

**Minutes  
Zoning Administrator Meeting  
August 16, 2012**

**Staff Present**

Charley Stump, Zoning Administrator  
Jennifer Faso, Associate Planner  
Cathy Elawadly, Recording Secretary

**Others Present**

Listed below, Respectively

**1. CALL TO ORDER**

Zoning Administrator Stump called the meeting to order at 2:06 p.m. in Conference Room No. 3, Ukiah Civic Center, 300 Seminary Avenue, Ukiah, California.

**2. SITE VISIT VERIFICATION**

Zoning Administrator Stump confirmed the site visit.

**3. APPROVAL OF MINUTES: June 14, 2012**

Associate Planner Faso made minor edits to the project Findings and Conditions of Approval.

Zoning Administrator Stump corrected spelling of 'Tom Segal' to 'Tom Segar.'

Zoning Administrator Stump approved the June 14, 2012 meeting minutes, as amended.

**4. APPEAL PROCESS**

Zoning Administrator Stump read the appeal process. For matters heard at this meeting the last day to appeal is August 27, 2012.

**5. VERIFICATION OF NOTICE**

Associate Planner Faso verified Minor Use Permit 12-12-UP-ZA was properly noticed in accordance with the provisions of the UMC.

**6. PUBLIC HEARINGS**

**6A. Minor Use Permit 12-12-UP-ZA**, 901 South State Street, APN 003-081-24. Request from Halloween City for approval of a Minor Use Permit to allow retail sales in a Heavy Commercial (C-2) zone.

Associate Planner Faso gave a staff report.

- Halloween City is requesting a minor use permit to allow seasonal retail sales of Halloween costumes and décor.
- Halloween City operated a retail store at this location last year. A use permit was not required at the time because it had been less than six months since the previous non-conforming retail use vacated the building. Halloween City was able to continue the previous use based on Zoning Ordinance section 9209 that states, 'If the nonconforming use of land or building ceases for a continuous period of six months, it shall be considered abandoned and shall thereafter be used only in accordance with the regulations for the district in which it is located.'
- The proposed temporary seasonal business will operate from September 4 through November 2, 2012.
- Employment will include 23 temporary workers.
- There will be no changes to the building, building footprint or landscaping.
- With regard to the project conditions, staff recommends the gate that separates the front parking lot from the rear parking lot be left open so that there will be enough parking.
- Sign permits would be required for signage as discussed on page 3 of the staff report and the signage would have to come down one week after the business leaves.

- After the project packet was prepared and sent out, three e-mails were received by staff, as well as telephone calls that were not followed-up with e-mails.
- Staff recommends approval based on the Findings and Conditions of Approval contained in the staff report.

**Zoning Administrator Stump:**

- E-mails were received by staff in opposition to the project. Staff also received telephone calls concerning the project.
- The e-mails have been incorporated as part of the record and corresponding decision-making process.

**PUBLIC HEARING OPENED: 2:10 p.m.**

**David Alanis, Regional Manager for Halloween City, northern California area:**

- Introduced Jeremy Specials as the District Manager overseeing this particular area. He lives in Ukiah.
- Introduced Michael Shanahand as the General Manager overseeing this particular location. He also lives in Ukiah.
- Is present to represent Halloween City.
- Has reviewed the staff report and agrees with staff's Findings and Conditions of Approval.
- Is open to assisting staff with whatever the City may need and/or require.

**Tracey Oswald:**

- Is the owner of Incognito, which is locally-owned Halloween costume and décor retail sales store operating in the Downtown area.
- Her business is less than a mile from the proposed location of Halloween City.
- Advised that last year Halloween City had a significant financial impact on her business and she almost lost her home as a result.
- Is very concerned that this year Halloween City could put her out of business.
- Allowing Halloween City to operate in rather close proximity to her business presents a 'huge hardship.'
- From the research she has done, corporate retail stores such as Halloween City have put small businesses like hers out of business all over the United States.
- Is of the opinion it is not fair that Halloween City be allowed to come to town for two months and pull that money out of the community when she has four children in school and pays all types of taxes.
- Is opposed to the project.

**Robert Sherwood:**

- Is the owner of the property and building where Ukiah Valley Lumber Company formerly operated where Halloween City would be located.
- It has been a financial hardship for him since Ukiah Valley Lumber Company went out of business yet he pays his property taxes, etc.
- Has made significant improvements to the building/other structures on the site, as well as site improvements with the hope the building would be leased. Even though the property has actively been marketed for sale or lease, there have been no interested persons/parties other than Halloween City that operated a temporary seasonal business last year at this location.
- Could argue that his retail lumber business was put out of business because of Home Depot and Friedman's, but this is America, land of free-enterprise and competition.
- Acknowledged that people do not always shop local.
- The property is properly zoned and as such is compatible with the surrounding neighborhood uses.

- Halloween City hired full-time people last season who anticipate that this business will become permanent.
- Halloween City was successful last year and the community seemed to like the store and this is reason it was well-visited.
- Cannot afford to have his building stay vacant.
- Supports approval of the project.

**Quincy Oswald:**

- This public hearing is about the temporary aspect of a seasonal retail sales operation and not about the store becoming permanent.
- What will occur is all the revenue generated from this specific business will be taken from other like businesses that have been established in this community for years and then the business will move on.
- With regard to the element of job creativity, the 23 jobs created are temporary in nature.
- Expressed concern about the jobs that would be lost when stores go out of business. Does not believe this issue has been factored into staff's analysis.
- Is of the opinion Halloween City does not fit well in Ukiah because he grew up with the personification of 'shop and live local.' Ukiah has been one of those small rural communities that do not want big box retail stores and staying a small town while trying to expand with local shops rather than provide for huge worldwide retailers. This is how it should be. Halloween City represents the exact opposite.
- Halloween City will come in and swoop up all the revenue and move on. The Project is not about the store becoming permanent, but rather two and half months of taking business from people who have been here for years.
- Does not support approval.

**Steve Scalmanini:**

- Requested clarification concerning the number of months Halloween City will operate.

**David Alanis:**

- Halloween City will operate from September 4 through November 2, 1012.
- The building is rented for longer than two months.

**Steve Scalmanini:**

- Has concern about the relationship between what is being proposed and possible approval of the Use Permit and correlation with the Ukiah General Plan.
- It is his understanding that claims made in the staff report that the project conforms with the General Plan without any reference to the General Plan. Is aware that one of the elements of the General Plan is to maintain and build a thriving Downtown economy. It appears the proposed project will essentially undermine the Downtown economy.
- Asks why is consideration being given for approval for something that is a detriment to the Downtown economy.
- Is it not the responsibility of the Planning Department to see that projects comply with the General Plan?

**Pinky Kushner:**

- Is also concerned about conformity with the General Plan.
- Is of the opinion the project does not conform to the General Plan.
- The General Plan is pretty all-encompassing whenever there is a question whether the City should 'vote local and not outside.' This is clearly demonstrated by the enormous effort and money the City has paid into for its new Downtown Zoning Code. The proposed project 'will hurt' this Downtown Zoning Code plan.
- The site is zoned C2, Heavy Commercial, and the proposed project is retail sales and not heavy commercial. When the site was used for retail sales, it was without an official permit. It was a nonconforming use in an existing alternate zoning designation and

1 questions the ability to change the Heavy Commercial zoning designation into the retail  
2 sales use.

- 3 • Does not agree the proposed project is exempt from the provisions of the CEQA with  
4 regard to Section 15303 3(c). This section of CEQA describes the small class of projects  
5 that involve new construction or conversion of existing small structures. The 1998  
6 revisions to the section clarified the type of projects to which this section applies. What  
7 this hearing is all about is a change of use and in being a change of use the project does  
8 not qualify for any of the exemptions under CEQA. Under CEQA, the change of use  
9 should be investigated. In particular, the only area that should be investigated is the top  
10 of economic impact.
- 11 • Given the Downtown economic situation with many stores vacant including the Palace  
12 Hotel and with a lot of City concern about the Palace Hotel making another business  
13 potentially vacant is essentially grounds for full examination under CEQA law.
- 14 • Is opposed to the project.

15  
16 **John Attaway:**

- 17 • Does not support that any outfit/company can come and grab seasonal retail income and  
18 leave. This does not seem right.
- 19 • Does shop locally when possible.
- 20 • Supported Ukiah Valley Lumber Company and is sorry the business closed. However,  
21 the example is different because unlike Halloween City, Friedman's and Home Depot  
22 these companies/businesses are here permanently.

23  
24 **Benj Thomas:**

- 25 • Asked Tracey Oswald if she can estimate what percentage of her income and/or profit is  
26 Halloween based.
- 27 • Also asked if Christmas sales are considered as part of her business income.

28  
29 **Tracey Oswald:**

- 30 • Probably 60% of her income/profit is Halloween based. In September and October she  
31 must be able to make enough income to sustain her financially for the rest of the year.
- 32 • She is a Halloween and/or costume store not a Christmas store.

33  
34 **Benj Thomas:**

- 35 • Has questions directed toward adherence to the General Plan and compliance with  
36 CEQA provisions.
- 37 • In its analysis of the project how does the Planning Department apply the General Plan  
38 guidelines in terms of recommendation/approval for a minor use permit such as the one  
39 being considered?

40  
41 **Planning Director Stump:**

- 42 • If a project comes in and Planning staff clearly sees that the project is inconsistent with  
43 the Ukiah General Plan, the applicant is advised right then that staff cannot support  
44 approval of the project.
- 45 • For other projects where it is not readily known whether or not there may be an  
46 inconsistency issue with the general plan, an analysis is conducted to make this  
47 determination as staff reviews and processes the application. This is the process that  
48 has occurred for the Halloween City minor use permit project.

49  
50 **Benj Thomas:** Requested clarification, if the aforementioned procedure is the case the finding is  
51 that there is not an inconsistency with the general plan for the project.

52  
53 **Planning Director Stump:** It is staff's recommendation that the project is consistent with the  
54 goals/policies of the General Plan and this is what was determined by staff in its analysis of the  
55 project.

1 **Benj Thomas:** Has concerns about potential economic impacts to other businesses as pointed  
2 out by Pinky Kushner.  
3

4 **Planning Director Stump:**

- 5 • The General Plan has an economic element component.
- 6 • Recalled the Walmart Expansion project where the economic element component was  
7 thoroughly analyzed for consistency with the General Plan.
- 8 • The economic element component of the General Plan does play a role in these  
9 proceedings.

10  
11 **Maria Gilardin:**

- 12 • Does not support the City giving preference to big box retail establishments and/or out-of-  
13 state retailers.
- 14 • Likes to see local businesses thrive.
- 15 • Pleased the Walmart Expansion project was denied.
- 16 • Is sorry that Ukiah Valley Lumber Company closed.
- 17 • What happened to Ukiah Valley Lumber Company may happen to Incognito and/or  
18 another local business.
- 19 • At some point the community needs to say 'no' to big box retailers, which is like a disease  
20 attacking small towns.
- 21 • Encourages the community to make a huge effort to help the Ukiah Valley Lumber  
22 Company property owner find a suitable use for that site. Understands that the property is  
23 losing income by the building being vacant, but should not have to settle/rely on a retailer  
24 that sells 'junk' costumes and plastic décor. The owner of Ukiah Valley Lumber  
25 Company can do much better and he should be supported in this endeavor.
- 26 • The question remains what would happen to Tracey Oswald and her retail establishment.
- 27 • Does not the support approval of the project.

28  
29 **Mary Anne Miller:**

- 30 • Competition from one store versus another is something that can be welcoming and a  
31 good thing for the community. However, is of the opinion 'the playing field has to be  
32 level.' In other words, everyone should be operating in the allowable zoning district  
33 appropriate for the use.
- 34 • The proposed use is retail sales and should be operating in the Downtown area.
- 35 • Two costume stores ought to be able to get even more business, i.e., one from the other  
36 just like a restaurant location next to another restaurant.
- 37 • The problems typically occur when one use is out the jurisdiction/appropriate zoning  
38 district of the other use where prices may be much lower in one location than another,  
39 and/or parking is easier in one location than another. Industrial areas, like the site where  
40 Halloween City would be located have more space to operate because it is easier to find  
41 parking. It may be that prices would be lower than that of a similar type of business that is  
42 locally owned and not a corporate business operating in a downtown location.
- 43 • It is not for the civic good to approve a use permit unless it is located in the appropriate  
44 zoning district for the use. Retail sales zoning designations are different than those  
45 designations zoned for industrial use.

46  
47 **Shari McAsey:**

- 48 • Has been a patron of Incognito for many years even before Tracey Oswald owned the  
49 store.
- 50 • It was apparent that Incognito was not doing well financially last Halloween season when  
51 Halloween City first began operating in this community.
- 52 • It is 'shameful' that a corporate store that only operates seasonally is allowed to operate  
53 with the likelihood of putting other small retail stores out of business.

- 1 • Does support shopping locally and was a patron of Ukiah Valley Lumber Company and  
2 noted it was very unfortunate for the community that Ukiah Valley Lumber Company  
3 closed.  
4

5 **Robert Sherwood:**

- 6 • If one follows the logic of not allowing for competition, there would be one grocery store,  
7 one hair salon, one gas station, etc.  
8 • Acknowledged that Incognito likely has a 'loyal' following such that none of these patrons  
9 will shop at Halloween City.  
10 • There are people that will shop out of the town and the corresponding tax dollars will go  
11 out of town as well as opposed to going to Incognito.  
12 • There was talk that vacant buildings do not thrive. Has a building that is not thriving. Has  
13 a 9,000 sq.ft. building that is sitting vacant. Vacancies are detrimental, which is the  
14 reason he wants to lease his building to Halloween City.  
15 • His goal is for Halloween City to operate as a permanent business in his building.  
16 • Addressed the issue of the use not being consistent with the General Plan and noted  
17 Ukiah Valley Lumber Company operated as a retail store. While there was an industrial  
18 use in the back of the property, Ukiah Valley Lumber Company was a hardware store.  
19 The property is zoned C2 (Heavy Commercial). The retail/commercial use component is  
20 less intensive and is consistent with the other uses up and down State Street. There are  
21 many retail uses on State Street. Halloween City is a retail/commercial use and  
22 appropriate for the area.  
23 • Would like to lease his building to Halloween City. Even though Halloween City operates  
24 for two months, the lease is for a longer term and this represents income for him.  
25 • Understands that Halloween City could financially compromise Incognito or other stores,  
26 but is of the opinion that maintaining competition in the community is a healthy approach.  
27

28 **John Attaway:**

- 29 • To reiterate again, what occurred to Ukiah Valley Lumber Company is different than what  
30 could potentially occur to Incognito and/or other businesses.  
31 • It is not competition when a business that operates seasonally is allowed to come in and  
32 operate for two months and then walk away. Their business plan is to operate for two  
33 months and leave. Obviously, Halloween City is a pretty large company and can afford to  
34 operate seasonally in communities.  
35 • Does support the concept of providing for competition when it represents fairness, but  
36 this not the 'right word' to be using in this instance.  
37

38 **Pinky Kushner:**

- 39 • There are technical issues why this project could be denied: 1) The project should not be  
40 exempt from CEQA review and, 2) The zoning for the site does not allow for a retail sales  
41 use.  
42

43 **Steve Scalmanini:**

- 44 • Reiterated again, is of the opinion the project is inconsistent with the goals/policies of the  
45 General Plan. The logic and/or project analysis appears to be incomplete with regard to  
46 consistency with the General Plan.  
47 • The issue is not whether or not there will be one vacancy in town, but rather there will be  
48 two vacancies should Halloween City be allowed to operate.  
49

50 **Quincy Oswald:**

- 51 • It is unfortunate that Ukiah Valley Lumber Company closed.  
52 • It appears 'the vacancy' is the issue.  
53 • Does this community really want to trade one vacancy for another vacancy?  
54

55 **Terry Alridge:**

- 1           • Is opposed to the project and does not support approval.  
2

3 **Steve Scalmanini:** Commented on employment that is seasonal for Halloween City and  
4 questioned why this was not addressed in more depth in the staff report.  
5

6 **David Alanis:**

- 7           • Commented on the matter of employment and advised that the setup and tear down of  
8 the store will employ people longer.  
9           • Management persons are hired on for longer periods of time.

10  
11 It was noted that Christmas tree lots and stores are an example of a seasonal retail sales use.  
12

13 **PUBLIC HEARING CLOSED: 2:41 p.m.**

14  
15 **Planning Director Stump:**

- 16           • Thanked everyone for their comments and added this is community dialog at its best.  
17 These are the type of comments that should occur for projects that affect the community.  
18           • Disagrees with the comments that the project is not exempt from CEQA.  
19           • Has reviewed the staff analysis concerning why the project should be exempt from CEQA  
20 and agrees with staff in this regard.  
21           • The project site is zone C2 (Heavy Commercial) where typically a store like the one being  
22 proposed should operate in the C1 (Community Commercial) zoning designation like that  
23 of Incognito.  
24           • The C2 zoning designation does allow a retail sales use to occur if the appropriate  
25 findings can be made to approve a minor use permit.  
26           • The City does not have any rules, regulations or policies that preclude non-locally owned  
27 businesses from coming to town. If this were the case, many of the businesses currently  
28 operating in this community would not be allowed to operate. Accordingly, the City does  
29 not have any rules, regulations or policies against temporary businesses.  
30           • It was mentioned that Christmas tree lots and stores do occur as a temporary operation  
31 and the City has no rules, regulations or policies against such businesses.  
32           • There is no City regulation for him as Zoning Administrator to rely upon to say the  
33 proposed use cannot occur. If such a regulation was in existence, the applicant would  
34 have been told upfront before an application for a use permit was applied for. This may  
35 be an issue the City should talk about as part of the bigger picture.  
36           • The City is concerned about local business. The City website says 'to shop local.' There  
37 is the question about what this means: only shop at locally owned businesses or local  
38 businesses located in the City of Ukiah that provide for sales tax that pay for our parks,  
39 police and fire and/or these types of things.  
40           • Is concerned about a comment made by Mr. Scalmamini who mentions he is more used  
41 to a more in-depth general plan consistency analysis for projects of controversy.  
42           • Agrees with Mr. Scalmanini the analysis for this project is likely short in this regard.  
43

44 **Planning Director Stump** continued Minor Use Permit 12-12-UP-ZA to a date certain of  
45 Thursday, August 23, 2012 at 2:00 p.m. to allow for further General Plan consistency analysis.  
46

47 **7. ADJOURNMENT**

48 There being no further business, the meeting was adjourned at 2:50 p.m.  
49

50  
51 \_\_\_\_\_  
52 Charley Stump, Zoning Administrator

53 \_\_\_\_\_  
Cathy Elawadly, Recording Secretary