

# PLANNING COMMISSION STAFF REPORT

DATE: November 3, 2011 for **November 7, 2011 MEETING**

ITEM: V. C. – Planning Commission Public Hearing

FILE: **UP-11-11 / Tim Freeman for the Moraga Valley Kiwanis Foundation (Applicant), Kimco Realty Corporation (Owner) 522 Center Street.** Approve the operation of a temporary See's Candies store from November 16, 2011 to December 24, 2011 in the Rheem Shopping Center. Zoning: Community Commercial (CC) APN 255-160-012

## I. Application Basics

### A. Zoning Permits Required:

- Community Commercial Permitted Use, under MMC Section 8.36.020
- Temporary Sign Permit, under MMC Section 8.88.240

**B. CEQA Determination:** Categorically exempt pursuant to Section 15301 of the CEQA Guidelines (Class 1, "Existing Facilities.")

**Table 1: Land Use Information**

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Vacant Retail Store	Community Commercial	Rheem Park Specific Plan Area
Surrounding Properties	North	Vacant (application pending)	Community Commercial	Rheem Park Specific Plan Area
	South	Dollar Tree	Community Commercial	Rheem Park Specific Plan Area
	East	Mycra Pac	Community Commercial	Rheem Park Specific Plan Area
	West	Parking/Loading; Vacant/Undeveloped beyond	Community Commercial; Open Space beyond	Community Commercial, MOSO Open Space beyond

**Table 2: Special Characteristics**

Characteristic	Applies to Project?	Explanation
Scenic Corridor	Yes	The proposed use would be located within the Moraga Road Scenic Corridor. The use would not be visible from the scenic corridor since it is located in an enclosed building.
Sign	Yes	A temporary 20-square foot banner is proposed on the canopy in front of the business above the entrance way. The banner requires Design Review Board approval because it would be displayed for more than 30 days (MMC Section 8.88.240A-3).

**Figure 1: Site Plan**



**Table 3: Project Chronology**

Date	Action
October 13, 2011	Application submitted
October 20, 2011	Application deemed complete
October 28, 2011	Public hearing notices mailed/posted
November 7, 2011	PC hearing
December 19, 2011	PSA deadline <sup>1</sup>

1. Project must be approved or denied within 60 days after being deemed complete if exempt from CEQA, or 60 days after adoption of a negative declaration, or 180 days after adoption of an EIR (Govt. Code Section 65950).

**II. Project Setting**

The project site is located in the Rheem Shopping Center which includes small, locally-owned retail stores, large, national discount stores, a drug store, restaurants, services,

offices, vacant retail spaces, and an off-street parking lot. The proposed use would be located within an existing 960 square foot vacant space. The space was formerly occupied by Star Shoes and Albert's of Moraga; both of which are permitted uses in the Community Commercial zoning district.

### III. Project Description

The Moraga Valley Kiwanis Foundation proposes to operate a temporary store selling See's Candies during the 2011 holiday season, from November 16, 2011 to December 24, 2011. The store would be open every day from 10 A.M. to 5 P.M. except on November 24, 2011 (Thanksgiving Day.) All of the net proceeds from the sales would go to the organization's activities, including its financial support of charities, community service organizations, and the local Lamorinda schools. The applicant proposes to display a temporary banner while the store is in operation. The banner will require Design Review Board approval because it would be in a scenic corridor and the dates of display would exceed the maximum allowable display time for a temporary banner (MMC Section 8.88.240).

### IV. Issues and Analysis

#### A. Findings Required:

The proposed use is permitted if the Planning Commission determines the use meets the following criteria pursuant to Moraga Municipal Code Section 8.36.020.B:

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 use is located in a self-contained shopping center, and there are no other retail businesses, residences, or other land uses across Rheem Boulevard or Moraga Road that may attract pedestrians or vehicular movement. In addition, the proposed use is not expected to generate additional vehicular trips to the shopping center. The new use could be expected to generate on-site pedestrian activity.*
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 located in a retail shopping center, it may attract customers to other businesses within the surrounding area, and it may retain shoppers within Moraga during the holiday season.*
3. Any adverse characteristics of the use can be mitigated to the extent necessary to make the use compatible with neighboring uses *because no adverse characteristics have been identified so no mitigation of the use is required.*
4. The use will be within a building or space enclosed by approved fencing, landscaping, or other buildings *because no changes to the existing exterior*

*elevations are proposed except for the temporary banner which will be reviewed by the Design Review Board.*

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 use will be located within an existing, enclosed vacant retail space and will not include the operation of machinery or any other noise production.*
6. The use will not create an excessive public economic problem *because a temporary use selling candies will not generate the need for additional public services. In addition, the proceeds from the applicant's temporary retail store will be used to benefit the Moraga community.*
7. The use will not generate glare, electrical interference, odor, vibration, brilliant light, dust, smoke, fumes, or have other characteristics that are otherwise offensive to the sense to the extent that there is interference with the development or enjoyment of other properties in the vicinity *because all retail activities will be within an enclosed location, the use will not generate or produce odor, smoke or fumes, and no lighting is proposed.*
8. The hours of operation will not foster conditions detrimental to the neighborhood or Town *because the hours of operation are similar to the hours of other businesses in the area.*

#### **B. General Plan Consistency:**

General Plan Policy Analysis: The 2002 General Plan contains the following applicable policy:

1. Policy LU2.2–New Commercial Uses: Encourage new business and office uses that enhance existing uses, respond to local resident and business needs, employ local residents, and strengthen the character and attractiveness of the Town's commercial centers.

Staff Analysis: The proposed use would provide residents a temporary retail store during the holiday season with merchandise that is currently not available in Moraga. It would add to the variety of existing business and may improve the shopping center's competitiveness as a retail center. The proposed use may increase local shopping and may attract customers to other businesses. Furthermore, the occupancy of a vacant space would be an improvement to the entire commercial center.

#### **V. Recommendation**

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, Staff recommends that the Planning Commission:

A. ADOPT Resolution No. XX-2011 to APPROVE UP-11-11 pursuant to Section 8.148.050 subject to Conditions of Approval (see Attachment A).

**Attachments:**

- A. Resolution
- B. Project Site Plan, received October 13, 2011
- C. Notice of Public Hearing

**Staff Planner:** Kelly Suronen, ksuronen@moraga.ca.us, (925) 888-7040

**Reviewed by:** Shawna Brekke-Read, Planning Director

# ATTACHMENT A

## **RESOLUTION**

**BEFORE THE TOWN OF MORAGA PLANNING COMMISSION**

**In the Matter of:**

**Resolution No. XX-2011 PC**

To approve the operation of a temporary )  
See's Candies store at 522 Center Street in )  
the Rheem Shopping Center. )  
\_\_\_\_\_ )

File No. UP-11-11

Date: November 7, 2011

Effective Date: November 17, 2011

**WHEREAS**, on October 13, 2011, the Moraga Valley Kiwanis Foundation submitted an application to operate a temporary See's Candies store from November 16, 2011 to December 24, 2011; and

**WHEREAS**, the project is Categorically Exempt under Section 15301 of the California Environmental Quality Act (CEQA) Guidelines (Class 1, "Existing Facilities"); and

**WHEREAS**, a Public Hearing Notice for the project was posted at 329 Rheem Boulevard, the Moraga Library, 522 Center Street, and was mailed to property owners within 300 feet of the Rheem Shopping Center on October 28, 2011; and

**WHEREAS**, on November 7, 2011, the Planning Commission held a public hearing where testimony was heard from the applicant and interested parties; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Commission of the Town of Moraga hereby resolves to approve the operation of a temporary See's Candies store at 522 Center Street from November 16, 2011 to December 24, 2011 subject to the following conditions listed below:

**FINDINGS NECESSARY FOR APPROVAL OF A USE PERMIT UNDER SECTION 8.36.020 OF THE MORAGA MUNICIPAL CODE:**

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 use is located in a self-contained shopping center, and there are no other retail businesses, residences, or other land uses across Rheem Boulevard or Moraga Road that may attract pedestrians or vehicular movement. In addition, the proposed use is not expected to generate additional vehicular trips to the shopping center. The new use could be expected to generate on-site pedestrian activity.*
  
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 located in a retail shopping center, it may attract customers to other businesses within the surrounding area, and it may retain shoppers within Moraga during the holiday season.*

3. Any adverse characteristics of the use can be mitigated to the extent necessary to make the use compatible with neighboring uses *because no adverse characteristics have been identified so no mitigation of the use is required.*
4. The use will be within a building or space enclosed by approved fencing, landscaping, or other buildings *because no changes to the existing exterior elevations are proposed except for the temporary banner which will be reviewed by the Design Review Board.*
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 use will be located within an existing, enclosed vacant retail space and will not include the operation of machinery or any other noise production.*
6. The use will not create an excessive public economic problem *because a temporary use selling candies will not generate the need for additional public services. In addition, the proceeds from the applicant's temporary retail store will be used to benefit the Moraga community.*
7. The use will not generate glare, electrical interference, odor, vibration, brilliant light, dust, smoke, fumes, or have other characteristics that are otherwise offensive to the sense to the extent that there is interference with the development or enjoyment of other properties in the vicinity *because all retail activities will be within an enclosed location, the use will not generate or produce odor, smoke or fumes, and no lighting is proposed.*
8. The hours of operation will not foster conditions detrimental to the neighborhood or Town *because the hours of operation are similar to the hours of other businesses in the area.*

#### **CONDITIONS OF APPROVAL:**

1. Prior to the issuance if a building permit, Planning Department approval is required.
2. The proposed temporary banner shall be subject to Design Review Board review and approval. Any other signs shall require Design Review Board review and approval and are subject to the following requirements:
  - a. Window 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.
  - b. 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.
  - c. Exposed neon tubing, whether for signing or decoration, is not considered in good taste and is discouraged under Design Guideline CC3.7.
3. 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 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;
  - f. A sign that is flashing and/or animated.
4. Any tenant improvements shall comply with all relevant code requirements. Prior to the issuance of a permit, the Building 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.
  5. 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.
  6. The hours of operation shall not exceed 9:30 A.M. to 5:30 P.M. Sunday through Saturday. 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.
  7. The exterior of the building shall be monitored by store volunteers during hours of operation to keep it free of litter. All storage of materials and sales displays shall be entirely within the building structure.
  8. 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 November 7, 2011 by the following vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

ATTEST:

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Russell Driver, Chair

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Shawna Brekke-Read, Planning Director

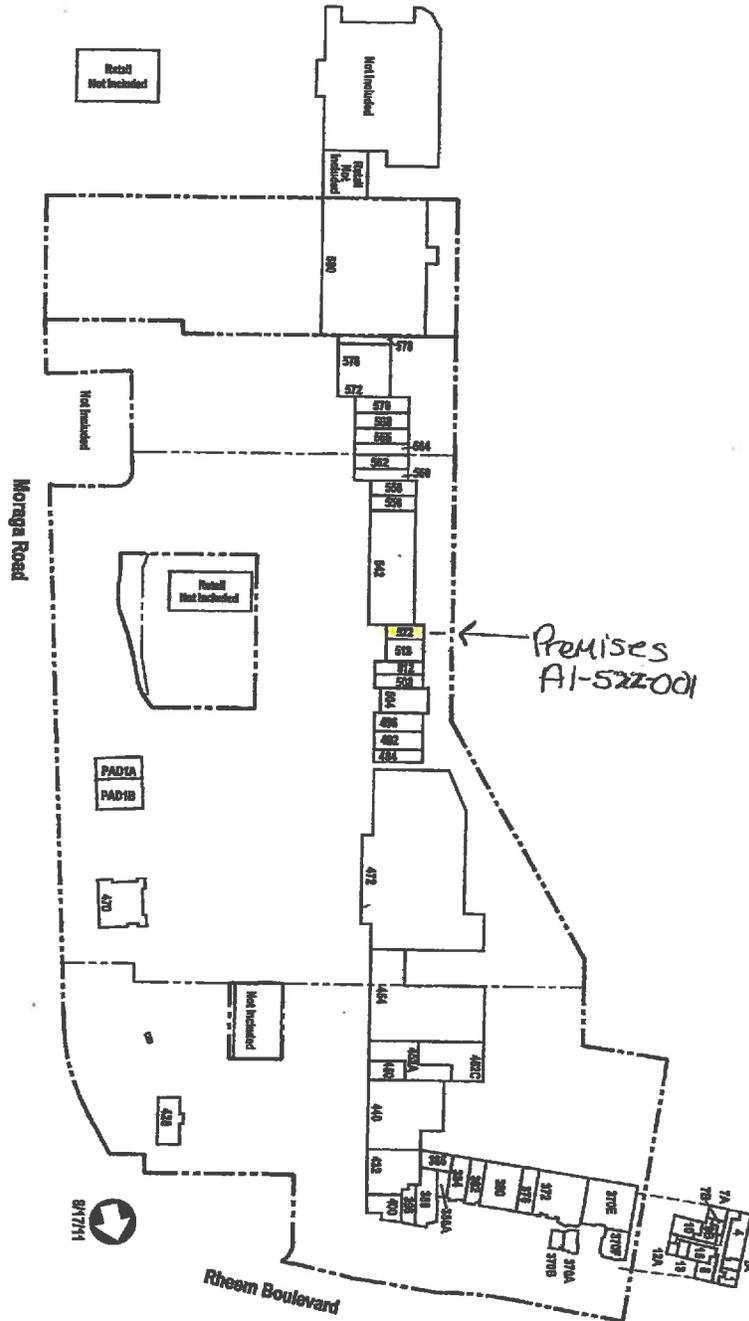
# ATTACHMENT B

## **PROJECT SITE PLAN**

EXHIBIT A

This site plan is intended to be an approximate depiction of the Shopping Center. No representation or warranty is made with respect to the actual location, number or configuration of Buildings, Curb Cuts, Abutting Thoroughfares, Parking Areas, Traffic Patterns, or of the Tenants intended to be within the Shopping Center. The Landlord specifically reserves the right to change the content and configuration of the Shopping Center from time to time and at any time the Landlord desires in its sole and absolute discretion, or as is required to conform to Local Governing Agencies.

The leased premises shall be the area identified below.



# ATTACHMENT C

## **NOTICE OF PUBLIC HEARING**



# PLANNING COMMISSION

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## NOTICE OF PUBLIC HEARING

### 522 Center Street

**UP-11-11 to operate a temporary See's Candies store for charitable purposes from November 16, 2011 to December 24, 2011.**

The Planning Commission of the Town of Moraga will hold a public hearing on the above matter, pursuant to Moraga Municipal Code Sections 8.12.060-070, on **Monday, November 7, 2011** at the Moraga Library Community Meeting Room, 1500 St. Mary's Road (wheelchair accessible). The meeting starts at 7:00 p.m.

#### **PROJECT INFORMATION:**

- 960 square feet of existing commercial floor area in the Rheem Shopping Center

#### **PERMITS REQUIRED:**

- Miscellaneous Use Restrictions, under MMC Section 8.148.050
- Temporary Sign Permit, under MMC Section 8.88.240

**APPLICANT:** Moraga Valley Kiwanis Foundation, P.O. Box 503, Moraga, CA 94556

**PROPERTY OWNER:** Kimco Realty Corporation, 3333 New Hyde Park Rd, #100, New Hyde Park, NY 11042

**ZONING DISTRICT:** Community Commercial (CC)

**ENVIRONMENTAL REVIEW STATUS:** Categorically exempt under Section 15301 of the California Environmental Quality Act (CEQA) Guidelines (Class 1, "Existing Facilities")

**ATTACHMENTS:** Vicinity map

#### **PUBLIC COMMENT**

Comments may be made verbally at the public hearing and in writing before the hearing. Those wishing to speak at the hearing are encouraged to submit a speaker card by 7:15 p.m. The Commission may limit the time granted to each speaker.

Written comments to the Commission are encouraged and should be directed to:

Planning Department  
329 Rheem Boulevard  
Moraga, CA 94556

Fax: (925) 376-5203  
E-mail: [planning@moraga.ca.us](mailto:planning@moraga.ca.us)

To assure distribution to Commission members prior to the meeting, it is recommended to submit **correspondence by 12:00 noon, seven (7) days before the meeting**. 15 copies must be submitted of any correspondence with more than ten (10) pages or any item

submitted less than seven days before the meeting.

### FURTHER INFORMATION

Questions about the project should be directed to the project planner, Kelly Suronen, at (925) 888-7041 or [ksuronen@moraga.ca.us](mailto:ksuronen@moraga.ca.us). All project application materials may be viewed at the Planning Department, 329 Rheem Boulevard, during normal office hours.

