



## STAFF REPORT

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**To:** Planning Commission  
**From:** Community Development Director  
**Date:** May 18, 2004  
**RE: PC 03-45**

Resubmittal of Conditional Use Permit (CUP) for Thomas Towing for proposed Change of Use, development of indoor and outdoor automotive repair facility and towing business at 73662 Homestead Drive (APNs 621-131-03, 04, and 05).

**RECOMMENDATION:** Conduct the Public Hearing and approve the CUP subject to the requirements and standards of the City's General Plan and Development Code.

**BACKGROUND:** At the February 3, 2004 meeting, the Planning Commission denied the applicant's Conditional Use permit (CUP) based on nonconformance with the City's General Plan and Development Code. The denial was subsequently appealed to the City Council. On March 23, 2004, the appeal was denied.

The City Council's action is considered final. However, the Council took action on March 9, 2004 to allow the applicant to resubmit the application at no cost.

On February 24, 2004, the applicant submitted to the City a revised proposal and revised site plan. Because the site plan had not been presented to the Planning Commission, it was not considered by the Council at the March 23<sup>rd</sup> meeting. Staff reviewed the site plan and sent a March 25, 2004 letter outlining the issues which needed to be addressed. In response, the applicant submitted an April 28, 2004, cover letter, phasing schedule, revised site plan, photos (2) and a sign proposal. The materials submitted by the applicant are attached for the Commission's consideration.

### Attachments

- CUP application
- Locator Map
- March 25, 2004 letter from staff
- April 28, 2004 proposal including cover letter, phasing schedule, site plan, photos (2) and a sign proposal
- Draft Conditions of Approval
- Draft Negative Declaration
- Initial Study
- Deminimis Impact Finding



**Parcel Merger**

The subject site is comprised of three parcels, identified as APN 621-131-03, 04, and 05. In October 2003, the property owner submitted a parcel merger application. The purpose of the parcel merger is to avoid a situation where one of the parcels is sold separately making compliance with the approval, as proposed, impossible. The application submitted by the owner was forwarded to the County Recorder’s office for recording. Staff has been notified by the Recorder’s office that the legal descriptions provided by the property owner are not accurate and are in need of correction. Therefore, Condition #3 of the draft Conditions of Approval requires that the parcels be merged into one parcel within 30 days of approval.

**Public Improvements**

Curb, gutter and sidewalk are proposed. Condition #20 of the attached draft Conditions of approval specifies that Homestead Drive be improved along the project boundaries in conformance with the City’s Collector standard which is established in the General Plan. One of the unique aspects of this property is that it has a 100-foot wide right-of-way, 50 feet of which is on the applicant’s side of centerline. Typically, the right-of-way would be 80 feet. The applicant is proposing to pave 40 feet of roadway and construct curb, gutter and a five-foot wide sidewalk adjacent to the roadway. The City Engineer has recommended that the applicant develop the roadway to the Collector standard, which is 32’ of pavement width. Per the City’s standards for sidewalk construction, the applicant could construct either a six-foot-wide sidewalk adjacent to the curb & gutter, or a four-foot-wide sidewalk if a two-foot-wide median is provided between the sidewalk and the curb & gutter. With the wording presently in the draft Conditions of Approval, the applicant would construct the roadway to the General Plan Standard and could construct either sidewalk width and be in compliance with standards established by the City.

Per Development Code Chapter 19.85, *Public Improvements - Delaying or Deferring*, the applicant may, subsequent to Planning Commission approval of the CUP, apply to the City Manager for deferral of the public improvements. If the findings specified in Chapter 19.85 of the Code can be made, the City Manager is authorized to approve a deferral agreement.

**Parking/Internal Circulation**

Per Development Code Chapter 19.82, *Off-street Parking and Loading Regulations*, adopted by the City Council February 10, 2004, the parking requirement for this business is six (6) stalls, one of which must be handicap accessible. Section 19.82.060 (M) of the City’s parking requirements specifies that all parking areas and access thereto shall be paved. The applicant proposes to phase paving for the required parking spaces over a one-year period, with three spaces paved within 180 days of approval and the other three paved within 180 days of the completion of the first three. The applicant proposes to pave driveways within two years of approval.



Chapter 19.82 does not include a provision for phasing but the proposed phasing plan is presented to the Planning Commission for consideration. Because phasing of private improvements, such as onsite parking and driveways, is not specified in the Code, the attached draft Conditions of Approval do not allow for the proposed phasing. If the Commission approves a phasing plan, the Condition #10 of the Conditions of Approval should be modified to reflect the approved phasing.

Table 19.82-E and 19.82 –F of the City’s parking code establishes requirements for loading spaces. Section 19.82.080 *Loading Space Requirements*. States:

All office, commercial and industrial uses (activities) shall provide a loading space as specified in Table 19.82 E and 19.82 F below. If, during project review it can be determined that a loading area can reasonably be shared by more than one use, a shared loading area can be approved in lieu of one per use.

Table 19.82-E specifies the standard for “Automobile or vehicle parts and service” businesses. Per the Table, one 12' x 45' loading space is required for such facilities.

The proposed site plan does not address this requirement. In the March 25, 2004 letter, staff requested that the applicant either include the loading space on the site plan or provide information as to why it should not be required. In response the applicant states:

There is no proposed loading area in that there is no loading associated with the proposed business. The proposed business is a dispatch center. Tow trucks are sent from the proposed location to other areas where vehicles are recovered and then taken to other facilities such as automotive repair shops or to vehicle storage yards. No vehicles will be stored at the proposed location.

The purpose of a loading area is to provide an accessible area for delivery of materials. Per the applicant’s business license application, the proposed business is “Towing office, parking trucks, dispatching tow calls, sell auto parts & accessories & propane, installing mufflers and hitches.” Based on this description and the intended use of the property, staff recommends the inclusion of a loading area as specified in Chapter 19.82 of the Code. Accordingly, the requirement for a loading space is specified in Condition #11 of the draft Conditions of Approval, allowing the applicant 30 days from approval to submit a design to the City Engineer for approval.

The proposed use includes trucks. To ensure that the required customer parking areas are reserved for customers, a paved truck parking area should be required. The site plan depicts a truck parking area, measuring approximately 30' x 10' on the easterly portion of the property, near the Homestead Drive frontage. The proposed truck parking area will be visible from both Adobe Road and Homestead Drive. If the Planning Commission has no concerns with the proposed truck parking area, Condition #12 of the draft Conditions of Approval does not need to be modified. However, if the truck parking area is not approved as proposed, the Condition should be modified to reflect the revised requirement(s).

The proposed site plan indicates a 15' wide driveway connecting the parking area to the vehicle repair area. Table 19.82-D of Chapter 19.82 establishes *Required Driveway and Aisle Widths*. For two-way driveways and access aisles, the minimum width established by the City is 25 feet. Additionally, Table 19.82.D establishes a 30-foot wide standard for, “Two-way truck access for commercial sites.” Per Condition #13 of the attached draft Conditions of Approval, all two-way driveways must be at least 25 feet wide, as specified in the Development Code. Therefore, to meet this requirement, the driveway width must be increased to at least 25 feet in width. If the Planning Commission determines that a 30-foot width is necessary, because of the potential for

truck traffic, then Condition #13 should be modified to include the Planning Commission's requirement.

Section 19.10.080 *Parking and Driveways*, of the Development Code establishes standards for "...areas of heavy vehicle traffic, loading areas and other site areas for heavy vehicles or equipment..." Per this subsection, all such areas are to have paving design and thickness of sufficient strength to support such vehicles and traffic. Condition #13 of the draft Conditions of Approval specifies compliance with this requirement.

### **Landscaping**

Per Design Standards established in Section 19.10.040 (B), adopted by the City Council on October 14, 2003, landscaping equal to 10% of the front setback is required. The front setback for this property is 2,400 square feet, resulting in a requirement for 240 square feet of landscaping. Per Design Standard (D) in the same subsection, a minimum six (6) foot wide landscaped area is required to separate parking areas from a street or public sidewalk. The applicant proposes landscaping exceeding this requirement. The minimum landscaping requirement is found in Condition #16 of the draft Conditions of Approval.

### **Screening**

Per Section 19.10.050 (B) *Outdoor Storage and Use Standards*, adopted by the City Council on October 14, 2003, a solid wall made of block, masonry, or other similar material is required around the perimeter of vehicle repair facilities to substantially block the view of the yard. The section states, in part:

Vehicle storage, tow yards, appliance or vehicle repair or service, and similar uses. A solid wall made of block, masonry, or other similar material shall be constructed and maintained around the perimeter of the use to substantially block the view of the yard. A minimum of three (3) feet of landscaping shall be provided along the street frontage to provide aesthetic relief along the wall.

In the phasing proposal, the applicant states that an interim screening fence has been installed "around the west entrance area" and that an adobe wall will be constructed to replace it within 18 months of approval. This aspect of the proposal does not meet standards established by the City Council with adoption of Chapter 19.10 on October 14, 2003 (Section 19.10.050). To ensure compliance with the Council-adopted policy, the requirement for a block wall has been added as Condition #17 of the draft Conditions of Approval.

### **Outdoor Vehicle Repair Area**

Section 19.10.050 (B) of the code also specifies that areas used for vehicle repair be paved. The section states:

Vehicle storage, tow yards, appliance or vehicle repair or service, and similar uses. The areas of the yard that are visible from offsite shall be paved with concrete or asphalt paving. Suitable Best Management Practices (BMP) shall be constructed and/or practiced to ensure that any vehicle fluids shall not leave the site and shall not contaminate soil.

Because the applicant proposed vehicle repair, the requirement is applicable. Staff notified the applicant of the requirement in the March 25, 2004 letter. In response, the applicant states:

The proposed site for Thomas Towing has no “vehicle storage” area. Vehicles will access the two car garage and vehicle lift area via the west gate and then have mufflers or tow hitches installed. Wrecked or inoperable vehicles will be stored at our Pine Ave location....None of the above actions will cause vehicles to leak fluids.

It appears from this response that the applicant believes the requirement is applicable only to vehicle storage lots. However, the text in section 19.10.050 lists “vehicle repair or service” as one of the business types where the standard is applicable. Staff has included the requirement in Condition #18 of the draft Conditions of Approval. If the Planning Commission does not find that the section is applicable, Condition #18 can be removed or modified in accordance with the Planning Commission’s interpretation of the requirement.

### **Trash Enclosure**

Per Design Standards established in Section 19.10.040 (K) of the Development Code, a trash enclosure is required. In the phasing schedule proposed by the applicant, the trash enclosure is proposed within 18 months of approval. Because the Development Code does not provide a deferral mechanism for trash enclosures, staff has included the requirement for the trash enclosure in Condition #5 of the draft Conditions of Approval, therefore requiring it upon approval. If the Planning Commission is going to allow the requested 18 month delay, the Condition will need modification accordingly.

### **Signs**

A Monument Sign is depicted on the site plan. In the March 25, 2004 letter, staff requested that the applicant provide detail to assist in the approval of the proposed sign. Specifically, staff requested information regarding the height, sign area, and content of the sign. In response, the applicant provided a photo entitled “proposed gas tank sign” and accompanying copy “Thomas Towing 760 367 7117.” Both the photo and the sample sign copy text are attached to this staff report for the Planning Commission’s consideration. This is submitted by the applicant as the proposed sign plan.

The proposed sign can be approved if it is found to be in compliance with Development Code Chapter 19.84, *Signs*. Per Section 19.84.030 *Permits*, the sign must be professionally prepared and the applicant is required to provide, “A scale diagram of the Sign with the accurately calculated copy area.” and “A visual sample of the colors to be used.” There is no indication that the sign will be professionally prepared and a scale diagram has not been submitted.

Section 19.84.040,(O) *Multi-faced Signs*, provides direction on multi-faced signs. The Section states:

The Sign Area and quantity of a Multi-face sign shall be calculated as a single sign provided the Sign faces are placed at angles which do not exceed 60 degrees. Four-sided Signs are not allowed.

If the Commission determines that the use of the gas tank as a sign can be approved, then the applicant could submit a drawing to staff for approval. If the drawing depicts a sign that will be professionally prepared, it can be approved. If the Planning Commission does not approve the gas tank design, the sign proposal should be revised and the gas tank should be removed from its present location.



### **Findings for Approval**

Pursuant to Section 19.30.060 of the Development Code, the Planning Commission is required to make the following findings in order to approve the CUP:

- A. That the proposed design and location of the conditional use and the conditions under which it will be operated are in accordance with the purpose of this Development Code, the zoning regulations applicable to the site, the City of Twentynine Palms General Plan, and other applicable development policies and standards of the City; and
- B. That the proposed design and location of the conditional use and the conditions under which it will be operated will not be detrimental to the public health, safety, or welfare, or materially injurious to uses, properties or improvements in the vicinity; and

- C. That the proposed site is adequate in size and shape to accommodate the use and integrate it with the existing and planned uses in the vicinity.



### **Conditions of Approval**

Staff has developed draft Conditions of Approval which incorporate the requirements of the Development Code and General Plan as adopted by the City Council. The applicant's compliance with the Conditions will result in a development in accordance with City standards.

### **Environmental Clearance**

The project is subject to the California Environmental Quality Act (CEQA). Accordingly, staff prepared an Initial Study to assess the potential environmental affects of the project. Based on staff's analysis, the project qualifies for a Negative Declaration if developed to the standards established by the City Council. Therefore, if a motion is made to approve the project, it should include adoption of the Negative Declaration.

### **De Minimis Impact Finding**

Separate from the CEQA requirement, Section 711.2 of the California Department of Fish and Game Code requires that the applicant pay a mitigation fee to the Department if project approval will result in an adverse affect on wildlife resources. However, if a finding can be made that project approval will not result in an adverse affect on wildlife resources, the fee is not required. Because the project will not disturb any wildlife habitat, staff believes the finding can be made. This finding should be cited in the motion to approve the Negative Declaration if/when such motion is made.

### **Approval Authority**

The Planning Commission is the Approval Authority for this project. If the CEQA Negative Declaration is adopted, the Commission may, 1) Make the required findings and take action to approve the CUP subject to the attached Conditions of Approval, 2) Make the required findings and take action to approve the CUP subject to a modified list of Conditions, 3) Continue the matter to a future specific date to allow additional time for consideration of the issues, or 4) Direct staff to develop findings for denial and take action to deny the project.



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**To:** Planning Commission  
**From:** Community Development Director  
**Date:** May 18, 2004  
**RE: PC 04-23**

Minor Use Permit (MUP) application from Daniel and Victoria Kuns for proposed tattoo studio at 6284 Adobe Road (APN 618-252-06), with parking proposed offsite (APN 618-252-27).

**RECOMMENDATION:** Conduct the hearing and approve the MUP, subject to the requirements and standards of the City's General Plan and Development Code.

**BACKGROUND:** The applicant seeks to establish a tattoo studio in the existing structure at 6284 Adobe Road. Per Table 19.10-A in Section 19.10.020 of the Development Code, a Minor Use Permit is required.

Zoning for the subject parcel is General Commercial (CG). The proposed use can be allowed in the CG land use district subject to the Planning Commission's approval of the MUP. The MUP can be approved if the findings specified in Section 19.31.060 *Findings*. The required findings are:

### Attachments

- MUP Application
- Locator Map
- Site Plan
- Draft Parking Agreement

- A. That the proposed design and location of the conditional use and the conditions under which it will be operated are in accordance with the purpose of this Development Code, the zoning regulations applicable to the site, the City of Twentynine Palms General Plan, and other applicable development policies and standards of the City; and
- B. That the proposed design and location of the use and the conditions under which it will be operated will not be detrimental to the public health, safety, or welfare, or materially injurious to uses, properties or improvements in the vicinity; and
- C. That the proposed site is adequate in size and shape to accommodate the use and integrate it with the existing and planned uses in the vicinity.

In approving an application for a MUP, the Planning Commission may impose reasonable and appropriate conditions to achieve the purposes of the Development Code and to justify making necessary findings. Section 19.31.070 *Conditions of Approval*, states that conditions may include, but shall not be limited to:

- A. Requirements for special building setbacks, open spaces, buffers, fences, walls and screening.

- B. Requirements for installation and maintenance of landscaping, and erosion control measures.
- C. Requirements for street and other infrastructure improvements and related dedications.
- D. Regulation of vehicular ingress, egress, and traffic circulation.
- E. Regulation of hours of operation or other characteristics of operation.
- F. Requirements for increased security.
- G. Requirements for periodic review.
- H. Requirements for special building design and features to enhance the visual impact and integrate the use into the community.
- I. Other conditions as may be deemed necessary to make the findings required by this Chapter.

### **Parking**

The parking requirement for tattoo studios is one per 200 square feet of gross floor area. The proposal is 1,705 square feet, resulting in a parking requirement of nine spaces.

The applicant proposes to provide the parking on the parcel immediately west of the site. The parking parcel is paved but in need of either resurfacing or resealing and striping. In submitting the application, the applicant requests six months to complete the required parking lot improvements.

Section 19.82.060 D (1) requires that all paved parking stalls are to be clearly marked by painted (or other easily distinguished and durable material) pavement striping. To be compliant with this requirement, striping of the lot will be required.

Per Section 19.82.060 (G), all off-street parking is to be located on the same lot as the use it is designed to serve, unless the parking is within 300 feet from an entrance to the use it serves and the applicant shall provide a recordable instrument guaranteeing use of such parking facility for the benefit of the property and its use(s) for the duration of the use(s) for which the parking is provided. The document is to be recorded in the County Recorder's Office as a deed restriction on all subject properties.

### **Handicap Parking**

Per the Americans With Disabilities Act and Title 24 of the California Code of Regulations, one of the required parking spaces is to be handicap accessible. The handicapped space is to be as close to the entryway as is reasonably possible. The applicant is proposing to locate the handicapped accessible space adjacent to the alley, in the parking space closest to the rear entrance.

### **Conditions of Approval**

As is noted above, the Planning Commission may impose reasonable conditions on the approval.

Staff recommends that the applicant, 1) agrees to resurface and stripe the parking lot within six (6) months of approval, and 2) agrees to provide a recordable instrument guaranteeing the parking for the customers of the primary site as specified in Section 19.82.060 (G) of the Development Code.

### **Environmental Clearance**

The California Environmental Quality Act (CEQA), provides for several areas of exemptions. Class 1 includes, “Operation, repair, maintenance, or minor alteration of existing structures or facilities not expanding existing uses.” Staff believes that this class of exemption can be applied to the proposed project. If the Planning Commission concurs, a motion to approve the Site Plan Review and CUP amendment should include a finding that the project is exempt from CEQA. If the Commission does not concur, the matter should be referred back to staff for completion of an environmental analysis.

### **Approval Authority**

The Planning Commission is the Approval Authority for the MUP. If the CEQA Exemption is approved, the Commission may, 1) Make the required findings and take action to approve the MUP subject to the conditions discussed above, 2) Make the required findings and take action to approve the MUP subject to a modified list of Conditions, 3) Continue the matter to a future specific date to allow additional time for consideration of the issues, or 4) Direct staff to develop findings for denial and take action to deny the project.

### **Staff Recommendation**

Staff recommends approval of the MUP, subject to the requirement that the applicant, 1) provide the recordable parking agreement prior to occupancy, and 2) resurface and stripe the parking lot within six months of approval.



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**To:** Planning Commission  
**From:** Community Development Director  
**Date:** May 18, 2004  
**RE: PC 04-22**  
Staff referral of Massage Technician/Therapist application from Valerie Driscoll

**RECOMMENDATION:** Review the application and the applicable regulations and make a determination on approval or denial.

**BACKGROUND:** At the urging of massage professionals in 2002, the Planning Commission developed revised regulations for processing massage technician and massage therapist licenses. Ordinance No. 167 was recommended for adoption by the Planning Commission on June 4, 2002 and was adopted by Council on August 13, 2002. A copy of Ordinance No. 167 is attached.

On March 26, 2004, Valerie Driscoll applied for a Massage Therapist Permit. Per Ordinance No. 167, a Massage Therapist is allowed to perform onsite and outcall massage service. Section 5 of Ordinance No. 167 requires 600 certified hours of training. In submitting the application, Ms. Driscoll submitted transcripts indicating that she had 508 hours of training and certificates that indicate that the total training was 504. Staff informed Ms. Driscoll of the 600-hour requirement contained in Section 5. The section states:

### Attachments

- Ordinance No. 167
- April 1, 2004 letter, Ms. Driscoll to City Manager
- April 12, 2004 response from staff
- March 1997 transcript and certificate indicating 404 hours of training
- March 1997 transcript showing 104 and April certificate showing 100 hours of training
- 1999-2000 transcript (dated April 21, 2004), 32 hours of training
- Unsigned certificate of attendance from Desert Resorts School of Somatherapy, 8 hour seminar
- Massage Certificates (licenses) issued by City of Palm Desert, 1999-2002

Except as expressly provided in this Chapter, no person shall perform or offer to perform an off-premises massage unless he or she has a valid Massage Therapist Permit, with an off-premises endorsement, issued to him or her pursuant to the provisions of this Chapter. Nothing herein shall exempt a person from zoning or other applicable requirements set out elsewhere in this Code or in the Zoning Ordinance, and every person shall comply with all such requirements. In addition to the materials required to be submitted for a Massage Technician Permit, the applicant shall submit a Certified transcript from a Recognized School of Massage verifying that the applicant has successfully completed a course of

study requiring at least six hundred (600) hours of massage therapy training.

On April 1, 2004, the City Manager received a letter from Ms. Driscoll indicating that she was challenging the 600-hour requirement contained in Ordinance No. 167. In challenging the requirement, Ms. Driscoll indicated that she has received 528 hours of training and a fulltime Palm Desert massage business from September 1997 to April 2000.

Per Section 4 of Ordinance No. 167, *Permit Required*, a Massage Technician Permit can be issued with 300 hours of training. A Massage Technician Permit allows the permittee to provide only onsite massage service at a specified location. However, as is referenced above, offsite practice requires 600 hours of training.

Per Section 6.3 of Ordinance No. 167, staff is the approval authority for a Massage Therapist or a Massage Technician license. Applications that meet the standards established in Ordinance No. 167 are approved at staff level. However, Section 19.40.040 of the Code allows staff to refer matters to the Planning Commission for action. Rather than deny the application because of nonconformance with City requirements, staff is referring Ms. Driscoll's application to the Planning Commission. Per Section 19.40.040, the Planning Commission becomes the approval authority for the application.

As a follow-up to Ms. Driscoll's April 1, 2004 letter, staff prepared an April 12, 2004 response requesting that she provide additional detail on her training so that the materials can be presented to the Planning Commission for a determination. Ms. Driscoll submitted an April 21, 2004 Student Transcript from The Desert Resorts School of Somatherapy and copies of certificates from the City of Palm Desert. The transcript indicates an additional 16 hours of training. (Sixteen hours completed and the other 16 hours "cancelled"). From information provided by Ms. Driscoll, it appears that she has received somewhere between 524 and 532 hours of training.

On May 3, 2004, Ms. Driscoll requested that staff approve a Massage Technician license (on site only), based on the fact that she exceeds the 300-hour requirement for a Technician. Staff has approved the Technician license but is referring the matter of the Massage Therapist license to the Planning Commission for a determination. The Planning Commission, as approval authority for this matter, could, 1) deny the application for a Massage Therapist license based on nonconformance with Section 5 of Ordinance No. 167, *Off-premises Endorsement to Massage Technician Permit (Massage Therapist)*, 2) approve the Massage Therapist license based on the information provided by Ms. Driscoll relative to her experience, allowing her to substitute her experience for the shortage in the training required per Ordinance No. 167, or 3) continue the matter to a future date to allow additional time for consideration of the issues.