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UNAPPROVED DRAFT MINUTES

PLANNING COMMISSION
CITY OF SEBASTOPOL
MINUTES OF July 12, 2022

PLANNING COMMISSION:

The notice of the meeting was posted on July 7, 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, and Commissioners Burnes, Fritz and Kelley
Absent:	Vice Chair Fernandez (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. CONTINUED AGENDA ITEMS:

- A. Peacetown Temporary Use Permit Review** – A continued public hearing regarding the Peacetown Concert Series Temporary Use Permit to permit music stages at the parking lots of The Cooked Goat (120 Morris Street #120) and Foundry/Woodfour Building (6780 Depot Street #160) and the Community Market south lawn (6762 Sebastopol Avenue #100) from June to September of 2022.

Associate Planner Jay presented the staff report.

The Commission had no questions for staff.

The applicant did not give a presentation.

Chair Oetinger asked for Planning Commission comments.

Paul Fritz, Commissioner

It sounds like things have been going well, and the Rialto Cinema has not had any complaints. We got the photos and email from Jennifer at The Barlow today and it looks like

there has been parking available. Regarding her request for modification of the conditions, it sounds like they had a mix of one and two parking guards and it sounds like it has been working with one or two, so I would be okay with going to one. I could also appreciate the issue of asking a private security company to wear logos or materials for some other event, so I would be okay with making the modifications as she requested. I would be inclined to allow this permit to continue for the rest of the summer as requested with those modifications.

Chair Oetinger opened public comment.

Jennifer, The Barlow

I wanted to reiterate from what I sent in an email and let you, and anybody from the public that has an opinion on it, that we took this very seriously. I continuously monitored the lot, and I think the pictures are more telling than my words, but I really appreciate the consideration to get down to one guard. I've talked to the guards when they're there, and they have a good vantage point between the two entrances and it seems to be working really well. The other big concern about having the Peacetown merchandise just didn't feel right, nor could the private security company wear those shirts, so I wanted to make sure I had that protected. Also, I feel like somebody of authority should be wearing a different type of uniform and not branded to the event that's happening. I really appreciate your consideration and I'm happy to answer any questions. Thank you.

Hearing nothing further, Chair Oetinger closed public comment.

The Commission discussed the application as follows:

Linda Kelley, Commissioner

Maybe I can ask Jennifer real quick, how is the parking over at the overflow parking at the old gravel facility?

Jennifer, The Barlow

That's been going very, very well. We've had no issues with that parking lot. It's being utilized to its capacity, so it's definitely needed and we're very happy to have it. Guests appreciate the extra parking. It's really helpful and it alleviates any stress off any lots that shouldn't be parked in, so yes, I'd say it's working really well.

Linda Kelley, Commissioner

That's very good to hear. I'm just going to ask a little bit about the location over by Community Market, the south lawn. I'm hoping that you won't be doing any outdoor burning. We have a ban in the City, unless there's food involved. I know it has a nice, very efficient smokestack, but there are still people who are very sensitive, and during fire season it's very distressing to smell smoke, so just a heads up reminder. That's all my questions. My comments, I agree with Commissioner Fritz and I'm glad it's going well.

Deborah Burnes, Commissioner

I don't have any comments. I think it's going well.

Kathy Oetinger, Chair

I totally support the guards wearing their uniforms, and the photos do show that it is working. I'll just make a comment that I drive on Morris Street right at that time on Wednesday as Peacetown is starting up, usually around almost 5:00 o'clock, and there are a lot of pedestrians crossing the street in a lot of places, so I think it would be sensible to make even a makeshift crosswalk for people coming immediately out of the parking lot in

the future. I know everyone is going slowly, but that's not always the case on Morris Street, so just something to keep in mind.

Paul Fritz, Commissioner

I had a question about Condition #8, which talks about the continuation of the public hearing to today and modifying the conditions at that time. I'm wondering if we need to modify that condition tonight or if it's fine to just leave that in there as it is? Now that we're making modifications, it sounds like Item #4.

Kari Svanstrom, Planning Director

I can answer that from staff's perspective when appropriate, Chair Oetinger.

Kathy Oetinger, Chair

Okay. I see Jim Corbett has raised his hand.

Jim Corbett, The Barlow, Applicant

Everything has been going pretty smoothly. Jennifer has been really fantastic about keeping on top of it. I put out a newsletter every week describing what's happening in Peacetown, and I started including the Rialto Cinema and encouraging people to go to the movies after Peacetown. Typically the Rialto starts at 7:30 or so, but I have a little ad in my newsletter for people to click on. We really want to be good neighbors, and we want them to be successful as well as the other merchants in Peacetown, so I will continue to do that and continue to go to the movies at the Rialto. I think it's a great place and it's a great thing for our town to have a really wonderful movie theater like that, so we want it to be successful.

Kathy Oetinger, Chair

Thank you, Jim. I'm sure we all do.

Paul Fritz, Commissioner

Can I get Kari to respond to my question?

Kari Svanstrom, Planning Director

From a legal perspective you are actually fulfilling that condition of approval this evening, and we can certainly note in the record and we will revise the conditions of approval based on any modifications the Commission may have tonight, so there's no need to remove Item #8 unless you wanted to continue it additionally, but that is just fulfilling that condition.

Paul Fritz, Commissioner

In that case, I would like to make a motion. Is this the extension of the use permit or just a new use temporary use permit?

Kari Svanstrom, Planning Director

If you were changing some of the conditions, it would be to amend the use permit as follows.

Commissioner Fritz made a motion to amend the use permit to revise Condition #4 to eliminate a minimum of two parking guards and provide one parking guard, and also remove the last sentence regarding the security branded as a Peacetown concert series.

Commissioner Burnes seconded the motion.

AYES: Chair Oetinger, and Commissioners Burnes, Fritz, and Kelley.

NOES: None

ABSTAIN: None
ABSENT: Vice Chair Fernandez.

Deborah Burnes, Commissioner

I wanted to add that I echo what Chair Oetinger said about Morris Street. I'm on Morris Street and it is very dangerous, so if it's something we can put on an agenda in the future to look at having some type of crosswalk situation there, that would be fantastic.

Kari Svanstrom, Planning Director

One note, since it's related to this discussion, the City is aware of that. I sit in on meetings regarding the Local Road Safety Plan and the Vision Zero for pedestrian safety, and that intersection—with The Barlow's use of that and no longer being an industrial use—will be one of the items for the development of 385 Morris Street that comes forward. The use of the part of that lot undeveloped for parking is specific to any use permits that are granted, which is why it's part of this application approval; it is not permitted just as is otherwise. So yes, for any long-range considerations, we're looking at it.

- B. Appeal – 7233 Healdsburg Avenue, Piala** – Consider a Resolution regarding the (approval/denial) of an appeal from Lowell Sheldon regarding the decision of City Staff to deny on the alcohol transfer permit at 7233 Healdsburg Avenue. This action would (approve/deny) the application based on the findings of the Planning Commission.

Associate Planner Jay presented the staff report.

Chair Oetinger asked for Planning Commission questions of staff.

Paul Fritz, Commissioner

I have a question about the standard conditions of approval since this is a tenant improvement project. It seems like most of those aren't really relevant. Do we just attach that to any use permit, or how does that work procedurally?

John Jay, Associate Planner

That's correct, any of the use permits that are discretionary review would have these standard conditions applied to them. Most of them won't apply to this specific project, but as it is a use permit they would be subject to those standard conditions for alcohol or for any other conditional use permit.

Kathy Oetinger, Chair

I believe in the video that I watched there was a clarification for the ABC application. They do require all the owners of the license, but it's okay that we've given the alcohol use permit to just one person under the restaurant's name?

Kari Svanstrom, Planning Director

Yes, the application process for ABC is different and they're allowed to have different requirements. And I'm not even sure if we require them to be someone involved with the restaurant. It could be, for instance, Mr. Haroche or someone else. However, in this case we do recommend and believe it makes sense that it be Jeffrey Berlin. He would then be the responsible party for implementing and monitoring all the conditions of approval, and then Mr. Sheldon is entirely removed from the entirety of the alcohol use permit in that way. That's why we're recommending that, and it could still be Piala. More simply, it's Jeffrey Berlin and then it's clear for the public record who is the responsible applicant.

Kathy Oetinger, Chair

And should the restaurant site move to another location, is that a completely new permit condition, or can they transfer this permit to a new location?

John Jay, Associate Planner

They would go through the same process. The alcohol transfer stays with the building and then goes from owner to owner. If they were to open up in a new location they would go through the same process, provided that there wasn't an alcohol use permit at that location that they were moving to.

Kathy Oetinger, Chair

So it's really tied to the person at that location until there's a new person.

Paul Fritz, Commissioner

This may be a staff/applicant question, but at our last meeting we talked a bit about Mr. Sheldon being limited to being a patron of the restaurant. I know there's a condition about him not having any supervisory activity and things like that, but I'm wondering if there was a discussion with the applicant's team since our last discussion about limiting Mr. Sheldon only being in the restaurant as a patron during open business hours rather than outside of typical hours?

Kari Svanstrom, Planning Director

Our discussions with the applicant went along the lines of trying to take the draft conditions from the last meeting, look at those, and in looking at those the City was looking at how would you limit it and when the work would be, and so when would Mr. Sheldon be allowed into the restaurant? Would that be when there is no staff present, only ownership? One of the things that came up as well was if he's the responsible person for repairing something or installing something. Installing equipment is pretty easy to do without someone there, but if there's a repair that needs to be made and he's responsible, then he may be onsite to coordinate that, and so it sounded like it would be difficult logistically to have him actually be able to be a part of the restaurant in terms of what his actual role is, which is the setup and the maintenance of the restaurant equipment and such, in the route that the condition was taking.

Kathy Oetinger, Chair

I had a similar related question, but I was coming up with the word "work," because there are different kinds of work, like what you said, installing equipment or setting up, but Condition #2 didn't specifically say that he couldn't work and that he maybe take an order that's not alcoholic, or maybe serve food that's not alcoholic, or work the cash register, I don't know, but it doesn't mention work in the sense of working in the restaurant when it's open. I felt like that was an important issue besides being a customer. I think he should not be able to "work" in the restaurant when it's open to customers. I think that's what he was saying. The quote I have is, "I'm not willing to be barred from ever coming in as a customer."

Kari Svanstrom, Planning Director

That was the discussion at the last meeting, but the applicants are here and they can maybe speak to that a little bit better.

Kathy Oetinger, Chair

Yes, go ahead, Mr. Haroche.

Bob Haroche, Attorney

I'm the attorney for the applicant. We tried to streamline and simplify the proposed conditions by divorcing Lowell from the alcohol, because that is the only basis the Commission has to condition this ABC permit: the perceived harm from alcohol. So once we remove alcohol from the equation we thought we'd just keep Lowell out from the supervisory, the managerial, and he's not going to be the day-to-day operational manager; that's all in the conditions. But like Kari was explaining, if he's in the middle of maintaining, installing, or repairing some equipment and a staff person happens to walk in, whether it's during operational hours or outside of them, what does he have to do, drop everything and walk out of the restaurant? It didn't really make sense. It seemed that the perceived harm that the opponents have is that Lowell and alcohol don't mix well, so we've separated the two of them, and that was our reasoning there. Logistical, streamlined, simple.

Kathy Oetinger, Chair

Okay, I understand that. Thank you.

Deborah Burnes, Commissioner

I'm thoroughly confused now, because last time we had the whole discussion that Lowell was not needed to run any part of the operation and he would not be in any capacity at the establishment. So now we're saying he will be, and that's a little confusing to me, because we went over that last time. So I just want to make sure that I'm clear on this, that he will be there for setup, for maintenance, and he will be working, because last time it was made quite clear that he wasn't needed in any capacity to run a restaurant. Then my second thing is I just want to be clear again, because what you had just said is actually not my understanding about what our responsibility as a Commission is, so Kari, if I'm wrong please correct me. What I heard from our legal team was that the onus, unlike what Mr. Sheldon said in his letter, he is not on trial here. We are not here to decide whether he's innocent, that's just not our job. Our job is that you guys need to present us with significant evidence that we feel comfortable that anything will not happen in the presence of Mr. Sheldon in potentially harming the health and wellbeing of the Sebastopol community, so him not drinking alcohol—I think we discussed this the last time too—is he's still in a position of power, so I would like some clarification on both of those points.

Lowell Sheldon, Applicant

Is that for Kari or is that for me?

Deborah Burnes, Commissioner

I guess one for Kari, just to make sure that I understand what our role is here. And then yes, for you. Your partner had made it quite clear that he was planning on doing everything on his own, didn't need you in any capacity, and the only way that you would be there would be a guest eating at a restaurant, so it seems like that changed between the last meeting and now.

Lowell Sheldon, Applicant

As our first set of conditions stated leading into the last meeting, my role is construction and development, Jeff's role is running the restaurant, and that was our position. Then it kind of evolved throughout the meeting as we were all discussing what conditions could we get on board with and how can we get this open, and so on and so forth. But when we met with Kari and we were discussing how could we figure out a path forward here, we really came back to number one. I can be involved in a restaurant as is; this restaurant can open without serving beer and wine. It's not sustainable, so that's why we're here today; we're adding beer and wine. Our understanding is that your role is to look at the added use of beer and wine and how that specific added use potentially has a harmful effect on the

community. The only connection here is that there is the perception that there's a harm that can come if I'm drinking or serving alcohol, so we said if we're here to discuss the addition of alcohol and I'm not involved in any way in the serving or selling or drinking of alcohol, then we already have this base set line that I can run a restaurant. I'm not going to be running it, but it's allowed, so adding conditions that have nothing to do with the alcohol but are just kind of about me as a person, we felt like it was cleaner and more appropriate to just focus on what the added alcohol...

Deborah Burnes, Commissioner

What my confusion is, we spent hours and hours at the last meeting, and I said as a small business owner I couldn't believe that you can run this operation without Lowell's help. We went through this. It's hard to find help and it was rest assured that this is all under control, Lowell won't be there in any managerial... So now we're back to you will, which is confusing to me because it's not just the alcohol, it's the position of power at a restaurant where alcohol is present as well, so I just need to regroup myself and get back to where we're at today. So today you're saying you will be there, but you just won't drink alcohol, but you will be needed to run... You want to be able to participate in the running of the restaurant, but will not be drinking alcohol, is that what I'm hearing now, today?

Lowell Sheldon, Applicant

Yes, our position is that I should be able to move freely in and out of the restaurant. That's our position. God willing, I won't be needed except to fix a few things here and there, but in the off scenario that I'm needed to wash some dishes or something, we think that given that I already have the ability to do that in the restaurant, we're adding alcohol, we feel like that should be (inaudible).

Deborah Burnes, Commissioner

Your lawyer from last time said it was beneath you to wash dishes and you absolutely would not be there, so that's why I'm saying I just want to get on team with what...

Lowell Sheldon, Applicant

What Bob said last time was just that it's not my goal to wash dishes, but I have no problem...

Deborah Burnes, Commissioner

That's fine. I hear where you guys are at today and that was what I just wanted...

Bob Haroche, Attorney

Commissioner Burnes, just to clarify, and I was careful to say I don't want to denigrate anybody. It's not that it's below him, it's that it's not the highest and best use of Lowell's talents to wash dishes. This is a wonderful opportunity for Lowell to go back in and make minimum wage washing dishes in the kitchen; that's not the dream here. I do want to point out that the draft Condition #2 prohibits Lowell from managing the business. "Applicant shall not permit Lowell Sheldon to exercise directly or indirectly any personnel related responsibilities in connection with the ownership, the management, or the operation of the business." I do realize that there's a power differentiation, as you mentioned in the last Planning Commission hearing. I submit to you that that is not a legal basis to deny a permit. It's too abstract, it's too vague, it's too nebulous, and going down that line you're opening up the Commission to a new role of rendering social, societal judgments instead of focusing on the task of legally defensible, rational land use planning, and that's what we're here for. I think the City's attorney who was here at the last hearing is not here today. If he were, I would defer to him to give an explanation.

Deborah Burnes, Commissioner

And I will tell you that in my honest opinion the Commission is not the place to hear this, because this would really be for mental health professionals or other people beyond us to be doing this. We are put in a very awkward position. When the health and safety of a community is involved I think we all take our due diligence very seriously. But yes, Kari, can you please answer exactly what our (inaudible) to be?

Kari Svanstrom, Planning Director

Thank you, Commissioner Burnes, because I do agree with Mr. Haroche that a position of power in itself is not a threshold or a criteria for an alcohol use permit, so the link is a bit tenuous there. However, there is a link, Commissioner Burnes, as you're noting, between a place where alcohol is being served. So are other staff consuming while on premises and therefore there's a different dynamic with alcohol that there wouldn't be at a restaurant not serving alcohol? That would be kind of the basis of a link. Again, it's somewhat tenuous and that's actually one of the reasons why we went to the... If the nexus or the connection between an alcohol use permit and the criteria, if the concerns are with Mr. Sheldon and in regard to the alcohol use permit, not running a restaurant, then the link would be what is Mr. Sheldon's involvement with alcohol? While on his side there would not be any consumption, there is still potentially consumption of alcohol by staff when they're... I worked in a restaurant when I was in college and certainly staff had drinks while we were onsite.

Deborah Burnes, Commissioner

More my point, but just to be clear, whether or not the staff drinks alcohol has nothing to do with it being a health or safety concern if Mr. Sheldon is not drinking alcohol? I just want to be very clear. Because that was what I (inaudible).

Kari Svanstrom, Planning Director

It would be up to the City to determine that. As noted, it's a much smaller link, I believe, and maybe there's a policy at the restaurant that staff is... We do have responsible beverage service as a requirement from the Police Department on the application already, so I don't know, Mr. Sheldon, or if Mr. Berlin is here, if you can describe the policies, or if you have policies that would be in place regarding staff consumption of alcohol. Mr. Haroche

Bob Haroche, Attorney

Staff's Condition #17, "The business owner shall ensure that employees are drug and alcohol free while on duty," and we accept that condition.

Kari Svanstrom, Planning Director

Thank you. Perfect. So that does generally address that, Commissioner Burnes.

Kathy Oetinger, Chair

I'm questioning the one-year condition, Condition #4. At the one-year point would the Planning Commission require additional concerning evidence to deny a future modification to the conditions, or does the evidence that it has today still apply in one year?

Kari Svanstrom, Planning Director

This is actually something that I believe we discussed a little bit, but you're right, it's not clarified. Mr. Haroche, I think this would be what constitutes evidence as you were going down that road. So when we were looking at the condition of Mr. Sheldon not being onsite working at all John and I were looking at what does that mean and if after a period of a year what would be the criteria? And I do want to make sure that it's a little bit easier on the Commission the next time around, and so what I think would make sense is to have it

based on the Piala restaurant commencing operations forward, that we were not looking at past events, we're talking about the actual use in itself; I think that has a very clear nexus to the City's criteria. If you want to we can get into what constitutes evidence, or you can make it more general. The applicant was proposing an automatic expiration of the conditions. We felt the use permit should be approved by the Planning Commission, just simply be up to the Planning Commission at that time.

Paul Fritz, Commissioner

I had a question about that same condition. It says, "The use permit shall be reviewed after a period of one year," but then the last sentence mentions the applicant being responsible for applying for that review. So would this be automatically scheduled for a year from tonight that we will automatically see this again, but they have to come back with an application six weeks before that, or however long it takes to get something on an agenda? Is that what the intention is?

Kari Svanstrom, Planning Director

Correct. That way we have a file that we would open. There is a cost to staff for all of this, and so that would cover that cost as well as the public notices and all of that kind of stuff associated with the use permit. When it's not automatic, if someone wants to amend the conditions they apply for an amendment to use permit, and so that's what the application would be. It certainly also does help, John and I are doing an awful lot of stuff for us to not to have to... What happens if it's one year and the applicant is nowhere to be found and he's not responding to us? It just kind of makes it clear: here's the process of how that would happen.

Paul Fritz, Commissioner

Just to be clear, is it they have to apply within a year, because again, who knows what your workload is at that time, and if they apply like June 1st and it doesn't get on an agenda until August whatever, is that okay as long as they apply for the use permit amendment within a year?

Kari Svanstrom, Planning Director

I do agree that we could use some clarification on when the applicant is eligible to apply, and so we can certainly modify that condition. I certainly would not want to guarantee a July 12th or 20th since you're right, and we're about to present the Housing Element where we want to prioritize housing applications.

Paul Fritz, Commissioner

Yes, I want to just make sure that we're not trapped, and they're not trapped, and it's clear as to what exactly we're expecting in terms of an amendment application.

Kari Svanstrom, Planning Director

It might be slightly longer than a year, but, "Shall be eligible to apply for an amendment to use permit to modify the conditions after a period of one year of the restaurant commencing operations" might be a better condition for that.

Paul Fritz, Commissioner

Yes, I like that better.

Kari Svanstrom, Planning Director

That way when we start to do analysis and research it's already been open a year.

Deborah Burnes, Commissioner

Just for clarification again, when they apply in a year from now, that would be to remove the modifications so they don't have to apply again, is that accurate?

Kathy Oetinger, Chair

Except for three years.

Kari Svanstrom, Planning Director

You're correct. We're kind of outlining this a little bit.

Deborah Burnes, Commissioner

Because normally it wouldn't have to come in a year.

Kari Svanstrom, Planning Director

Yes, normally a use permit, you could come and ask for modifications whenever you want. I don't know if you were around when the HEAD WEST marketplace came forward, but they had like four modifications in a year because they were trying to arrange and make it work for them, and there was no limit to that. Normally you can apply to amend an existing use permit at any time. This is trying to clarify you can't apply until this time, and yes, the reality is as an amendment they could request other amendments as well, but this is the expectation they have (inaudible) has asked be included in the conditions, and we would just take whatever amendment we get at that time.

Kathy Oetinger, Chair

On Item 5, what would the due process look like if Conditions #2 or #3 were violated? If they weren't adhered to, could staff or the Planning Commission call for the review, or would the license just be revoked? And I'm assuming this is based on evidence. If there were evidence, would the City or... How would that process work?

Kari Svanstrom, Planning Director

Normally a violation of a use permit is not written into the use permit. It is something that's similar to Peacetown where they were having issues, so we referred it to you. This is kind of double clarifying it. You could make it automatic or able to be done at a staff level, I believe. Yes, the grounds for revocation would need to be evidence, photo evidence, of Mr. Sheldon drinking at the restaurant at some point in time, something like that. But the way it is written, it constitutes a ground for revocation, *not* it constitutes ground for a hearing to potentially revoke the permit, and so the way I read this—and Mr. Haroche, if you don't agree, let me know—it says yes, this would constitute the ground for revoking the permit.

Bob Haroche, Attorney

Well, I look at it as if established, a violation of Condition #2 or #3 could be a ground for revocation, so the question of whether or not it's established could start at staff level, but I think constitutional due process does require the right of appeal from that.

Kari Svanstrom, Planning Director

Correct.

Bob Haroche, Attorney

But if somebody comes in and says, "I saw Lowell drinking. Here's a photo of it," Kari, you can make that determination. We could take a futile appeal to the Planning Commission, but I think that would establish the grounds for revocation. Now, whether the Planning Commission... Well, I'm just speculating at that point. I think due process does require right of appeal.

Kari Svanstrom, Planning Director

That is correct. Similar to any staff level decision, an administrative decision is subject to appeal, yes. So certainly our letters that we send out even for incompleteness determination tell people that. It's pretty much on most things we send out as a final designation, that it is appealable, even though this is our decision.

Kathy Oetinger, Chair

Condition #7, it's kind of a side question for us on the Planning Commission. I think it's regarding the serving of full meals in addition to smaller plates and balancing the proportion of wine to the submitted menu; and the proportion of table seating, I guess 20% of the seating can be bar height, which is different from a restaurant where normally you sit down rather than standing or sitting precariously on a stool with your legs dangling. It seems to me that some of these issues like the length of the wine list and the length of the food that's available that day is kind of iffy, but these are also conditions that could be violated. Would the same process hold for these conditions? Does that ever happen where you go into a restaurant and say oops, sorry, you're not serving enough food?

Kari Svanstrom, Planning Director

The bar seating, and that to me is also the bistro seating, it's absolutely not like Mr. Sheldon was proposing, which I think was every single seat in the tables as submitted. The appeal evidence is regular table seating or the long picnic table kind of seating, but I did want to make sure they had some flexibility, and this is more related to the first grounds of denial that I had done at the staff level where it was called Piala Wine Bar and it was being promoted as a wine bar and it was questionable whether there were actually full meals served. I can tell you John and I regularly work with applicants on this kind of issue and we happened to get a similar application a few weeks later and we had to determine is it full meals or not. What they have now is generally full meal, something where you would sit down, and not just fancy peanut bar snack kind of stuff. And yes, we don't normally have beer or wine lists, but again, this is trying to be a little clearer given that this is an appeal of that criteria as well where they had modified the restaurant with what they submitted to show that it is a full restaurant and will be operating as such, so we're trying to clarify that. And I will say normally if someone is in violation of this type of condition where it's not that specific violation constitute the grounds, we would generally work with them on a staff level and say your menu has turned into 200 wines and three tapas plates. It's no longer a bona fide restaurant, you need to apply for a bar license, and you don't have the parking, so please don't.

Kathy Oetinger, Chair

Thank you. I thought you had something like that, but I just wanted to hear that since it's another one of those things that could destroy their restaurant.

Deborah Burnes, Commissioner

I thought you had said, but maybe I didn't hear you right, that Mr. Sheldon wanted bar seating, but that it needs to be tables. Is that really a condition of a differentiation in a bar to a restaurant? Because so many restaurants have bar tables where you sit up high on a stool.

Kari Svanstrom, Planning Director

It was actually the other way around, Commissioner Burnes. The proposed is all table seating, but we wanted to lend some flexibility, because restaurant seating changes over time, so that was part of their justification.

Kathy Oetinger, Chair

Since I wasn't here at the last meeting I did feel I should talk about my thoughts on this. I have reviewed all the materials and I did see the video, and obviously no one has objected to my being here at this point. I also had many of the concerns that the public and the Commission expressed several weeks ago, and I do agree, we're not talking about parking lots, we're talking about people. My feeling is that we really do all want the restaurant to be successful, and we also recognize our duty to protect the people in our community, and it's true that this evidence is concerning to us and to the public. We're seeing it as a red flag and we feel like we must do something about it. Something I hadn't heard a lot of people talk about on the Commission is the fact that I would like Mr. Sheldon to be safe, and I know some of his supporters do too, and I think it's almost unkind to knowingly put him at risk, to put him in a restaurant where he's allowed to have alcohol, because I am concerned for his welfare too. I don't think that I'm trying to punish him at all, and I really don't feel comfortable allowing Mr. Sheldon to be in a restaurant and drink or serve alcohol, so I hope that this is resolved by Conditions #2 and #3. I also know that it is hard for the City to enforce conditions like this that could occur on a daily basis, so if we do approve this use I feel like we would be leaving that enforcement up to Mr. Berlin and Mr. Sheldon, because it would really be up to them to protect their investment and their partnership by complying with this at all times, and I'm just hoping that their business relationship and personal relationship is strong enough for them to be successful with Mr. Sheldon in the restaurant knowing how easy it would be to have a drink and have someone see it. But I think that given the conditions that I am seeing here that I feel comfortable putting the risk into their hands knowing that they have the opportunity to succeed or to blow it; it's a risk. I don't know whether it will take a year or two years. I don't know if I'd be ready to look at it again in a year and say that it was okay or not okay, but right now I'm feeling like they deserve a chance to try this, because I know the community will be watching. I know we have conditions that we can't enforce all the time. We just hope that people do that, and if people are going to be successful, they must do it. I don't know whether that makes it any easier for them, because this is a challenging situation, but right now I'm kind of feeling like they deserve an opportunity to try and that we've done the things that we think we can legally do to protect the customers. At this point, that's where I am.

Deborah Burnes, Commissioner

I really appreciate you sharing where you're at with us, and thank you for watching the whole video and being a part of this, because it's not a very easy thing to be a part of and I don't think any of us want to do this. You bring up two really important points for me. I agree with you that caring for Mr. Sheldon is part of the whole process and that is what restorative justice is about: it's about caring for both parties involved in the process. However, the other piece that concerns me is saying I think we should give them a chance and if something happens, it's a risk. When I hear to you say that, it worries me, because this isn't a risk about somebody stealing money out of a cash till, or somebody graffiti-ing our town. This is a risk where allegedly women were violated. I just don't think we're the place for this. Are we willing as a commission to say okay, we'll take that risk and hopefully it won't happen again? But I do think you brought up a very valid, very important point that we didn't... I thanked all of Mr. Sheldon's supporters for coming last time, but we didn't talk about wanting to set him up in that way for success and I think that's an important piece of the puzzle too, so I appreciate you for bringing that up, and that risk thing just got me.

Kathy Oetinger, Chair

I understand that risk fully well. My feeling is that that can happen anywhere in the world, and I think we've done the things we need to do for it not to happen in the restaurant. I don't know what else we can do, because that does seem to be the issue, and I guess that's where I stand. We may have different opinions. Kari, I see your hand up.

Kari Svanstrom, Planning Director

Thank you, Chair Oetinger, for mentioning that you had watched the full video of the meeting and read all of the materials. Since the Commission voted last time to continue the item, and that doesn't require your interaction or having been involved with that, and not reopen public comment at this meeting but just to continue deliberations, I did want to note for those who might be in the audience and curious about that, that is allowed. You do not need to recuse yourself because you weren't at the last meeting as long as you've reviewed all the materials, and obviously you've put a lot of thought into this as well as you've been reviewing those materials, and so I just wanted to make that clear. The second clarification regarding the condition of the one-year review, and Chair Oetinger, I believe it was you who noted that you might not be ready at that time to change the conditions, I did want to make it clear that the Planning Commission would be under no obligation to change the conditions of approval that are potentially approved for the project.

Kathy Oetinger, Chair

Kari, I'm not sure, should I call on the non-applicant?

Kari Svanstrom, Planning Director

It is the Chair's privilege. You may, or you may not. I would only ask that if it's a public comment that it not be accepted, because we're not taking anyone else's public comment, but if it is information as the applicant, then I think that is acceptable.

Kathy Oetinger, Chair

Okay, I'm going to call on Commissioner Fritz first.

Paul Fritz, Commissioner

Thanks. I just wanted to reiterate I appreciate what you had to say, Chair Oetinger, and the fact that you did watch the video, and I agree with your assessment generally. As has been said numerous times in the past couple of meetings, we are not here to deliberate or decide any factual evidence to the allegations, but we do have a responsibility as the Planning Commission, and as also has been said, this is very unusual terrain for us. I agree with Commissioner Burnes that I don't feel fully qualified to be making this decision based on the things we've heard, but this is where we are. I also just wanted to express we've gotten some additional comments from members of the public telling us how biased we were and somewhat taking us to task for our behavior at the last meeting, and again, I'll say we're all just doing the best we can. I think we have given this a lot of thought and are trying to be thoughtful and make the best decision for the community, which is what we are tasked with. We're all just volunteers; none of us have anything to gain one way or the other from this. But having said all that, I feel that with the conditions that have been placed on this project, and I agree, I think especially from Mr. Berlin—I don't see him at the meeting tonight—he obviously wants this to be successful. He's been a successful restaurateur in the past; I'm sure he wants this to succeed. He has heard from many members of the public and the community about their concerns. It's really in his best interests as the managing partner of this restaurant to make sure that things go well, because if things don't go well it's not going to be pretty for him either, and I'm sure he doesn't want to have to experience that given the things that we've heard. So I believe that with the conditions that have been placed on the project and the fact that I'm sure the owners want this to succeed, and there are many eyes on this project... There have been some concerns about how this is going to be implemented, who is going to be monitoring this? I think the community is monitoring this, and again, I agree that Mr. Berlin as managing partner will be monitoring this and I'm comfortable with these conditions as they've been proposed with the

modification in terms of the timing of the reapplication...modification application, I'm comfortable, I think, moving forward at this point.

Kathy Oetinger, Chair

Lowell, if your comments are appropriate at this time, I will allow you to speak.

Lowell Sheldon, Applicant

Thank you. I just wanted to say as we wrap up to a vote that we take this process very seriously and we have every intention of making sure that we follow every one of the conditions as they are laid out. I know that myself and Jeff, we understand the risk to our livelihoods should we not meet any of these conditions, so we're 100% behind them and I just wanted to make sure you know that. Thank you.

Kathy Oetinger, Chair

Paul, it sounded like you were almost making a motion.

Paul Fritz, Commissioner

I guess I can make a motion. I'd like to move that we approve the alcohol use permit with the conditions as proposed with the modification to Condition #4 regarding the timing. I can't remember exactly what wording you had, Kari, regarding the timing, if you want to repeat that.

Kari Svanstrom, Planning Director

I usually write these down, but I did not. Let me see if I can do it.

Kathy Oetinger, Chair

I wrote down that you would add a date for when they were allowed to apply.

Kari Svanstrom, Planning Director

Yes, so that it would be the applicant is eligible to apply one year after the restaurant commences opening.

Paul Fritz, Commissioner

Yes, I like that, what she said. So with that modification to Condition #4, I move that we approve this alcohol use permit application.

Kathy Oetinger, Chair

I will second the motion.

Linda Kelley, Commissioner

I got disconnected, but only for a few minutes. My comment was I came into this meeting knowing that the HR firm requirement to assist employees was not going to be on the table, and that was such a huge issue for the safety of your employees, which partly this is, so I am glad to see that you got that in there without us having to duly work on that. I do very much appreciate it and it is very, very, very important. It's even hard to go to HR, however, if it's an independent third-party, that's what we are looking for. I'm going to say good luck. I am very uncomfortable in approving this alcohol use permit, but I am going to, and I'm hoping that we can believe Mr. Sheldon in terms of his change of heart and also understanding his part in these complaints. It's just not people picking on you. Women have not been believed and are still not believed, including this whole hearing, however, I'm going to limit that and trust that Mr. Sheldon is a changed man and will continue to change, because recovery is not just a one deal, it's a process. You're in recovery; you don't get

recovered. You might think a little bit about your substance use. I think a lot of people have had to do that, especially during this pandemic, and good luck to you.

Kathy Oetinger, Chair

Is there any other discussion on the motion? Then I'll call for the vote. Kari.

Kari Svanstrom, Planning Director

Thank you. Commissioner Kelley.

Linda Kelley, Commissioner

Aye.

Kari Svanstrom, Planning Director

Commissioner Fritz.

Paul Fritz, Commissioner

Aye.

Kari Svanstrom, Planning Director

Commissioner Burnes.

Deborah Burnes, Commissioner

Can I abstain?

Kathy Oetinger, Chair

You can vote no; it's okay.

Kari Svanstrom, Planning Director

You can abstain as well.

Deborah Burnes, Commissioner

I would rather abstain, because I don't feel like we're qualified, and I wish them the best in business, but I don't want to vote yes either, so can I not abstain?

Kari Svanstrom, Planning Director

If I can call on you next, because we do need a quorum, and I want to make sure that Chair Oetinger doesn't also abstain. So let me skip and call on Chair Oetinger.

Kathy Oetinger, Chair

Yes.

Kari Svanstrom, Planning Director

Commissioner Burnes.

Deborah Burnes, Commissioner

I guess I can vote no, because it won't affect anything anyway.

Kathy Oetinger, Chair

We can always have a protest vote; it's okay.

Deborah Burnes, Commissioner

It will make your life easier.

Kari Svanstrom, Planning Director

So Commissioner Burnes, what was your vote? Sorry.

Deborah Burnes, Commissioner

I'll vote no, because it won't change anything if it makes your life easier.

AYES: Chair Oetinger, and Commissioners Fritz and Kelley.

NOES: Commissioner Burnes

ABSTAIN: None

ABSENT: Vice Chair Fernandez

Kari Svanstrom, Planning Director

Okay, thank you. So the motion passes 3/1, with one member absent, to approve with conditions as modified by Commissioner Fritz. There is a seven-day appeal period, so this would become final next Tuesday should the City not receive an appeal. And thank you very much, everybody.

Bob Haroche, Attorney

Thank you, Commissioners and staff. Appreciate it.

Kathy Oetinger, Chair

It's hard to be a Planning Commission, but we're trying to do our best, I'm sure.

6. REGULAR AGENDA ITEMS:

- A. DRAFT Climate Action Framework Presentation** – A presentation from CivicSpark Fellow Phoebe Goulden of the Draft Climate Framework for the City of Sebastopol.

Director Svanstrom presented the staff report.

CivicSpark Fellow Phoebe Goulden gave a presentation and was available for questions.

Chair Fritz asked for Planning Commission questions of staff.

Paul Fritz, Commissioner

Who will be tasked with following through on this? Does that go to the Climate Action Committee or is it dispersed among various groups? I'm wondering who is tracking progress as this moves forward.

Phoebe Goulden, CivicSpark Fellow

The primary responsibility for evaluating and prioritizing next steps is with the Climate Action Committee, but any recommendation from the Committee would need to be approved by City Council, so implementation would likely involve a variety of City departments and other groups.

Paul Fritz, Chair

Would the Climate Action Committee stay on top of it and determine yes, we're moving forward or meeting this goal, or we've met this goal, or crossing things off the list? Would they be the City committee to do that or have that task?

Phoebe Goulden, CivicSpark Fellow

The recommendation in the framework is that the Committee checks in on progress every six months and stays on top of it that way.

Kari Svanstrom, Planning Director

Commissioner Fritz, a couple of things regarding the Climate Action Committee. One is I've already talked with the chairs in terms of how to move things forward with next steps and talked to them about the work plan that we do with the Planning Commission. The intent is to facilitate a similar workshop with them at one of their meetings to take all the actions in Appendix A, which are the potential actions, and it may be that each working group that targets transportation, or energy, or education, all those various components, might do their own prioritization of them in their section, but ultimately getting to a work plan that balances all the components. The Council has identified a little bit of money in the Planning Department budget for initiatives that might require, say, an outside consultant, or outreach or things like that, and then that would go forward as the work plans do where we chip away at those. The Climate Action Committee actually has quarterly informational updates to Council, and so they do interact on that basis and get direction. I think it would probably be that two of those each year would be dedicated to the progress and next steps.

Paul Fritz, Chair

My last question for now is how will this be published and publicized in the community? I think it's a great document, and obviously a lot of time and effort has gone into it, and I think as many people as possible should see it, so I'm just wondering what the plan is for that.

Phoebe Goulden, CivicSpark Fellow

There has been a press release and social media push with the draft release. I think there may be a similar effort once it is adopted. The Climate Action Committee has an education and outreach working group that's also discussing some additional methods to get the word out about the framework.

Kari Svanstrom, Planning Director

Commissioner Fritz, one of Phoebe's suggestions was the partners being able to say this is Planning and Public Works, or it's Public Works, or it's Engineering, which helps identify responsible parties so that all of the departments know what actions they're responsible for. It's very similar to and it probably looks a little bit like our General Plan, which is done in a similar way where the majority of them are Planning, or Planning Commission, and Climate Action Committee. We're also now including adopting tier one in our Housing Element because the Climate Action Committee has recommended that, and so it all comes together in that way.

Deborah Burnes, Commissioner

Commissioner Fritz, I'm on the education outreach program on the Climate Action Committee. It's been such a pleasure being part of this, and what a great project, so if you have any additional ideas, please let me know, because we love creative input and we really want to get the word out too.

Kathy Oetinger, Chair

Something the City does is send out the community email, and it's very packed, but even if it's just a short little tip on something, or just a concept or something that people get, when there are ideas, like making choices about when you want to get on an airplane versus driving, a little information like that I appreciate. I think that is a good method and could be very effective if it's done short and sweet and toward the beginning of those many long

lists. I know we already get tips on saving water and I always enjoy seeing them; I think they're helpful.

Kari Svanstrom, Planning Director

That's excellent, and one thing that I just found out is the Climate Action Committee has been asked to do a column in the Sebastopol Times, and so that would be another venue to get it out to an even broader audience, and that is something we'll be talking about tomorrow.

Chair Oetinger opened public comment.

Kari Svanstrom, Planning Director

I will note that we did receive a number of comments just on the public draft itself, and those are included on the City's website. Phoebe has been collecting those, but I just realized that the Planning Commission might not have seen them. Many of them are from the Climate Action Committee. Again, they did a very thorough review, but we did also get comments from the public as well.

Seeing no public comments, Chair Oetinger closed public comment.

Chair Oetinger asked for further Planning Commission comments.

Paul Fritz, Commissioner

I think our General Plan still requires level of service studies for new projects, and I would actually recommend putting in this as an action item getting rid of level of service as a measurement of intersection traffic flow functioning, because it tends to prioritize moving cars through town at the expense of anything else and I think it would be important for us to address some other metric. Most jurisdictions are moving from level of service to VMT measurements that prioritize not driving a lot, whereas level of service is a relic of highway construction. I think that's important tool for us in terms of creating more infill development opportunities, because level of service often is against smarter development that has lower climate impacts; level of service competes against that. Generally, I think we need to prioritize pedestrian connectivity and creating safe and welcoming pedestrian environments over getting cars through town as quickly as possible. Sebastopol is a small town not just population-wise but area-wise, and I'm fortunate enough to live relatively centrally in town and I can really walk to any place in town within 20 minutes, and I don't think people realize how easy it is to walk around Sebastopol. I can walk from my house to the hardware store in 20 minutes, and there are many trips that I can take where I can ride my bike or walk. I think it's very reflective to us culturally to just get in our car. I know the City has the Sebastopol Walks events that they do throughout the summer, but I'm thinking of organizing some kind of neighborhood-by-neighborhood activity that you get everyone together and say, "We're walking to the hardware store today," and everyone can see they live a 10-minute walk from the hardware store or whatever, because so many people's impulse is to just get in your car when they don't realize how close something is. I don't know how that gets organized or who organizes it, but I think that would be really useful and could go a long way to getting people out of their cars, especially around town. I think also a lot of these items point to the importance of the Planning Commission as the land use administrators when we're looking at projects and looking at revising the Zoning Code or revising the General Plan. So many of these things in the climate action framework really point to land use issues that we need to remain aware of as new projects and new opportunities come before us, because we're responsible for a lot of what is mentioned in this framework. Electrification of buildings, especially for single-family homeowners, is really important, and there's an education component to that, but also a financial component,

particularly for some people. It's not inexpensive to convert your house from gas to electric, so making people aware of programs that are available for doing those kinds of projects. I know, for example, Sonoma Clean Power has a program where you can get a zero interest loan to do electrification projects, like if you want an induction stove or you want solar panels. So making people aware of things like that, or grants that may be available from the state or whoever, but again, it's an educational opportunity, because I think more people would be interested in making those changes if they only knew how and had someone help them pay for it, because we don't all have the money to do that.

Deborah Burnes, Commissioner

Commissioner Fritz, I'll take your idea to the Education Committee about the walking. We're doing a bike one right now. You said where does it go, so I'll pick it up for you.

Kari Svanstrom, Planning Director

Thank you, Commissioner Burnes. I was going to note there are actually quite a few of these. The Climate Action Committee has talked extensively about electrification of existing buildings, not just new, and seeing it tonight in the presentation, the greenhouse gas emissions drop of almost 20% over ten years by buildings was kind of surprising to me. Transportation is hardly at all, but the buildings went from 24,000 to 16,000. But with our existing housing stock, yes, it's something the Climate Action Committee has been looking at. Then I was thinking about the e-bike share that the Climate Action Committee has talked about. They talked extensively and asked a lot of questions of someone who had an electric scooter community share, but there was a lot of concern about cluttering sidewalks and how it would fit within town, especially given the bicycle paths and the slightly hilly nature of the City, and would e-bikes be a little bit more second nature to people and make more sense? They're still discussing that one.

Linda Kelley, Commissioner

Great presentation. It's nice to see all the things we've been working on articulated for all these years from Solar Sebastopol on up, and one important issue is to continue advocacy on a state level, to have the CPUC continue to hold PG&E accountable. In the mid-2000s we lobbied against PG&E taking more of whatever solar capacity that you had used with the panels that you bought, and I know PG&E is trying to do it again and I don't know how far they've gotten. If we want solar and expensive battery systems to be a viable option we also need the regulatory advocacy and support to be able to do this. Right now if you have any appliance on gas, your electric baseline is based on the fact that you're probably using gas for heating. Well, that's a false narrative; that's not true for everybody. So until you get rid of gas altogether PG&E is going to limit your baseline electrical, and that's a horrible incentive, so I'm going to advocate on this side of the decision table for us to remember to continue to advocate for fair treatment by PG&E on these issues and get their cooperation, because I don't trust them, and I'm sorry to say after all these years it hasn't gotten any better. Thank you, again, for this report. These are very lofty goals, but that's how it's always been.

Chair Oetinger asked for further Commission discussion. Seeing none, she thanked Ms. Goulden for bringing the item to the Planning Commission.

Kari Svanstrom, Planning Director

We are looking for a motion tonight to adopt the resolution supporting this as it goes to Council. That was in your packet, I think pages 4-5 of your agenda.

Commissioner Burnes made a motion to adopt the Planning Commission resolution recommending that the City Council adopt the Climate Action Framework.

Commissioner Fritz seconded the motion.

AYES: Chair Oetinger, and Commissioners Burnes, Fritz, and Kelley.

NOES: None

ABSTAIN: None

ABSENT: Vice Chair Fernandez.

7. SUBCOMMITTEE UPDATES

Kathy Oetinger, Chair

Ives Park Subcommittee. They are considering doing a review of the parks and proposing evaluation of them in the way they did with Ives Park earlier.

8. PLANNING DIRECTOR'S REPORT

Director Svanstrom provided updates.

The Commission asked questions of Director Svanstrom.

9. ADJOURNMENT: Chair Oetinger adjourned the meeting at 8:13 p.m. The next regularly scheduled Planning Commission meeting will take place on Wednesday, July 26, 2022 at 6:00 p.m.