

**Minutes
Zoning Administrator Meeting
August 23, 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 2:08 p.m. in City Council Chambers, Ukiah Civic Center, 300 Seminary Avenue, Ukiah, California.

2. SITE VISIT VERIFICATION

Zoning Administrator Stump confirmed the site visit.

3. APPROVAL OF MINUTES

4. APPEAL PROCESS

Zoning Administrator Stump read the appeal process. For matters heard at this meeting the last day to appeal is September 4, 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.

Zoning Administrator Stump:

- This project was continued from August 16, 2012 in order to do some General Plan consistency analysis and referred to his memorandum dated today that contains supplemental General Plan consistency analysis to assist with today's proceedings.
- The project essentially involves a proposed two-month retail store to sell Halloween costumes and décor at the former Ukiah Valley Lumber building.
- The project requires approval of a minor use permit in which the Zoning Administrator makes the determination to approve or deny.
- This particular project happens to have grown in controversy and this has happened before since it is a community issue.
- Provided an overview of the August 16 Zoning Administrator hearing and noted after lengthy public testimony, both in favor and in opposition to the project, the Zoning Administrator closed the public hearing and agreed with the public testimony that the General Plan consistency analysis conducted for this project was incomplete. To this end, with concurrence of the applicant, the Zoning Administrator acted to continue the matter to today so that a more in-depth General Plan consistency analysis could be prepared to supplement the August 16, 2012 staff report.
- Requested that public testimony focus on the supplemental General Plan consistency information.
- If a public member spoke at the August 16 meeting this information is in the public record so it is not necessary the information be repeated. However, if a person did not speak at the last meeting 'feel free' to speak on this project beyond the General Plan consistency analysis.

- 1 • Explained how this meeting will proceed, including the decision-making and appeal
2 process.
- 3 • With regard to the General Plan consistency analysis concludes that two major goals apply:
4 1) Goal ED-1, Support a strong local economy and 2) Goal GP-2, Promote business
5 development, emphasizing local ownership of businesses in order to keep capital and
6 growth within the community.
- 7 • The appropriate way to conduct the consistency analysis is to look at the findings that are
8 stated in the General Plan leading up to the goal. The policies and implementation
9 measures included underneath a corresponding goal in the General Plan define how the
10 goal's objective/intent will be carried out.
- 11 • The analysis has concluded the project is consistent with the two aforementioned goals of
12 the General Plan and noted page 6 of the supplement memorandum concerning the
13 General Plan analysis provides for the conclusion reached as a result of the analysis and
14 referred to the findings 1-10 listed in support of General Plan consistency.
15

16 **PUBLIC HEARING OPENED: 2:15 p.m.**

17
18 **Julie Wood:**

- 19 • Has been involved in civic matters that concern the community.
- 20 • The Halloween City project has one 'flaw' in that this business has no intention of becoming
21 part of and/or contributing to the community. Their business agenda is to 'grab and go.'
22 This means they come in and grab the profits and go. This is her objection to the project. If
23 the business were here to compete with other local businesses permanently, this is
24 acceptable, but this is not their intent and goes against everything Ukiah represents. She
25 does supports allowing for competition.
26

27 **James Connerton:**

- 28 • Does not claim to be an expert on all aspects of the General Plan.
- 29 • Is of the opinion sufficient questions have been raised about the project's compatibility with
30 the General Plan about Halloween City's intent to bring and maintain local business to deny
31 the use permit.
- 32 • It appears Halloween City is a large corporation that comes into communities seasonally for
33 the purpose of selling goods cheaply and potentially puts other like businesses that have
34 been in the community a long time out of business. This is not a good idea.
- 35 • Opposes the project.
36

37 **Susan Knopf:**

- 38 • The proposed project is not consistent with the General Plan goals and policies.
- 39 • Halloween City wants to come to Ukiah to make a quick profit and leave only to spend their
40 profit 'at home.'
- 41 • Ukiah wants businesses that stay in the community and spend their profits locally.
- 42 • Would support the project if it was here to stay.
- 43 • Is fine with competition provided it is long term
44

45 **Pinky Kushner:**

- 46 • Did speak at the August 16 Zoning Administrator meeting and will try not to repeat herself.
- 47 • Does want to talk about the project and its consistency with CEQA based on the following:
48 1. The project involves more than just an 8,000 sq. ft. building, but rather the fact the site
49 is 2.5 acres.
- 50 2. Once the site use changes to retail, this represents a significant change to the
51 community with regard to such issues/impacts as light, noise, traffic and other relevant
52 impacts.
- 53 3. The 2.5-acre site has not be zoned retail/sales and the proposed change to retail would
54 be significant and we should be looking at this project as a Major Use Permit as
55 opposed to a Minor Use Permit.

- 1 • Is recommending either denial of the Minor Use Permit or shifting it over to a Major Use
- 2 Permit and allow the Planning Commission to take care of the argument.
- 3 • The supplemental memorandum/staff report states the proposed store would ‘support a
- 4 strong local economy’ by creating 23 new temporary jobs. Would like to know the yearly
- 5 full-time equivalent for these jobs.
- 6 • While page 4 of the supplemental memorandum/staff report states the proposed store
- 7 would not preclude the City from carrying out the Downtown Master Plan, it will not
- 8 preclude it, but it would not help it. The project actually hinders the Downtown Master Plan.
- 9 Is of the opinion it is misleading of the supplemental memorandum/staff report to say that
- 10 the project will not preclude carrying out the Downtown Master Plan.
- 11 • The supplemental memorandum/staff report with regard to economic development states
- 12 the strategy is intended to be a framework to guide principle economic development
- 13 activities, business recruitment, business retention and expansion in job training. Questions
- 14 how this proposal is going to guide business retention. To the contrary, this represents
- 15 business destruction.
- 16 • Furthermore, page 4 of the supplemental memorandum/staff report states that during the
- 17 public hearing relevant to the August 16 meeting ‘the business owner of an existing retail
- 18 store objected to the proposal on the grounds that the competition would reduce her
- 19 revenue and have a negative impact on her business.’ The final words of this paragraph
- 20 goes on to state, ‘However, the proposed store operated for the same two months last year
- 21 and while the competition may have reduced the existing businesses project, the business
- 22 stayed open.’

23
24 Is of the opinion, the aforementioned language/discussion is not disclosing the full story.
25 Recalls that the business owner stated Halloween City would put her business out of
26 business and this was not mentioned in the staff report discussion.

- 27 • Page 4 of the staff report discussion goes on to state, ‘If the Economic Development
- 28 Strategy and General Plan Goal of retaining businesses were intended to eliminate
- 29 business competition, it would say just that and would include implementation measures
- 30 accordingly.’ This aspect just needs to be emphasized. As was brought up by other public
- 31 speakers, no one is opposed to competition. If Halloween City was to bring in a costume
- 32 store into the Downtown core and compete ‘head-on’ with Incognito 12 months a year and
- 33 hire as many people as Incognito does, ‘let the competition’ roll. This same paragraph says,
- 34 ‘The same City Council that adopted the Economic Development Strategy and General
- 35 Plan subsequently approved non-locally owned businesses such as Freidman Brothers,
- 36 Kmart, Food-for-Less and others, which immediately competed with both existing locally
- 37 owned businesses at the time. Based on this decision making, it is clear that the intent of
- 38 the economic development strategy and Goal ED-1 was not to prohibit non-locally owned
- 39 businesses from establishing in the City and competing with locally owned businesses.’
- 40 With regard to this analysis, the City Council that approved the Economic Development
- 41 Strategy and General Plan Goal of retaining businesses did this some years ago. Is of the
- 42 opinion the current City Council would not have interpreted the General Plan in the same
- 43 way. Given the recent experience with the Walmart Expansion project, does not believe
- 44 that Freidman’s, Kmart, Food-for-Less and others would have stood a chance to compete
- 45 head on head with Ukiah Valley Lumber and other like businesses not just by being allowed
- 46 to come in but rather looking at how to promote such businesses like Incognito, for
- 47 instance.
- 48 • Referred to page 5 of the supplemental memorandum/staff report and stated if one really
- 49 looks at the policies and goals under economic development with regard to nurture growth
- 50 and prosperity, Halloween City does not nurture growth and prosperity. While it is stated
- 51 that no preference is given to large and small employers, is of the opinion large employers
- 52 are being favored.
- 53 • Recommends consideration whether this project requires CEQA review and whether it
- 54 should be a Major Use Permit.
- 55

1 **Benj Thomas:** Has questions about the process after the public testimony.
2

3 **Steve Scalmanini:**

- 4 • Provided staff with a copy of the letter to the editor entitled, 'Can Incognito be saved?' that
5 appeared in today's Ukiah Daily Journal.
- 6 • Is it the City's decision on this matter discretionary or ministerial?
7

8 **Zoning Administrator:** The proceeding is discretionary.
9

10 **Steve Scalmanini:**

- 11 • Requested clarification the Zoning Administrator or City Council on appeal have the
12 authority to deny the project?
13

14 **Zoning Administrator:** Confirmed the Zoning Administrator or City Council can approve or deny
15 the project.
16

17 **Steve Scalamanini:**

- 18 • With regard to the supplemental memorandum/staff report dated today is of the opinion
19 there are in general numerous misjudgments/misconclusions made. For example, the claim
20 was made the building was historically used for retail/sales purposes that ignores the fact
21 the retail use for the lumber business was related to the business concerning the rest of the
22 property. The other portion of the property that incorporates the lumberyard was related to
23 the lumber retail/sales portion of the business. The property including the building is zoned
24 C2 (Heavy Commercial) notwithstanding the retail/sales use for the building. It was not a
25 freestanding independent 'sell whatever you want kind of store.' This fact has been
26 completely ignored.
- 27 • While a retail/sales use is allowed in the C2 zoning district, understands there was no use
28 permit required for the commercially zoned property in the past. To approve a use permit
29 now suggests that somehow 'two wrongs made a right.' This is a misjudgment on the part
30 of staff report document.
- 31 • The document mentions the project does not conflict with the text contained in the
32 economic development element of the General Plan and does not reference the exact text
33 and therefore, is confused about subordinated text in the staff report that refers to the text
34 in the economic development element.
- 35 • The staff reports notes that nothing in the findings discussion leads to the conclusion the
36 proposed commercial/retail store is inconsistent with GP Goal ED-1 and Goal GP-2 and
37 questions what due diligence was done to reach that conclusion. Does not see any record
38 of what was done.
- 39 • There was reference to carrying out the Downtown Master Plan and Economic
40 Development Strategy adopted by the City. There are no specific references to any text in
41 either of these documents to make the point clearer and is confused about what this really
42 means without substantiating references about the point that is being made.
- 43 • There is also mention that the proposed store would reinforce the Valley's economy by
44 providing 23 new temporary jobs. We do not have knowledge about what the full-time
45 equivalents are for that. We also do not know how many jobs will not be hired elsewhere in
46 the City because they will not be staffed at the same level for Halloween.
- 47 • Again, questions what due diligence the City has done about impacts to other businesses
48 concerning the 23 new jobs.
- 49 • Mention has been made the proposed store operated for the same two months last year
50 and while the competition may have reduced the existing business profits, the business
51 (Incognito) stayed open. It stayed open but questions if one year is enough? With regard to
52 due diligence, the only reasons for this discussion is because Ukiah Valley Lumber went
53 out of business. How many years did it take them to go out of business after Freidman's
54 and Home Depot opened? To suggest that one year is enough ignores the fact that Ukiah

1 Valley Lumber tried to stay in business for several years and then finally went out of
2 business. He finds the document short on this issue.
3 • There was mention that while the goals call for local businesses to be emphasized, it is not
4 mandated. Questions whether this aspect has to be mandated in order for the City to make
5 a discretionary decision to not approve the permit.
6

7 **Zoning Administrator Stump:**

- 8 • Certain findings have to be made in order to approve a minor use permit such that the
9 project must be: 1) consistent with the applicable zoning. 2) consistent with the General
10 Plan. 3) compatible with the surrounding land uses. 4) not detrimental to the public's health
11 and safety. If the aforementioned findings can be made, the minor use permit is obligated
12 to be approved by code. In other words, if the findings can be made there is no reason to
13 deny the use permit and the project must be approved.
14

15 **Steve Scalmanini:**

- 16 • There is mention in the staff report that since the General Plan there have been
17 subsequently approved non-locally owned businesses such as Freidman's, Kmart and
18 Food-for-less and others that immediately competed with both existing locally owned and
19 non-locally owned businesses at the time in which no mention was made of which of those
20 businesses are no longer in business. This is another error in due diligence because
21 information is missing. The other side of the story is not discussed. The document talks
22 about the businesses that are still in business. Again, there is no reference to those
23 businesses that are no longer in business, including Ukiah Valley Lumber.
24 • With regard to the element of health and safety asked what documents are available that
25 indicate there is no residual toxics and/or other types of environmental concerns that exist
26 on the former Ukiah Valley Lumber property after its change in ownership in 2008.
27 Specifically, does the City have a copy of the 'Preliminary Title Report' and other disclosure
28 reports concerning the sale of that property?
29

30 **Zoning Administrator Stump:** Is unaware of any toxins and/or environmental concerns at the
31 former Ukiah Valley Lumber site.
32

33 **Steve Scalmanini:** Has there been a request for that documentation?
34

35 **Zoning Administrator Stump:** There has been no request for such documentation.
36

37 **Steve Scalmanini:**

- 38 • Such information would be in a preliminary title report and/or disclosure report that would
39 exist at the title company for that sale. Is of the opinion this information should be part of the
40 staff report. This is an error in due diligence to not seek this information.
41 • Has in the past purchased treated lumber from Ukiah Valley Lumber and questions the
42 origin or if the lumber was treated on site, which is a toxic process.
43

44 **Miles Oswald:**

- 45 • Is opposed to the project.
46 • Provided a letter dated August 23 concerning the public hearing of Incognito versus
47 Halloween City that discusses the proposed project's inconsistencies with the goals/policies
48 of the Ukiah General Plan.
49

50 **Zackery Roseck:**

- 51 • Supports approval of the project.
52 • Likes that the proposed project will bring in 23 new jobs.
53

54 **Mary Anne Miller:**

- 1 • Referenced the staff report and is of the opinion it is not clear what the findings are to
- 2 approve the project.
- 3 • It is not clear what the Zoning Administrator's recommendation is.
- 4 • Is of the opinion a recommendation should not be made until all the facts have been
- 5 reviewed.
- 6 • An indication must be shown that both sides of the parties involved (Incognito and
- 7 Halloween City) were equally weighed. Is of the opinion this aspect is not evident in the
- 8 staff report.
- 9 • What was evident in the staff report is 'that what was not forbidden, is okay' provided the
- 10 project goes through the Zoning Administrator process in that there will not be an
- 11 environmental process and/or any further review unless the project is appealed.
- 12 • It is not necessary for the project to have to go before Council on appeal if more thought
- 13 had been given by the Zoning Administrator from public testimony at the first hearing on
- 14 this matter. There are people that are of the opinion the project would be detrimental to the
- 15 community and spoke about this at the former hearing on this matter.
- 16 • When an applicant comes into the City, he/she should be told the project is not a sure thing
- 17 and have to prove to the community the proposed project is a worthy new addition to the
- 18 community. Is of the opinion that this has not been done in any way.
- 19 • Asked that the Zoning Administrator to provide conditions of approval by which the project
- 20 could be made better. If people say the project is not good for the community, it should be
- 21 denied.
- 22 • Understands the applicant has a vested interest and should have been told upfront that
- 23 approval of the project was not a guarantee.
- 24

25 **Zoning Administrator Stump:** Will make a decision on the project. Staff has provided conditions of
 26 approval that have been provided for in attachment 2 of the August 16 staff report. With regard to
 27 weighing both sides of the issue, the public hearing process represents that balance. There have
 28 been people speaking in favor and in opposition to the project so there is a balance of opinion being
 29 made.

30
 31 **Jeremy Specials:**

- 32 • Is the District Manager of Halloween City.
- 33 • Is a property owner in the City of Ukiah.
- 34 • Does have a vested interest in the community, but also needs a job.
- 35 • Since the process has been stretched out, people are not being employed and people can
- 36 be employed right now.
- 37 • Could go to a different location in Ukiah that would still be in town.
- 38 • The only reason this project is presently being reviewed is because it has been more than
- 39 six months since the previous non-conforming retail use vacated the building.
- 40 • To regulate a business of the same type is not fair. A capitalistic market is fair and this is
- 41 what these proceedings are about. Competition is good for the community.
- 42

43 **Scott:**

- 44 • Is a resident of Ukiah.
- 45 • Is happy to have Incognito as a retail Halloween store in Ukiah.
- 46 • Supports the concept of allowing for competition.
- 47 • Allowing for another like business would actually help both businesses because it would
- 48 draw people from other surrounding areas to shop for Halloween costumes/décor in Ukiah.
- 49 • Supports approval of the project.
- 50

51 **Tom Larson:**

- 52 • Is a realtor and is representing the owner of the building.
- 53 • Has been instrumental in marketing the property.
- 54 • Trying to get the building leased or sold has been very difficult.

- Having a perspective business willing to lease the building is a positive thing.
- The Community needs new jobs.
- The issue is not whether the proposed business affects Incognito, Walmart or other stores but rather whether it is legal to have the business operate at this location.
- If, for instance, a new pizza parlor wanted to come to town of which there are many this is free enterprise.
- If a business is a legal use, it should be allowed.
- Understands it is never a positive thing to have a negative influence on another business, but this is this free enterprise.
- Supports approval of the project. Is pleased someone wants to lease the building and provide for new jobs at the same time.

Mike Shannahand:

- Is the general manager of the proposed local Halloween City store.
- Resides in Ukiah.
- Was the assistance manager at the former Ukiah Valley Lumber building for Halloween City last year.
- Because project approval has been delayed is losing work hours in a town where it is difficult to find full-time employment.
- Is fortunate to have a part-time job with Halloween City and this job allows him to supplement his income and save for the rest of the year in order to stay personally solvent.
- In terms of keeping the business and profits local, as an assistant manager provides for good customer service and was instrumental last year with providing that good customer service and encouraging people to shop locally. Customers expressed to him they were happy to have Halloween City in the community so they did not have to travel out of town to go to another Halloween City store.

Steve Scalmanini:

- Commented on the matter that Halloween City could go to other locations in town and would like to encourage this rather than going into an area that is commercially zoned and going into an area that is zoned for retail/sales. To grant a permit to go into a commercially zoned area undermines value to the other retail shopping centers in town that are zoned properly for this kind of business. These shopping centers include Orchard Plaza, Pear Tree Center, etc.
- To approve the project would be undermining and damaging to the property values of those people who have gone through the process/efforts to purchase and maintain their shopping malls.

James Connerton:

- The matter today is a zoning issue to some degree and there are many issues surrounding this.
- If it is the intention of the General Plan to bring business and employment into Ukiah of a lasting nature, a consideration should be in questioning whether the project should be a minor or major use permit. It is not easy for the property owner to lease a business particularly a large location like that of the former Ukiah Valley Lumber building in town, but since the site is currently zone heavy commercial and since the community is trying to attract either manufacturing/industry on a full-time basis, approval to allow a retail/sales use component would strongly disappoint a potential buyer who might intend to use all of the site for commercial purposes if the store is going to be used for only two months a year and vacant for the rest of the year. This is not beneficial to the community either. Is of the opinion the issue is great enough that the project should go to the Planning Commission and/or City Council.

1 **Pinky Kushner:**

- 2 • The issue of zoning is a concern. If this heavy commercial zone receives this appellation of
3 a retail use, it does gain in value for the property owner, but loses value for the community.
4 It may be the project should be a Major Use Permit that requires CEQA review. This review
5 and conclusion could just include an addendum to district zoning without having to be a full
6 EIR. Is also of the opinion the matter does need to be looked at with 'open eyes' in this
7 regard.
8

9 **Lupe Mendez:**

- 10 • Is a resident of Ukiah.
11 • Worked at the Halloween City store last year and will again this year if the project is
12 approved.
13 • Is of the opinion Halloween City benefits Ukiah and its residents.
14 • Supports project approval.
15

16 **PUBLIC HEARING CLOSED: 2:50 p.m.**

17
18 **Zoning Administrator Stump:**

- 19 • Thanked the public for participating in the public hearing proceedings.
20

21 **Benj Thomas:**

- 22 • Asked if the matter would come to City Council as a discretionary decision, the basis for a
23 'yes' or 'no' vote is not governed directly by the Zoning Code. In other words, Council can
24 do anything it wants.
25

26 **Zoning Administrator Stump:**

- 27 • In the event the matter is appealed and goes to Council, Council will be asked to determine
28 whether it can make the required findings to approve the Minor Use Permit. The same
29 question will go to Council that is before the Zoning Administrator today. Council will be
30 asked to determine whether the Zoning Administrator's action was appropriate. Council as
31 a decision making body must make the required findings the Zoning Administrator either
32 did or did not make. Council must support or not support the Zoning Administrator's
33 decision on the same basis the Zoning Administrator made that decision.
34 • Approval or denial of the projects is subject to the findings that have to be made in support
35 of approval or denial. There is no associated 'criteria' that has to be made or proven. The
36 findings that have to be made is the project must be consistent with the zoning, General
37 Plan goals and policies, complies with surrounding land uses and cannot be detrimental to
38 the health, safety and general welfare of the community.
39 • If the findings can be made to support approval, the Zoning Administrator is obligated to
40 approve the Minor Use Permit.
41 • To exercise discretionary review for a project means conditions of approval can be placed
42 on a project or not, or to not accept staff's recommended conditions. Additionally, in some
43 cases for a project findings cannot be made unless there are conditions of approval.
44 • It could be if this project does not meet the findings, but the applicant is required to do
45 certain things that staff conditions, that the appropriate findings can be made so the project
46 would be approved with conditions. There is discretion in this regard.
47 • Would like to take a few moments to review the materials that have been submitted and the
48 notes before making a decision.
49

50 **Recess: 3:00 p.m.**

51 **Reconvene: 3:12 p.m.**

52
53 **Zoning Administrator Stump:**

- 54 • Again thanked the public for their comments and noted all the comments were
55 professionally delivered.

- After review of the documents reached a number of conclusions:
 1. With regard to the CEQA issue – disagrees an EIR is required for this project. Is of the opinion the project is categorically exempt from CEQA review.
 2. Found there are no laws, regulations, goals or policies that preclude business competition in the City. It became apparent today that no one else knows of any such laws/rules.
 3. The City also has no rules or regulations that preclude non-locally owned businesses from coming into the City. Most of the businesses in Ukiah are not locally owned.
 4. What is really apparent is that there are no rules or regulations, policies or goals that preclude temporary business from coming into the City. Some public members believe this is wrong and the City should have such rules/regulations. This is a bigger question than for the Zoning Administrator. It is not a question that can be answered by the Zoning Administrator and no new rules can be made at these proceedings that the City bans temporary businesses. The Zoning Administrator can only enforce the rules/regulations that are currently in place/adopted and cannot make new rules.
 5. Is of the opinion the Zoning Administrator is being asked inadvertently to exceed his authority in these proceedings.
 6. It was noted in the proceedings that the 1993 Economic Development Strategy may not be supported by the current Council, but that is the adopted strategy. This document has not been revisited or readopted.
 7. It may be completely true that this current Council may think differently about things particularly in light of the recession.
 8. What the Zoning Administrator has to go on for these proceedings is the 1993 Economic Development Strategy.
 9. Found the project consistent with the C2 zoning. The City has a lot of retail in the C2 zoning. Accordingly, there are many different land uses in the different zoning categories. With the completion of the General Plan in 1995, particular attention was paid to the aspect of land uses in the different zoning categories. The City has a variety of land uses all over the City so a retail use in the C2 zone is not highly unusual.
 10. Found the project consistent with the General Plan, which has been the biggest debate. The General Plan was adopted 17 years ago and this is the first time we have had an issue like the one being considered today where there is a debate about General Plan goals and policies and how they should be interpreted for a project like this.
 11. Found the project to be consistent with surrounding land uses and has not heard any public testimony to the contrary.
 12. Is of the opinion the project would not be detriment to the health and safety of citizens.
 13. Is able to make the appropriate finding for approval of the project.
 14. Accepts staff's findings with some modifications:
 1. Finding No. 1 (Page 7 of the August 16 staff report) – 'The proposed project, as condition, is consistent with the goals and policies of the General Plan as described in the staff report,' and added the following language: 'and the August 23 supplemental memorandum.'
 2. Finding No. 4 (Page 7 of the August 16 staff report) does not include all the bullet items that are listed in the text concerning the discussion and will be incorporated accordingly.
 15. Has reviewed the project conditions and referred to pages 9-11 of the August 16 staff report in this regard and highlighted some of the conditions for discussion and modification purposes. Does accept staff's conditions of approval with some modifications.

Zoning Administration Stump approved Minor Use Permit 12-12-UP-ZA based on the project findings and subject to conditions of approval as provided for in the staff report, as modified.

FINDINGS – USE PERMIT FINDINGS

**TO ALLOW HALLOWEEN CITY TO OPERATE A SEASONAL RETAIL STORE
AT 901 SOUTH STATE STREET, APN 003-081-24
FILE NO.: 12-12 UP-ZA**

The following findings are supported by and based on information contained in this staff report, the application materials and documentation, and the public record.

1. The proposed project, as conditioned, is consistent with the goals and policies of the General Plan as described in the staff report dated August 16, 2012 and the supplemental memo dated August 23, 2012.
2. The proposed project, as conditioned, is consistent with the Zoning Ordinance as described in Tables 1 of the staff report.
3. The proposed project, as conditioned, is consistent with the purpose and applicable requirements of the C-2 zoning district based on the following:
 - A. With an approved use permit the proposed project that includes retail sales is a permitted use within the Heavy Commercial (C-2) zoning district.
 - B. The proposed project meets the parking requirements of the zoning code in that the project will provide 33 vehicle parking spaces and 3 bicycle parking spaces as required by the zoning code.
4. The proposed project, as conditioned, is compatible with surrounding land uses and shall not be detrimental to the public's health, safety and general welfare based on the following:
 - A. The project site is located within an existing commercial area and is surrounded mainly by commercial/retail uses.
 - B. The same business operated at this location in 2011 as described above and there were not issues with the temporary use of the building for seasonal sales.
 - C. The proposed project will occupy a building which was previously used for retail services.
 - D. The building is currently vacant, approval of this use permit would allow a vacant building to be occupied and therefore use of the building would be an asset to the neighborhood and will draw people to the area.
 - E. The hours of operation would be consistent with other business in the area and is consistent with standard hours of operation for retail business.
 - F. Through the use permit the operational characteristics will be regulated, therefore the project would not be detrimental to the surrounding uses.
 - G. The project was reviewed by the Fire Marshal, Police Department, Building Official, and Public Works and any review comments from these departments have been included as conditions of approval.
 - H. The project is required to comply with all federal, state and local laws.
 - I. The project is consistent with the Airport Mater Plan B1 compatibility zone requirements as noted in Table 3 of the staff report.
5. The proposed project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15303 Class 3 (c), Conversion of Small Structures, which allows structures up to 10,000 square feet to be converted from one use to another in urbanized areas when the use does not involve significant amounts of

1 hazardous materials, where all necessary public services and facilities are available, and
2 the surrounding area is not environmentally sensitive based on the following.
3

- 4 A. The total building square footage is 8,000 square feet.
- 5 B. The business does not use large amounts of hazardous materials.
- 6 C. The site is developed with an existing building, public utilities and services already
7 are available at the site and no expansion of the existing buildings are proposed as
8 part of the project.
9

10 9. Notice of the proposed project was provided in the following manner as required by the
11 Zoning Ordinance:

- 12 A. Posted in three places on the project site on August 3, 2012
- 13 B. Mailed to property owners within 300 feet of the project site on August 2, 2012.
- 14 C. Published in the Ukiah Daily Journal on August 5, 2012.
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17 **CONDITIONS OF APPROVAL – MINOR USE PERMIT**

18 **TO ALLOW HALLOWEEN CITY TO OPERATE A SEASONAL RETAIL STORE**
19 **AT 901 SOUTH STATE STREET, APN 003-081-24**
20 **FILE NO.: 12-12 UP-ZA**
21
22

- 23 1. Approval is granted for the operation of a retail store at 901 North State Street based on
24 the project description submitted to the Planning and Community Development
25 Department and as shown on the Site plan date stamped June 18, 2012 except as
26 modified by the following conditions of approval.
27
- 28 2. This Use Permit is granted subject to the following operating characteristic:
29
 - 30 A. Dates and hours of operation are limited to those shown on attachment 3-1 provided
31 in the project description;
 - 32 B. Outside display and/or storage of items is prohibited.
 - 33 C. The gate that leads to the rear parking lot shall remain open during the business
34 hours of Halloween City to allow for parking in the rear parking lot.
35
- 36 3. Prior to commencement of business activities, the applicant shall provide a site plan to
37 Planning staff showing the proposed location of the three required bike parking spaces
38 and the sign required by condition of approval #5 below for staff review and approval.
39
- 40 4. The required bike racks shall be installed in the staff approved location prior to the
41 commencement of business activities. The bike racks shall be located as close as
42 practicable to the front entrance to the retail store. Inverted “U” style rack is preferred.
43
- 44 5. Application for and approval of a Sign Permit/Building Permit from the Planning and
45 Community Development Department is required prior to installation of any signage.
46
- 47 6. Prior to commencement of business, the signage shall be installed in the front parking
48 area in the staff approved location to direct customers to additional parking located at
49 rear of the site.
50
- 51 7. All signage associated with the Halloween City shall be completely removed no later than
52 one week after when the store vacates the building at the end of the Halloween season.
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- 54 8. Prior to commencement of business activities, the applicant shall obtain a City of Ukiah
55 business license.

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- 9. On plans submitted for building permit, these conditions of approval shall be included as notes on the first sheet.
- 10. The existing landscaping shall be properly maintained. Any damaged landscaping shall be replaced as soon as possible and no later than November 15, 2012.

From the Building Official (David Willoughby)

- 11. A Building permit is required for the installation of the wall signs and store racking. The attachment of the wall signs and racking is required to be designed by a California licensed Architect or Engineer with 2 sets of structural calculations.

Standard City Conditions of Approval

- 12. Business operations shall not commence until all permits required for the approved use, including but not limited to business license, tenant improvement building permit, have been applied for and issued/finished.
- 13. No permit or entitlement shall be deemed effective unless and until all fees and charges applicable to this application and these conditions of approval have been paid in full.
- 14. The property owner shall obtain and maintain any permit or approval required by law, regulation, specification or ordinance of the City of Ukiah and other Local, State, or Federal agencies as applicable. All construction shall comply with all fire, building, electric, plumbing, occupancy, and structural laws, regulations, and ordinances in effect at the time the Building Permit is approved and issued.
- 15. A copy of all conditions of this Use Permit shall be provided to and be binding upon any future purchaser, tenant, or other party of interest.
- 16. All conditions of approval that do not contain specific completion periods shall be completed prior to commencement of business.
- 17. This approval is not effective until the 10 day appeal period applicable to this Use Permit has expired without the filing of a timely appeal. If a timely appeal is filed, the project is subject to the outcome of the appeal and shall be revised as necessary to comply with any modifications, conditions, or requirements that were imposed as part of the appeal.
- 18. This Use Permit may be revoked through the City's revocation process if the approved project related to this Permit is not being conducted in compliance with these stipulations and conditions of approval; or if the project is not established within two years of the effective date of this approval; or if the established use for which the permit was granted has ceased or has been suspended for 24 consecutive months.
- 19. This approval is contingent upon agreement of the applicant and property owner and their agents, successors and heirs to defend, indemnify, release and hold harmless the City, its agents, officers, attorneys, employees, boards and commissions from any claim, action or proceeding brought against any of the foregoing individuals or entities, the purpose of which is to attack, set aside, void or annul the approval of this application. This indemnification shall include, but not be limited to, damages, costs, expenses, attorney fees or expert witness fees that may be asserted by any person or entity, including the applicant, arising out of or in connection with the City's action on this application, whether or not there is concurrent passive or active negligence on the part of the City. If, for any reason any portion of this indemnification agreement is held to be void

1 or unenforceable by a court of competent jurisdiction, the remainder of the agreement
2 shall remain in full force and effect.

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6 **7. ADJOURNMENT**

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

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Charley Stump, Zoning Administrator

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12 _____
Cathy Elawadly, Recording Secretary