begin donating to the local Oakley schools and sports programs helping to keep kids off the streets and live there dreams.

We look forward to making this a wonderful place for our bingo players to come and enjoy come an afternoon or evening of fun and in a safe environment.

We would be happy to answer any questions you may have regarding our request and would be happy to have you visit this location and discuss our operations.

Please do not hesitate to contact me via e-mail at francinemcmahon53@aol.com or (925) 726-6211.

Sincerely,

A handwritten signature in black ink that reads "Francine McMahon". The signature is written in a cursive style with a long horizontal line extending to the right.

Francine McMahon
President
Daub 4 Kidz, Inc.



City of Oakley
3231 Main Street
Oakley, CA 94561
www.oakleyinfo.com

NOTICE OF PUBLIC HEARING

Notice is hereby given that on **April 26, 2016** at 6:30 p.m., or as soon thereafter as the matter may be heard, the City Council of the City of Oakley will hold a Public Hearing at the Council Chambers located at 3231 Main Street, Oakley, CA 94561 for the purposes of considering an application for a **Conditional Use Permit**.

Project Name: Daub 4 Kidz Bingo Hall (CUP 01-16).

Project Location: 2105-2107 Main Street (Cypress Square Shopping Center) APN 037-110-026.

Applicant: Francine McMahon, 1841 Tioga Pass Way, Antioch, CA 94531.

Request: This is a public hearing on a request for approval of a Conditional Use Permit to operate a non-profit Bingo Hall (Assembly, Public) within a 6,000 square foot space located at 2105-2107 Main Street (former Diablo Water District Offices within the Cypress Square Shopping Center). The applicant proposes to operate up to four sessions a week, including Tuesday and Friday nights, and Saturday and Sunday afternoons. Up to 100 players, 12 volunteers, and 1 security guard may be present during any given sessions. The site is zoned C (General Commercial) District.

The Staff Report and its attachments will be available for public review, on or after April 22, 2016 at City Hall, 3231 Main Street, Oakley, CA 94561 or on the City's website www.oakleyinfo.com.

Interested persons are invited to submit written comments prior to and may testify at the public hearing. **Written comments may be submitted to Kenneth W. Strelo, Senior Planner at the City of Oakley, 3231 Main Street, Oakley, CA 94561 or by email to strelo@ci.oakley.ca.us.**

NOTICE IS ALSO GIVEN pursuant to Government Code Section 65009(b) that, if this matter is subsequently challenged in Court by you or others, you may be limited to raising only those issues you or someone else has raised at a Public Hearing described in this notice or in written correspondence delivered to the City of Oakley City Clerk at, or prior to, the Public Hearing.

RESOLUTION NO. XX-16

A RESOLUTION OF THE CITY OF OAKLEY CITY COUNCIL MAKING FINDINGS AND DENYING A CONDITIONAL USE PERMIT (CUP 01-16) TO OPERATE A BINGO HALL AT 2105-2107 MAIN STREET FOR THE PROJECT KNOWN AS "DAUB 4 KIDZ BINGO HALL" APN 037-110-026

WHEREAS, on January 13, 2016, Francine McMahon of Daub 4 Kidz, Inc. ("Applicant") submitted an application requesting approval of a Conditional Use Permit to operate a non-profit Bingo Hall (Assembly, Public) within a 6,000 square foot space located at 2105-2107 Main Street (former Diablo Water District Offices within the Cypress Square Shopping Center) ("Project"). The applicant proposes to operate up to four sessions a week, including Tuesday and Friday nights, and Saturday and Sunday afternoons. Up to 100 players, 12 volunteers, and 1 security guard may be present during any given sessions ("Project"); and

WHEREAS, on February 12, 2016, the project application was deemed complete per Government Code section 65920 et. seq; and

WHEREAS, on February 17 and 19, 2016, the applicant was notified that the Staff recommendation to the City Council would be for denial of the proposed conditional use permit; and

WHEREAS, on March 3, 2016, with knowledge of Staff's recommendation, the applicant notified Staff to continue processing the application and take the project to public hearing; and

WHEREAS, the project is designated as *Commercial* in the Oakley 2020 General Plan, and zoned C (General Commercial) District on the City of Oakley Zoning Map; and

WHEREAS, this project is from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15270 (Projects Which Are Disapproved); and

WHEREAS, on April 15, 2016, the Notice of Public Hearing for the Project was duly noticed by being posted at Oakley City Hall located at 3231 Main Street, outside the gym at Delta Vista Middle School located at 4901 Frank Hengel Way, outside the library at Freedom High School located at 1050 Neroly Road, and at the project site. The notice was also mailed out to all owners of property within a 500-foot radius of the subject property's boundaries, to parties requesting such notice, and to outside agencies; and

WHEREAS, on April 26, 2016, the City Council opened the public hearing at which it received a report from City Staff, oral and written testimony from the public, and deliberated on the project. At the conclusion of its deliberations, the City Council took a vote and adopted this resolution to deny the project, as revised by the City Council during its deliberations; and

WHEREAS, if any term, provision, or portion of these Findings or the application of these Findings to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of these Findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City; and

WHEREAS, these Findings are based upon the City's General Plan, the City's Zoning Ordinance, and the information submitted to the City Council at its April 26, 2016 meeting, both written and oral, including oral information provided by the applicant, as reflected in the minutes of such meetings, together with the documents contained in the file for the project (hereinafter the "Record"); and

NOW, THEREFORE, BE IT RESOLVED THAT, on the basis of the above findings of fact and the entire Record, the City Council makes the following additional findings in support of the denial:

- A. In regards to the application requesting approval of a Conditional Use Permit (CUP 01-16) to operate a non-profit Bingo Hall (Assembly, Public) within a 6,000 square foot space located at 2105-2107 Main Street (APN 037-110-026):
 1. The proposed use would not be operated so as to be compatible with the intended character of the area and would change the essential character of the area from that intended by the general plan (CO designation) and applicable General Commercial (C) District, and b) the proposed use would not provide for the continued growth and orderly development of the community and is not consistent with the various elements and objectives of the general plan in that:
 - a. The purpose and intent of the C District is clearly to accommodate office, retail and personal services. Operation of a bingo hall in the C District does not fully comply with the purpose and intent of the C District, and it is even less compliant when occupying tenant spaces within a shopping center designed for retail, office and service uses (i.e. grocery, restaurant, dance, etc.);
 - b. A bingo hall is not an ideal use in this specific location and not compatible with the businesses that are located within and expected to locate within this retail shopping center. Shopping centers are best reserved for retail, office, and food oriented businesses, which operate 5-7 days a week, provide part-time and

full-time employment opportunities, and directly provide goods and services to the community; and

- c. A bingo hall could be a good fit in other locations in the City, such as an assembly building that can lease space for the 3-4 times a week and couple of hours the bingo hall would operate. There are other non-shopping center locations within the C District where a bingo hall may be more compatible.

BE IT FURTHER RESOLVED THAT, on the basis of the above Findings and the Record, the City Council denies of the Applicant's request for a **Conditional Use Permit (CUP 01-16)**.

- A. A renewed application after denial is subject to the time limits and standards contained in Oakley Municipal Code Section 2.4.014(b).

PASSED AND ADOPTED by the City Council of the City of Oakley at a meeting held on the 26th day of April, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

APPROVED:

Kevin Romick, Mayor

Date

ATTEST:

Libby Vreonis, City Clerk

Date