



APPEAL

SECTION A APPEAL APPLICATION (PUBLIC HEARING)

NOTE: DO NOT USE THIS FORM FOR MESSAGE APPEALS. VISIT TEMECULACA.GOV/MESSAGE

PROJECT INFORMATION

Original Planning Application Number(s)
 PA07-0314

Appealing the Decision of:
 Director of Community Development Director's Hearing Planning Commission

Date of Decision
 3/1/2023

Briefly specify what action or decision is being appealed
 Planning Commission Resolution No. 2023-04 revoking conditional use permit PA07-0314.

ADDITIONAL PROJECT INFORMATION

Assessor's Parcel No(s)
 2022-922036011

Legal Description (Tract, Lot No.)
 Lots 10 and 11 BLK 27 MB 015/726

Street Address(es)
 28645 Old Town Front Street Temecula, CA 92590

General Location
 Old Town Temecula

APPLICANT/REPRESENTATIVE/OWNER INFORMATION

Company (Owner)
 Zip Third Investments, LLC

First Name Rick	Middle Initial	Last Edwards (Lawyer For Zip Third)
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Street Address
 5021 Verdugo Way, Suite 105-408

City Camarillo	State CA	Zip 93012	Phone 310-277-6464, ext. 382
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E-mail
 re@rickedwardsinc.com

I certify that all filing requirements have been satisfied for my application. I further understand that an incomplete application cannot be accepted for processing.

Applicant's Signature
 → *Rich Edwards*

FOR STAFF USE

PLANNING APP. NO.

DATE STAMP

REC'D BY

RECEIVED

MAR 10 2023

CITY CLERK'S OFFICE

*Randi Johl,
 City Clerk*

SECTION B	DESCRIPTION OF ACTION BEING APPEALED
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Specify if appealing an action of the Planning Director or the Planning Commission. Include the date of the decision to be appealed. Include the specific action that is being appealed, complete with original Planning Application Number(s), common name of project, general location of project, and any other supporting information. Please see attachment.

SECTION C	WRITTEN DESCRIPTION TO SUPPORT APPEAL
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Include reason or justification to support the appeal. The Appellant must submit with this appeal each issue that the appellant alleges was wrongly determined together with every agreement and a copy of every item of evidence. Please see attachment.

SECTION D	EVIDENCE TO SUPPORT POSITION
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The burden of proof to cause the appeal action to overturn the prior decision rests with the Appellant. If the Appeal is to the City Council, only those issues that were presented during previous hearings may be addressed. New evidence or issues may or may not be considered by the Council. Please see attachment.

SECTION E	DESIRED ACTION TO BE TAKEN
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Include a statement concerning the relief or action sought from the Planning Commission or City Council. Please see attachment.

Please see attachment for Sections B-E.

ATTACHMENT TO APPEAL APPLICATION

SECTION B- DESCRIPTION OF ACTION BEING APPEALED

Planning Commission Resolution No. 2023-04 dated March 1, 2023, which states that it “confirms the decision of Administrative Law Judge Nye-Perkins revoking the Bank CUP.” (Resolution, page 3.)

SECTION C- WRITTEN DESCRIPTION TO SUPPORT APPEAL

The “reason or justification to support the appeal” consists of the following:

1. Absence of Due Process and Failure to Comply with the City's Municipal Code.

a. Inadequate notice to property owner of administrative citations and civil penalty letters.

City Code Section 1.21.050 requires the following for effective service of citations:

“B.[T]he enforcement official shall attempt to locate the business owner and issue the business owner an administrative citation...a copy of the administrative citation also shall be mailed to that address to the attention of the business owner or a responsible person. The mailing shall be sent by certified mail, postage prepaid, return receipt requested. Simultaneously, the same notice may be sent by regular mail.”

C. The enforcement official shall attempt to obtain on the administrative citation the signature of the responsible person ...”

Enforcement official Tom Cole testified that citations were sent to Zip Third, of which Norman Solomon is the principal, only by regular mail:

“A That is correct. I mailed them regular mail to Mr. Solomon and Ms. Moore. And to the agent or (sic) service [The Bank's agent] and I mailed them certified and regular mail.” (Transcript Day 1, 183:18-20.)

These citations were sent during Covid. Mr. Solomon, age 76, was sheltering at home. His property manager did not notify him of regular mail. Certified mail would have been brought to his attention. As a permit holder, Zip Third was entitled to service which complied with the City Code. That service was not made.

b. The Planning Commission's ignored the legal effect of the following: The City represented to the Administrative Law Judge, and the parties agreed, that there were two permit holders, the on-site business (The Bank restaurant) and the property owner:

"ADMINISTRATIVE LAW JUDGE NYE-PERKINS: Am I hearing from you that there are two permit holders here, both the property owner and the restaurant operator?"

MS. PETRUSIS: Yes." (Transcript, 12:6-8.)

The Judge concluded this colloquy with:

"Okay. I have the parties' positions on that **very critical issue**. I believe from my personal review of this that the permit holder is both the property owner and The Bank." (Bolding added.) (Hearing Transcript Day 1, 16:21-24.)

Notwithstanding the City's agreement that there were two permit holders, the Planning Commission resolution, p. 2, Section 2 A, states:

"A. The Planning Commission...hereby adopts the findings of fact and conclusions of law issued by Judge Nye-Perkins...subject to the following modifications (sic) finding that **the permit holder of The Bank CUP is CNC Puma Corporation** and also finding that the property owner is Zip Third Investments who has (sic) property interest in the BANK CUP which runs with the land." (Bolding added.) (PC RESOLUTION NO. 2023-04, p.2.)

The City is free to adopt or reject the Administrative Law Judge's ruling. But it is not due process for the City -- after the hearing is over and the Judge has ruled -- to "modify" its own representation and agreement that "there are two permit holders here, both the property owner and the restaurant operator". No Court would allow that.

"An oral stipulation made in open court constitutes not only an agreement between the parties, but also an agreement between them and the court. Thus, the court is bound to enforce such stipulations 'for the protection of its own honor and dignity.' [*Linder v. Cooley* (1963) 216 CA2d 390, 395, 31 CR 271, 274; *Lyons v. Lyons* (1961) 190 CA2d 788, 790, 12 CR 349, 350]." (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group rev. June 2022) ¶ 8:954.)

The City should honor its representation and agreement. The City is not above the law.

The property owner, Zip Third, does not contest the grounds to revoke the CUP as to one permit holder, the tenant, CNC Puma. More generally, the property owner, which currently owns the entire block where CNC's restaurant is situated, and whose principal, Mr. Solomon, owns four other Temecula properties, supports all reasonable efforts to better Old Town. It is a pathetic situation when, as here, a planning commissioner wisely recommends coming to Old Town only during daylight.

But the City's overruling the Administrative Law Judge for agreeing with the City that there are two permit holders is not due process. It suggests an agenda to revoke the CUP as to both

permit holders by any means necessary. That throws the baby out with the bathwater. And it suggests recognition that the grounds to revoke as to the CUP-holding property owner are weak.

Zip Third does not believe that the City has a malicious intention. But the consequences of the City's unfair (and illegal) position reversal are inconsistent with the City's representations that it is, as Mr. Watson testified, "business friendly" and talks to the property and business owners before issuing any citations:

"You testified that the code enforcement situation is the City tries to be business friendly and that the City does not want to use a heavy hand as to owners, but instead to work collaboratively. I think I quoted that pretty accurately. Based on that, did you ever attempt to contact Mr. Solomon or anyone at Zip Third by phone, for example?

A No." (Transcript Day 1, 137:18-25.)

"My question is you indicated that code enforcement reaches out to owners to act collaboratively. Did you reach out to this owner to act collaboratively, meaning a phone call or something that isn't an enforcement letter? That is my definition for purposes of this question?

A No, we didn't." (Transcript Day 1, 138:3-9.)

The tenant received full compliance with the City Code and standard practice: consultations before citations, certified mail service of citations, and more than a year's time to comply. In contrast, the property owner learned of the violations, and of the City's intention to revoke the CUP, in a 5:30 p.m. phone call from the City's lawyer on Friday, July 1.

Notifying the property owner earlier would have produced prompt action. The property owner took prompt action after the July 1 phone call. That prompt action resulted in dismissal -- by property owner's motion and resultant court order -- of tenant's bankruptcy petition (dismissed before the revocation hearing commenced on August 31), and initiation of unlawful detainer proceedings. After systemic delays, those proceedings are set for trial March 30 in Riverside Superior Court.

Additional due process "justification" of the appeal is:

c. The City's failure to comply with City Code section 1.21.050, stating that property owners are not responsible for tenants' violations of a CUP.

2. Lack of the Required Clear and Convincing Evidence to Support Revocation.

The property owner violated nothing. There has been no assertion that the property owner caused or contributed to a single violation. When informed of violations the property owner acted swiftly towards stopping them.

No one has suggested that the property owner or its principal is irresponsible, or crazy, or desires Old Town's environment to deter business. The property owner owns the entire block, which is prime Old Town property. Its principal has owned 9 Temecula properties and supports the City's growth and prosperity.

The property owner aspires to remain a CUP holder, and to replace the tenant with a tenant who honors the CUP's conditions.

SECTION D- EVIDENCE TO SUPPORT POSITION

The entire record that was before the Planning Commission;
Planning Commission Resolution No. 2023-04;
Transcript of Planning Commission hearing held February 15, 2023.

SECTION E- DESIRED ACTION TO BE TAKEN

Zip Third Investments, LLC, requests that City Council decide not to revoke the CUP as to permit holder Zip Third, and, accordingly, not to confirm or adopt the decision of the Administrative Law Judge and not to confirm or adopt Planning Commission Resolution No. 2023-04 to the extent that decision to revoke and that resolution to revoke apply to Zip Third.

SECTION F

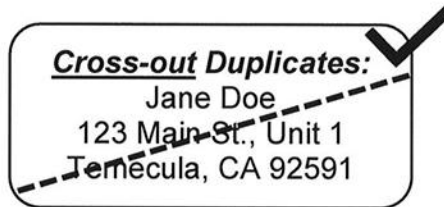
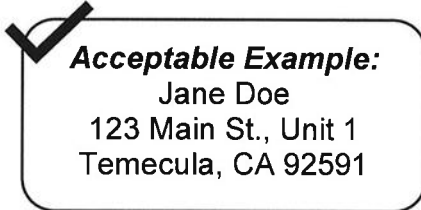
PUBLIC NOTICING REQUIREMENTS

Information for this section may be obtained by requesting a "Radius Package" from a title insurance company. **All information is required at the time the appeal is submitted.**

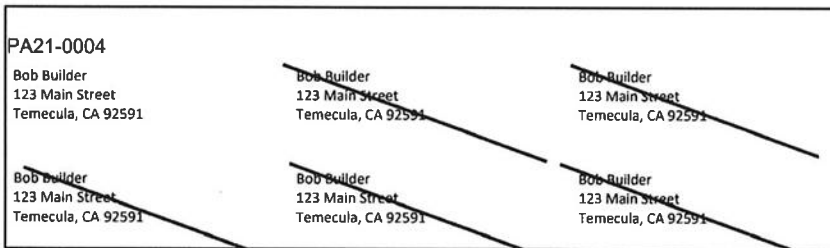
The following items are required and must be provided by the applicant:

1. **TWO** identical gummed label sets (**30 labels per sheet**). The labels must:
 - a. Indicate all the nearest property owners' names, mailing address (including unit numbers) that are within a minimum of a 600-foot radius of the exterior boundaries of the project (including all exterior boundaries of all parcels if a project includes multiple parcels). This list must be ascertained from the last equalized assessment roll.
 - b. Duplicate property owners must be crossed out.

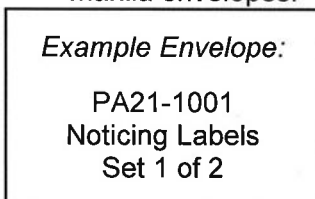
SAMPLE LABELS:



- c. A minimum of **30 individual/different property owners** must be included after all duplicates are removed (even if a 600-foot radius is utilized)
- d. Include the Planning Application number on the header of the label sets (example below)



2. **TWO** photocopies of the above label sets.
3. **The TWO** identical gummed label sets & photocopies must be placed in separate 9 1/2" x 12 1/2" manila envelopes. The envelopes shall include the below information on the front:




4. **TWO** gummed labels with the mailing address for the property owner, applicant, engineer, and other representatives. Do not include duplicates if the owner, applicant, etc., are the same. These must be placed in a letter-sized envelope that is stapled outside of one of the large manila envelopes mentioned in step 3.
5. Certification by the Title Company, engineer, or surveyor that the above list is complete and accurate. The Tax Assessor's Office will not prepare or certify the property owner list (see certification form attached).
6. A copy of the assessor's parcel map showing all the parcels within the noticing radius. On the map, print the names of all property owners within the noticing radius as they are listed on the gummed labels. If the names are not legible due to the size of the map/lots, a separate spreadsheet may be provided.

PROPERTY OWNERS CERTIFICATION

I, Norman S. Solomon, certify that on 03/08/2023
(Print Name) (Month-day-year)

the attached property owners list was prepared by
Provident Title Company pursuant to application requirements furnished by the
City of Temecula Planning Department. Said list is a complete and true compilation of owner of the subject
property and all other property owners within **600 feet (or the 30 nearest individual property owners,
whichever creates the greatest number of public notices (persons owning multiple properties shall
only be counted once)** of the property involved in the application and is based upon the latest equalized
assessment rolls.

I further certify that the information filed is true and correct to the best of my knowledge. I understand that
incorrect or erroneous information may result in processing delays or be grounds for rejection or denial of the
application.

Name	
Norman S. Solomon	
Title/Registration	
Manager, Zip Third Investments LLC	
Address	
3055 Wilshire Boulevard, No. 1010, Los Angeles, CA 90010	
Phone (Daytime)	
(310) 365-9620	
Signature	Date
	03/09/2023
Planning Application No.	
PA07-0314	