



PLANNING COMMISSION

AGENDA Regular Meeting Tuesday, August 24, 2021 7:00 p.m.

***** New Location*****

This meeting is being held in accordance with the Brown Act as currently in effect under the State Emergency Services Act, the Governor's Emergency Declaration related to COVID-19 and the Governor's Executive Orders N-25-20 and N-29-20 that allow members of the Planning Commission, City staff, and the public to participate and conduct a meeting by teleconference, videoconference or both. To comply with public health orders, the requirement to provide a physical location for members of the public to participate in the meeting has been suspended.

Vice Chair: Terri Denslow
Planning Commissioner: Bassam Altwal
Planning Commissioner: Justin Cesarin
Planning Commissioner: Frank Gavidia
Planning Commissioner: Ed Miller

A complete packet of information containing staff reports and exhibits related to each public item is available for public review on the City's website at www.ci.clayton.ca.us

Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton; and 4) City Website at www.ci.clayton.ca.us

Any writings or documents provided to a majority of the Planning Commission after distribution of the Agenda Packet and regarding any public item on this Agenda is available for review on the City's website at www.ci.clayton.ca.us

If you have a physical impairment that requires special accommodations to participate, please call the City Clerk's office at least 72 hours in advance of the meeting at 925-673-7300. To protect our residents, officials, and staff, and aligned with the Governor's executive order to Shelter-at-Home, this meeting is being conducted utilizing teleconferencing means consistent with State order that that allows the public to address the local legislative body electronically.

Most Planning Commission decisions are appealable to the City Council within 10 calendar days of the decision. Please contact Community Development Department staff for further information immediately following the decision. If the decision is appealed, the City Council will hold a public hearing and make a final decision. If you challenge a final decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing(s), either in oral testimony at the hearing(s) or in written correspondence delivered to the Community Development Department at or prior to the public hearing(s). Further, any court challenge must be made within 90 days of the final decision on the noticed matter.

Instructions for Virtual Planning Commission Meeting Participation

To protect our residents, officials, and staff, and aligned with the Governor's executive order to Shelter-at-Home, this meeting is being conducted utilizing teleconferencing means consistent with State order that that allows the public to address the local legislative body electronically.

To follow or participate in the meeting:

Videoconference: To follow the meeting on-line, click this link <https://us02web.zoom.us/j/86895059201>; or through the Zoom application, enter Webinar ID: 868 9505 9201. No registration or meeting password is required.

Phone-in: Dial toll free 877-853-5257. When prompted, enter the Webinar ID above.

E-mail Public Comments: If preferred, please e-mail public comments to the Interim Community Development Director at InterimCDD@ci.clayton.ca.us by 5:00 p.m. on the day of the Planning Commission meeting. All Email Public Comments received prior to 5:00 p.m. on the day of the Planning Commission meeting will be forwarded to the entire Planning Commission.

Each person attending the meeting via video conferencing or telephone and who wishes to speak on an agendized or non-agendized matter shall have a set amount of time to speak as determined by the Planning Commission Chair.

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **SELECTION OF CHAIR AND VICE CHAIR**
5. **PRESENTATION AND ANNOUNCEMENTS**

None.

6. **ACCEPTANCE OF THE AGENDA:** The Planning Commission will discuss the order of the agenda, may amend the order, add urgency items, note disclosures or intentions to abstain due to conflict of interest on agenda items, and request Consent Calendar items be removed from the Consent Calendar for discussion. The Planning Commission may also remove items from the Consent Calendar prior to that portion of the Agenda.
7. **PUBLIC COMMENT (Non-Agenda Items):** This time has been set aside for members of the public to address the Planning Commission on items of general interest within the subject matter jurisdiction of the City. Although the Planning Commission values your comments, pursuant to the Brown Act, the Planning Commission generally cannot take any action on items not listed on the posted agenda. At the Chair's discretion, up to three minutes will be allotted to each speaker.
8. **CONSENT CALENDAR:** The following routine matters may be acted upon by one motion. Individual items may be removed by the Planning Commission for separate discussion at this time or under Acceptance of the Agenda. The ordinance title is deemed to be read in its entirety and further reading waived on any ordinance listed on the Consent Calendar.

A. MINUTES:

Planning Commission Meeting of June 22, 2021

Staff Recommendation: Approve the minutes of the June 22, 2021 meeting.

9. PUBLIC HEARINGS

A. Weichert, Realtors – Request for approval of a Use Permit to allow the operation of a real estate business in a ground-floor tenant space located in the Town Center (UP-02-2021).

Weichert, Realtors, the applicant, requests approval of a Use Permit (UP-02-2021) to allow the operation of a real estate business (office uses) in a ground-floor tenant space located in the Town Center. The real estate

business is proposed to operate Monday through Friday from 9:00 a.m. to 5:00 p.m. The real estate office is proposed to be located at 1028 Diablo Street (Assessor's Parcel Number 119-014-006).

CEQA Status: The subject Use Permit request is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Categorical Exemption Class 1 (Existing Facilities), section 15301 of the State Guidelines for Implementation of CEQA.

Staff Recommendation: Staff recommends that the Planning Commission open the public hearing and accept testimony, close the public hearing and adopt the attached Resolution approving the Use Permit for Weichert, Realtors to allow the operation of a real estate business in a ground-floor tenant space located at 1028 Diablo Street in the Town Center.

10. ACTION ITEMS

None.

- 11. COMMUNICATIONS:** This time is set aside for the Planning Commission to make requests of staff, and/or for issues of concern to Planning Commissioners to be briefly presented, prioritized, and set for future meeting dates. This time is also provided for staff to share any informational announcements with the Commission.

12. ADJOURNMENT

The next Planning Commission Regular Meeting is Tuesday, September 14, 2021.

Minutes
City of Clayton Planning Commission
Regular Meeting
Tuesday, June 22, 2021

1. CALL TO ORDER

Chair A.J. Chippero called the meeting to order at 7:00 p.m.

2. ROLL CALL

Present: Chair A.J. Chippero
Vice Chair Terri Denslow
Commissioner Bassam Altwal
Commissioner Frank Gavidia
Commissioner Ed Miller

Absent: None

3. PLEDGE OF ALLEGIANCE

Commissioner Miller lead the Pledge of Allegiance.

4. PRESENTATIONS AND ANNOUNCEMENTS

None.

5. ACCEPTANCE OF THE AGENDA

Commissioner Altwal moved and Commissioner Miller seconded a motion to accept the agenda as presented. The motion passed 5-0.

6. PUBLIC COMMENT

Dee Vieira thanked Chair Chippero for his service on the Planning Commission.

William Jordan thanked Chair Chippero for his service on the Planning Commission.

Scott Denslow thanked Chair Chippero for his service on the Planning Commission.

7. CONSENT CALENDAR

A. Approval of Planning Commission Meeting Minutes.

Approval of the minutes for the May 25, 2021 Planning Commission meeting.

Vice Chair Denslow moved and Commissioner Altwal seconded a motion to approve the May 25, 2021 Planning Commission meeting minutes, as amended. The motion passed 5-0.

8. PUBLIC HEARINGS

None

9. ACTION ITEMS

A. Review of the FY 2021/22 Capital Improvement Program Projects for Conformity with the Clayton General Plan (GPA-01-2021).

Section 65401 of the California Government Code requires the Planning Commission to determine whether projects proposed in the City's Capital Improvement Program (CIP) for planning, initiation or construction during the ensuing fiscal year are in conformity with the General Plan. The Planning Commission is requested at tonight's meeting to review the draft list of CIP projects for which funding is proposed to be identified for planning, initiation or construction during fiscal year (FY) 2021/22, and to make determinations of General Plan consistency for the projects, in accordance with the Government Code. The Planning Commission's determination will be forwarded to the City Council for the City Council to consider prior to their adoption of the final CIP for the next fiscal year

Interim Community Development Director Dana Ayers presented the item.

Commissioner Altwal had the following questions and comments:

- What is Fund 303? City Manager Reina Schwartz responded that Fund 303 is an accounting mechanism to track other fund transfers for other projects rather than being a stand-alone fund in and of itself.
- Is the City in the red for Fiscal Year 2021/22? Ms. Schwartz responded that the City is not in the red but, rather, the City appropriated money in the prior fiscal year or two and implements the planned spending of that money to spend across the fiscal years that followed the year the money was appropriated.
- Regarding the Americans With Disabilities Act (ADA) program (CIP No. 10394A):
 - \$6,000 is not sufficient for curb accessibility improvements.
 - The City needs to increase the funding for accessibility improvements.
 - It appears that multiple accessibility-related issues have been addressed through other CIP projects.

Ms. Schwartz responded that the general consensus is that the \$6,000 is an insufficient amount, but it is just a small surplus of money that the City can save every year to build up an emergency fund. The City is looking to perform accessibility-related improvements through funding provided for other CIP projects such as the Neighborhood Pavement Preservation Project (CIP No. 10449)

- Title 2 of the 1992 ADA requires every city to have an ADA transition plan. Does Clayton have an ADA transition plan? Ms. Schwartz responded that, yes, Clayton has an ADA transition plan, but it is very old and in need of updating.
- Has the City implemented anything from the ADA transition plan? Ms. Schwartz responded that she has not had Clayton's ADA transition plan implementations brought before her but, as the City addresses other Citywide ADA improvements, we will be prepared to discuss these implementations.

- Clayton staff should be aware that there is a group of people going around suing jurisdictions because of ADA transition plans not being implemented. The City of San Francisco, City of Los Angeles, County of Marin, San Francisco School District, and the City of Concord have all been sued. Ms. Schwartz indicated that, during her employment with the City of Sacramento, they dealt with the ADA curb ramp lawsuit, so she is well aware of the risk involved with not facilitating the ADA transition plan implementations.

Commissioner Miller had the following questions and comments:

- Regarding the North Valley Playground Rehabilitation (CIP No. 10442), is the North Valley Playground located in Lydia Lane Park? Ms. Schwartz responded the North Valley Playground is located in North Valley Park.
- Regarding the Emergency/Auxiliary Power at City Hall Complex (CIP No. 10447), has any thought been given to utilizing solar power for short, day-long power outages in order to save money? Ms. Schwartz responded that, currently, there is a lack of funding for this CIP project. The City has looked at viable locations for solar such as the City Hall parking lot since the City Hall building is not conducive to the installation of solar panels. Staff we will be considering such solar-related issues as the cost of installing solar arrays, storage of solar energy, and selling solar energy back to the grid.
- Regarding the Neighborhood Pavement Preservation Project (CIP No. 10449), are Measure J funds being used? Ms. Schwartz responded that the funding is generated from a combination of Measure J funds, gas tax, and SB 1 monies.
- He indicated support of the Pine Hollow Road Upgrades (CIP No. 10379) since there are a lot of children using the public right-of-way on Pine Hollow Road, and the complete streets transportation policy and design approach will increase pedestrian safety along that corridor.

Commissioner Gavidia had the following questions and comments:

- How confident is the City in the projected and adopted revenue numbers being so reliant on gas tax monies? Ms. Schwartz responded that the City is confident since we have a fairly flat estimate that does not take into consideration one of the gas tax sources while drawing from other SB 1 funds. The City has the capacity to swap out revenue sources if one particular revenue source dips lower than others.
- It is good that the City is aware since vehicles are becoming more efficient, more people are working from home, and the overall use of petroleum has been flat for a long time. Both the Federal and State governments have been talking about this trend of not being able to rely on gas tax monies as we move forward.

Vice Chair Denslow had the following questions and comments:

- Why are we seeing CIP projects from previous Fiscal Years being carried forward to the next Fiscal Year's CIP? Ms. Schwartz responded that the reasons you are seeing previous fiscal years' CIP projects again are the bidding of certain CIP projects have been delayed, some CIP projects are phased out, some CIP projects are awaiting new funds to become available, and some CIP projects are ongoing for an extended period of time.

- It would be good to have that information included in the list of CIP projects so that there is an explanation as to why some CIP projects are carried forward through time. Interim Community Development Director Dana Ayers indicated that there is nothing in the California Government Code that requires differentiation between new CIPs and ongoing CIP projects in the annual evaluation of CIP/General Plan consistency. A jurisdiction must continue to find that its current CIP conforms to its General Plans regardless of how many times the CIP conformity with the General Plan has been found in previously. Part of the rationale for this is because General Plans change over time and sometimes new policies are added, existing policies are removed, or existing policies are amended which necessitates a CIP to continue to be analyzed for conformity to new or modified policies.

Commissioner Gavidia moved and Vice Chair Denslow seconded a motion to adopt Resolution No. 05-2021 determining the CIP projects identified for planning, initiation, or construction during Fiscal Year 2021/22 to be consistent with the Clayton General Plan. The motion passed 5-0.

10. PLANNING COMMISSION REQUESTS AND UPCOMING AGENDA DEVELOPMENT

Commissioner Altwal provided the following comments for Chair Chippero:

- Thank you for your service.
- It was a pleasure working with you on the Planning Commission and getting to know you as a person and your passion for Clayton.
- You were kind enough at previous festivals to offer to help clean up the festival area.
- You are a good person and I consider you a good friend.

Vice Chair Denslow provided the following comments for Chair Chippero:

- You will be missed.
- You have been an asset to the Planning Commission, Clayton Business and Community Association, and to the community.
- All your hard work is very much appreciated.
- Your contributions have made a difference.
- Thank you for all you have done.

Director Ayers provided the following comments for Chair Chippero:

- It has been a pleasure working with you.
- Wish you all the best.
- On behalf of staff, extending our thanks and appreciation.

Chair Chippero provided the following comments in a farewell speech:

- In November 2010, my wife and I moved to Clayton just days before my first daughter was born.
- We quickly realized what a wonderful community Clayton is.
- Within months of moving to Clayton, I wanted to give back to my community and I joined the Trails and Landscaping Committee that I served on for six years before serving on the Planning Commission for the last four years.
- My only intention was to help give back to our great community and I have done that through my work with the Trails and Landscape Committee, Planning Commission, and Clayton Business and Community Association (CBCA).

- On a different note, it pains me to have to leave on this note but I feel it is important to not let mistruths and misinformation fester like it has done these past several years with groups such as Save Clayton.
- On May 18, 2021, Commissioner Gavidia made the following statement to the City Council: "The members of the CBCA found out about the vote before the tax payers of Clayton found out. That does not make any sense to me. A private organization that gives money to the City gets to find out the results of votes before the rest of the public."
- Since I was the Planning Commissioner giving that report at the CBCA meeting, I can assure you that what Commissioner Gavidia accused me of doing is false.
- The vote count that I reported to the CBCA on February 25, 2021 was a publicly-recorded vote that transpired two days prior at the February 23, 2021 Planning Commission meeting.
- Any member of the public who attended the February 23rd Planning Commission meeting or watched the video replay could have provided the same report to the CBCA that I did on February 25th.
- While Commissioner Gavidia may have been exercising his right to free speech as a citizen during the comment portion of the City Council meeting, he is also a current Planning Commissioner that was acting irresponsibly by making reckless accusations against the current Planning Commission Chair and the CBCA.
- Left unchecked, these accusations may have caused irreparable damage.
- This begs the question: does Commissioner Gavidia have a responsibility as a Planning Commissioner to refrain from making false and damaging claims against another Planning Commissioner by spreading the seeds of misinformation?
- There should be consequences for a current Planning Commissioner for making such reckless and false claims.
- Since Commissioner Gavidia made this public accusation, he has not made any effort to retract his statement or correct his misinformation.
- If Commissioner Gavidia does not issue a public statement acknowledging his misstatement, then I am urging the City Council to censure Commissioner Gavidia or a more suitable action would be to include his removal from the Planning Commission.
- Unless Commissioner Gavidia issues a public statement correcting his misstatement, I am urging my fellow Commissioners to censure Commissioner Gavidia by preventing him from being selected to serve as Vice Chair or Chair.
- Congratulations to Justin Cesarin for his appointment to the Planning Commission as he will be a wonderful addition.
- Thank you Vice Chair Denslow for going above and beyond the call of duty with your thorough research. You are a great asset to this group.
- Commissioner Altwal, I have enjoyed being in the trenches with you. What you have brought to the table combined with your knowledge and experience has been an invaluable asset to the Planning Commission and our community.
- Thank you Reina, Dana, and the rest of the staff.
- Thank you Milan for all of your service to our City and the support you provide the Planning Commission. Feel free to call me anytime to discuss music as I have enjoyed talking with you about it.

11. **ADJOURNMENT**

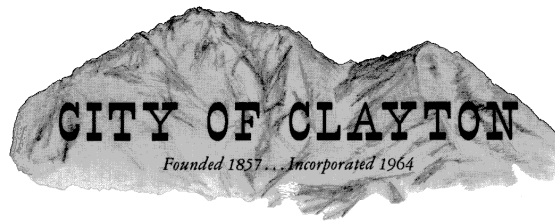
The meeting was adjourned at 8:00 p.m. to the regularly-scheduled meeting of the Planning Commission on July 12, 2021.

Respectfully submitted:

Dana Ayers, AICP, Interim Secretary

Approved by the Clayton Planning Commission:

Chair



AGENDA REPORT

To: Honorable Chair and Planning Commissioners

From: Milan J. Sikela, Jr.
Assistant Planner

Date: August 24, 2021

Subject: Agenda Item 9.A
Weichert, Realtors – Request for approval of a Use Permit to allow the operation of a real estate business in a ground-floor tenant space located in the Town Center (UP-02-2021).

SUMMARY

This is a public hearing on a request by Weichert, Realtors for approval of a Use Permit to allow the operation of a real estate business office use in a ground-floor tenant space located in the Town Center. The real estate business is proposed to operate Monday through Friday from 9:00 a.m. to 5:00 p.m. at 1028 Diablo Street, Assessor's Parcel Number (APN) 119-014-006.

RECOMMENDATION

Staff recommends that the Planning Commission open the public hearing and accept written and spoken testimony, close the public hearing and adopt the attached Resolution approving the Use Permit for Weichert, Realtors to allow the operation of a real estate business in a ground-floor tenant space located at 1028 Diablo Street in the Town Center.

PROJECT INFORMATION

Applicant: Julie Rogers representing Weichert, Realtors

Property Owner: Debra M. Pryor

Location: 1028 Diablo Street
APN 119-014-006
See **Attachment B** for Vicinity Map

General Plan Designation: Town Center Commercial

Town Center Specific
Plan Designation: Town Center Commercial

Zoning Classification: L-C (Limited Commercial) District

Environmental Review: The subject Use Permit request is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Categorical Exemption Class 1 (Existing Facilities), section 15301 of the State Guidelines for Implementation of CEQA.

Public Notice: On August 13, 2021, a public hearing notice was posted at the notice boards at Clayton City Hall, Clayton Community Library, and in the Town Center as well as being mailed to the owners of real property located within 300 feet of 1028 Diablo Street.

ANALYSIS

Weichert, Realtors is proposing to operate a real estate business in an existing 2,000 square-foot ground-floor commercial space located at 1028 Diablo Street in the Town Center (see **Attachment C** for proposed Floor Plan). The real estate company is proposed to operate Monday through Friday from 9:00 a.m. to 5:00 p.m.

According to Section 2.3 of the Town Center Specific Plan (TCSP) and Section 17.60.030.C.7 of the Clayton Municipal Code (CMC), any non-retail commercial use proposed for a ground-floor location within the Town Center requires approval of a Use Permit. This Use Permit requirement for non-retail ground-floor commercial uses in the Town Center was implemented in order to encourage retail uses in ground-floor commercial spaces and, thereby, support the establishment of a strong retail district in the Town Center.

Staff notes that, although the intent and purpose of the applicable provisions in the TCSP and CMC are to encourage retail uses in ground floor tenant spaces, the guidelines also envision a mix of uses with the Use Permit process being the mechanism to allow discretionary review for non-retail commercial uses and office uses to operate in ground floor locations. If the intent and purpose of the applicable regulations were to only have retail uses in ground floor tenant spaces, then non-retail commercial and office uses would be prohibited in the Town Center. Without such a prohibition, and with the establishment of a Use Permit process, the expectation was that there would be some non-retail commercial and office uses in downtown Clayton. By making the allowance for ground-floor offices—subject to discretion and consideration of the unique circumstances of each request—the TCSP recognizes that these types of destination uses can complement the desired retail uses by bringing visitors to the Town Center for a specific purpose. Once in the Town Center, visitors to these destination uses could then patronize other businesses in the area to dine or shop.

Staff has observed that the land uses in the TCSP area have evolved into a spatial layout where certain “corridors,” namely Main Street and Center Street, contain the majority of downtown Clayton’s retail vitality. Staff believes that retail should continue to be the goal for these main “corridors” in the Town Center, but that additional flexibility is appropriately allowed on the intervening block along Diablo Street.

In designing attractive pedestrian environments, an important objective is to keep the pedestrian's eyes up, providing interesting things to look at that draw the pedestrian from one storefront to the next. Attractive signage, outdoor seating areas, creative displays inside of glass storefronts and at entrances to tenant spaces help to achieve this objective. Where these elements are not present, the viability of a successful retail environment becomes more challenging.

In the case of Diablo Street where the proposed office would be located, there are only two businesses—one across the street from the other—with the subject commercial space located at 1028 Diablo Street. Skipolini's Pizza is located on the opposite side of the street from the subject tenant space and has an address of 1035 Diablo Street and, though the side of its building fronts on Diablo Street, it has prominent frontage on Main Street due to its front outdoor dining patio. The remainder of the blocks on both sides of Diablo Street south of subject tenant space are surface parking on both sides of the street. Other than the tenant space at 1028 Diablo Street and the takeout side entrance to Skipolini's Pizza, the block lacks the consistent pattern of retail glass storefronts that encourage continuous pedestrian movement, and with half of the blocks on either side of Diablo Street being developed as parking lots, there is little of visual interest to draw a pedestrian off of Main Street or Center Street and onto Diablo Street. Additionally, the street frontage of the subject building is behind another building with frontage on Main Street (Cup O' Jo coffee shop) so that the tenant space is not easily seen from Main Street. The subject building also lacks large windows for interesting visual displays of merchandise, and it is setback from the sidewalk, detracting from the elements necessary for a retail space that is attractive to pedestrian customers and passersby. This combination of circumstances makes viability of retail in the subject tenant space challenging. Consequently, staff believes it would be an appropriate location for a destination use such as the proposed professional office and would not take away retail space from the more retail-oriented corridors along Main Street and Center Street.

The proposed subject commercial building has adequate off-street parking with its own parking lot to accommodate the anticipated parking demand. Staff does not anticipate that there would be any parking impacts, as the subject property's parking lot contains 12 off-street spaces. This alleviates concerns that the proposed subject business would take away available on-street parking from customers patronizing retail businesses located on other streets in the Town Center.

COMMENTS RECEIVED

The property owner has provided a letter describing the difficulties in leasing the subject ground-floor tenant space to retail businesses (see **Attachment D**). In addition to the letter submitted by the property owner, letters and emails have also been submitted by the applicant as well as three other citizens in support of the proposal. These comments have been provided as **Attachment E** through **Attachment H**.

ATTACHMENTS

- A. Proposed Planning Commission Resolution No. 06-2021
- B. Vicinity Map
- C. Weichert, Realtors Proposed Floor Plan
- D. Letter from property owner Debra M. Pryor

- E. Letter from applicant Julie Rogers
- F. Letter from Kent A. Ipsen
- G. Email from Ed Moresi
- H. Email from Douglas Moore

CITY OF CLAYTON
PLANNING COMMISSION
PROPOSED
RESOLUTION NO. 06-2021

**A RESOLUTION OF THE CLAYTON PLANNING COMMISSION APPROVING A USE PERMIT
TO ALLOW THE OPERATION OF A REAL ESTATE BUSINESS IN A GROUND-FLOOR
TENANT SPACE LOCATED IN CLAYTON'S TOWN CENTER
(UP-02-2021)**

WHEREAS, the City received an application from Weichert, Realtors requesting review and approval of a Use Permit (UP-02-2021) to allow the operation of a real estate business in a ground-floor tenant space located in Clayton's Town Center ("Town Center"); and

WHEREAS, Section 2.3 of the Town Center Specific Plan (TCSP) requires approval of a Use Permit for any non-retail commercial use proposed for a ground-floor location within the Town Center; and

WHEREAS, Section 17.60.030.C.7 of the Clayton Municipal Code (CMC) requires approval of a Use Permit for any non-retail commercial use proposed for a ground-floor location within the Town Center; and

WHEREAS, although the intent and purpose of TCSP Section 2.3 and CMC Section 17.60.030.C.7 are to encourage retail uses in ground floor tenant spaces, the guidelines also envision a mix of uses within the Town Center with the Use Permit process being the mechanism to allow discretionary review for non-retail commercial uses and office uses to operate in ground floor locations within the Town Center; and

WHEREAS, the subject Use Permit request is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Categorical Exemption Class 1 (Existing Facilities), section 15301 of the State Guidelines for Implementation of CEQA; and

WHEREAS, on August 24, 2021, the Clayton Planning Commission held a duly-noticed public hearing on the Use Permit (UP-02-2021), and received and considered testimony and evidence, both spoken and documentary.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission does determine the foregoing recitals are true and correct and makes the following Findings for Approval of the Use Permit application:

A. The use is in conformity the General Plan and any applicable Specific Plan;

The project is in conformity with the General Plan objectives, policies, and land use designation since the project is located within the Town Center Commercial land use designation and the General Plan states that uses allowed within this designation shall be consistent with the Town Center Specific Plan.

This project is in conformity with the Town Center Specific Plan goals, policies, and land use designations since a real estate office, a commercial use, is an allowed use within the Town Center Specific Plan's Town Center Commercial land use designation with review and approval of a Use Permit by the Planning Commission. The Town Center Specific Plan intends to have an appropriate balance and mixture of uses, and the proposed use or its size will not interfere with or overwhelm the

pedestrian and retail orientation of the district. Rather, the proposed office use would occupy a ground-floor tenant space that is not conducive to retail due to is visual disconnection from pedestrian corridors on Main Street and Center Street.

B. The use is in conformity with City-adopted standards in the Zoning Ordinance as related to Use Permit standards of review by:

1. Providing sufficient off-street parking for vehicles and bicycles as well as safe and effective access for vehicles, pedestrians, and bicycles.
2. Not generating significant traffic congestion since the real estate office entails a maximum of seven people at any one time which is a nominal increase for the Town Center Specific Plan area.
3. Being compatible with the Town Center Commercial land use designation by providing a destination-type use that brings into the Town Center customers who may subsequently patronize dining and shopping businesses also located in the Town Center, thereby attracting and enhancing pedestrian activity, complementing the intensity of existing tenants, and without relocating an existing business in the Town Center or taking away from more viable retail spaces located along Main Street or Center Street.
4. Not generating intermittent or constant noise levels violating the General Plan Noise Element.
5. Not generating significant levels of toxic or non-toxic dust, airborne particulate, fumes, or smells.
6. Not generating exterior lighting or significant litter.
7. Not resulting in crime or negative influences on minors.
8. Not representing a concentration of an activity that would be a detriment to the health, safety, and welfare of nearby residents, businesses, property owners, or employees.

C. Shall not negatively affect the general safety (e.g., seismic, landslide, flooding, fire, traffic) of the City or surrounding area.

The project entails a real estate office occupying an existing tenant space within an existing building which will not affect the general safety as it pertains to seismic activity, traffic impacts, landslides, flooding, or fires.

D. Shall not have significant negative impacts on the health or general welfare of residents, businesses, property owners, or employees in the City.

The project entails a real estate office occupying an existing tenant space within an existing building which will not have significant negative impacts on the health or general welfare of residents, businesses, property owners, or employees in the City.

E. The permit will be in accord with the purpose of Use Permits as stated in Section 17.60.020 of the Clayton Municipal Code.

By implementing the objectives, goals, and policies of the General Plan and Town Center Specific Plan; not being detrimental to the health, safety, and welfare of residents, businesses, property owners, and employees in the City; and being conditioned to promote compatibility with adjacent uses; the project complies with the purpose of Use Permits as stated in Section 17.60.020 of the Clayton Municipal Code.

The Planning Commission Staff Report entitled, Weichert, Realtors – Request for approval of a Use Permit to allow the operation of a real estate business in a ground-floor tenant space located in the Town Center (UP-02-2021), and dated August 24, 2021, is referenced herein as further support for findings.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Planning Commission does hereby approve the Use Permit (UP-02-2021) to allow the operation of a real estate business in a ground-floor tenant space located in Clayton's Town Center, subject to the following Conditions of Approval:

1. The applicant shall indemnify, protect, defend, and hold harmless the City and its elected and appointed officials, officers, employees, and agents from and against any and all liabilities, claims, actions, causes, proceedings, suits, damages, judgments, liens, levies, costs, and expenses of whatever nature, including, but not limited to, attorney's fees, costs, and disbursements arising out of or in any way relating to the issuance of this entitlement, any actions taken by the City relating to this entitlement, and any environmental review conducted under the California Environmental Quality Act for this entitlement and related actions.
2. The days and hours of operation shall be Monday through Friday from 9:00 a.m. to 5:00 p.m.
3. The applicant shall obtain the necessary permits from the Contra Costa County Department of Conservation and Development. All construction shall conform to the California Building Code.
4. Any project-related signage shall require review and approval by the City in accordance with Town Center Specific Plan sign guidelines and Clayton Municipal Code sign provisions, prior to placement or installation of the signage.
5. Any changes to the real estate office operations and use shall require Planning Commission review and approval.
6. No permits or approvals, whether discretionary or mandatory, shall be considered if the applicant is not current on fees, reimbursement payments, and any other payments that are due.

PASSED AND ADOPTED by the Planning Commission of the City of Clayton at a regular meeting on the 24th day of August, 2021.

AYES:

NOES:

ABSTAINED:

ABSENT:

APPROVED:

ATTEST:

Chair, Clayton Planning Commission

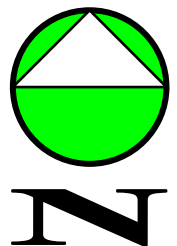
Dana Ayers, AICP
Interim Community Development Director



VICINITY MAP

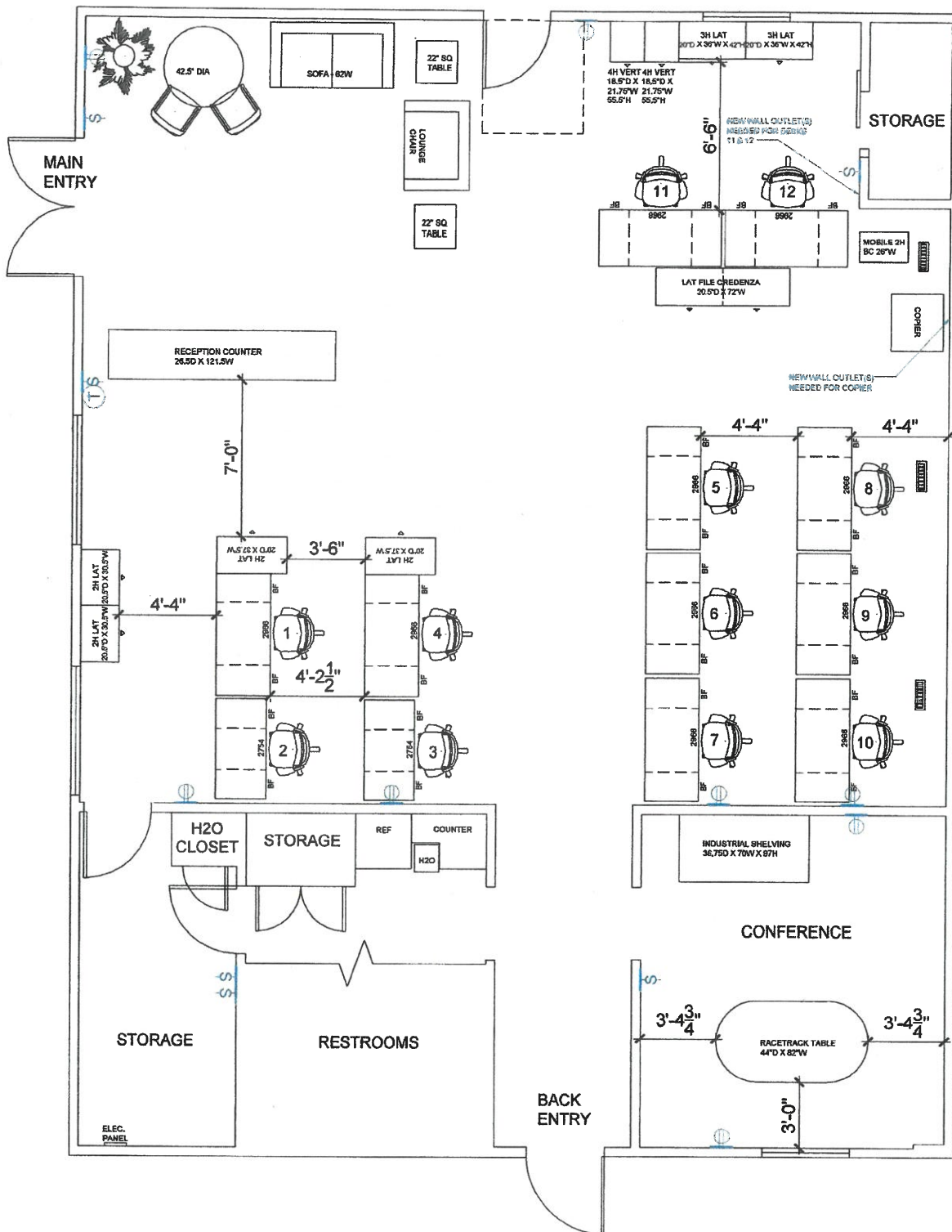


Weichert, Realtors
Use Permit UP-02-2021
1028 Diablo Street
APN 119-014-006



(Not to Scale)

ATTACHMENT C



WEICHERT REALTORS
1028 DIABLO STREET
CLAYTON, CA 94517

FURNITURE PLAN

APPROVAL / DATE:

REVISION:

1
2
3
4
5
6
7
8
9

JOB: XXXX

SCALE: NTS

DATE: 07.20.21

DESIGNER: KM

PRYORPROPERTIES
1655 Garnet Lane
Concord, CA.94519

August16, 2021

City of Clayton
6000 Heritage Trail
Clayton, CA. 94517

RECEIVED
AUG 17 2021
CITY OF CLAYTON
COMMUNITY DEVELOPMENT DEPT.

Subj: 1028 Diablo Street-Clayton, CA. Re:Use Permit

To Whom It May Concern:

I have been contacted by Julie Rogers of Weichert Realtors whom I recently have contracted a lease with to rent our property at the above address. She has informed me that the city has contacted her for the fact she needed to apply for a Use Permit.

Our family has owned this property for nearly 50 years and to this day, I had no idea that we had any restriction on the type of tenant we could rent to when in fact we own the property. I have had several tenants over the last 50 years in this space. Due to the present situation we all have been faced with during these past sixteen months with Covid-19, my past tenant closed her doors. The fact that she could no longer survive due to the Covid-19 and DeltaVariant, she elected to close her doors earlier this year. She was there for 13 years which I give her credit for. She texted me earlier in the year to advise me she would be closing her doors. Since then, I have tried to secure a retail tenant for the tenant space but have been unable to do so.

With that being said, I posted a "For Rent" sign in the window and then I was contacted by Julie Rogers who was interested in the property. I met her at the property, and I was impressed that she has already been in business for 16 years and has been located in Clayton for over five years. She told me she already had an office in Clayton, in Clayton Station Shopping Center. She already has a current business license for the city so I didn't see any reason why she couldn't move her offices. Seeing so many current vacancies around, I didn't want to lose out on someone who already has an

established business and is already located in Clayton.

I did get a few more calls regarding the property but the few I corresponded with didn't really state what the nature of their business was, they were just asking general rent questions, nothing solid. I took the sign down about a week or so later, but I texted them back and told them I had a potential tenant and would contact them back if we didn't sign a lease. Months earlier, when the word was out that my tenant was leaving, I had corresponded with a couple of potential tenants, one was a coffee shop which I already have in the building and the other was a similar business to the tenant that I just lost, had only been in business six months and were in a 2-year lease, there was nothing solid and no one I felt was a good fit.

During the current times and with Covid-19 and now the Delta Variant showing up, I am seeing so many businesses struggle and one of the last things we wanted to see was our building being vacant. I am finding in areas where there are vacancies, there are also homeless people coming around which something I wanted to avoid on the property. I am a senior; both my brothers are older than me with compromising health issues and the last thing we wanted to do is be in contact with people we don't know trying to rent the property. When I currently drive thru Clayton and Concord, you are seeing an abundance of vacancies which isn't a good sign for either the property owner or the cities. If you drive through Clayton Station and Clayton Valley Shopping Center, there are many open spaces available. Even downtown Clayton itself has more vacancies than I have seen in a long time and I wonder how the owners of those buildings survive with no rent. Clayton currently has many vacant spaces, and I can understand how hard it would be for anyone to start a business at this time. Personally, with Covid-19 and the Delta Variant on the news every day, I didn't feel I wanted to have a lot of personal contact with many people. This property is owned by our family, we are not a large corporation who can afford to let the building sit vacant.

Our goal was to find a tenant we felt would be a good fit for the community and hopefully will remain for many years. By having tenants in spaces and not vacant also helps keeping Clayton looking alive. We wanted to find a stable tenant, one who has a history and has been in business for a while, which is what we found.

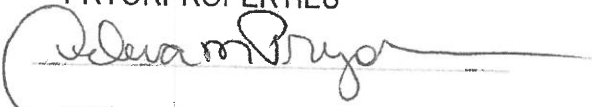
Julie lives in Clayton, already has an office in Clayton, and already has a Clayton business license. We felt we found a perfect fit for our property, one who could possibly be there for many years in the future.

Before I put my signs up, I put a call into Lynn French, a real estate broker. I personally don't know her, but I see her name and I know she's been around for a while. When I spoke to her, I asked her if she happened to know of anyone looking for space. I explained which property we owned because I felt she knows a lot of people. If I'm not mistaken, her office is on the ground floor in Clayton. She said she didn't know of anyone looking for a space but, if she did, she'd let me know. But she also told me she is looking for someone to move into another tenant space also. There are a few other real estate offices located in downtown Clayton that are on the ground floor so why would this be any different for my property?

So, in my eyes, it doesn't seem that there are a lot of business during these current times wanting to start a business or ready to make a move. So, I feel I was fortunate to negotiate with Julie Rogers and in my opinion, a rented space looks a lot better than an empty one when someone is driving through downtown Clayton.

If you need to contact me directly, please call me at (925)766-8681

Sincerely,
PRYORPROPERTIES



DEBRA M. PRYOR

Weichert, REALTORS®

America First Team

August 13, 2021

Community Development Director
Milan Sikela
City of Clayton
6000 Heritage Trail
Clayton, Ca. 94517

RECEIVED**AUG 17 2021****CITY OF CLAYTON
COMMUNITY DEVELOPMENT DEPT.**

RE: Use Permit Application for 1028 Diablo Street, Clayton, Ca.

Dear Milan,

Thank you for your assistance in the process to apply for a use permit with the City of Clayton. Please provide this letter to the Planning Commission with my application.

I have leased the space at 1028 Diablo Street for my company Weichert, Realtors-America First Team to operate my real estate sales and mortgage broker companies out of. At the time of signing the lease, I was not aware of the Town Center Specific Plan which, I was told, requires a use permit from the city to allow me to operate my business from the first floor at this location. .

My current location in Clayton Station is also located in Clayton, on the ground floor. There are three other real estate companies located on the ground floor in downtown Clayton. Because of this I did not foresee any issues with a lateral move from one Clayton ground floor office to another Clayton ground floor office.

In reviewing the Town Center Specific Plan (TCSP), and reviewing the current ground floor tenants in Clayton, it seems that there are several businesses that do not fit the "permitted use" category of the TCSP, including three other real estate companies, a dentist, and a message therapist. I think it is important to note that the church is primarily office space as well. Given that we are in tough economic times with the current pandemic, I don't see a rush of retail businesses to move to Clayton. There are currently four vacant tenant spots available in Flora Square, and two in Village Oaks. There is a prime ground floor location in Flora Square that has been available for years. Expanding further to Clayton Station and Clayton Valley Shopping Center, there are eleven more vacant ground floor tenant spaces. Taking this into consideration, I think expecting Pryor Properties to hesitate to rent to a company that is well established in Clayton would not be reasonable given the amount of vacancies within a two mile radius.

I have been looking for a new space since April and all of these locations have been available since then. Most retail companies have been hard hit with the pandemic and there are very few, if any, companies relocating at this time. There are also very few new companies starting up with the current pandemic

and economic conditions. A landlord would want to be very careful of the type of tenant and likelihood a retail tenant could withstand another possible shut down given the increase of Covid cases at this time. I had this discussion with Debbie Pryor, my landlord, at the time I met with her to see the property. She was concerned about being able to rent to a solid tenant since the retail store that had just vacated could not survive the last shut down. She was also concerned about being in contact with several potential tenants due to Covid-19.

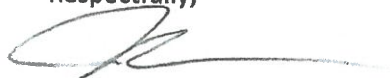
I believe she would have encountered a long vacancy with her property had I not come along and leased it. Finding a solid company with a history of success and a good fit for Clayton would have been difficult.

While I understand that I am not the type of retail business that is permitted under the TCSP, I believe my business will bring additional customers and revenue into the other retail businesses in Clayton. I have 20 agents that come and go in the office. In addition to all of the clients that will visit my business office and be exposed to the charm of Clayton and patronize other businesses. Many of whom would not normally come all the way into downtown Clayton. We also have several vendors, title company reps, home warranty reps, home inspectors, etc. that frequently come into our office to solicit our business. These vendors would also not normally come into downtown Clayton. I believe this could only be seen as a benefit to the community.

This point is also very important to me. I have lived in Clayton for 20 years. I love this town and I have always been involved in the community, the Wine Festival, the Oktoberfest, etc. My agents have also been involved and have volunteered several times over the years. We also have agents that are active in the Kiwanais, we do Toys for Tot's every year as well. Though I am not a retail business, I am the type of quality business that will have a positive impact to the Downtown Clayton as described in the TCSP.

I appreciate your time and consideration.

Respectfully,



Julie Rogers
Owner/Broker



RECEIVED

AUG 18 2021

**CITY OF CLAYTON
COMMUNITY DEVELOPMENT DEPT.**

August 18, 2021,

Re: Weichert Realty location

Dear Planning Commissioners,

It has come to my attention that there is a city ordinance that does not permit real estate offices in ground floor retail spaces. I was not aware of this ordinance or when it originated, but it must have been at some time after several real estate offices were established, for many of them have ground floor retail spaces. I am pro any business that wants to come into Clayton and service our community. Regarding the current ordinance, I feel that it fosters an unfair business advantage to those who came to town prior to ordinance being instituted.

I realize that the city has a vision and wants to promote boutiques and shops in the downtown, which is something I support. That being said, The Royal Rooster was a fantastic boutique establishment that was run by a tremendous operator, and it has closed. In my opinion, if The Royal Rooster could not make it then many others are sure to fail as well. Though I concur with the vision, the reality is that the economics of the vision may not be viable.

It is my understanding that Town & Country Realty Associates attempted to move to a ground floor retail space and that move was denied. What concerns me is that the current ordinance does not provide for a level playing field among like businesses. This may push great businesses out of Clayton and into neighboring Concord where they can hang their shingle in a more desirable location. So, what is the solution? Change the ordinance! Let the free market and economics determine the occupancy of a space. Many neighboring cities have some of their premier ground floor commercial spaces occupied by high end real estate firms, why should Clayton be different.

I support Weichert Realty taking the space and feel that Town & Country should be able to conduct their business in a ground floor space as well.

Thank you for your consideration

Kent A. Ipsen
President, Skipolini's Inc.

Walnut Creek
1535 Giammona Drive
Walnut Creek, CA 94596

(925) 280-1100
Fax (925) 280-8828

Clayton
1033 Diablo Street
Clayton, CA 94517

(925) 672-1111
Fax (925) 673-1364

Antioch
901 Fitzuren Road
Antioch, CA 94509

(925) 757-7770
Fax (925) 757-8265

Concord
2001 Salvio Street
Concord, CA 94520

(925) 680-6888
Fax (925) 680-1855

Folsom
191 Blue Ravine Road
Folsom, CA 95630

(916) 355-8555
Fax (916) 355-1050

Rocklin
6600 Lonetree Blvd.
Rocklin, CA 95765

(916) 789-1818
Fax (916) 789-1825

Milan Sikela

From: Pop <moresi@aol.com>
Sent: Thursday, August 19, 2021 11:18 AM
To: jrogers@weichert.com
Subject: letter

To whom it may concern,

I have been asked to write a letter of support for Julie Rogers regarding Weichert Realty leasing space in the Pryor building on Diablo Street.

I have known Julie for many years and she has been a kind, thoughtful and generous lady.

As a businesswomen she is proven and successful and would be an asset to our town.

Regarding the Clayton moratorium on street level real estate leases I was not aware of. However i would prefer to see a thriving business versus a vacant for lease sign.

I feel the Weichert Realty and the Team at Town and Country Realty Associates should have the opportunity to lease at street level.

Respectfully submitted,

Ed Moresi

RECEIVED
AUG 19 2021
CITY OF CLAYTON
COMMUNITY DEVELOPMENT DEPT.

Milan Sikela

From: Doug Moore <doug@apwest.com>
Sent: Thursday, August 19, 2021 4:15 PM
To: Carl "CW" Wolfe; Reina Schwartz; Interim CDD; Milan Sikela; Peter Cloven; Jim Diaz
Subject: Weichert Realtors Use Permit

August 19, 2021

RECEIVED
AUG 19 2021
CITY OF CLAYTON
COMMUNITY DEVELOPMENT DEPT.

Oakhurst Country Club
1001 Peacock Creek Drive
Clayton, Ca. 94517

RE: Weichert Realtors Use Permit

Clayton Planning Commission Members,

As a business owner in Clayton I am writing this in support of the City of Clayton granting a Use Permit to Weichert Realtors to allow them to move to 1028 Diablo Street. Weichert Realtors is a stable company that has been in business in this area for over 15 years. I believe they will increase foot traffic and revenue for all businesses in Clayton.

Given the number of vacancies that I have seen, I don't understand how this is a problem. I see three other real estate companies that have ground floor locations in Clayton. I am in favor of any business that wants to move into Clayton and believe it would be a benefit to the overall community.

I request that you approve their application for a Use Permit.

Sincerely,

Douglas Moore
Owner Oakhurst Country Club
Doug@apwest.com
925 708 8988