

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

RESOLUTION SETTING FORTH TOWN COUNCIL'S OCTOBER 14, 2008 DENIAL OF APPEAL (NO. 2008-004) AND UPHOLDING OF THE PLANNING COMMISSION'S AUGUST 20, 2008 DENIAL OF CONDITIONAL USE PERMIT (CUP) NO. 2008-004. CUP NO. 2008-004 PROPOSED THE OPERATION OF TWO (2) CREMATORIES THAT WOULD HAVE PROVIDED CREMATION SERVICES FOR BOTH HUMAN AND ANIMAL REMAINS. THE PROPOSED PROJECT WOULD HAVE OCCUPIED THREE (3) SUITES, TOTALING APPROXIMATELY 4,500 SQUARE FEET OF LEASED SPACE INSIDE AN EXISTING INDUSTRIAL BUILDING. THE PROJECT SITE IS APPROXIMATELY TWO (2) ACRES IN SIZE AND IS LOCATED WITHIN THE SERVICE COMMERCIAL (C-S) ZONING DESIGNATION.

Appeal Applicant:

Mr. Stephen D. Atmore of Affordable Cremations of the High Desert

Location:

The project site is located at 13558 Nomwaket Road, Suite Nos. A-B and C (APN 3087-381-05).

Summary Statement:

Attached is a copy of Town Council Resolution No. 2008-59 pertaining to Appeal No. 2008-004, whereby on October 14, 2008, the Town Council denied the Appeal and upheld the Planning Commission's denial of Conditional Use Permit No. 2008-004 (Affordable Cremations of the High Desert) at the August 20, 2008 Planning Commission Meeting. The Resolution was drafted by the Town Attorney's office and staff's recommendation is to adopt Resolution No. 2008-59.

Recommended Action:

Adopt Town Council Resolution No. 2008-59

Proposed by: Planning Division **Item Number** _____

Town Manager Approval: _____ **Budget Item** Yes No N/A

Attachments:

1. Town Council Resolution No. 2008-59
2. Planning Commission Resolution No. 2008-006

TOWN COUNCIL RESOLUTION NO. 2008 - 59

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, DENYING AN APPLICATION FOR A CONDITIONAL USE PERMIT TO ALLOW THE OPERATION OF TWO (2) CREMATORIES FOR HUMAN AND ANIMAL REMAINS CREMATION SERVICES WITHIN THE SERVICE COMMERCIAL (C-S) ZONING DESIGNATION; FOR PROPERTY LOCATED AT 13558 NOMWAKET ROAD, SUITE NOS. A-B AND C; APN 3087-381-05

WHEREAS, Affordable Cremations of the High Desert (the "Applicant") filed an application (Conditional Use Permit No. 2008-004) requesting approval of a Conditional Use Permit ("CUP") to allow operation of two (2) crematories for human and animal remains cremation services within three (3) suites, totaling approximately 4,500 square feet of leased space, of an existing industrial building located within the Service Commercial (C-S) zoning designation (the "Application" or the "Project"). The proposed site location is 13558 Nomwaket Road, Suite Nos. A-B and C; Assessor Parcel Number 3087-381-05 (the "Subject Site"); and

WHEREAS, on July 16, 2008 and August 20, 2008 the Planning Commission of the Town of Apple ("Planning Commission") conducted a duly noticed public hearing on the Application at which time all persons wishing to testify in connection with the proposed Application were heard, and the Application was comprehensively reviewed; and

WHEREAS, on August 20, 2008 the Planning Commission found that the Application did not comply with the zoning regulations set forth in Section 9.16.090 of Chapter 9.16 of Title 9 of the Town of Apple Valley Municipal Code (the "Development Code") and denied the Application; and

WHEREAS, the Applicant timely filed an appeal of the Planning Commission's August 20, 2008 denial of the Application with the Town Council (the "Appeal"); and

WHEREAS, on October 14, 2008 the Town Council of the Town of Apple ("Town Council") conducted a duly noticed public hearing on the Appeal at which time all persons wishing to testify in connection with the Appeal were heard, and the Appeal was comprehensively reviewed; and

WHEREAS, during the public hearing the Town Council received and considered testimony regarding public concerns with the location of the proposed Project; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, FINDS AND DETERMINES AS FOLLOWS:

Section 1. Incorporation of Recitals. The Recitals set forth above are true and correct and are incorporated herein by reference.

Section 2. Denial of Appeal. Based on the entire record before the Town Council and all written and oral evidence presented and/or on file with the Town, including but not limited to the oral testimony received at the Town Council hearing on the Appeal and at the Planning Commission hearing on the Application, and the findings made in this Resolution and by the Planning

Commission in Resolution No. 2008-006, the Town Council hereby denies the Appeal and confirms and upholds the denial of the Application by the Planning Commission.

Section 3. Development Code Findings. Based on the entire record before the Town Council and all written and oral evidence presented and/or on file with the Town, including but not limited to the oral testimony received at the Town Council hearing on the Appeal and at the Planning Commission hearing on the Application, and the findings made in this Resolution and by the Planning Commission in Resolution No. 2008-006, the Town Council hereby finds that the Application does not comply with the zoning regulations set forth in Section 9.16.090 of Chapter 9.16 of Title 9 of the Development Code.

A. Section 9.16.090(2) of the Development Code provides that in order to overturn the Appeal and to grant a CUP, the Town Council must find that: *the location, size, design and operating characteristics of the proposed Project will be compatible with and will not adversely affect or be materially detrimental to adjacent uses, residents, buildings, structures or natural resources.*

1. Public comment received at the hearing on the Appeal and at the Planning Commission hearing on the Application from residents, business owners and patrons that frequent the neighborhood, and a review of the proposed operation of the Project and the Subject Site indicate that the proposed Project, a crematorium which includes smokestacks, the transport of human remains to the Subject Site and the cremation of human and animal remains, may adversely affect or be materially detrimental to adjacent uses and residents and is not compatible with such adjacent uses.

a. Uses in immediate vicinity of the Subject Site include a church, restaurants, three (3) mobile home communities, a post office, a karate studio and a Little League.

b. The nearest mobile home community is located within 528 feet of the Subject Site, and the United Baptist Church is located directly adjacent to the Subject Site.

c. There is insufficient buffer between the Subject Site and the adjacent residential, service, community and business uses.

B. Section 9.16.090(5) of the Development Code provides that in order to overturn the Appeal and grant a CUP, the Town Council must find that: *there will not be a harmful effect upon desirable neighborhood characteristics.*

1. Public comment received at the hearing on the Appeal and at the Planning Commission hearing on the Application from residents, business owners and patrons that frequent the neighborhood, and a review of the proposed operation of the Project and the Subject Site indicate that the proposed Project may have a detrimental effect on the characteristics of the neighborhood in which the Subject Site is located.

a. The Subject Site is located in a mixed-use area, commonly referred to as "the Village", which has been the focus of continuing revitalization efforts. Uses in the vicinity of the Project include restaurants, a post office, a karate studio, a Little League and three (3) mobile home communities. The proposed Project is not consistent with the adjacent uses or the efforts to revitalize the neighborhood as a mixed-use area.

b. The proposed use may have a negative impact on the desirable characteristics of the neighborhood in which the Subject Site is located based on the awareness of the existence of the crematory.

C. Section 9.16.090(9) of the Development Code provides that in order to overturn the Appeal and grant a CUP, the Town Council must find that: *there are no other relevant negative impacts of the proposed use that cannot be reasonably mitigated.*

1. Public comment received at the hearing on the Appeal and at the Planning Commission hearing on the Application from residents, business owners and patrons that frequent the neighborhood, including the church located adjacent to the Subject Site, indicate that the proposed Project has other relevant negative impacts that cannot be reasonably mitigated.

a. The Subject Site and the proposed use is too visible to the public, including to nearby residences, businesses and business patrons.

b. The psychological distress to surrounding businesses and residences arising from the transport, handling and cremation of human remains cannot be reasonably mitigated because of the close proximity of such existing residences and businesses to the Subject Site.

c. Odors, smoke and particulate matter could emanate from the use if the operation fails, or from cremation of excessively large persons. A Daily Press article submitted into the record dated Sunday, June 11, 2006 by Leroy Standish titled "Crematorium emits thick smoke into town" reported that cremation of obese persons can result in heavy emissions of black smoke.

Approved and adopted by the Town Council of the Town of Apple Valley this 28th day of October, 2008.

Timothy J. Jasper, Mayor

Attest:

La Vonda M-Pearson, Town Clerk

PLANNING COMMISSION RESOLUTION NO. 2008 – 006

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF APPLE VALLEY, CALIFORNIA, DENYING AN APPLICATION FOR A CONDITIONAL USE PERMIT TO ALLOW THE OPERATION OF TWO (2) CREMATORIES FOR HUMAN AND ANIMAL REMAINS CREMATION SERVICES WITHIN THE SERVICE COMMERCIAL (C-S) ZONING DESIGNATION; FOR PROPERTY LOCATED AT 13558 NOMWAKET ROAD, SUITE NOS. A-B AND C; APN 3087-381-05

WHEREAS, Affordable Cremations of the High Desert (the "Applicant") filed an application (Conditional Use Permit No. 2008-004) requesting approval of a Conditional Use Permit ("CUP") to allow operation of two (2) crematories for human and animal remains cremation services within three (3) suites, totaling approximately 4,500 square feet of leased space, of an existing industrial building located within the Service Commercial (C-S) zoning designation (the "Application" or the "Project"). The proposed site location is 13558 Nomwaket Road, Suite Nos. A-B and C; Assessor Parcel Number 3087-381-05 (the "Subject Site"); and

WHEREAS, on July 16, 2008 and August 20, 2008 the Planning Commission of the Town of Apple ("Planning Commission") conducted a duly noticed public hearing on the Application at which time all persons wishing to testify in connection with the proposed Application were heard, and the Application was comprehensively reviewed; and

WHEREAS, during the public hearing the Planning Commission received and considered extensive testimony regarding public concerns with the location of the proposed Project; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED, THAT IN CONSIDERATION OF THE EVIDENCE PRESENTED AT THE PUBLIC HEARING, AND FOR THE REASONS DISCUSSED BY THE COMMISSIONERS AT SAID HEARING, THE PLANNING COMMISSION OF THE TOWN OF APPLE VALLEY, CALIFORNIA, FINDS AND DETERMINES AS FOLLOWS:

Section 1. The Recitals set forth above are true and correct and are incorporated herein by reference.

Section 2. In consideration of the evidence received at the public hearing on the Application, and for the reasons discussed by the Commissioners at said hearing and the findings made in this Resolution, the Planning Commission hereby denies the Application.

Section 3. In consideration of the evidence received at the public hearing on the Application, and for the reasons discussed by the Commissioners at said hearing and the findings made in this Resolution, the Planning Commission hereby finds that the

Application does not comply with the zoning regulations set forth in Section 9.16.090 of Chapter 9.16 of Title 9 of the Town of Apple Valley Municipal Code (the "Development Code").

A. Section 9.16.090(2) of the Development Code provides that in order to grant a CUP, the Planning Commission must find that: *the location, size, design and operating characteristics of the proposed Project will be compatible with and will not adversely affect or be materially detrimental to adjacent uses, residents, buildings, structures or natural resources.*

1. Public comment from residents, business owners and patrons that frequent the neighborhood, and a review of the proposed operation of the Project and the Subject Site indicate that the proposed Project, a crematorium which includes smokestacks, the transport of human remains to the Subject Site and the cremation of human and animal remains, may adversely affect or be materially detrimental to adjacent uses and residents and is not compatible with such adjacent uses.

a. Uses in immediate vicinity of the Subject Site include a church, restaurants, three mobilehome communities, a post office, a karate studio and Little League.

b. The nearest mobilehome community is located within 528 feet of the Subject Site, and the United Baptist Church is located directly adjacent to the Subject Site.

c. There is insufficient buffer between the Subject Site and the adjacent residential, service, community and business uses.

B. Section 9.16.090(5) of the Development Code provides that in order to grant a CUP, the Planning Commission must find that: *there will not be a harmful effect upon desirable neighborhood characteristics.*

1. Public comment from residents, business owners and patrons that frequent the neighborhood, and a review of the proposed operation of the Project and the Subject Site indicate that the proposed Project may have a detrimental effect on the characteristics of the neighborhood in which the Subject Site is located.

a. The Subject Site is located in a mixed-use area, commonly referred to as "the Village", which has been the focus of continuing revitalization efforts. Uses in the vicinity of the Project include restaurants, a post office, a karate studio, a Little League and mobilehome communities. The proposed Project is not consistent with the adjacent uses or the efforts to revitalize the neighborhood as a mixed-use area.

b. The proposed use may have a negative impact on the desirable characteristics of the neighborhood in which the Subject Site is located based on the awareness of the existence of the crematory.

C. Section 9.16.090(9) of the Development Code provides that in order to grant a CUP, the Planning Commission must find that: *there are no other relevant negative impacts of the proposed use that cannot be reasonably mitigated.*

1. Public comment from residents, business owners and patrons that frequent the neighborhood, including the church located adjacent to the Subject Site, indicate that the proposed Project has other relevant negative impacts that cannot be reasonably mitigated.

a. The Subject Site and the proposed use is too visible to the public, including to nearby residences, businesses and business patrons.

b. The psychological distress to surrounding businesses and residences arising from the transport, handling and cremation of human remains cannot reasonably be mitigated because of the close proximity of such existing residences and businesses to the Subject Site.

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Approved and adopted by the Planning Commission of the Town of Apple Valley this 20th day of August, 2008

David Hernandez, Chairman

ATTEST:

I, Patty Hevle, Secretary to the Planning Commission of the Town of Apple Valley, California, do hereby certify that the foregoing resolution was duly and regularly adopted by the Planning Commission at a regular meeting thereof, held on the 20th day of August, 2008, by the following vote, to-wit:

AYES:

NOTES:

ABSENT:

ABSTAIN:

Patty Hevle, Planning Commission Secretary