

## Planning Commission Staff Report

March 28, 2012  
Item 6.a.

**SUBJECT:** Appeal of P12-0308

**APPLICANT:** Ramon Rivas

**APPELLANT:** Rick Wilcox

**PURPOSE:** Appeal of the Zoning Administrator's Approval of a Zoning Certificate to operate a gold-buying business.

**GENERAL PLAN:** Retail/Highway/Service Commercial. Business and Professional Offices

**ZONING:** C-R (p) [Regional Commercial (peripheral)] District

**LOCATION:** 5540 Springdale Avenue, Suite C

**EXHIBITS:**

- A: Approved Zoning Certificate - #1 Cash for Gold
- B: Appeal Narrative, dated "Received, March 6, 2012"
- C. Diagram of Approved Gold-Buying Businesses
- D. Approved Zoning Certificate - Tri-Valley Cash 4 Gold
- E. Approved Zoning Certificate - We Buy Gold
- F: PMC 18.44.090; Jewelry Store Uses
- G: PMC 18.44.090; Secondhand and Pawn Shop Uses
- H: Notice of Conditions (PD Handout)
- I: Notice of Daily Reporting Requirement (PD Handout)
- J: Secondhand Dealer License for #1 Cash for Gold
- K: Location Map
- L: Noticing Map

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### BACKGROUND

On April 13, 2010, the City approved the first gold buying business operation within the City. Prior to approving the operations of that business, staff had conferred with the Police Department to obtain better information regarding the operations of such a business and what other regulatory agencies would be involved in the business operations. Additionally,

historically staff has approved jewelry stores which purchase gold or jewelry as part of their Zoning Certificate approval.

On February 10, 2012 the Planning staff received a general inquiry call from Rick Wilcox regarding work being done at 5540 Springdale Avenue, Suite C. Upon research of the site, staff issued a stop work order as the work being done, interior wall additions, etc., did not have a building permit and the scope of the work appeared to require a building permit. On February 22, 2012, staff received another phone call objecting to the type of business, however the caller did not want to identify herself.

On February 21, 2012, Mr. Rivas filed for a business license and Zoning Certificate approval to operate a gold buying business and was approved based on the prior determination that a gold buying business is similar to a jewelry store and jewelry stores are permitted uses in the zoning district where Mr. Rivas was locating. Due to the public concerns that were being received, staff met with Mr. Rivas on February 28, 2012, to inform him that the City had received calls regarding the business and to explain the appeal process.

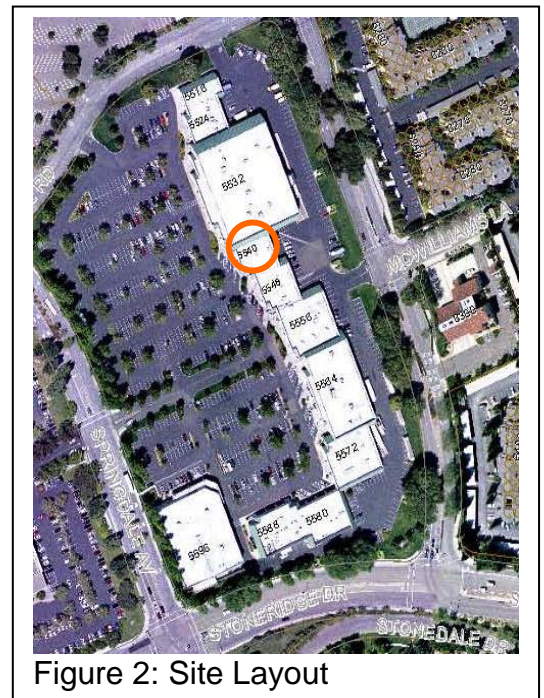
Including the approval of the original gold buying business in 2010 and the subject approval, staff has approved a total of three independent gold buying businesses to operate within the City of Pleasanton (Exhibits A, D, E, and C).

On March 6, Mr. Wilcox filed an appeal of the Zoning Administrator's decision. In summary, his appeal stated that he believes that gold buying businesses are not similar to jewelry stores and that they should be required to apply for a special use permit. His appeal is currently before the Planning Commission for consideration.

## SITE DESCRIPTION



JCPenney Plaza shopping center occupies a site of approximately 14.91 acres. It is bounded by Stoneridge Mall to the north, office uses to the west, high density

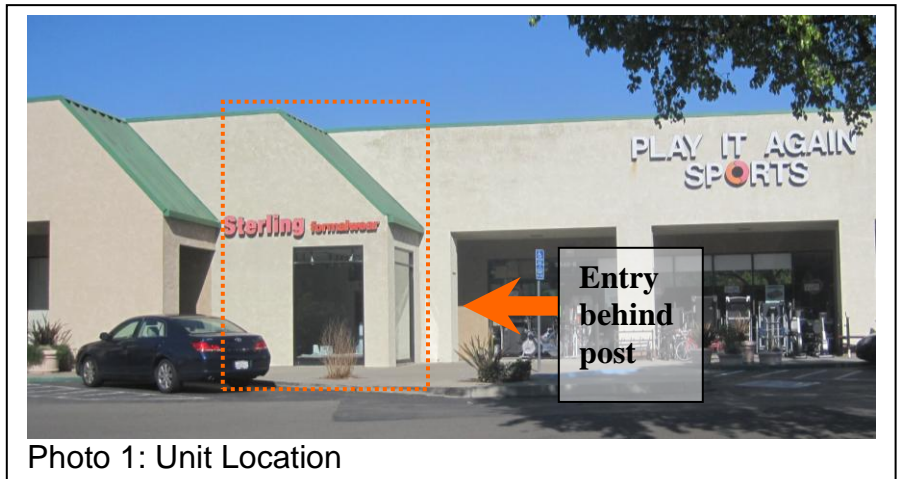


residential uses the east across Stoneridge Mall Road and to the south across Stoneridge Drive. The shopping center has a mix of retail/restaurant/offices uses.

Anchor tenants include JCPenney Home Center, Cost Plus World Market, and Office Max. The shopping center has four access entries; the primary access to the plaza is via Springdale Avenue and the secondary access is located to the north on Stoneridge Mall Road; there are also access points on Stoneridge Mall Road, to the east and north, which provide access primarily to the back of the shopping center (see Figures 1 and 2).

The business being appealed is located within an existing tenant space in the JCPenney Plaza shopping center (5540 Springdale Avenue, Suite C), a multi-tenant building. Unit C is approximately 1,400 sq. ft. in area, but the subject business will only be utilizing approximately 720 sq. ft. with the remaining area being located in the back of the space and unoccupied at this time. The space was previously occupied by Sterling Bridal and Tuxedo and the neighboring tenants are Play It Again Sports and JCPenney Home Store.

The tenant suite is accessed from the walkway and the common parking lot area. The entry door is tucked under a deep overhang and not directly visible from the parking lot (as shown in Figure 2 and Photo 1).



## PROJECT DESCRIPTION

Mr. Rivas, the business owner, secured a tenant space on Springdale Avenue and as described above, began tenant improvements to the interior prior to obtaining a zoning certificate or building permit.

The business owner subsequently applied for and received approval to operate his business, #1 Cash for Gold, on February 21, 2012. As noted above, the proposed business was determined by City staff to be similar to a jewelry store, which is a permitted use in the Regional Commercial (peripheral) zoning district. The subject business is proposed to operate Monday through Saturday from 10:00 a.m. to 8:00 p.m. and on Sunday from 10:00 a.m. to 12 noon, which hours are similar to the other retail uses in this shopping center. The business will be operated solely by the business owner. The subject business would purchase precious metals (gold, platinum, silver with stones and diamonds) from the general public. This establishment will not be smelting the metals, but rather the merchandise is sold to other businesses for deconstruction, smelting/reuse, or resold as is. No purchases of furnishings or other sources of metals will occur in conjunction with the business. The business owner was advised that the Zoning Certificate approval was subject to appeal per Pleasanton Municipal Code (PMC) 18.144.050 (Administrative Appeal Procedure).

As mentioned in the *Background* section of this report, an appeal was filed on March 6, 2012. The appellant, Rick Wilcox, submitted a narrative regarding his appeal of the approval of the Zoning Certificate (Exhibit B). Mr. Wilcox believes that the classification of a gold buying business as a jewelry store is an error and believes that a gold buying business should be required to apply for a “special use permit” so that the City could have more control over this type of business and to limit the growth, if desired.

## **DISCUSSION**

### General Plan Land Use Designation

The site has a General Plan land use designation of Retail / Highway / Service Commercial; Business and Professional Offices; which allows for shopping centers to have a variety of retail and commercial uses including jewelry stores. The use was determined by City staff to be similar to a jewelry store in that a product containing precious metals, such as gold, is purchased at an established price. The use is an establishment that involves precious metals similar to a jewelry store and, therefore, it is consistent with the General Plan Land Use Designation. The subject business would provide a means for the general public to transfer their unwanted jewelry for payment, which is consistent with the following General Plan Programs and Policies of the Land Use Element:

- Program 2.2: Encourage the reuse of vacant and underutilized parcels and buildings within existing urban area.
- Policy 13: Ensure that neighborhood, community, and regional commercial centers provide goods and services needed by residents and businesses of Pleasanton and its market area.

### Zoning Designation

Zoning Certificates are approved at the counter if the proposed use is “permitted” in the zoning regulations governing the site. A permitted use is one that has been pre-determined to be appropriate for a zoning district or specific property. Permitted uses are effectively ministerial (a matter of right) if the proposed permitted use meets the definition in the zoning code, if a definition exists. The subject site is zoned Regional Commercial (peripheral). This zoning is assigned to areas that surround the Stoneridge Mall development, i.e. on the periphery of the Mall. The Pleasanton Municipal Code (PMC) indicates what types of uses are permitted or conditionally permitted. It specifically indicates jewelry stores are permitted uses in the Regional Commercial (mall), Regional Commercial (peripheral), Commercial Neighborhood, and Central Commercial Zoning Districts. However, the PMC does not have a specific category for businesses that purchase jewelry rather than sell it.

In situations where a use is not specifically identified in the PMC, staff reviews the operations of the business to see if it is similar to another use that is identified in the code. Staff would

also take into consideration the types of currently allowed uses in the specified zoning district to provide consistency with other types of uses within the same zoning district, as well as existing businesses that have similar operations.

Staff determined that gold purchasing establishments were similar to a jewelry store based on the fact that several existing jewelry stores also buy gold and other precious metals. Staff also considered other determinations that were made for businesses that buy used items from the public, such as Play It Again Sports (which re-sells used items and also stocks new items).

Additionally, staff reviewed the existing regulations that are imposed by the Department of Justice (DOJ) on secondhand dealers<sup>1</sup> (administered by the Pleasanton Police Department<sup>2</sup>) and the relevant California Business and Professions (BP) Code that address such things as holding requirements after an item is bought from a member of the public. Staff also met with the Police Department on this matter and it was found that through the processes of the Police Department and the DOJ, these types of businesses were already regulated, reviewed, and required to operate in a specific manner to avoid criminal activity.

The appellant, Mr. Wilcox, also indicates in his appeal statement that a special use permit process could allow the City to limit the growth of this type of business, as well as increased revenues for extra services that need to be provided. The City does not use conditional use permits to limit the number of businesses but rather to ensure that they are developed and operated in a manner that is consistent with the public health, safety, and welfare. As for the suggestion for “fees” for certain uses, such as the gold buying business, the City has a business license tax that applies to all businesses in the City that operate for profit, based on gross revenues. The City does not have different tax rates for different uses. Special fees for gold buying stores or other uses that are perceived to require more public services would be a special tax subject to separate enactment, including potential voter approval.

### Police Department and Other Regulations

According to the Police Department, this use would be required to provide information for security checks, required identification checks with the transfer of any property, as well as requirements to hold property for thirty days (BP §21636) to allow for verification that items are not stolen property. The DOJ processes and the Police Department issues a Secondhand Dealer License for these types of businesses. The business owner has already obtained this document (Exhibit J) which the Police Department was required to issue as a ministerial action once Mr. Rivas passed the criminal background check and other application requirements. Violations of the State’s secondhand dealer requirements are subject to criminal prosecution.

The Police Department has stated that it may consider expanding their existing Secondhand Dealer Information Handouts (Exhibits H and I) and potentially working with the City Attorney to craft related regulations. An expanded document and additional regulations could further

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<sup>1</sup> California Business and Professions Code section 21626.

<sup>2</sup> California Business and Professions Code section 21641.

outline the operational standards by which a secondhand dealer should operate as deemed appropriate and necessary by the Police Department. This type of document would be enforced by the Police Officers that are working directly with these establishes and the general public, thus making that form of regulation more effective and efficient.

Staff Recommendation and Options for Consideration

The staff recommended action on this item is shown below, together with options for the Planning Commission’s consideration.

**Staff Recommendation:** Uphold the Zoning Administrator’s approval of the Zoning Certificate and deny the appeal because a gold buying business is similar to a jewelry store (a permitted retail use in this Zoning District) and the zoning certificate was properly issued.

If the Planning Commission does not agree with staff’s recommended action, it may consider the following options. All of the following options would delay the opening of this business until zoning text amendments and/or use permits are reviewed and approved. Option 2 would also potentially require relocation of the business from the subject site.

**Option 1:** Make the determination that this type of business is a secondhand business and direct staff to process a Zoning Code amendment to permit or conditionally permit Secondhand stores in the C-R(p) Zoning District (Exhibits F and G).

An alternative use determination is to consider this type of business as a secondhand store. However, secondhand stores are currently only allowed in the Central Commercial Service (C-C) District (e.g., Downtown). Should the Planning Commission believe that this type of business is appropriately located amongst other retail businesses, but that the business is more appropriately classified as a secondhand store rather than a jewelry store; then the Planning Commission could direct staff to determine that this type of business is a secondhand business and direct staff to process a Zoning Code amendment to permit or conditionally permit Secondhand stores in the C-R(p) Zoning District.

This option could allow the proposed business to remain in the current location, but may require a Conditional Use Permit depending on the Planning Commission’s directive.

**Option 2:** Make the determination that this type of business is a Secondhand store and should be located in the C-C District and that secondhand stores not be added to the list of uses in the C-R(p) District.

The Pleasanton Municipal Code currently allows secondhand stores in the C-C District only subject to a Conditional Use Permit. Therefore, this option would not allow the proposed business to operate in the current location.



**Option 3:** Make a determination that this type of business is neither a secondhand store nor a jewelry store, but rather a new use category and direct staff to process a Zoning Code text amendment to create a new category for establishments that purchase jewelry and precious metals.

This option could allow the proposed business to operate in the current location depending on the Planning Commission's directive regarding appropriate locations for this use type and the directive as to if the use should be permitted or conditionally permitted.

Staff notes that options 1 to 3 listed above would apply only to the current applicant and future gold buying businesses; all existing gold buying businesses would be allowed to remain as legal non-conforming uses.

### **ENVIRONMENTAL ASSESSMENT**

Zoning Certificate approval is a ministerial action. Because the original application was determined to be most like a jewelry store and thus a permitted use, it was not subject to evaluation under the California Environmental Quality Act (CEQA). Therefore, no environmental document accompanies this report.

If the Planning Commission adopts an option requiring a zoning code amendment, an environmental analysis would be prepared for such future consideration.

### **PUBLIC NOTICE**

Notices regarding the appeal were mailed to property owners and tenants within 1,000 feet of the subject property. No one contacted staff at the time this report was prepared.

### **CONCLUSION**

Staff believes that the use determination that gold buying businesses are similar to jewelry stores is appropriate and that the approval of the subject business at the 5540 Springdale, Suite C, location is compatible with the surrounding businesses and will not detrimentally affect the surrounding uses or properties. The safety concerns for this type of business are already addressed within the requirements of the Department of Justice permits and the review of the Police Department.

### **STAFF RECOMMENDATION**

Staff recommends that the Commission deny the appeal, thereby upholding the Zoning Administrator's determination that gold buying businesses are similar to jewelry stores and, therefore, the Zoning Certificate (P12-0308) was properly issued.

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