

GAUTIER PLANNING COMMISSION MEETING

JANUARY 3, 2013

6:00 P.M.

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APPEAL PROCEEDINGS

GPC CASE #12-26-AP

TONY LUONG D/B/A HLV, LLC

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PLANNING COMMISSION MEMBERS PRESENT:

David Wooten, Commission Chairman

Richard Johnson

James Torrey

Larry Dailey

Greg Spanier

STAFF MEMBERS PRESENT:

Robert Ramsey, Commission Attorney

Eric Meyer, Economic Development Director

Babs Logan, Commission Secretary

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PROCEEDINGS

1  
2 COMMISSIONER WOOTEN: New business?  
3 We have an appeal for a -- request for an  
4 appeal to staff decision regarding  
5 occupying a house in a C-3 zoning district  
6 as a residence, 3608 Highway 90. Forgive  
7 me if I mispronounce the name. Tony  
8 Luong, doing business as, HLV, LLC. GPC  
9 Case Number 12-26-AP. Could we have a  
10 reading on that, Mr. Meyer?

11 MR. MEYER: I guess, let's -- the  
12 applicant asked to use the structure at  
13 this location on Highway 90, it's just a  
14 few address points down here on the north  
15 side of Highway 90 from City Hall, as a  
16 residential structure. The property is  
17 zoned C-3. It has been used commercially  
18 for a long enough span to where it no  
19 longer can be used residentially is what  
20 we told them. So they're appealing that  
21 staff decision that they could not rent  
22 the house for residential use.

23 COMMISSIONER JOHNSON: How long have  
24 they been using the houses as a --  
25 operating a commercial business in the

1 house?

2 MR. MEYER: Babs, what was the exact  
3 time the privilege license --

4 MS. LOGAN: June of 2010.

5 MR. MEYER: So since June of 2010  
6 it's been commercial.

7 COMMISSIONER JOHNSON: Okay. Was the  
8 business owner living in the home, too?

9 MR. MEYER: I do not know.

10 COMMISSIONER WOOTEN: Could we,  
11 before we get too far into that,  
12 Mr. Johnson, we have to do a couple of  
13 legal matters on that situation.

14 COMMISSIONER JOHNSON: Okay. Great.

15 MR. MEYER: Okay. As far as we know,  
16 they had a privilege license as a business  
17 since at least June 2010.

18 COMMISSIONER WOOTEN: All right. So  
19 this is a quasi-judicial procedure, so  
20 we've announced the matter. Anyone --  
21 would you like to come forward and tell us  
22 who you are? We want to swear the  
23 witnesses, if you're going to give  
24 testimony in this matter.

25 TONY LUONG: My name is Tony Luong.

1 I'm representing HLV, LLC.

2 COMMISSIONER WOOTEN: Okay.

3 Mr. Ramsey.

4 MR. RAMSEY: Raise your right hand.

5 \* \* \*

6 (Witnesses sworn.)

7 \* \* \*

8 COMMISSIONER WOOTEN: Okay. All  
9 right. Thank you. Just one second. All  
10 right. So ex parte disclosure. I have  
11 not contacted Mr. Luong, but I know where  
12 the residence is at and I know what  
13 happens there. Okay. All right.

14 COMMISSIONER DAILEY: I visited the  
15 site.

16 COMMISSIONER WOOTEN: Okay. Thank  
17 you. All right. So -- sir?

18 TONY LUONG: We have rented to the  
19 last two tenants that were there. After  
20 the first one got evicted, hadn't paid  
21 rent in a while, we rented to the next  
22 one. And, apparently, they were related.  
23 We didn't know until after we rented to  
24 them, and they were paying on time and  
25 everything. These are the two residential

1 leases. And these are pictures of the  
2 house, if you'd like to see it.

3 When we rented to them, they rent it  
4 as a home. And after they lived in it for  
5 a while, they approached us and said, do  
6 you mind if we do business in the home? I  
7 said, as long as you guys, you know, pay  
8 rent on time, don't tear up my house, I  
9 don't have a problem with it. You have to  
10 take it up with the City. However you  
11 want to do it.

12 When we evicted the last one that  
13 hadn't paid rent in two to three months,  
14 we came up here just to turn on the power  
15 to try to fix our house so we could rent  
16 it back out, again. Then we found out  
17 that we lost our residential status, that  
18 we didn't know that when a tenant turned  
19 it into a business that they lived in,  
20 that they'll take -- that considered to be  
21 a business, so we lose our status. And we  
22 were never informed of that, so we really  
23 didn't know. So kind of ignorance on us,  
24 too. We really didn't know.

25 But the house, you know, it's like a

1 regular house. It has a kitchen, living  
2 room, fireplace, and everything. If it's  
3 a business structure, I understand if, you  
4 know, we can rent it as a business  
5 structure. It's going to be really hard  
6 to rent that out as a business right now,  
7 because it's a house. And, you know, it's  
8 hard to rent it as a business when it's  
9 just a house right now. And they were  
10 using it -- living in it and using it for  
11 whatever business they were doing, a  
12 psychic reading thing that they were  
13 doing.

14 But we removed everything. We  
15 cleaned up the yard. And we finished  
16 fixing it. And I think we borrowed the  
17 electricity because we couldn't turn the  
18 power on, so we borrowed auto body right  
19 next door, he let us borrow some power so  
20 we can fix it up and present with the  
21 hearing and see if we can get a  
22 residential status back to have it back as  
23 a house.

24 COMMISSIONER WOOTEN: Mr. Johnson,  
25 you had some questions?

1                   COMMISSIONER JOHNSON: No. I  
2 apologize. I forgot about the ex parte, I  
3 just went right into it. I might have a  
4 couple of questions, but y'all go ahead  
5 and move on.

6                   COMMISSIONER WOOTEN: Okay. So I had  
7 a couple. I see where you purchased the  
8 property in 2001; is that correct?

9                   TONY LUONG: I believe --

10                  COMMISSIONER WOOTEN: Through a  
11 warranty deed transfer?

12                  TONY LUONG: From my parents.

13                  COMMISSIONER WOOTEN: February 19,  
14 2001; is that right?

15                  TONY LUONG: I believe so.

16                  COMMISSIONER WOOTEN: And I also  
17 notice on one of your lease documents  
18 dated 2010, July -- June 2nd, 2010, that  
19 you made a notation here that the leasee  
20 is allowed the purpose of carrying on a  
21 business profession or trade. That's in  
22 this lease, you wrote it in. As a matter  
23 of fact, you didn't have that legal right  
24 to do that because of the zoning of the  
25 property.

1 TONY LUONG: I don't see that.

2 COMMISSIONER WOOTEN: Right here  
3 (indicating).

4 TONY LUONG: I didn't write that.

5 COMMISSIONER WOOTEN: I understand  
6 that you purchased it as residential, the  
7 City annexed you, zoned it to C-3 at the  
8 time, and that was perfectly fine. You  
9 were in a -- give me the legal term.

10 MR. RAMSEY: Preexisting  
11 non-conforming use.

12 COMMISSIONER WOOTEN: There you go.  
13 And it was fine as long as it was the way  
14 it was, but it seems like you leased it  
15 out in 2010 and actually gave them  
16 permission to carry on a business there,  
17 but the law did not allow that.

18 MR. MEYER: Oh, it would. I mean, it  
19 was zoned C-3, so you could have a  
20 business.

21 COMMISSIONER WOOTEN: Okay. So the  
22 law did allow that, but it wouldn't allow  
23 it to go back. Once it went there, it  
24 couldn't go back into a non-conforming  
25 use.

1 MR. MEYER: Once you have not been  
2 residential for 60 days, then you lose  
3 your non-conforming status.

4 COMMISSIONER WOOTEN: Thank you,  
5 Mr. Meyer, for helping me clarify that.  
6 Okay. Yes, Mr. Dailey.

7 COMMISSIONER DAILEY: Concerning that  
8 lease and the language in there about was  
9 allowed to carry on a business, was it  
10 your understanding that it was still  
11 primarily a residence with the tenant  
12 being allowed to have a home occupancy  
13 business? Is that your position?

14 TONY LUONG: I was in the  
15 understanding that they were living there  
16 and just trying to make money to pay for  
17 living there. So if I had known that if  
18 they created a business where they live  
19 and I would lose my residential status, I  
20 would never allow that. I would never --  
21 my understanding of it was never known to  
22 me of that.

23 And I should have looked at that  
24 thing, again, because I didn't write that.  
25 They put that in later, but that's beside

1 the point now. I just now saw it just  
2 like you guys.

3 COMMISSIONER WOOTEN: So the 2011  
4 lease doesn't have that clause or  
5 statement in it?

6 COMMISSIONER SPANIER: Does the law  
7 look at that differently, an in-home  
8 business?

9 MR. MEYER: Yeah, a home occupation.  
10 Y'all have those come before y'all,  
11 someone wants to do a home occupation.

12 COMMISSIONER SPANIER: Is that really  
13 considered a business in terms of not  
14 being able --

15 MR. MEYER: No. We wouldn't consider  
16 a home occupancy as a commercial use,  
17 because they can exist in Hickory Hills or  
18 in a number of other places.

19 COMMISSIONER SPANIER: Home occupancy  
20 couldn't have signs.

21 MR. MEYER: Well, they couldn't,  
22 yeah. They had a privilege license, a  
23 sign, everything. There's no other  
24 residential dwellings on Highway 90, at  
25 least -- we did the windshield survey, you