

CITY OF SANTA ROSA
DEPARTMENT OF COMMUNITY DEVELOPMENT
STAFF REPORT FOR PLANNING COMMISSION
OCTOBER 24, 2013

PROJECT TITLE

Dibs Auto Sales Appeal

APPLICANT

Jean Kapolchok & Associates

ADDRESS/LOCATION

704 and 722 Santa Rosa Avenue

PROPERTY OWNER

Robert J. Montgomery

ASSESSOR'S PARCEL NUMBER

009-331-050 and 051

FILE NUMBER

ZC13-0524

PROJECT SITE ZONINGNeighborhood Commercial-Historic-
Station Area (CN-H-SA)**GENERAL PLAN DESIGNATION**Medium Density Residential/Retail and
Business Services**APPLICATION DATE**

June 17, 2013

APPLICATION COMPLETION DATE

June 17, 2013

PROJECT PLANNER

Clare Hartman, Supervising Planner

RECOMMENDATION

Denial

PROPOSAL

Appeal of the Community Development Director's denial of a Zoning Clearance for an auto and vehicle sales and repair use to replace an existing, legal non-conforming mobile home and RV sales and repair use for the property located at 704 and 722 Santa Rosa Avenue.

SUMMARY

On May 20, 2013, a representative for Dibs Auto Sales submitted a letter requesting a Zoning Clearance to allow a used auto and vehicle sales and repair use to replace the existing, legal non-conforming mobile home and RV sales and repair use located at 704 and 722 Santa Rosa Avenue. On June 4, 2013, based on findings that the two uses are distinctly separate land use classifications, that the existing use is a more restrictive land use than the proposed use, and that the proposed use would result in more traffic and noise impacts than the existing use, the Community Development Director determined that the auto and vehicle sales and repair use is not allowed on the subject property. As a result, the requested Zoning Clearance was denied. On June 17, 2013, the applicant filed an appeal of the Director's decision.

CITY OF SANTA ROSA
PLANNING COMMISSION

TO: PLANNING COMMISSION
SUBJECT: DIBS AUTO SALES APPEAL
AGENDA ACTION: ADOPTION OF A RESOLUTION

ISSUE(S)

Should the Planning Commission deny the appeal and uphold the Community Development Director's denial of a Zoning Clearance for vehicle and auto sales and repair for Dibs Auto Sales at 704 and 722 Santa Rosa Avenue?

BACKGROUND

1. Surrounding Land Uses

North: Mixed-use (retail and residential) and auto service
South: Highway 12
East: Single-family residential
West: Auto sales and service

2. Existing Land Use – Project Site

The subject site includes two separate parcels, both of which are approximately 0.39 acres in size, for a total of approximately 0.78 acres. The existing land use is a mobile home and RV sales and repair business, which City records indicate has been in operation since 1987.

The flat site is currently paved, and includes two structures, one approximately 2,950-square-foot building on the 704 Santa Rosa Avenue site, which is used for RV repair and service, and one approximately 858-square-foot building on the 722 Santa Rosa Avenue site, which is used as a sales office.

3. Project History

City records indicate that prior to 1987, "auto and vehicle sales and rental" and "vehicle service – major repair" land use operations were recognized as legal uses on the site through use permits and/or zoning clearances. The last such tenant was a Dodge dealership.

Beginning in 1987, the use of the site converted to "mobile home, boat, and RV sales" and "vehicle services – major repair", as documented by a Business Tax Certificate secured for Bob's Travel Center. No use permit or zoning clearance records for the replacement use have been found. However, the Community

Development Department recognizes that the replacement use has operated on the site for the last 26 years and still remains active today.

City records show that the property at 704 Santa Rosa Avenue, the northerly parcel, has been zoned Neighborhood Commercial since at least 1983, prior to the current businesses establishment. The Neighborhood Commercial zone did not allow auto and vehicles sales, mobile home and RV sales or repair uses in 1987, or in the ensuing years. As a result, the use on this portion of the site was non-conforming at the time it was established. However, because City records indicate that automotive sales and repair had been approved for the site, through a Use Permit, prior to 1987, the mobile home and RV sales and repair use is considered legal non-conforming, although a Zoning Clearance for the use cannot be found.

City records also show that the property at 722 Santa Rosa Avenue, the southerly parcel, was zoned General Commercial at the time that the existing mobile home and RV sales and repair use was established, which did allow such uses. However, on August 31, 2010, the City Council adopted an ordinance rezoning the property to Neighborhood Commercial-Historic-Station Area (CN-H-SA), which does not allow auto and vehicles sales, mobile home and RV sales or repair uses. As a result, the existing use is now considered legal non-conforming on this property as well.

On May 20, 2013, a representative for Dibs Auto Sales submitted a letter requesting a Zoning Clearance to allow an auto and vehicle sales and repair use to replace the existing, legal non-conforming mobile home and RV sales and repair use located at 704 and 722 Santa Rosa Avenue.

On June 4, 2013, based on findings that the two uses are distinctly separate land use classifications, that the existing use is a more restrictive land use than the proposed use, and that the proposed use would result in more traffic and noise impacts than the existing use, the Community Development Director determined that the proposed auto and vehicle sales and repair use is not allowed on the subject property. As a result, the requested Zoning Clearance was denied.

On June 17, 2013, Jean Kapolchok, the applicant representative filed an appeal of the Director's determination.

In July, 2013, the appellant requested that the item be scheduled before the Commission in September.

On September 5, 2013, the City received a letter prepared by Stephen Butler of Clement, Fitzpatrick & Kenworthy Inc., a legal representative of the applicant.

On September 9, 2013, the appellant requested that the Commission continue the item from their September 12, 2013 meeting to the October 24, 2013 meeting.

On September 12, 2013, the Commission continued (5-0) the Dib's Appeal item to the October 24, 2013 meeting.

On September 17, 2013, staff prepared a written response to the letter prepared by Stephen Butler.

4. Project Description

The applicant is proposing to locate an auto and vehicle sales business on the site located at 704 and 722 Santa Rosa Avenue. The proposed use would include incidental auto repair service related to safety check's required for the automotive sales. The proposed use would replace an existing, legal non-conforming mobile home and RV sales use, which also includes on-site vehicle repair.

Pursuant to a May 16, 2013 letter from Dino D'Argenzio, Keegan and Coppin Co. Inc., representing the business and property owners (attached), the proposed hours of operation would be 9 a.m. to 5:30 p.m., Monday through Friday, and 11 a.m. to 4 p.m., Saturday and Sunday. The business is anticipated to have three employees on site at a time. The aforementioned letter also states that the auto sales would include a combination of passenger vehicles, large trucks, RV vehicles, travel vehicles, trailers, small and large vans.

The applicant has stated that they intend to improve the property by upgrading the exterior of the current buildings. Any exterior changes to the site and the existing buildings would require Design Review approval. Because the site is located within the Burbank Gardens Preservation District, a Design Review application would be reviewed, jointly, by the Design Review Board and Cultural Heritage Board.

ANALYSIS

1. General Plan

The project site is located within the Medium Density Residential/Retail and Business Services General Plan designation, which is intended for mixed-use development, including single-family attached and multi-family developments at a density of 8 to 18 units per acre, as well as retail and service enterprises, offices and restaurants. The designation is implemented by the Neighborhood Commercial Zoning District.

The following General Plan goal and policy apply to the denial of the requested Zoning Clearance:

- LUL-G Promote mixed use sites and centers.
- LUL-G-3 Prepare and implement mixed-use zoning district(s) that provide development standards for mixed use sites and centers. District regulations should address:
- Minimum density and intensity requirements;
 - Allowable uses;
 - Building heights;
 - Shared parking standards; and
 - Prohibition of new auto-oriented and drive through establishments.

The project site is also located within the boundaries of the Downtown Station Area Specific Plan, which was adopted in October 2007. The following Specific Plan policies apply to the denial of the requested Zoning Clearance:

- SP-LU-4.3 Support the creation of a pedestrian-oriented environment along Santa Rosa Avenue with two to three-story mixed use buildings, improved street furnishings and other pedestrian amenities.
- SP-LU-6.9 Encourage development of neighborhood-serving retail uses in areas adjacent and accessible to residential neighborhoods. These retail uses should be compatible with the character of the immediately surrounding area and include “mom and pop” pedestrian-oriented stores. Larger scale, auto-oriented enterprises are discouraged.

The proposed auto and vehicle sales and repair use does not further the goals and policies of either the General Plan or the Downtown Station Area Specific Plan. Rather, the proposed use would continue to perpetuate the non-conforming, auto-oriented use on a site that is envisioned by both of the above noted documents as being a mixed-use, pedestrian friendly site.

2. Zoning

- North: Neighborhood Commercial-Historic-Station Area (CN-H-SA) and Neighborhood Commercial-Historic (CN-H)
- South: Highway 12
- East: Two-Family Residential Planned Development-Historic (PD 0225-H)
- West: CN-H

The subject site is located within the CN-H-SA Zoning District. The following breaks down the three parts of the zoning for the site:

- CN: The Neighborhood Commercial Zoning District is intended for areas within and adjacent to residential neighborhoods appropriate for limited retail and service centers for convenience shopping. Uses in this district are intended to provide for the day-to-day needs of local neighborhoods and workplaces, but not to be of such scope and variety as to attract substantial traffic volumes from outside the neighborhood.
- –H: The Historic Combining District identifies the subject site as being within the boundaries of the Burbank Gardens Preservation District. The –H Combining District is intended to recognize, preserve and enhance Santa Rosa’s locally designated historic resources.
- –SA: The Station Area Combining District identifies the subject site as being within the boundaries of the Downtown Station Area Specific Plan. The site is further shown to be located within the Park and Gardens sub-area of the Station Area Plan, which is envisioned as a mixed-use area. The –SA Combining District is intended to enhance and reinforce distinctive characteristics within the Downtown and North Santa Rosa Station Area Specific Plan areas and create environments that are comfortable to walk in.

As noted above, the existing mobile home and RV sales and repair use is considered legal non-conforming. Zoning Code Section 20-61.020(B)(1), (2) and (3) addresses the replacement of non-conforming uses with similar uses:

- “A non-conforming use may be changed to another non-conforming use of a similar or more restricted classification or nature; provided, the proposed new non-conforming use would not increase the degree or intensity of the non-conformity.”
- “The replacement non-conforming use shall serve as a “new bench mark” in terms of establishing the acceptable level of non-conformity.”
- “Where a non-conforming use is changed to another non-conforming use of a more restrictive classification, it shall not thereafter be changed to a use of a less restrictive classification.”

It is staff’s position that the existing mobile home and RV sales use is a more restrictive land use than the proposed vehicle and auto sales use. Specifically, staff finds that the general operational nature of auto sales results in more traffic and noise impacts than that associated with RV sales due to an increase in the number of customers and/or employees, coupled with the smaller size of the product that would allow more inventory on the subject site. As such, staff finds

that the proposed use, which is not allowed in the CN-H-SA Zoning District, cannot replace the existing non-conforming use.

3. Environmental Review

The project is exempt from the California Environmental Quality Act, pursuant to section 15270, because it has been denied by the Community Development Department.

4. Comments/Actions by Other Review Boards/Agencies

N/A

5. Neighborhood Comments

The City's Zoning Clearance process is an administrative process in which public notice is not required. As such, no neighborhood comments were received prior to the staff determination to deny the request for a Zoning Clearance by Dib's Auto Sales.

An appeal of the administrative decision to deny the Zoning Clearance is likewise not subject to public notice requirements (Zoning Code Section 20-62-030 E.4). Following the filing of the appeal, however, staff did mail a courtesy "public meeting" notice to surrounding property owners and neighborhood groups in the area. This notice went out on August 28, 2013. Following the Commission action on the continuance of the appeal to October 24, 2013, a courtesy "continued public meeting" notice was sent to the same mailing list.

As of the date of this report no written comments have been submitted as a result of these notices. Staff has received a few phone calls with questions about the item, and stated concerns about the conversion of the site to an auto sales lot.

6. Public Improvements/On-Site Improvements

N/A

7. Appeal

On June 17, 2013, the applicant filed an appeal in opposition to the denial of the Zoning Clearance for Dibs Auto Sales. The following identifies the applicant's grounds for appeal, along with staff's response to each:

A. Applicant Grounds for Appeal

The Downtown Station Area Specific Plan created hundreds of non-conforming uses. In response, the City Council included policies in the

Specific Plan to help non-conforming uses and replacement of non-conforming uses continue until the property owners were ready to convert.

Staff Response

The applicant's grounds for appeal specifically references policy SP-LU-5.4 of the Downtown Station Area Specific Plan, which is provided below:

- “Allow continuance of existing non-conforming uses within the Plan Area until properties are ready to convert to uses that are consistent with adopted plans and regulations. Allow for maintenance and re-occupancy of buildings with non-conforming uses and exempt minor alterations and/or expansions of existing buildings from the development guidelines established in the Development Guidelines and Streetscape Standards chapter of this plan.”

While the aforementioned policy does support continuance of existing non-conforming uses, it does not allow occupancy of new non-conforming uses. As explained in the June 4, 2013 letter denying the requested Zoning Clearance, the two land uses – auto and vehicle sales versus mobile home and RV sales – are defined in the Zoning Code as distinctly separate land use classifications. Which are defined below:

- “Auto and Vehicle Sales/Rental. A retail or wholesale establishment selling and/or renting automobiles, trucks and vans, trailers, motorcycles, and bicycles (bicycle sales are also included under “General Retail”). May also include repair shops and the sales of parts and accessories, incidental to vehicle dealerships. Does not include: the sale of auto parts/accessories separate from a vehicle dealership (see “Auto Parts Sales”); mobile home, recreational vehicle, or watercraft sales (see “Mobile Home, RV and Boat Sales”); tire recapping establishments (see “Vehicle Services”); businesses dealing exclusively in used parts, (see “Recycling—Scrap and Dismantling Yards”); or “Gas Stations,” which are separately defined.”
- “Mobile Home, RV, and Boat Sales. Retail establishments selling both mobile home dwelling units, and/or various vehicles and watercraft for recreational uses. Includes the sales of boats, campers and camper shells, jet skis, mobile homes, motor homes, and travel trailers.”

Because the proposed use falls into a different land use classification than the existing use, the proposal is considered a change in use, not a continuation of an existing use.

Furthermore, as identified in the General Plan section of this report (above), the Downtown Station Area Specific Plan also includes a policy (SP-LU-6.9) that specifically discourages auto-oriented retail, particularly adjacent to residential neighborhoods. The subject site is located directly adjacent to a single-family residential neighborhood.

Finally, it should be noted that on September 25, 2013 the City Council adopted an ordinance amending the Aggressive Economic Development Measures section of the Zoning Code, which previously extended the time limit for maintaining a legal non-conforming status from six months to 24 months. The amended ordinance language, Zoning Code Section 20-15.020(A), which is quoted below, specifically excludes the Park and Gardens sub-area of the Downtown Station Area Specific Plan, where the subject property is located:

- “The time limit for maintaining a legal non-conforming status is hereby extended from six months to 24 months, which will allow for a longer period of vacancy between uses. Except the properties located within the Park and Gardens sub-area of the Downtown Station Area Specific Plan, which includes properties located along Santa Rosa Avenue, between Highway 12 to Charles Street, for which the time limit for maintaining a legal nonconforming status shall be as otherwise set forth in the Zoning Code.”

The following Zoning Code Sections 20-61.020(D)(1) and (2) now apply to the subject property:

- “If a nonconforming use of land, or a nonconforming use of a conforming structure, is discontinued for a continuous period of at least six months, the rights to legal nonconforming status shall terminate.”
- “The nonconforming use shall not be resumed once the use has been terminated for at least six months.”

The following outlines the reasons for the reduction in time for the Park and Gardens sub-area, which was unanimously supported by both the Planning Commission and City Council:

- a. The area is immediately adjacent to the southern entry of the City's downtown;
- b. The area was specifically addressed in two recent planning efforts – the Downtown Station Area Specific Plan and the Santa Rosa Avenue Corridor Plan;

- c. There are several large, paved, underdeveloped or vacant lots in this area that could readily be developed with conforming retail uses; as opposed to other areas which are built out with non-conforming structures;
- d. The retail vacancy rate has demonstrated a return to pre-recession levels and is showing signs of recovery; and
- e. The replacement of auto oriented uses in this area with same or similar uses would be in direct conflict with Station Area Plan policy SP-LU-6.9 which specifically encourages “neighborhood serving retail uses” and discourages “auto-oriented enterprises”.

While the existing mobile home and RV sales use is still in operation, the above-noted changes to the Zoning Code clearly illustrate the Planning Commission and City Council’s desire to see this area transform to uses consistent with the General Plan and Downtown Station Area Specific Plan.

B. Applicant Grounds for Appeal

The proposed replacement use is a legal non-conforming use of similar or more restrictive nature and, per the Zoning Code, as well as the Downtown Station Area Specific Plan policies regarding non-conforming uses, should be allowed to occupy this site.

The applicant further refined this statement as follows:

- a. The existing use is not strictly a “mobile home, boat, and RV” sales use;
- b. The fact that “auto and vehicle sales and rental” is now an allowed use in the Light Industrial Zoning District should not be used against the proposed new use;
- c. The proposed new use will not result in more traffic or noise.

Staff Response

The responses below respond directly to letters “a” through “c” above:

- a. The applicant contends that the proposed auto and vehicle sales use is similar or more restrictive than the existing use because Bob’s Travel Center does not strictly sell mobile homes and RV’s. Rather, the applicant has stated that vehicle sales have continuously occurred on the subject site since the 1940’s, and, specifically, that

the existing business also sells trucks and small vehicles. Hence the proposed use would be a continuation of the existing use.

The applicant has not provided the City with any documentation regarding Bob's Travel Center's sale of trucks and small vehicles on the site. Furthermore, aerials taken in 1993, 2000, 2002, 2005, 2007, 2009 and 2011 (attached) clearly show mobile home and RV's on the site, and do not indicate the presence of any small trucks or automobiles in the sales lot.

- b. The applicant's statement discusses the fact that "auto and vehicle sales and rental" was not an allowed use in the Light Industrial Zoning District until 2012, and the fact that they are now allowed, with the approval of a Minor Use Permit, should not be used against the proposed new use. They have also stated that using this information against Dibs Auto Sales would not be in line with the City Council's intentions.

The "auto and vehicle sales and rental" land use is allowed in the following zoning districts:

- Motor Vehicle Sales (CV) - permitted by right
- General Commercial (CG) - with the approval of a Minor Use Permit
- Light Industrial (IL) - with the approval of a Minor Use Permit

The "mobile home, boat or RV sales" land use is allowed in the following zoning districts:

- CV - permitted by right
- CG - with the approval of a Minor Use Permit

As identified above, the "auto and vehicle sales and rental" land use is allowed in more zoning districts, and, as a result, there are more opportunities for such a use to locate within the City than for the "mobile home, boat or RV sales" use. The Council's intention in changing the Code was to provide more opportunities within the City where the "auto and vehicles sales and rental" use would be a conforming use.

It should be noted that, the fact that the existing mobile home and RV sales use has been the primary use on the site has set a new benchmark in terms of use and intensity, and, therefore cannot be

changed to a use of a less restrictive classification (see Zoning Code Sections 20-61.020(B)(2) and (3) in the “Zoning” section of this report, above).

Given the number of zoning districts that allows “auto and vehicle sales and rental”, the applicant has had ample opportunity to locate a site where the proposed use would conform to the Zoning Code and General Plan.

- c. The applicant has stated that the proposed new use will not result in more traffic or noise. Specifically, a chart was provided in the Grounds for Appeal which outlines the number of average customer’s per day that visit the existing use and that frequented the proposed use at their former site, as well theoretical traffic counts for both.

The applicant contends that there will be approximately half the number of customers visiting the proposed auto and vehicle sales use than currently visit the mobile home and RV sales use. However, staff questions the validity of the numbers provided (7 to 10 customers per day for Dibs Auto Sales versus 19 to 20 customers per day for Bob’s Travel Center) given the frequency of people who shop for RV’s versus people who shop for small vehicles.

In their grounds for appeal, the applicant has also stated that the proposed auto sales would create fewer trips than the existing mobile home and RV sales. To substantiate that claim, they have attached a trip generation worksheet that outlines how they arrived at their traffic counts. According to their source (the City of San Diego Trip Generation Manual), car dealerships generate 50% more trips than RV dealerships; however, if the dealership is an “automobile multiple dealership” then the trip generation is reduced by 41.5%. While the applicant agrees that the subject site is not an “automobile multiple dealership”, they contend that it is in the immediate vicinity of a number of other auto dealerships, and thus it is reasonable to apply a 20% trip reduction to the proposed Dibs Auto Sales. Based on this information, the applicant has applied a 25% reduction to the proposed Dibs Auto Sales use, which, coupled with the stated customers per day, creates a projected traffic count that is slightly less than the existing Bob’s Travel Center.

The Traffic Engineering section of the Public Works Department has reviewed the information provided and does not agree with the findings that have been made. It is staff’s position that the “automobile multiple dealership” deduction is flawed. Specifically, if the subject site were in the Corby Avenue auto dealership area staff would agree that the suggested deduction could be used. However,

the location at 704 and 722 Santa Rosa Avenue would not facilitate walking to other auto dealership locations to reduce vehicle trips. Therefore, this deduction should not be used.

Staff finds that the general operational nature of auto sales as a land use results in more traffic and noise impacts than that associated with RV sales. Staff further finds that there would likely be an increase in the number of customers and/or employees regularly entering and exiting the site when compared to RV sales, due to the more frequent pattern of shopping for, or purchasing, of automobiles. In addition, with a smaller sized product (automobiles) the new use will significantly increase the amount of auto-oriented retail available on the site when compared to an inventory of larger product (RV's) on the same site.

C. Applicant Grounds for Appeal

The applicant is willing to agree to certain conditions on the Zoning Clearance to mitigate impacts.

Staff Response

Pursuant to Zoning Code Section 20-52.020, a Zoning Clearance is a "procedure" used by the City to verify that a proposed land use or structure is allowed in the applicable zoning district. A Zoning Clearance does not simulate a Conditional Use Permit or the conditioning process. The Zoning Clearance process allows the City to review whether or not the "auto and vehicle sales and rental" land use classification is allowed on the subject site, not whether it is allowed with specific operational or site upgrade conditions.

D. Applicant Grounds for Appeal

The applicant's grounds for appeal advises staff and the Planning Commission that testimony regarding the need to find a replacement site due to the loss of the former Dibs Auto Sales site may be given. Further, in the letter from Dino D'Argenzio, Keegan and Coppin Co. Inc., dated May 16, 2013, the applicant contends that the owner of Dibs Auto Sales was assured by the City that he would be assisted in relocation of his property and business.

Staff Response

As identified in the attached Stipulation for Judgment and Judgment in Condemnation and the Final Order of Condemnation in the case of City of

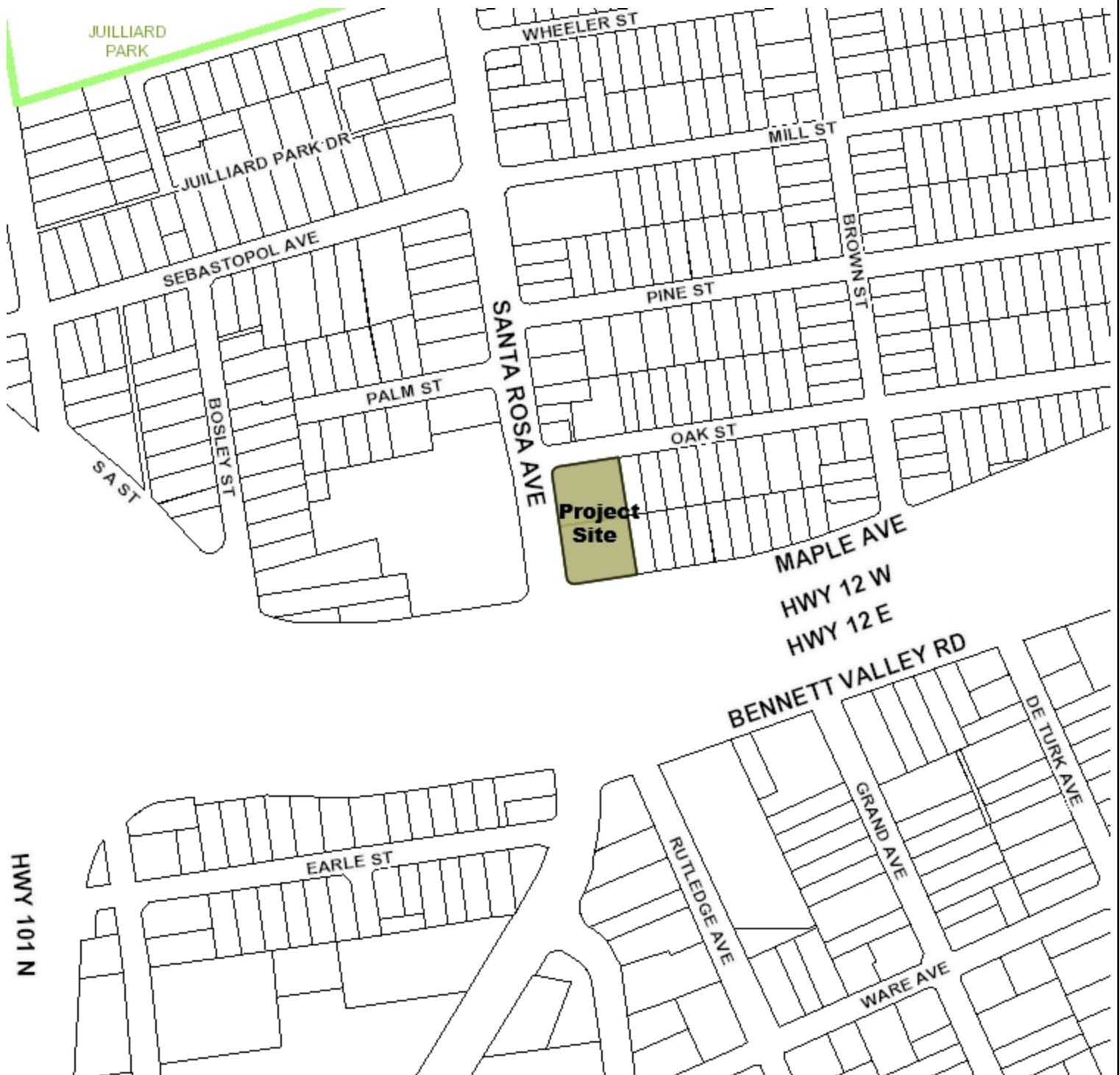
Santa Rosa versus George and Karen Dib, the City has fulfilled its obligation with regard to the condemnation of the former Dibs Auto Sales site with the payment of full and just compensation pursuant to a settlement of the matter reached between the City and the Dibs. The stipulated settlement, entered into on June 15, 2010 (attached) states that the "acceptance by the Dibs of the payment constitutes full and complete satisfaction of all claims, including but not limited to claims for inverse condemnation, pre-condemnation damages, and loss of good will in connection with the legal action or otherwise, and any costs, expenses including any and all relocation expenses..." Any obligation the City may have had regarding relocation assistance was fulfilled as part of the settlement. Further, relocation laws and regulations would not require the City to revise or ignore its current zoning laws as part of any obligation to assist with relocation. Therefore, it is staff's position that the prior condemnation of the Dibs' property and business has been fully addressed by the City and has no bearing on the current issue.

RECOMMENDATION

It is recommended by the Community Development Department that the Planning Commission deny the appeal and, by resolution, uphold the Community Development Director's denial of a Zoning Clearance for vehicle and auto sales and repair for Dibs Auto Sales located at 704 and 722 Santa Rosa Avenue.

Attachments:

- Location Map
- Aerials, dated 1993, 2000, 2002, 2005, 2007, 2009 and 2011
- Design Review and Conditional Use Permit approval, dated December 28, 1984
- Letter from Dino D'Argenzio, Keegan and Coppin Co. Inc., dated May 16, 2013
- Letter from Clare Hartman, Supervising Planner, dated June 4, 2013
- Grounds for Appeal from Jean A. Kapolchok, J. Kapolchok & Associates
- Stipulation for Judgment and Judgment in Condemnation, dated June 22, 2010
- Final Order Of Condemnation, dated July 14, 2010
- Letter from Stephen Butler of Clement, Fitzpatrick & Kenworthy dated September 5, 2013
- Email from Jean Kapolchok dated September 9, 2013, requesting continuance of the item from September 12, 2103, to the October Planning Commission meeting
- Letter from Clare Hartman dated September 23, 2013 responding to the letter from Stephen Butler
- Correspondence



704-722 Santa Rosa Avenue
File No. ZC13-0524



7/10/2013

Scale 1: 3,445

0 Miles 0.05

1993 - 1 meter



April 2000



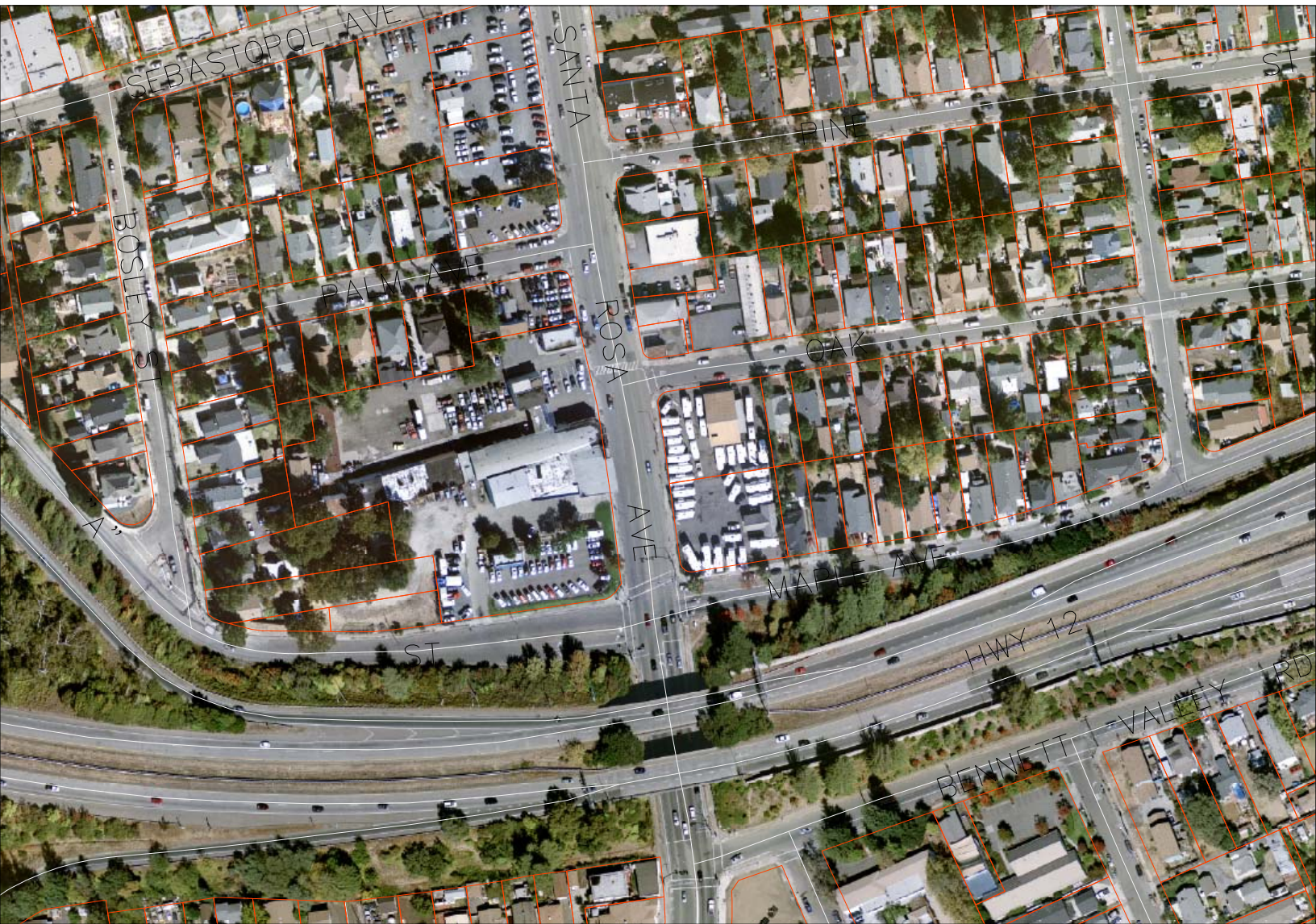
July 2002



March 2005



October 2007



April 2009



April 2011





WAYNE G. GOLDBERG
DIRECTOR

DEPARTMENT OF COMMUNITY DEVELOPMENT
CITY HALL P.O. BOX 1678 SANTA ROSA, CALIF. 95402
(707) 576-5236 100 SANTA ROSA AVE.

December 28, 1984

Donald Zumwalt
P.O. Box 1967
Santa Rosa, CA 95402

RE: Santa Rosa Dodge APN: 9-331-46, 48, and 49 Zone: C-2
General Plan: Retail Business and Service

Dear Mr. Zumwalt:

The design review and use permit application for a used car dealership, including relocated office building, at 722 Santa Rosa Avenue, Santa Rosa, California has been reviewed and approved by the Community Development Department staff, per plans and information submitted November 27, 1984, subject to compliance with all the standard conditions stated on the attached sheet and the following:

1. Prior to issuance of a building permit, the following shall be submitted for review and approval of the Department of Community Development:
 - a. A lot merger of Assessors parcels 9-331-46, 48, and 49.
 - b. A final drainage and irrigation plan including sufficient planting within the natural drip lane of the existing oak tree.
 - c. A color and material board for the office building.
2. Signs are not approved or part of this action and a separate application is required.
3. A wastewater discharge permit is required.
4. Maximum 12 inch eave permitted into 5 foot yard on east side, this eave is required to be of 1 hour construction.
5. All rooms in the building are required to be accessible to physically handicapped as required by State Title 24.

CITY OF SANTA ROSA
Department of Community Development
P.O. Box 1678, Santa Rosa, CA 95402
DATE: 12/19

PROJECT PLANNER:
ROSS PARKERSON

PROJECT TITLE:
SANTA ROSA DODGE

APPLICANT NAME:
SANTA ROSA DODGE

REPRESENTATIVE NAME:
DONALD ZUMWALT

OWNER'S NAME:
SAME

APN:
9-331-46, 48, 49

TYPE OF BUSINESS:
USED CAR DEALER

NO. OF PARKING SPACES
FULL SIZE: _____ COMPI

PREVIOUS ACTION TAKEN BY DECISION

PROPOSED ZONING:
SAME

TYPE OF SUBDIVISION:

Annexation/Rezoning

☒ Design Review

Extension of Time
(Date of Termination
of Approved Tentative
Map)

General Plan Amendment

Referrals to City Departments:

☒ Building ☒ Finance

☒ C.O.

Referrals to Other Agencies/Organ

Alcoholic Beverages Control
Applicable School District
Bellevue
Bennett Valley
Mark West
Piner-River
Rincon Valley
Rossland
Santa Rosa
Wright

*If no reply is received by the
on this project.

Request (Please review the propos

Recommended Conditions:

Design Review and Use Permit
Santa Rosa Dodge
December 28, 1984
Page Two

It was determined on November 27, 1984, that the project qualifies for a Class I Exemption under the California Environmental Quality Act.

The Zoning Ordinance provides a 15-day appeal period from the date of approval. If a building permit is obtained within that time and an appeal is also received, this could result in a delay. Note: A building permit is required for all interior and exterior changes.

This approval is granted for one year, until December 28, 1985 and may be renewed for one additional year at the end of that period as provided by Chapter 1, Article 6, Section 64 and Chapter 2.5, Article 2, Section 263 of the Zoning Ordinance.

Should you wish to obtain an extension of this approval, a written request must be submitted to this office 30 days prior to the expiration date, accompanied by required fees. Call me at 576-5402 if you have any questions.

Sincerely,

DEPARTMENT OF COMMUNITY DEVELOPMENT

E. Ross Parkerson
E. Ross Parkerson
Assistant Planner

ERP/jh
Attachment

cc: M. Sheppard
Building Division
CD Engineering
Sommer/Battaglia
417 Tesconi Circle, Santa Rosa, CA 95401

Fire Department
Utilities Department
File:

C. Bodine, 503 Brown Street, Santa Rosa, CA 95401

Santa Rosa, CA 95402

CITY OF SANTA ROSA

CERTIFICATE OF MERGER OF FOUR SEPARATE LOTS
OF REAL PROPERTY INTO A SINGLE LOT

SONOMA COUNTY ASSESSOR'S PARCELS NUMBERED
9-331-16, 9-331-46, 9-331-48, 9-331-49

The City of Santa Rosa, California, finds that the request of Donald H. Zumwalt and Jill Zumwalt, the joint fee title owners of all that certain real property situated in the City of Santa Rosa, generally identified as Sonoma County Assessor's Parcels Numbered 9-331-16, 9-331-46, 9-331-48 and 9-331-49, and precisely described on Exhibit A, which is attached hereto and made a part hereof by this reference, to merge the said four separate and contiguous lots into a single lot or parcel of real property is consistent with the Santa Rosa General Plan and the zoning of the four lots, and the requested merger is otherwise acceptable to the City of Santa Rosa.

Based on the above findings, the request of the fee title owners, and the consents to the proposed merger executed by the persons having interests in certain deeds of trust affecting the four separate lots, the City of Santa Rosa hereby approves and authorizes the merger of Sonoma County Assessor's Parcels numbered 9-331-16, 9-331-46, 9-331-48 and 9-331-49, which lots are precisely described on Exhibit A, into a single lot or parcel of real property. The merger of said four separate lots into a single lot is effective upon the recording of this Certificate in the Official Records of Sonoma County and thereafter any division of the single lot, created by this merger, shall require either a minor or major land division approval by the City of Santa Rosa, California.

Dated: 5 March 1985

CITY OF SANTA ROSA

By

Bryndon J. Rima
BRYNDON J. RIMA
Director of Public Works and
City Engineer

ATTEST Rebecca Albright
Assistant City Clerk

ORDER NO: 57

All that real
State of Calif

PARCEL ONE:

Lot 301 in Blk
City of Santa
County Recorder
in Book 20 of

A.P. 9-331-16

PARCEL TWO:

Lot 270, Block
Wheelers Secon
page 25, Sonom

SAVING AND EX
the Deed to th
1965 and recor
Sonoma County

A.P. 9-331-46

PARCEL THREE:

Lot Number 268
designated upo
to the City of
the County Rec
Book 20 of Map

A.P. 9-331-48



KEEGAN & COPPIN COMPANY, INC.

ONCOR INTERNATIONAL

1355 North Dutton Avenue, Santa Rosa, CA 95401-7110 ♦ (707) 528-1400 ♦ Fax (707) 524-1419

Website: www.KeeganCoppin.com ♦ E-Mail: Info@KeeganCoppin.com

Offices in Santa Rosa, Petaluma, Napa/Sonoma, & Larkspur

CITY OF SANTA ROSA
100 SANTA ROSA AVE., STE 5
SANTA ROSA, CA 95404

MAY 20 2013

DEPARTMENT OF
COMMUNITY DEVELOPMENT
PLANNING DIVISION

May 16, 2013

City of Santa Rosa
Dept. of Community Development
100 Santa Rosa Ave. Room 3
Santa Rosa Ca. 95404

Attn.: Clare Hartman and Charles Regalia

chartman@srcity.org

cregalia@srcity.org

On behalf of George Dib

Dib Auto Sales

Re: AP. 009-331-050 and 051

Clare Hartman

With respect to **704-722 Santa Rosa Ave.**, owned by Robert Montgomery operating as Bob's RV Sales, and the requested zoning clearance request for **Dib's Auto Sales.** Mr. Dib and Karen Jurling Dib request a zoning clearance in order to purchase the property for use as primarily automotive sales with incidental use for auto services for related safety check pertaining to the automotive sales at the subject location.

Please review the following with respect to the request of George Dib to operate auto sales and service on this site, as follows:

- I) Historical and continual uses for the site at 702-722 Santa Rosa Ave have been automotive related including: auto service, automotive sales including truck, travel trailers, motor homes, and autos of various types all since the property was constructed sometime in the 1940-1950 period. Prior to 1980 the service shop building to the North was operated independently as a repair shop by Torvick Auto sales of used and new cars on the site previous to Bob's RV Sales. In 1990 Mr. Montgomery purchased the property from Mr. Sal Iraci, who had previously operated a used car and truck sales lot on the property for over 10 years prior to 1990. Since 1990 Mr. Montgomery has operated the vehicle sales and automotive service and repair facility at this location. The service shop on the Northerly parcel (704) has been continually used for automotive services and major repairs. The southerly parcel (722) has a sales office and retail use building.

The following is a comparative description of the current Bob's RV Sales relative to the proposed Dib's Automotive sales for the site.

704 / 722 Santa Rosa Ave. is approx. 8/10 of an acre site, fully paved with 3 street frontages and multiple curb cut access points on Santa Rosa Ave and on each street fronting to the South and the North

Bob's RV Sales:

- The average customer/car count to the site per day to Bob's RV Sales as reported by Mr. Montgomery is 19-20/day.
- Bob's RV Sales displays autos for sale, including; 40-45 trailers, trucks, large and small vehicles for sale on-site. The larger vehicle sizes range from approx. 24 ft - 40 ft long, 8 ft wide, 11-12 ft in height; weight 4,000 - 14,000 lbs.
- Hours of operation of Bob's RV Sales are 9 AM - 5 PM, 7 days per week.
- The sales office area on the Southerly parcel is approx. 1,000 sf; The auto- service bay building is on the Northerly parcel and has auto bays facing Santa Rosa Ave. and North.
- Full automotive repair services are performed for any automotive customer on-site including repairs and service for sold vehicles for warranty purposes.
- The automotive service shop on site performs general automotive repairs including, but not limited to, collision, dry rot, roof, walls, brakes, electrical, bearings, fiber glass, hitch installation, siding, etc.
- Sales and Service staff of Bob's RV on site are 3 to 6 depending on days of operation.

II) Comparison to current Dib's Automotive site at 2728 Santa Rosa Ave.

- 1) Dib's average daily customer car count is 7-10 cars per day for customers purchasing a vehicle of any type.
- 2) Dib's automotive inventory currently offers for sale: 50% large trucks, RV vehicles, travel vehicles, trailers, small and large vans ; and 50% passenger vehicles.
- 3) Dib's hours of operation are 9 AM - 5:30 PM Monday - Friday; 11 AM - 4 PM Saturday and Sunday.
- 4) Current retail office sales area is a mobile structure of approx. 650 sf.
- 5) Dib's current use performs incidental automotive service to warranty vehicles.
- 6) Dib's sales staff is 3 people on site (vs. the 6 that Bob's RV has on site.)

III) Conclusion and Zoning Clearance Request

- The Dib's Auto Sales use is a lesser impact on the site compared to the current use;
- The Dib use is more compatible to the nature of the Santa Rosa 'gateway' entrance to the South end of downtown Santa Rosa. The products are much less smaller in size and more visually appealing then RV vehicles.
- A portion of the products offered for sale by Dib's are very similar in use and nature to products and services currently offered by Bob's Travel Trailer sales and automotive service.

Dib's use is a more attractive use for the site than RV sales, the following reasons:

- 1) Dib's use will perform far less general automotive service than current use.
- 2) Half of the Dib's vehicles are smaller in overall size and therefore less of a visual impact to the 'entry/gateway' nature of Santa Rosa Ave.
- 3) The Dib's use includes sales of RV, travel trailers, trucks, and passenger cars, which is compatible in nature to the Bob's RV Sales and therefor is compatible in nature to current uses.
- 4) The Dib's hours of operation are similar or less than the current operating hours of Bob's RV Sales.
- 5) Mr. Dib will be improving the property by upgrading the exterior of the current building.

The parties request a Zoning Clearance in order for Mr. Dib and family to purchase the property.

Within the last 2 years, the City of Santa Rosa required Mr. Dib to sell his property and business at the corner of Kawana Springs Rd and Santa Rosa Ave.

The City action included Eminent Domain at which time Mr. Dib was assured by the City of Santa Rosa that he would be assisted in a relocation of his property and business.

Mr. Dib feels the City of Santa Rosa is obligated to provide adequate and reasonable mitigation Measures and actively assist Mr. Dib is securing suitable site of equally functional location for the continued operation of Dib Auto sales.

Mr. Dib has the subject property oin contract to purchase from Mr. Montgomery.
Mr. Dib finds the site of 702-722 Santa Rosa Ave suitable and compatible in nature.

The site has been continually used for automotive related sales and service for all types of automotive vehicle since at least the 1960-1970 period and therefore the site should not be limited only to the current operation of RV sales.

Mr. Dib is running out of time to accomplish the 1033 Tax Deferred exchange provided by Eminent Domain tax regulations and will suffer great financial loss should the City of Santa Rosa fail to assist Mr. Dib in the relocation to this site.

We would hope that City staff level would agree in order to assist Mr. Dib in the relocation process and the continued operation of Dib Auto Sales at this subject location.

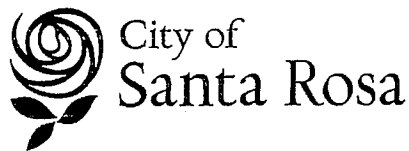


Dino DArgenzio
Keegan and Coppin Co Inc.
1355 N Dutton Ave
Santa Rosa, Ca 95401
dargenzio@keegancoppin.com
fax 707-545-1784

On behalf of
Robert J. Montgomery
704-722 Santa Rosa Ave
Santa Rosa, Ca 95403

George Dib
2728 Santa Rosa Ave
Santa Rosa, Ca 95403
fax 568-3427
dibsauto@sonic.net

Jane Duggan
ReMax Central Santa Rosa
320 College Ave Suite 300
Santa Rosa, Ca 95401
Jane.duggan@sonic.net



June 4, 2013

Dino DArgenzio
Keegan & Coppin Company, Inc.
1355 North Dutton Avenue
Santa Rosa, CA 95401-7110

Re: Zoning Clearance Determination – Dib's Auto Sales
Addresses: 704-722 Santa Rosa Avenue
APNs: 009-331-050 & 009-331-051
General Plan: Mixed Use (Retail and Business Services & Residential Medium Density)
Zoning: CN-H-SA (Neighborhood Commercial – Historic Combining – Station Area Combining)

Dear Mr. DArgenzio:

Thank you for submitting your request for a Zoning Clearance to allow auto and vehicle sales and repair at the address referenced above. The Community Development Department has completed its review of the land use permit records for the property and the supplemental information that you have provided in the May 16, 2013 letter. The Department has determined that auto and vehicle sales and repair are not allowed at the subject property.

The current General Plan designation for the property is Mixed Use (Retail and Business Services & Residential Medium Density) and the current zoning classification is CN-H-SA. This General Plan designation is intended to accommodate mixed use development on important locations just outside downtown. Single uses are allowed consistent with either of the underlying land use classifications.

The CN base zoning district is consistent with and implements the Mixed Use land use classification of the General Plan. Residential uses are encouraged as part of new development; Neighborhood serving convenience retail and services are permitted; and auto oriented uses such as auto and vehicle sales, auto parts sales, auto repair, and RV and trailer sales are not permitted. The SA combining district implements the Downtown Station Area Specific Plan and policies for the Park and Gardens Sub-Area. The H combining district implements historic preservation guidelines for the Burbank Gardens Preservation District.

City records indicate that prior to 1987, "Auto and vehicle sales and rental" and "Vehicle service – major repair" land use operations were recognized as legal uses at the site through use permits and/or zoning clearances. The last such tenant was a Dodge dealership. Beginning in 1987, however, the use of the site converted to "Mobile home, boat, and RV sales" and "Vehicle services – major repair" as documented by a Business Tax Certificate secured for Bob's

Travel Center. No use permit or zoning clearance records for the new replacement use have been found, however the Department recognizes that the replacement non-conforming use has operated on the site for the last 26 years and still remains active today. The replacement use established a new benchmark for use of the site. The current use may continue as a legal, nonconforming use, but no other uses outside of the current General Plan designation of Mixed Use and zoning classification of CN-SA-H are allowed.

Zoning Code Section 20-61.020 provides direction on the circumstances upon which a legal non-conforming use may be replaced by a new non-conforming use. Specifically, an existing legal, non-conforming use may be continued, transferred or sold to a new operator who wishes to operate the same use. In this case, the use rights available for transfer would be restricted to the current use classified as "Mobile home, boat, and RV sales" and "Vehicle services – major repair". Another criteria for replacing a use with a new non-conforming use is if the new use is *"of a similar or more restricted classification or nature; provided, the proposed new non-conforming use would not increase the degree or intensity of the non-conformity."*

Following a review of the City's permit records, the Zoning Code, and your letter dated May 16, 2013, the Department has determined that the new use of "Auto and vehicle sales" is not of a similar or more restricted classification or nature than the existing use of "Mobile home, boat, and RV sales" and further that the new use will increase the degree or intensity of the nonconformity. This determination is based on the following findings:

- a) The two land uses are defined in the City's Zoning Code as distinctly separate land use classifications;
- b) Of the two land use classifications, "Mobile home, boat, and RV sales" is a more restricted land use classification in terms of where such a use can locate in the City and under which level of permit and review authority; and
- c) Although the May 16th letter does address specific details of the existing and proposed tenant operations, staff finds that the general operational nature of auto sales as a land use results in more traffic and noise impacts than that associated with RV sales. Staff finds that there would likely be an increase in the number of customers and/or employees regularly entering and exiting the site when compared to RV sales due to the more frequent pattern of shopping for, or purchasing, of autos. In addition, with a smaller sized product (autos) the new use will significantly increase the amount of auto-oriented retail available on the site when compared to an inventory of larger product (RVs) on the same site.

The decision of the Community Development Director or his designee is subject to appeal to the Planning Commission within ten (10) calendar days from the date of the Director's action. In the event the end of the appeal period falls on a non-workday, the appeal period shall be extended to include the next business day. Reasons for an appeal must be made in writing on a completed appeal application form. An established fee must accompany appeals. Appeals are filed at the following address:

City of Santa Rosa
Community Development
100 Santa Rosa Avenue, Room 3
Santa Rosa, CA 95404

If you have any questions, please feel free to contact me at (707) 543-3185 or by email at Chartman@srcity.org.

Sincerely,



CLARE HARTMAN, SUPERVISING PLANNER
Community Development

C Chuck Regalia, Director
 Robert J. Montgomery, 704-722 Santa Rosa Ave., Santa Rosa, CA 95403
 George Dib, 2728 Santa Rosa Ave., Santa Rosa, CA 95407
 Jane Duggan, ReMax Central Santa Rosa, 320 College Ave., Ste. 300, Santa Rosa, CA 95401

Attachments: Letter by Dino Dargenzio dated May 16, 2013

J. Kapolchok

+ Associates

Land Use Planning
Urban Design

**Appeal of an Administrative Determination
To Deny a Zoning Clearance for
Dib's Auto Sales
704 - 722 Santa Rosa Avenue
Santa Rosa, CA**

Grounds For Appeal:

- 1. Downtown Station Area Specific Plan (DSASP) created hundreds of non-conforming uses. In response, the City Council included policies in the DSASP to help non-conforming uses and replacement of non-conforming uses continue until the property owners were ready to convert:**

The subject property is located within the Park and Gardens Sub-Area of the Downtown Station Area Specific Plan. Continuation of non-conforming uses are specifically addressed for this sub-area as well as reflected in a Specific Plan policy SP-LU-5.4. The Plan reads as follows:

"While the land uses and building forms envisioned for the future of this Sub-Area reflect a transition from current conditions, there are provisions within the Specific Plan that allow existing nonconforming uses to continue to operate in the interim." (DSASP p. 4-6 emphasis added)

Hence, the DSASP specifically acknowledged that the land use being applied to this area represented a dramatic conversion but specific measures were added to the DSASP to allow properties to continue their existing uses or uses similar in nature until such time as the properties were ready to convert.

Policy SP-LU-5.4: Allow continuance of existing non-conforming uses within the Plan Area until properties are ready to convert to uses that are consistent with adopted plans and regulations. Allow for maintenance and re-occupancy of buildings with non-conforming uses and exempt minor alterations and/or expansions of existing buildings from the development guidelines established in the Development Guidelines and Streetscape Standards chapter of this plan. (DSASP p. 4-13 emphasis added)

843 Second Street
Santa Rosa, CA 95404
TEL: 707.526.8939
FAX: 707.526.8985
eMAIL: jkapolchok@sbcglobal.net

Policy SP-LU-5.4 represents a significant change in intent when it comes to the treatment of legal non-conforming uses within the boundaries of the DSASP.

The stated intent of non-conforming regulations per the city's Zoning Code is to provide for the eventual elimination of non-conforming uses (Section 20-61.010 B). The Specific Plan's intent is more liberal. The Plan's intent is to allow non-conforming uses to continue, including replacement uses and uses that involve minor alterations and expansions of buildings, until the properties are ready to convert. This policy has been incorporated into the city's General Plan for properties within the DSASP boundaries and is directly applicable to the subject property.

2. **The proposed replacement use is a legal non-conforming use of similar or more restrictive nature and per the Zoning Code, coupled with the DSASP policies regarding non-conforming uses, should be allowed to occupy the site.**

Historic Use: 704 – 722 Santa Rosa Avenue has historically been used for the sale and service of automobiles, trucks, recreational vehicles, motor homes and boats since the 1940's. According to the city, in their letter dated June 4, 2013 addressed to Dino D'Argenzio, representative for the prospective buyer, "City records indicate that prior to 1987, "Auto and vehicle sales and rental" and "Vehicle service – major repair" land use operations were recognized as legal uses at the site through use permits and/or zoning clearances. The last such tenant was a Dodge dealership."

Existing Use: Also according to the city's June 4, 2013 letter "Vehicle service – major repair" and "Mobile home, boat, and RV sales" are the current, recognized legal non-conforming uses on the site.

Requested Use: On behalf of Dib's Auto, a Zoning Clearance was filed with the city to replace the "Vehicle service – major repair" and "Mobile home, boat, and RV sales" legal non-conforming uses with a "Vehicle service – major repair" and "Auto and vehicle sales and rental". The replacement of the existing "Vehicle – major repair" with the proposed "Vehicle – major repair" use is not at issue. This use has been recognized by the city and change of operator is clearly permitted by the code. At issue, is the ability for Dib's "Auto and vehicle sales and rental" to replace Bob's Travel Center's "Mobile home, boat, and RV sales".

Existing use is not strictly a "Mobile home, boat, and RV" sales use: Bob's Travel Center is and has not exclusively engaged in the sale of RVs. Although the current on-lot inventory is predominantly RVs, Bob's Travel Center has and does show and sell trailers, trucks and large and small vehicles. According to information provided by the property owner, Bob's

Travel Center displays vehicles for sale, including 40 - 45 trailers, trucks, and large and small vehicles. The existing non-conforming use did not forfeit the "auto vehicle sales and rental" use, which, by definition includes the sale of trailers and trucks. The existing use operates within a "blended" category of "Auto and vehicle sales and rentals" and "Mobile home, boat and RV sales".

Proposed use is not strictly a "Auto and vehicle sales and rental" use:

According to information submitted as part of the Zoning Clearance application¹ Dib's automotive inventory includes and will include RVs, travels vehicles and trailers (Note: trailer sales are permitted in both categories).

Zoning Code Section 20-61.020:

The above referenced code section sets forth the following criteria for the replacement of non-conforming uses with similar uses:

"A non-conforming use may be changed to another non-conforming use of a similar or more restricted classification or nature; provided, the proposed new non-conforming use would not increase the degree or intensity of the non-conformity."

It is the city's position that the proposed use does not conform to the criteria cited above because:

- "Mobile home, boats and RV sales" and "Auto and vehicle sales are separate land uses within the city's classification system.
- "Mobile home, boat, and RV sales" is the more restrictive of the two land uses.
- And, "staff finds that the general operational nature of auto sales as a land use results in more traffic and noise impacts than that associated with RV sales. Staff finds that there would likely be an increase in the number of customers and/or employees regularly entering and existing the site when compared to RV sales due to the more frequent pattern of shopping for, or purchasing, of autos. In addition, with a smaller size product (autos) the new use will significantly increase the amount of auto-oriented retail available on the site when compared to an inventory or larger product (RVs) on the same site."²

Based on the above findings, staff issued a denial of the requested Zoning Clearance. We respectfully, disagree.

¹ Letter dated May 16, 2013 to the City of Santa Rosa, RE: Dib Auto Sales by Dino D'Argenzio, Keegan & Coppin Company, Inc

² Letter dated June 4, 2013 to Dino D'Argenzio, RE: Zoning Clearance Determination – Dib's Auto Sales by Clare Hartman, City of Santa Rosa.

Separate land uses: We do not disagree that the two land uses "vehicle sales" and "RV sales" are separate land uses within the city's zoning classification system. However, this fact does not lead to the conclusion that the use, as described, under these particular circumstances, is not similar in nature.

As referenced above, vehicle sales have continuously occurred on the subject property since the 1940's. A Dodge dealership was replaced by recreational vehicle sales use but, as stated by the property owner, this use also included the sale of trucks and small vehicles. Hence, the auto and vehicle sales land use continues and, as will be discussed below, through the mechanism of a Zoning Clearance, the intensity of the land use, that is, its nature, can be prescribed.

"Mobile home, boat and RV" sales are the more restrictive of the two land uses: Neither "Auto and vehicle sales and rentals" or "Mobile home, boat and RV" sales are permitted in the Neighborhood Commercial (CN) zoning district, which is the existing zoning on the site (CN-H-SA). Therefore, their level of "permitted-ness", as it relates to the subject property, is identical. Neither land use is permitted.

Staff has taken the position that "Mobile home, boat and RV" sales is more restrictive because "Auto and vehicle sales and rental" is permitted, after first securing a MUP, in the Light Industrial (IL) district. That is, there is one additional use category that auto and vehicle sales and rentals would be entertained. Although this fact is correct we find staff's interpretation of this fact to be both ironic and not necessarily correct.

"Auto and vehicle sales and rentals" were not allowed in the IL district until 2012. The amendment to the district occurred as an implementation measure to the City Council goal of business friendly/economic stimulus. To now use this fact as a means of preventing a small, locally owned business from occupying a site that has a ±70-year history of vehicle sales is, shall I suggest, not quite in line with the Council's intentions. Furthermore, just because a particular land use is allowed amongst a number of zoning classifications doesn't bear a relationship to the use's intensity (restrictiveness) or nature.

The general operational nature of auto and vehicle sales results in greater noise and traffic impacts than RV sales: Generally speaking, this could be correct. However, what is being overlooked is that the intensity of the use can be controlled through the Zoning Clearance. The applicant, through his representative, submitted a project description as regards number of employees, hours of operation and anticipated customer traffic based on their existing use. Furthermore, the zoning code allows a replacement use if that use is of a similar or more restrictive nature, that is, equal or less intensity.

Intensity of Use: Intensification of Use is defined in the city's Zoning Code. It reads:

Intensification of Use: A change in the use of a structure or site, where the new use is required by this Zoning Code to have more off-street parking spaces than the former use; or a change in the operating characteristics of a use (for example, hours of operation), which generates more activity on the site.

The same number of parking spaces is required for auto and vehicle sales and rentals as is required for mobile home, boat or RV sales. Zoning Code Table 3-4: "Parking Requirements By Land Use" requires 1 space for each 450 sf. of covered display or building area for each use.

The second measure, according to the code's definition, is operating characteristics of the use that may generate more activity on site. The table below depicts the main operating characteristics of the uses and compares them to determine similarity of intensity. (The information presented was derived from the application for the Zoning Clearance.)

Operating Characteristics	Existing Use	Proposed Use	More Intense Use
Hours of operation	8 hours per day (9AM to 5PM); 7 days/week. Total hours = 56 hours per week.	8.5 hours per day for 5 days; 5 hours per day for 2 days. Total hours = 52.5 hours per week.	Existing
Number of Employees	3 - 6	3 - 5	Existing
Lot Coverage	±100%	Less than ±100%. Mr. Dib has offered to install landscaping along the street frontage.	Existing
Customer's per Day (average)	19 - 20	7 - 10	Existing
Traffic ³	113	110	Existing
Aesthetics (mass and bulk; see explanation below)	Dominant	Less dominant	Existing
Improvements	None	Upgrading buildings exteriors	Existing

³ Numbers are based on a theoretical construct. See attached worksheet

Aesthetics: Currently, the site is fully occupied with large vehicles that are 24 - 40 ft. long x 8 ft. wide x 11-12 ft. high. Although, at times, the site shows and sells smaller vehicles, without relief afforded through setback, siting or landscape treatment, the RVs create a massive, dominant appearance. Dib's Auto proposes a mixed product line that includes smaller vehicles as well as larger trucks and RVs. Dib's, through the mechanism of the Zoning Clearance, looks forward to working with staff on site layout, landscaping, building upgrades and signage. This will result in a more visually pleasing less dominant site appearance.

3. Zoning Clearance

In order to replace the existing legal non-conforming use with a new legal non-conforming use the applicant must receive a Zoning Clearance from the city. Through this administrative process the applicant is willing to restrict the hours of operations, the number of employees and upgrade the visual appearance of the site by improving the exterior appearance of the buildings, working with staff on site layout, signage and landscaping. These volunteered restricts assure the proposed use is of the same or less intensity as the existing use.

Based on the above information, including the voluntary restrictions on the use, we believe that the proposed use is in conformance with the Section 20 - 61.020 of the city Zoning Code and in keeping with the replacement policy of the DSASP. We ask that the Planning Commission over turn staff's denial of the Zoning Clearance and grant the requested appeal.

Please be advised that testimony regarding the need to find a replacement site due to the loss of Dib's Auto former site because of condemnation by the city for roadway improvements may be given.

Sincerely,



Jean A. Kapolchok

Trip Generation Worksheet:

According to the City of San Diego Trip Generation Manual Car Dealerships generate 50% more trips than Recreational Vehicle Dealerships. However, if the car dealership is an Automobile Multiple Dealership the trip generation is reduced by 41.5% or 8.5% more than a Recreational Vehicle Dealership. Although the subject property is not part of an Automobile Multiple Dealership, it is in the immediate vicinity of a number of Automobile Dealerships. It is therefore reasonable to apply a 20% trip reduction to the proposed use. Furthermore, information has been submitted that the existing RV dealership also sells and/or has sold trucks and smaller vehicles. Likewise, information has been submitted that the proposed use will also sell RVs and trailers. For purposes of analysis, a 25% adjustment was made for each use.

Display Lot: Assumed size \pm .5-acres

Trip Generation*

Car Dealership: 150 trips

Recreation Vehicle Dealership: 100 trips per acre

Automobile Multiple Dealerships: 109

Existing Use: 75% RVs; 25% trucks, trailers, smaller vehicles

Proposed Use: 25% RVs; 75% autos, trucks, trailers

Trip Generation - Existing Use: 113 trips

Trip Generation - Proposed Use: 110 trips

*The above trip generation numbers are theoretical and may not represent actual number of existing or proposed trips.

In both the existing and proposed use actual customer counts were significantly lower and are more representative of actual use.

ENDORSED
FILED

JUN 22 2010

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

CAROLINE L. FOWLER, City Attorney (SBN 110313)
MOLLY L. DILLON, Assistant City Attorney (SBN 193405)
City of Santa Rosa
100 Santa Rosa Avenue, Room 8
Santa Rosa, California 95404
Telephone: (707) 543-3040
Facsimile: (707) 543-3055

Attorneys for City of Santa Rosa

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SONOMA

CITY OF SANTA ROSA,

Plaintiff,

v.

GEORGE and KAREN DIB, dba GEO.
DIB's AUTO SALES, aka DIB'S AUTO
SALES, and DOES 1 to 50, inclusive,

Defendants.

CASE NO. SCV-246184

STIPULATION FOR JUDGMENT AND
JUDGMENT IN CONDEMNATION
[CCP § 1235.10]

A Portion of Parcel No. 044-041-001

Unlimited Civil Case

IT IS HEREBY STIPULATED by and between plaintiff, CITY OF SANTA ROSA, and
defendants, KAREN DIB, and GEORGE DIB, dba GEO. DIB'S AUTO SALES, that Judgment in
Condemnation as to the real property interests described in plaintiff's Complaint may be entered in
the sum and containing the terms and conditions of the Settlement Agreement at Exhibit "A",
attached hereto by reference and made a part hereof, and upon the further terms and conditions
herein contained.

IT IS ORDERED AND ADJUDGED that the property described in the plaintiff's
Complaint including all improvements on the land (the "Property"), shall be condemned for public
use by plaintiff.

IT IS FURTHER ORDERED AND ADJUDGED that the use for which the Property is

1 sought to be condemned for the Santa Rosa Avenue Widening Project, is authorized by law and is
2 a public use, and that the taking in condemnation is necessary for that public use.

3 IT IS FURTHER ORDERED AND ADJUDGED that all of defendants' rights to just
4 compensation, severance damages, pre-condemnation damages, business losses, loss of rental
5 income, fixtures and equipment, or any other claims which they made or may have shall be forever
6 extinguished upon execution of the Stipulation for Judgment and Judgement in Condemnation, and
7 payment by plaintiff to "the Smith Dollar Client Trust Account" and mailed to the attention of Glenn
8 M. Smith, Esq., at Smith Dollar, 404 Mendocino Avenue, Second Floor, Santa Rosa, California
9 95401 of the total sum of SIX HUNDRED TWENTY THOUSAND DOLLARS (\$620,000.00),
10 inclusive of fees, costs and interest ("Just Compensation").

11 IT IS FURTHER ORDERED AND ADJUDGED that payment of the Just Compensation
12 specified above is full payment for all interest in the Property taken, together with all improvements
13 on the Property, and for all claims of compensation due including interest, relocation benefits,
14 attorneys' fees and costs, and/or damages of every kind and nature, including but not limited to loss
15 of goodwill, lost rental income, value of fixtures and/or equipment, rental or leasehold value,
16 severance damages, and pre-condemnation damages, suffered by defendants in this action, by reason
17 of the taking of the Property or by reason of any action or inaction whatsoever on the part of plaintiff
18 and/or its agents in relation to the Property and/or the above-captioned case.

19 IT IS FURTHER ORDERED AND ADJUDGED that upon payment by plaintiff of Just
20 Compensation and recordation of an Order in Condemnation in the official records of Sonoma
21 County, California, the defendants' interest in the Property, including all improvements thereon,
22 shall be condemned for the necessary public uses and purposes stated in the Complaint, all of which
23 are authorized by law.

24 IT IS FURTHER ORDERED AND ADJUDGED that plaintiff shall take the Property free
25 and clear of any lien or encumbrances on the Property.

26 IT IS FURTHER ORDERED AND ADJUDGED that upon payment of Just
27 Compensation, plaintiff shall be entitled to a Final Order of Condemnation, which shall be filed and
28 recorded transferring legal title to the Property to plaintiff, and that Statement of Decision and Notice

1 of Entry of Judgment are hereby waived.

2 The Stipulation may be signed in counterpart.

3 DATED: 6/17/10



MOLLY L. DILLON
Assistant City Attorney
Attorney for Plaintiff
City of Santa Rosa

7 DATED: 6/15/10



GLENN M. SMITH, BSQ.
Attorney for Defendants
Karen and George Dib

10 IT IS ORDERED:

12 DATED: JUN 22 2010

MARK TANSIL
JUDGE OF THE SUPERIOR COURT

**SETTLEMENT AGREEMENT AND FULL AND FINAL RELEASE
OF ALL CLAIMS AND ACTIONS**

The undersigned, Karen Dib and George Dib, doing business as Geo. Dib's Auto Sales (hereinafter collectively referred to as the "Dibs"), make and enter into this Settlement Agreement and Full and Final Release of all Claims and Actions ("Settlement Agreement"), with and in favor of the City of Santa Rosa, a California charter city, and its officers, employees, volunteers, and agents (which City and persons are all hereafter collectively called the "City").

RECITALS

- A. The City filed an action against the Dibs in eminent domain in order to acquire the real property owned by the Dibs and located at 2300 Santa Rosa Avenue, Santa Rosa, California (the "Property"); such legal action is known as Sonoma County Superior Court Case No. SCV-246184 (The "Legal Action"), upon which Property the Dibs operate a used car sales business known as Geo. Dib's Auto Sales (The "Business").
- B. In the Dibs' answer to the City complaint in the Legal Action, the Dibs claimed loss of good will associated with the proposed relocation of the business from the Property.
- C. In connection with the Legal Action, the City through legal motion obtained an order for possession of the Property prior to judgment ("Order for Possession"), which gives the City the right to possession and use of the Property effective June 22, 2010.
- D. The parties have reached an agreement to settle the Legal Action and any and all related claims upon the terms set forth herein.

AGREEMENT

1. For the payment of SIX HUNDRED TWENTY THOUSAND DOLLARS (\$620,000) and other consideration as expressly set forth herein, the Dibs hereby, collectively and each individually, acknowledge and agree that the receipt and acceptance by the Dibs of the payment set forth in this Settlement Agreement constitutes full and complete satisfaction for all claims, including but not limited to claims for inverse condemnation, precondemnation damages, and loss of good will in connection with the Legal Action or otherwise, and any costs, expenses including any and all relocation expenses, demands, damages, interest, litigation expenses, attorney fees, and any other loss or damage recognized under law which the Dibs could claim, assert or allege against the City as a result of, arising out of or in connection with the Legal Action and the City's acquisition of the Property and relocation of the Business, and the Dibs relocation from the Property, including but not limited to relocation expenses or benefits that could be required pursuant to California Government Code Section 7260 et seq., or any existing Federal or State relocation laws, regulations and guidelines. The Dibs hereby collectively and each individually waive and release all rights, claims, costs, expenses, demands, damages or causes of action the Dibs now have or may have in the future against the City, its officers, directors, employees, consultants, attorneys, accountants, other professionals, insurers and agents of City, as a result of, arising out of or in connection with the Legal Action and City's acquisition of the Property, relocation of the Business, and construction of the City's project. In furtherance of the intentions set forth herein, the Dibs hereby acknowledge that they are collectively and each individually familiar with Section 1542 of the Civil Code of the

State of California, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

The Dibs hereby collectively and each individually waive and relinquish any right, claim, appeal or benefit which it has or may have under Section 1542 of the Civil Code of the State of California or any similar provision of statutory or nonstatutory law of any other applicable jurisdiction to the full extent that it may lawfully waive all such rights and benefits pertaining to the subject matter of this Settlement Agreement.

2. The City and the Dibs hereby agree that legal counsel for each party shall execute a Stipulation for Judgment in the Legal Action, to which a copy of this fully executed Settlement Agreement will be attached as Exhibit "A", and that the City will cause the Stipulation for Judgment to be filed with the court having jurisdiction over the Legal Action. Once the Stipulation for Judgment is so filed, the City shall return a file stamped copy to legal counsel for the Dibs along with the payment of the financial settlement award described hereunder. In order to process payment, however, the City will require a completed W-9 from the Dibs' legal counsel. The City shall then be entitled to submit a Final Order in Condemnation, consistent with the Stipulation for Judgment, to be executed and filed by the court, which order shall be recorded in the Official Records of Sonoma County, California and which shall evidence transfer of fee title of the Property to and in favor of the City.

3. It is agreed and confirmed by the parties hereto that, notwithstanding any other provisions in this Settlement Agreement, the right of possession and use of the

Property shall vest in the City as of the date of recordation of the Order in Condemnation or on June 22, 2010 pursuant to the Order for Possession ("Date of Possession"), whichever is sooner, which rights shall include the right to remove the existing improvements, if any, and to construct the City's Santa Rosa Avenue Widening Project (the "Project").

4. Notwithstanding the above or any other provision in this Settlement Agreement, the City hereby agrees, as additional consideration for conveyance of the Property to the City and settlement of the Legal Action and all related claims, that the Dibs shall have the right, at no liability or expense to the City whatsoever, to continue to occupy the Property, including the operation of the Business thereon, until July 31, 2010. During this period (the "Leaseback Period"), the Dibs hereby agree, in exchange for, and as a condition to, the continued right to occupy the Property, to the conditions and requirements of occupancy set forth at Exhibit A to this Settlement Agreement, which is made part hereof by this reference. Prior to the Date of Possession, the Dibs shall provide the City with evidence, satisfactory to the City, of insurance coverage as required to be maintained by the Dibs under the conditions and requirements of occupancy. The Dibs hereby agree and represent that the Dibs' only right to use and possession of any portion of the Property during the Leaseback Period shall be pursuant to the terms of this Settlement Agreement and the conditions and requirements of occupancy set forth at Exhibit A.

5. The City further agrees as part of the settlement hereunder that during construction of the Project the City, at the City's sole cost, will maintain as part of the City's construction signage a relocation sign (approved by the City and the Dibs) for the Business on the Property indicating the Business has relocated and including the address of the new location, for a period not to exceed one year.

6. The Dibs hereby each individually and collectively warrant and represent that they have not heretofore assigned or transferred or purported to assign or transfer to any person not a party hereto the Property, or any portion thereof, nor any rights or interests in or to the Business. A division or agreement with respect to any proposed division, if any, of the aforementioned sum between the undersigned or anyone else shall, in no way, affect the validity of this Settlement Agreement.

7. This Settlement Agreement contains the entire agreement between the parties hereto and supersedes any and all prior oral and written agreements and understandings, and no representation, warranty, condition, understanding or agreement of any kind with respect to the subject matter hereof shall be relied upon by the parties unless incorporated herein. This Settlement Agreement may not be amended or modified except by an agreement in writing signed by the party against whom the enforcement of any modification or amendment is sought. The terms of this Settlement Agreement are contractual and are not a mere recital.

8. This Settlement Agreement and all of the terms and provisions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, predecessors, heirs, spouses, legal representatives, agents, servants, employees, attorneys, insurers, partners, members, affiliates, associates, corporations, limited liability companies, subsidiaries, parents, affiliated companies, partnerships, stockholders, officers and directors.

9. The parties acknowledge and represent that, prior to signing of this document, they have consulted with their respective counsel concerning the advisability of entering into this Settlement Agreement, and the meaning and effect of the terms and

conditions set forth herein.

10. In view of the fact that this Settlement Agreement is the product of joint drafting and negotiation among the parties hereto, it is agreed and understood that the general rule that ambiguities are to be construed against the drafter shall not apply to this Settlement Agreement.

11. Each party agrees to do any and all acts or things reasonably necessary in connection with the performance of their obligations under this Settlement Agreement without undue delay or expense.

12. This Settlement Agreement may be executed in counterparts, and authentic facsimile signatures shall be deemed to be original signatures for all purposes.

13. The paragraphs and provisions of this Settlement Agreement are severable; if any paragraph or provision is found unenforceable, the remaining paragraphs and provisions shall remain in full effect.

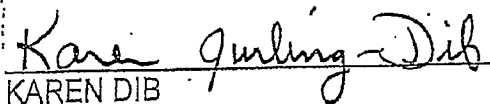
14. This Settlement Agreement shall be interpreted and governed according to the laws of the State of California.

The undersigned does hereby declare that the meaning of this Settlement Agreement has been explained to and through his or her attorney and that s/he fully understands and appreciates the meaning thereof and has executed the same of his or her own free will and accord.



GEORGE DIB, dba Geo. Dib's Auto Sales

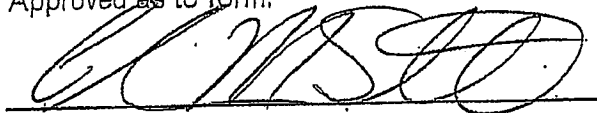
Date: 6-15-10



KAREN DIB

Date: 6-15-10

Approved as to form:



GLENN M. SMITH, Smith & Dollar,
Legal Counsel for the Dibs

Date: 6/15/10



WAYNE GOLDBERG, Interim City Manager
City of Santa Rosa

Date: 6/17/10

Approved as to form:



MOLLY L. DILLON
Assistant City Attorney
City of Santa Rosa

Date: 6/17/10

Attachment: Exhibit A – Conditions and Requirements for Occupancy

2300 SANTA ROSA AVENUE SANTA ROSA, CA

EXHIBIT A - CONDITIONS AND REQUIREMENTS OF OCCUPANCY

A. The City of Santa Rosa (the "City") hereby agrees to allow George and Karen Dib (the "Dibs") to continue to occupy the real property and improvements located at 2300 Santa Rosa Avenue Santa Rosa, CA ("Property") in accordance with the conditions and requirements set forth herein. The Dibs hereby understand and acknowledge that the City has acquired the Property in connection with the Santa Rosa Avenue Widening Project (the "Project"). The Dibs currently operate a used auto sales business on the Property commonly known as Geo. Dib's Auto Sales and they desire to continue operation of the business until such time as the City must have full possession of the Property to commence the Project.

B. The City hereby agrees that the Dibs may continue to occupy the Property until July 31, 2010. The Dibs hereby agree and acknowledge that the Dibs have already been served with a notice of the City's Order for Possession of the Property and a notice to vacate and that the Dibs shall not be entitled to any further notice in connection with City's right to possession of the Property or commencement of the Project.

C. The Dibs hereby agree and acknowledge that the Property was acquired by the City to allow for construction of the Project and that the Dibs' use and occupancy of the Property is temporary. The Dibs are required without the right to any further notice or demand, to vacate the Property on or before July 31, 2010 to allow for the City's commencement of the Project. The Dibs further hereby understand and acknowledge that the Dibs have already received full and just compensation for all and any of the Dibs' previous rights and interests in and to the Property pursuant to a settlement with the City, including any and all payment for loss of business goodwill and relocation assistance and as of July 31, 2010, the Dibs shall NOT be eligible or entitled to receive any assistance under the City's Relocation Assistance Program, nor any other payment or compensation whatsoever from the City in connection with the requirement to vacate the Property. The Dibs hereby accept the right of continued occupancy with full knowledge of the impending Project and the fact that the Dibs are NOT eligible for any assistance under the City's Relocation Assistance Program and described in Government code section 7260, et seq. and corresponding regulations found in the California Code of Regulations, Title C25, Chapter 6.

D. The Dibs shall have the right to vacate the Property at any time. Any personal property whatsoever remaining on the Property after July 31, 2010 shall be deemed abandoned in favor of the City and the City shall have the right without further notice or demand to the Dibs to remove and dispose of said property in any way the City may see fit without any obligation to the Dibs therefore.

E. The Dibs hereby agree and acknowledge that they currently occupy the Property and have done so for several years. The Dibs are therefore very familiar with the condition of the Property and hereby accept the Property in its current condition, with no warranties express or implied by the City as to its fitness for the intended use. The City shall have no obligation whatsoever to make any repair or renovation to the Property. The Dibs acknowledge that they shall be solely responsible for the condition of the Property.

F. The City will not be liable for any damage or injury to the Dibs or any other person or property occurring on the Property, or in connection with the Dibs use of the Property and the continued operation of the Business. The Dibs hereby agree to indemnify, defend and hold harmless the City, its officer, employees and agents, from and against any and all claims, damages, loss or liability arising out of the Dibs' continued occupancy of the Property and the continued operation of the Business thereon, excepting only for the sole, active negligence of the City.

G. Insurance requirements: The Dibs, at their sole cost and expense, shall at all times during the term of occupancy, maintain the follow insurance:

1. Commercial-general liability at least as broad as ISO CG for \$1,000,000 per occurrence and \$1,000,000 annual aggregate. Evidence of insurance in the form of a Certificate of Insurance is subject to review and approval by the Risk Manager for the City of Santa Rosa.
2. Workers Compensation, statutory requirements and Employer's Liability of not less than \$1,000,000, unless the Dibs shall provide a letter representing to the City that the Business has no employees and shall have no employees during the period of occupancy hereunder.

All policies shall contain or be endorsed to contain the following provisions:

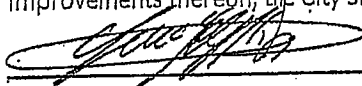
Coverage shall not be canceled by either party, except after thirty (30) days prior written notice has been provided to the entity unless canceled for non-payment, then ten (10) days notice shall be given.

General Liability policy shall contain, or be endorsed to contain the following provisions:

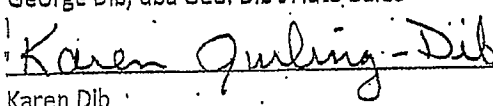
For any claims related to the Property or the operation of the business located thereon, the Dibs' Insurance coverage shall be primary and any insurance or self-insurance maintained by the City shall be excess of the Lessee's insurance and shall not contribute with it.

"The City of Santa Rosa, its officers, agents, employees and volunteers" are to be named as additional insured on a form equivalent to CG20 10 with an edition date prior to 2004.

H. The City shall have no obligation to maintain real property hazard insurance of any kind whatsoever on the Property. In the event of any damage or destruction of the Property or any personal property or improvements thereon, the City shall have no obligation to repair, replace or rehabilitate same.

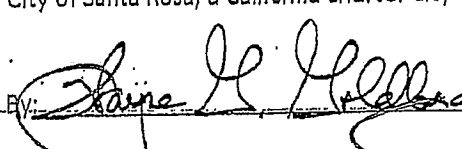

George Dib, dba Geo. Dib's Auto Sales

Date: 6-15-10


Karen Dib

Date: 6-15-10

City of Santa Rosa, a California charter city


Elaine H. Healey

Date: 6/17/10

12
mf

1 CAROLINE L. FOWLER, City Attorney (SBN 110313)
 2 MOLLY L. DILLON, Assistant City Attorney (SBN 193405)
 3 City of Santa Rosa
 4 100 Santa Rosa Avenue, Room 8
 5 Santa Rosa, California 95404
 6 Telephone: (707) 543-3040
 7 Facsimile: (707) 543-3055
 8 Attorneys for City of Santa Rosa

FILED

JUL 14 2010

SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SONOMA
 By [Signature]
 Deputy Clerk

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SONOMA

ORIGINAL

11 CITY OF SANTA ROSA,
 12 Plaintiff,
 13 v.
 14 GEORGE and KAREN DIB, dba GEO.
 15 DIB's AUTO SALES, aka DIB'S AUTO
 16 SALES, and DOES 1 to 50, *inclusive*,
 17 Defendants.

CASE NO. SCV-246184
 Parcel No. 044-041-001
FINAL ORDER OF CONDEMNATION
 [CCP § 1268.030]

Judge: Hon. Mark Tansil

Unlimited Civil Case

Judgment in condemnation having been entered in the above-entitled action on June 22, 2010, in the office of the County Clerk of the County of Sonoma, State of California, and it appearing to the court's satisfaction that the above-named plaintiff, under that judgment, has paid to the defendants, just compensation in the sum of SIX HUNDRED TWENTY THOUSAND DOLLARS (\$620,000.00) disbursed in accordance with the Stipulation for Judgment and Judgment in Condemnation on file in this action:

IT IS ORDERED AND ADJUDGED:

The fee simple title to the parcel of property, situated in the County of Sonoma, State of California, more particularly described as:

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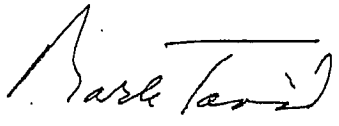
Please see Exhibit "A", attached hereto for the legal description.

The property is hereby condemned for the Santa Rosa Avenue Widening Project.

On filing a certified copy of this Final Order of Condemnation with the County Recorder of the County of Sonoma, State of California, the fee simple title to the real property described above shall vest in plaintiff, its successors, and its assigns.

The plaintiff has taken possession of the real property described above, in accordance with the provisions of California Code of Civil Procedure §§ 1255.410-1255.480, this possession having been authorized on June 22, 2010.

DATED: 7/14/10



JUDGE OF THE SUPERIOR COURT

Commencing at a point on the Easterly line of the state highway between Santa Rosa and Petaluma, which is the Northwest corner of the tract of land conveyed by Margaret Guisti to Wilbur R. Bassett, et al, by Deed dated April 22, 1938 and recorded May 2, 1938 in Book 453 of Official Records, Page 86, Sonoma County Records; thence along the Easterly line of said state highway North 0° 11' 30" East, a distance of 212.50 feet to the North line of that certain 4.80 acre tract conveyed by Glenn Guisti to Margaret Guisti, by Deed dated August 19, 1932 and recorded in Book 321 of Official Records, Page 310, Sonoma County Records; thence North 89° 45' East and along the North line of said tract conveyed by Glenn Guisti to Margaret Guisti, a distance of 472 feet; thence South 4° 12' West, 213.50 feet to the Northeast corner of the land of Bassett; thence along Bassett's Northerly line South 89° 45' West, 456.70 feet to the point of commencement.

Excepting therefrom that portion described in the Deed to Joseph C. Badger, et al, recorded December 29, 1945 in Book 676 of Official Records, Page 137, under Recorder's Serial No. C-7568, Sonoma County Records.

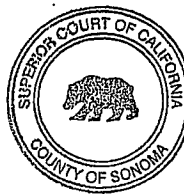
Also excepting therefrom that portion described in the Deed to Donald Simpson, et ux, recorded December 29, 1945 in Book 676 of Official Records, Page 138, under Recorder's Serial No. C-7570, Sonoma County Records.

Also excepting therefrom that portion described in the Deed to F. Orpet, a single man, recorded March 18, 1946 in Book 672 of Official Records, Page 453, under Recorder's Serial No. C-13194, Sonoma County Records.

Also excepting therefrom that portion conveyed to the County of Sonoma on June 16, 1948 in Book 804 of Official Records, Page 1, Sonoma County Records.

(044-041-001-000)

THE WITHIN INSTRUMENT IS A CORRECT COPY
OF THE ORIGINAL ON FILE IN THIS OFFICE.



ATTEST: AUG 10 2010

Clerk of the Superior Court of California
County of Sonoma
By [Signature] Deputy Clerk

DAVID SHARP
JOSE O. GUILLEN

LAW OFFICES OF
CLEMENT, FITZPATRICK & KENWORTHY
INCORPORATED
3333 MENDOCINO AVENUE, SUITE 200
SANTA ROSA, CALIFORNIA 95403
FAX: 707 546-1360

TELEPHONE: (707) 523-1181

CITY OF SANTA ROSA
P.O. Box 1678
Santa Rosa, CA 95402

SEP 05 2013

DEPARTMENT OF
COMMUNITY DEVELOPMENT
STEPHEN K. BUTLER

September 5, 2013

City of Santa Rosa
Planning Commission
100 Santa Rosa Avenue, Room 3
Santa Rosa, CA 95404

HAND DELIVERED

Re: *Appeal of Administrative Determination to Deny a Zoning Clearance for
Dib's Auto Sales/704-722 Santa Rosa Avenue, Santa Rosa
September 12, 2013 Planning Commission Hearing*

Dear Chairwoman Cisco and Members of the Planning Commission:

I am writing to you to support Jean Kapolchok's appeal of the above-referenced administrative determination. Ms. Kapolchok thoroughly set forth the property owner's compelling grounds for appeal in her six-page letter to the City. It is clear from the record that while vehicle sales were less intense in recent years, auto sales on the property have remained part of the product inventory and were never completely abandoned.

As the Commission is undoubtedly aware, a property owner has a constitutionally vested right to a legal non-conforming use. City Staff has erred in making its determination that the property owner's legal non-conforming use was terminated by virtue of Zoning Code §20.61.020. Neither the law nor the facts support this conclusion.

1. Priority of the Downtown Station Area Specific Plan.

Ms. Kapolchok correctly sets forth Specific Plan Policy SP-LU-5.4, which states that non-conforming uses within the plan area may continue "until properties are ready to convert to uses that are consistent with adopted plans and regulations." The evidence demonstrates that the property owner has manifested no present intention to convert to conforming uses or to abandon the right to continue operation of an auto and vehicle sales business on the subject property.

In the hierarchy of the planning and zoning law, zoning ordinances are subservient to both General and Specific Plans. The General Plan is a comprehensive, long term plan for physical development of the City and sits on top of the hierarchy of local government law regulating land use. (Longtin's California Land Use, Second Edition, Section 2.03; *O'Loane v. O'Rourke* (1965) 231 Cal.App.2d 774). Specific Plans are logical extensions of the General Plan and cannot be adopted unless the Specific Plan is consistent with the General Plan. (Government Code §65359). Zoning laws are subordinate to the General Plan and any Specific Plan. Zoning laws must conform to the adopted General Plan and Specific Plan. (Government Code §§65455, 65860; *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1183).

Any provision of the Zoning Ordinance which purports to constrain legal non-conforming uses protected by the Specific Plan are inconsistent with the General Plan and Specific Plan and may not be enforced. Moreover, where a Specific Plan has been adopted, policies in that Plan control over more generalized policies in the General Plan. (*Markley v. City Council* (1982) 131 Cal.App.3d 656, 668). In this case, very clearly articulated goals of the Specific Plan relating to the preservation of non-conforming uses trump more generalized language set forth in Zoning Code §20.61.020. City Staff erred in applying the standards of the Zoning Ordinance.

2. Standard of Review.

Courts have recognized that legal non-conforming uses are important constitutionally vested rights (*Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1525). If an administrative decision of a city or county substantially affects a vested right, the trial court will exercise its independent judgment on the evidence and will find an abuse of discretion if the City's findings are not supported by the weight of the evidence (*Strumsky v. San Diego County Employees Retirement Association* (1974) 11 Cal.3d 28, 32; *Goat Hill Tavern*, at page 1525). The weight of the evidence supports only the conclusion that the property owner and his predecessors have continued the sale of the vehicles on the site for decades and have never had any intention of abandoning that use.

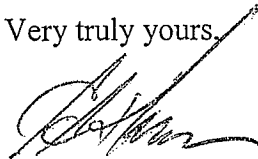
3. Abandonment of a Non-Conforming Use.

Abandonment of a non-conforming use involves both the intent to abandon and an overt act, or failure to act, which carries the implication the owner does not claim or retain any interest in the right to the non-conforming use (*Pallco Enterprises, Inc. v. Beam* (2005) 132 Cal.App.4th 1482, 1498 and *Hansen Bros. Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533, 569). Even if it were appropriate, which it is not, to apply the standards set forth in §20.61.030, the facts quite aptly demonstrate that there has never been an intention to abandon nor an actual abandonment of auto sales on the subject property. That use has continued, uninterrupted, even though the product mix has shifted over time.

In conclusion, the administrative decision made by staff will, if not overturned by this Commission, result in the taking of a constitutionally protected property right without compensation. This, in turn, will unnecessarily expose the City to litigation and a damages claim. Rather than torture the plain language of the Specific Plan and its explicit policy direction, we respectfully request that this Commission overturn staff's determination.

Thank you for your consideration of these points.

Very truly yours,



STEPHEN K. BUTLER

SKB/pd

c: Chuck Regalia, Director of Community Development
Clare Hartman, Supervising Planner Development Review
Molly Dillon, Santa Rosa City Attorney's Office
Jean Kapolchok

Bliss, Sandi

Subject: FW: PC 9/12 Item 11 (Dibs appeal) - request for continuance

From: Bliss, Sandi
Sent: Monday, September 09, 2013 5:37 PM
To: Bliss, Sandi
Cc: Jones, Jessica
Subject: FW: PC 9/12 Item 11 (Dibs appeal) - request for continuance

Chair Cisco and members of the Planning Commission,

As noted below, the appellant has requested a continuance of the Dibs Auto Sales Appeal on the September 12, 2013 agenda. Since the item and agenda have already been publicly noticed, the item will remain on the agenda, however, staff recommends the Commission honor the appellants request and continue the item to the next available meeting, October 24, 2013.

Clare Hartman | Supervising Planner

Community Development | 100 Santa Rosa Avenue | Santa Rosa, CA 95404
Tel. (707) 543-3185 | Fax (707) 543-3269 Chartman@srcity.org



-----Original Message-----

From: Jean Kapolchok [<mailto:jkapolchok@sbcglobal.net>]
Sent: Monday, September 09, 2013 12:25 PM
To: Hartman, Clare; Regalia, Chuck
Cc: Glen Smith; Rob Muelrath; luvaplatypus@aol.com
Subject: Request for a continuance - Dibs
Importance: High

Dear Clare and Chuck,

By this email I hereby formally request that the appeal hearing on the Dib Zoning Clearance item scheduled for the September 12th Planning Commission meeting be continued to the October Planning Commission meeting. The reason for the request is my client, Mr. George Dibs, is having health issues and may not be able to attend the meeting. Furthermore, the Planning Commission hearing is our only appeal possibility. It is our understanding that all members of the Planning Commission will not be present on September 12th.

Less than a full commission places the project at a potential disadvantage.

I will inform the Chair of the Planning Commission of this request. Thank you for your understanding.

Sincerely,

Jean Kapolchok



September 23, 2013

Mr. Stephen Butler
Clement, Fitzpatrick & Kenworthy Inc.
3333 Mendocino Avenue, Suite 200
Santa Rosa, CA 95403

Re: Appeal of Administrative Determination to Deny a Zoning Clearance
for Dib's Auto Sales at 704/722 Santa Rosa Avenue

Dear Mr. Butler,

Thank you for your letter dated September 5, 2013, regarding the above mentioned administrative decision and appeal. In your letter, you state "It is clear from the record that while vehicle sales were less intense in recent years, auto sales on the property have remained part of the product inventory and were never completely abandoned."

The statement appears to be a primary basis for the points that follow in your letter; however, the City is not in receipt of any evidence that supports the statement as it pertains to sales on the site. Please provide evidence that auto sales are occurring on the site as an existing legal non-conforming use. Staff is particularly interested in evidence pertaining to autos being displayed for sale on site and sold directly from the site.

It should be noted that on Monday, September 16, 2013, I observed, for the first time, a car being displayed on the site for sale. Then on Tuesday, September 17th, I saw a second car for sale added, parked adjacent the first car. The ability to sell autos on the site is the subject of the appeal. It is the Department's position that the on-site display and sales of auto is not a legal non-conforming use on this site. Please advise your client to remove the cars for sale pending the Commission's decision on the matter.

Sincerely,

A handwritten signature in cursive script that reads "Clare Hartman".

Clare Hartman
SUPERVISING PLANNER

Cc: Chuck Regalia, Director, Community Development, City of Santa Rosa
Molly Dillon, Assistant City Attorney, City of Santa Rosa
Jean Kapolchok, 843 Second Street, Santa Rosa, CA 95404

Hartman, Clare

From: Bob Ruiz [campanille@comcast.net]
Sent: Friday, September 20, 2013 6:55 PM
To: Morris, Erin; Housh, Noah; Hartman, Clare; Reynolds, Michael; Sparacio, Steve; Jones, Jessica; Rose, William; Kranz, Lisa; _PLANCOM - Planning Commission; Regalia, Chuck
Subject: File No. ZC13-0524

Planning Commission:

Regarding the Appeal of the Community Development director's denial of a zoning clearance for an auto and vehicle sales and repair use to replace an existing legal, non-conforming mobile home and RV sales and repair use for the property located at 704 and 722 Santa Rosa Avenue:

Is the property owner allowed to have auto sales while awaiting the decision of the Planning Commission?

They do. Two cars are for sale on the property right now. They just put them there this week in DEFIANCE of the Planning Commission!

--bob ruiz
652 Oak Street
Santa Rosa, CA 95404

Hartman, Clare

From: Brauley McNulty [brazidazi@sbcglobal.net]
Sent: Friday, September 20, 2013 6:15 PM
To: Hartman, Clare
Cc: Brauley McNulty
Subject: FILE NO. ZC13-0524

Clare Hartman and/or Sandi Bliss,

My name is Blake McNulty. I own a home on the 600 block of Oak st. I am writing to you to express my support of the City Of Santa Rosa DENYING approval of a mixed use auto sales/service business at the current location of "Bob's RV Sales and Service." I have lived here for over 11 years. In a radius of 5 blocks of Santa Rosa Avenue, we already have 4 auto sales lots, 5 auto repair shops and a RV sales business. This would be a slap in the face to the residents of the Burbank Gardens Neighborhood to allow ANOTHER auto business in the immediate area. We already have problems with Brezeale's Auto shop on our block. It is already unsafe because the mechanics/staff drive down our street "testing" the cars they service. They drive very fast and stop "abruptly", using our street as their "field testing" area for their vehicles. It is completely unnecessary, and provides no benefit, to the residents to have even more cars, foot traffic, "testing of vehicles" in our neighborhood. This was never part of the vision for the builders of our quaint homes - to have our street used as a "mixed use" area. This is a neighborhood filled with families. Fences are the only thing to protect our children from the dangers of all of the speeding cars on our street. In 2003 I asked the city to please install speed bumps on our street. We were denied. The onramp to Highway 12 is located at the end of the 700 block of Oak street. We have hundreds of speeding cars (understatement) driving down our street on a DAILY basis. It is the expressway for people to get onto Highway 12. In regards to the location of the proposed "auto shop", it is already used as a prostitution site on a NIGHTLY basis. My children have found condoms, crack pipes, needles, alcohol bottles...etc in front of MY HOUSE. How sad. What a shame.

This "auto shop" would do nothing to the beautification of our historic designation in the neighborhood. It seems that the city recognizes this too. If I understand the "NOTICE OF CONTINUED PUBLIC MEETING" correctly, the city IS NOT IN FAVOR of this business also. Please help us restore our neighborhood to the vision of its owners/tenants. It is a charming place to live, because the residents want it to be. The neighborhood ebbs and flows with the problems related to the proximity of Santa Rosa Ave. We can't remove the problems of the avenue (drugs, gangs, prostitution, crime, vandalism, etc. However, we can (hopefully) work with the city to beautify our neighborhood and the original vision of Mr. Luther Burbank. Thanks for taking the time to read my letter. I hope you do not allow this "eyesore" to pollute our neighborhood.

Thank you
Blake McNulty
642 Oak st.

P.S I am using my wife's email as the server only because I am having "issues" with my smtp format

Hartman, Clare

From: thea daniels [1234teddy@sbcglobal.net]
Sent: Friday, September 20, 2013 11:38 AM
To: Hartman, Clare
Subject: response to zc13-0524

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Clare Hartman 9/20/13

Good day, my name is Thea Daniels and I'm a homeowner at 646 Oak St. Santa Rosa. In response to receiving the Community Development notice in regards to...

704-722 Santa Rosa Ave.

File Number zc13-0524

I request that you recommend keeping the Denial of zoning for an Auto and Vehicle sales and Repair use in place for the existing mobile home and RV sales and repair.

We are a tight knit community that has created a Historic Neighborhood. We are homeowners and a few rentals of young families, older residents, mixed lifestyles all looking out for each other and our historic community. We are a revitalized downtown neighborhood with pride of home ownership. Entrepreneurial small businesses: Dirks Diner, Astro hotel, Sewing other restaurants, Auto repair and other small downtown style businesses that are attempting to create and maintain an inviting ART community within the Burbank Gardens neighborhood. This lot would be much better suited to embrace a community business rather than bringing in more of what we already have. There are **empty** auto sales lots right across the street and established auto repair businesses in the area already.

Open your minds, see the possibilities that are already happening and think about the short to long term benefits a little planning and visioning could do to strengthen Santa Rosa's appeal.

We have an Arts district, the Luther Burbank Historic district and Prince Gateway not to mention the downtown efforts to draw in the community, please work with what's working and thriving not what's dead and dying.

Thank you for your consideration in this matter.

You may reach me for any information at

1234teddy@sbcglobal.net

Regards

Thea Daniels

Bliss, Sandi

From: Hartman, Clare
Sent: Thursday, October 03, 2013 10:33 AM
To: Bliss, Sandi
Subject: FW: Bob's Trailer/RV Sales

Please add this letter to the Dib's Appeal item scheduled for Planning Commission on October 24, 2013.

Clare Hartman | Supervising Planner

Community Development | 100 Santa Rosa Avenue | Santa Rosa, CA 95404
Tel. (707) 543-3185 | Fax (707) 543-3269 | Chartman@srcity.org



From: christineando@comcast.net [<mailto:christineando@comcast.net>]
Sent: Wednesday, October 02, 2013 7:46 PM
To: Hartman, Clare
Subject: Bob's Trailer/RV Sales

Dear Ms. Hartman,

It is my understanding that Bob's Trailer/RV Sales is appealing the denial for clearance to sell the property to a used car lot. I agree with the Planning Director's decision to refuse this request.

I have been a resident on Oak Street within close proximity to Bob's for over seven years. Much has been done to make the Luther Burbank Gardens District a better place to live and to raise my young children. The opening of yet another used car lot would be taking several steps backward.

As far as I know, autos have never been sold off of Bob's lot. Living within close proximity to the property, I hope not see it start any time soon. There are plenty of used car lots on the west side of Santa Rosa Avenue. There are so many that I doubt that anyone could benefit from yet another on that street. As a resident of the Luther Burbank Gardens District, another used car lot is the last thing I want. I am sure that I am not the only resident of Oak Street (or Maple Street for that matter) who feels this way.

If Bob's is sold for any reason, I hope that it would go to one that is more beneficial to our neighborhood, such as a small grocery store.

I will not be able to attend the meeting on October 24 regarding this matter, but I hope you will be willing to consider my input. Thank you for taking the time to read my comments.

Sincerely,
Christine Ando