Meeting Date: September 20, 2010

TOWN OF MORAGA **STAFF REPORT**

To: **Planning Commission**

From: **Lori Salamack, Planning Director**

Subject: **UP 10-10 Dollar Tree (applicant), Kimco (property owner)**
542 Center Street, Rheem Valley Shopping Center
Consideration of a permitted use application by Dollar Tree to operate a retail variety store in the Rheem Valley Shopping Center. Zoning: Community Commercial – CEQA status: Categorically Exempt per CEQA Section 15301, Existing Facilities. (Continued from the August 23, 2010 and September 7, 2010 Planning Commission meeting)

Request

Adopt the attached draft resolution approving the Permitted Use Application with conditions.

Background

This application was previously considered by the Planning Commission on August 23, 2010 and September 7, 2010. On September 7th, a subcommittee of the Planning Commission was appointed to refine the draft conditions of approval. The revised resolution incorporates the draft conditions of approval from the subcommittee

Alternatives

Revise the attached draft resolution making revisions as necessary.

Recommendations

Adopt the attached draft resolution with revisions, if necessary.

Attachments:

A. Revised Draft Resolution

ATTACHMENT A

Revised Draft Resolution

BEFORE THE TOWN OF MORAGA PLANNING COMMISSION

In the Matter of: Approval of a Permitted Use application from Dollar Tree to allow the operation of a retail variety store at 542 Center Street in the Rheem Valley Shopping Center.	)	**Resolution No. XX-2010 PC** File No. UP 10-2010 Planning Commission Adoption Date: September 20, 2010 Effective Date, if not appealed: October 1, 2010

WHEREAS, an application for a Permitted Use was submitted on July 27, 2010 by Dollar Tree (Applicant) and Kimco (Property Owner) for the operation of a retail variety store at 542 Center Street in the Rheem Valley Shopping Center; and

WHEREAS, the project is categorically exempt under CEQA Guidelines Section 15301 existing facilities; and

WHEREAS, a Public Hearing Notice for the project was mailed to property owners and businesses within 300 feet of the property on August 13, 2010; and

WHEREAS, on August 23, 2010, the Planning Commission held a public meeting where testimony was received from the applicant and interested parties; and

WHEREAS, on August 23, 2010, the Planning Commission continued consideration of the application to September 7, 2010; and

WHEREAS, on September 7, 2010, the Planning Commission held a public meeting where testimony was received from the applicant and interested parties; and

WHEREAS, on September 7, 2010, the Planning Commission continued consideration of the application to September 20, 2010; and

WHEREAS, on September 7, 2010, the Planning Commission appointed a two-person subcommittee to consider possible mitigating conditions of approval; and

WHEREAS, the subcommittee provided staff with draft conditions of approval that were incorporated by staff into the draft resolution; and

WHEREAS, on September 20, 2010, the Planning Commission held a public meeting where testimony was received from the applicant and interested parties; and

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission of the Town of Moraga hereby approves the Permitted Use application from Dollar Tree to allow the operation of a retail variety store at 542 Center Street in the Rheem Valley Shopping Center in accordance with the findings and conditions of approval listed below.

FINDINGS FOR APPROVAL OF A PERMITTED USE PERMIT IN ACCORDANCE WITH MMC SECTION 8.36.020B:

1. The use will not generate significant amounts of pedestrian and vehicular traffic that will foster the flow of traffic between the proposed use and uses across abutting streets because the retail use would be located in 3 existing vacant spaces in the Rheem Center, previously occupied by Blockbuster, The Beauty Source and Lori's Perfect Tan. Primary access to the store will be by pedestrians in the shopping center and motor vehicles in the shopping center parking lot. The shopping center has a total of 1,065 parking spaces. 37 parking spaces would be allocated to the Dollar Tree store on a non-exclusive basis (1 space for each 250 square feet of floor area). There would be no change in the total number of required parking spaces from the previous businesses. There are no uses across abutting streets that would be a significant source of pedestrian or vehicular traffic for the proposed business.

2. The use is compatible in land use and traffic characteristics and design with other uses directly affected by the proposed use because it is similar to existing businesses in the shopping center that are potentially affected by the proposed use. These businesses share the same land use category (community commercial) as the proposed use so the proposed use is not incompatible in terms of land use characteristics with other uses directly affected by the proposed use. The proposed hours of operation (Monday through Saturday 9 am to 9 pm and Sunday 9 am to 8 pm) are similar to the hours of operation for other businesses in the shopping center and thus the traffic associated with the proposed use would be coming into and out of the shopping center at times similar to other businesses and would therefore not be incompatible in terms of traffic characteristics with other businesses in the shopping center. The proposed use will occupy three vacant spaces in the shopping center and only require tenant improvements; not the construction of new retail space. In this way, the design of the proposed use is compatible with existing businesses because no new space is required to be constructed.

3. The potential adverse characteristics of the use will be mitigated to the extent necessary to make the use compatible with neighboring uses with the conditions of approval that have been included in resolution.

4. The use will be within a building or space enclosed by approved fencing, landscaping or other buildings because the displays of merchandise and retail sales for the Dollar Tree store will be entirely within the enclosed building. The application does not request any outdoor display of merchandise.

5. The use will not generate noise levels in excess of fifty-five (55) dba during the daytime hours, or fifty (50) dba during the nighttime hours because the Dollar Tree store intends to install new HVAC equipment to improve the efficiency and reduce operational costs as stated by the applicant at the August 23rd Planning Commission meeting and the new mechanical equipment will not generate noise in excess of the established standard.

6. The use will not create an excessive public economic problem because the Dollar Tree store use will add to the local sales tax revenue and will help contribute to the economic viability of the Rheem Valley Shopping Center through the rental of three existing vacant spaces. The use will also contribute to the local economy by providing a source of full time employment for 1 store manager and 2 assistant store managers as well as 23 part time employees. No empirical evidence has been found that links discount or bargain stores with lower residential home values. On the contrary, the lack of tax revenue from vacant stores in a community can adversely impact community services and school funding. Good police services and schools both contribute to higher home values.

7. The use will not generate glare, electrical interference, odor, vibration, brilliant light, dust, smoke, fumes or other characteristics that are otherwise offensive to the senses to the extent that there is interference with the development or enjoyment of other property in the vicinity because this business does not involve cooking or construction or the significant operation of mechanical equipment or any other activity that would result in characteristics that are offensive to the senses.

8. The hours of operation will not foster conditions detrimental to the neighborhood or town because the proposed hours of operation, Monday through Saturday 9 am to 9 pm and Sunday 9 am to 8 pm, are similar to the hours of operation for other businesses in the shopping center and would not be detrimental to the neighborhood or town.

CONDITIONS OF APPROVAL:

1. The term of this approval is for a period of one year. Within the year, the applicant must establish the use in accordance with the approved conditions of approval or reapply to the Town of Moraga for a new approval. Once established, the use must be conducted in accordance with the approved conditions of approval or the approval may be subject to revocation by the Town.

2. In the event that any of the conditions of this approval are not satisfied, the Planning Department shall cause a noticed hearing to be set before the authorized agency to determine whether the Town of Moraga should revoke the approval.

3. Nothing in this approval shall authorize the applicant to intensify the authorized activity beyond that specifically describe in the application or included in this approval.

4. The applicant, as a condition of this approval, hereby agrees to defend, indemnify, and hold harmless the Town, its agents, officers, and employees, from any claim, action, or proceeding against the Town as a result of the action or inaction of the Town, or from any claim to attack, set aside, void, or annul this approval by the Town of the applicant's project; or applicant's failure to comply with conditions of approval. This condition and agreement shall be binding on all successors and assigns.

5. The applicant agrees, as a condition of approval of this project, to pay for all reasonable legal and expert fees and expenses of the Town of Moraga, in defending any legal actions associated with the approval of this project brought against the Town. In that event such a legal action is filed against the project; the Town shall estimate its expenses for the litigation. Applicant shall deposit said amount with the Town or enter into an agreement with the Town to pay such expenses as they become due.

6. All tenant improvements shall comply with all relevant code requirements. Prior to the issuance of a permit, the Building Department, Fire Department and any other necessary agency shall review the proposed plans to confirm compliance with all relevant codes including but not limited to the California Building Code, Electrical Code, Mechanical Code, Plumbing Code, Fire Code and regulations regarding handicapped access.

7. All tenant improvements shall incorporate sustainable building components such as energy efficient lighting, water conserving plumbing and resource conserving building materials in the project design. Prior to issuance of any permit for tenant improvements, the Planning Department shall review the proposed plans to confirm the incorporation of sustainable building components into the project's design. In addition, prior to installation, the Planning Department shall confirm that any new exterior lighting or interior lighting that can be viewed from the exterior is configured so that it does not produce glare outside the building.

8. Any proposed exterior modification to the building shall require consideration and approval by the Design Review Board prior to the modification except for the following:

   a. the installation of mechanical equipment on the roof that is not visible from the public right-of-way and is less than 55 dba at the nearest point in the shopping center that is potentially occupied by people. Prior to the issuance of a permit for the new equipment, the applicant shall provide the Planning Department with documentation demonstrating compliance with the maximum allowable noise standard (55 dba).

9. Prior to occupancy, the applicant shall submit a plan for a comprehensive sign program for the exterior of the building to the Design Review Board for review and approval. The proposed sign program shall be in compliance with the Town of Moraga Municipal Code regarding signage. The following types of signs are prohibited under MMC Sections 8.88.240-A.8 and 8.88.360:

   a. Signs consisting of moving or rotating parts, flashing lights such as, but not limited to, search or flood lights;

   b. Signs which are inflatable;

   c. A sign which is dilapidated, in disrepair or unsightly;

   d. A sign which is: (1) portable, such as an "A-frame" sign; (2) attached to a fence; (3) painted on or attached to a vehicle which is parked for the purpose of advertising to the passing public; or (4) supported by exposed wires or cables.

e. A sign which, because of brilliant lighting, interferes with the comfortable or peaceful enjoyment of adjoining or surrounding property, or because of shape, design, intensity, color or reflected light, conflicts or interferes with traffic or public safety;

10. The hours of operation shall not exceed 9 am to 9 pm Monday through Saturday and 9 am to 8 pm on Sunday. No deliveries shall be permitted between the hours of 7 pm to 7 am daily. All deliveries of merchandise for the store shall be made at the rear of the building so as to not impede the flow of traffic within the shopping center. If it is impossible to make a delivery at the rear of the building, the Planning Director may approve an alternate location at a time that does not adversely impact circulation within the center.

11. All merchandise fixtures and interior finishes shall be of showroom and display quality similar to other retail businesses in the shopping center and the store shall not present the appearance of a warehouse operation. All shelving and casements shall be new or refurbished to be equivalent to new shelving/casements.

12. Any building material used in connection with tenant improvements on the interior of the building that may be visible from the exterior of the building shall be coordinated with the overall color and architectural style of the building so that they complement one another and provide a coherent visual character.

13. Shelving and movable wall partitions within 6-feet of the front windows shall be limited in height to 3-feet and shall not block a significant portion of the front windows. In addition, merchandise shall not be stacked above an opaque wainscot along the store front windows. The wainscot height shall not exceed 3 feet. Window treatments (if any) shall be designed so the overall color and architectural style of such treatment is complementary with the building and provides a coherent visual character.

14. Window signs, including temporary promotional signs, shall not exceed 20% of the area of the window on which they are placed in accordance with Moraga Municipal Code (MMC) Section 8.88.090. In accordance with Town of Moraga Design Guideline CC3.5, decorative product type signs, such as neon signs, shall be located no closer to an exterior window or open doorway than 6 feet. Exposed neon tubing, whether for signing or decoration, is not considered in good taste and is discouraged under Design Guideline CC3.7.

15. All merchandise shelves and display cases shall be laid out in an orderly manner which will result in an open and uncluttered appearance to customers. Shelves and display cases shall be limited in height to 5 feet 6 inches. These height limits shall not apply to displays along store side and back walls.

16. All aisles shall be free and clear of merchandise except during times of shelf restocking. Restocking of shelves shall be made in an expeditious manner which will minimize merchandise stored or stacked within store aisles.

17. The exterior of the building shall be monitored by store personnel during hours of operation to keep it free of litter. All storage of materials and sales displays shall be entirely within the building structure.

18. All trash and recycling shall be accommodated at the rear of the building.

PASSED AND ADOPTED by the Planning Commission of the Town of Moraga on September 20, 2010, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

_____

Jim Obsitnik, Chair

ATTEST:

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Lori Salamack, Planning Director