Minutes

Planning Commission March 1, 2010 City of Orange Monday 7:00 p.m.

PRESENT: Commissioners Cunningham, Imboden, Steiner and Whitaker

ABSENT: Commissioner Merino

STAFF

PRESENT: Ed Knight, Assistant Community Development Director

Jennifer Le, Senior Planner

Anna Pehoushek, Principal Planner Doris Nguyen, Associate Planner

Dan Ryan, Historic Preservation Planner

Sonal Thakur, Assistant Planner Gary Sheatz, Assistant City Attorney Sandi Dimick, Recording Secretary

ADMINISTRATIVE SESSION:

Chair Whitaker opened the Administrative Session @ 6:52 p.m. with a review of the Agenda.

Item No. 1, Minutes from the regular Planning Commission Meeting on February 1, 2010. All Commissioners present would vote on the minutes and there were no changes or corrections noted.

Item No. 2, General Plan Amendment, Chair Whitaker stated he would have a question on the item.

Item No. 3, T-Mobile CUP, there were no questions or comments on the item.

Item No. 4, Pancho's Granada CUP, Commissioner Steiner asked if a representative from the Orange Police Department would be present? Assistant Planner, Sonal Thakur, stated Sergeant Peterson would be present and the memo that was in the Commissioner's hot file would be discussed during her presentation.

Item No. 5, Lucille's CUP, Chair Whitaker stated he would have a question on the item.

Item No. 6, Essenmacher CUP, there were no questions or comments on the item.

Chair Whitaker asked if there was any additional information or updates from Staff. Assistant Community Development Director, Ed Knight, stated there was nothing additional.

Administrative Session closed at 6:56 p.m.

REGULAR SESSION:

PUBLIC PARTICIPATION: None

CONSENT CALENDAR:

(1) APPROVAL OF MINUTES FROM THE REGULAR MEETING OF THE PLANNING COMMISSION ON FEBRUARY 1, 2010.

Commissioner Steiner made a motion to approve the minutes from the regular meeting of February 1, 2010 as written.

SECOND: Commissioner Cunningham

AYES: Commissioners Cunningham, Imboden, Steiner and Whitaker

NOES: None ABSTAIN: None

ABSENT: Commissioner Merino

MOTION CARRIED.

New Hearings:

(2) GENERAL PLAN AMENDMENT 2009-05 AND MITIGATED NEGATIVE DECLARATION ENV. 1822-09 – HOUSING ELEMENT

The Housing Element is one of the State-required chapters or "elements" of the City's General Plan. It was last updated in 2001, covering the 1998-2005 planning period. The Housing Element update covers the 2006-2014 planning period and contains a needs assessment, resources and constraints analysis, review of past performance, policy action program community outreach summary, and an "adequate sites" analysis. The Housing Element identifies the existing and projected housing needs of the Orange community and establishes policies that ensure adequate opportunities exist for the production of new housing units for all income levels, in a manner that meets the needs of the Orange community and the City's Regional Housing Need Assessment (RHNA) allocation in compliance with State law.

LOCATION: Citywide

NOTE: Mitigated Negative Declaration (MND) No. ENV 1822-09 was

prepared to evaluate the physical environmental impacts of the project, in conformance with the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines Section 15070 and in conformance with the Local CEQA

Guidelines.

RECOMMENDATION:

Adopt Planning Commission Resolution No. 06-10 recommending that the City Council approve Mitigated Negative Declaration No. ENV 1822-09 and General Plan Amendment 2009-05 to adopt the

2006-2014 General Plan Housing Element.

Chair Whitaker stated he would move the item presentation to the end of the Agenda and asked if there was any opposition to that Agenda change? There was none, the item was moved to the end of the Agenda.

Senior Planner, Jennifer Le, presented a project overview consistent with the Staff Report.

Chair Whitaker opened the item for any questions to Staff. He stated in the City Council's determination of the General Plan, the Land Use portions of the General Plan took away some density zoning; which was some of the ways the City received credit or potential credits for the housing element, and he asked was it Staff's analysis that there was still enough area with the changes made by the City Council in the Urban Mixed Use area or had there been other areas where it had been added back?

Ms. Le stated there were no areas that had been added back and there was still enough even with the areas that had been removed.

Chair Whitaker asked if Ms. Le anticipated any opposition from the State, as the plan had gone to the State twice with comments and there had been quite a bit of negotiation and had they expected any rejections?

Ms. Le stated the City expected the State to accept it. It was the State's determination and they could not be certain. When the item was resubmitted Staff would be detailing the revisions and ultimately they were showing plenty of capacity in the Urban Mixed Use areas that remained, and based on that fact Staff was confident that the State would support the housing element.

Commissioner Cunningham stated on page H92 it spoke to housing and policy actions; on Policy Action D.12 Re-use of Historic Structures he asked for a specific example of where that might occur in the City of Orange?

Ms. Le stated it would be the use of a historic structure that was not currently residential and finding the means to re-use it as a historic structure.

Commissioner Cunningham asked if the City had a site in mind or was it written in the event an opportunity arose?

Ms. Le stated they had a few areas in mind and she would defer that to Principal Planner, Anna Pehoushek.

Ms. Pehoushek stated that particular policy action dovetailed the Land Use changes that were made particularly in Old Towne in the industrial and rail corridor, such as the Second Harvest Food Bank, and it was with those industrial uses that were transferring to non-industrial uses. With the change from industrial to mixed use, it would offer those mixed use areas adaptive re-use that could include residential units.

Chair Whitaker brought the item back to the Commission for discussion or a decision.

Commissioner Steiner made a motion to adopt PC 06-10, recommending approval to the City Council of General Plan Amendment No. 2009-05 and Mitigated Negative Declaration No. ENV 1822-09-Housing Element, subject to the conditions contained in the Staff Report.

SECOND: Commissioner Imboden

AYES: Commissioners Cunningham, Imboden, Steiner and Whitaker

NOES: None ABSTAIN: None

ABSENT: Commissioner Merino

MOTION CARRIED

(3) CONDITIONAL USE PERMIT NO. 2748-09; DESIGN REVIEW COMMITTEE NO. 4461-09; AND ADMINISTRATIVE ADJUSTMENT 0177-10 – T-MOBILE

A request to locate a new, unmanned wireless communications facility and associated equipment enclosure on the top (5th) level of an existing residential parking structure. Three panel antennas are proposed on top of an existing light standard that would be 29'7" in height to match the appearance of the three other light standards previously installed by Verizon Wireless. The applicant is also requesting approval of an Administrative Adjustment to permit a reduction in the required parking.

LOCATION: 1235 W. Town and Country Road

NOTE: The proposed project is categorically exempt from the provisions

of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15303 (Class 3 – New Construction) because the project would involve the placement of a permanent canopy

structure.

RECOMMENDED ACTION:

Adopt Planning Commission Resolution No. 01-10 approving the replacement of one light standard on an existing five level apartment parking structure to accommodate three panel antennas and a new 8' high metal equipment enclosure and approval of Administrative Adjustment 177-10 for the reduction of two guest parking spaces.

Assistant Planner, Sonal Thakur presented a project overview consistent with the Staff Report.

Chair Whitaker opened the item for any questions to Staff. There were none.

Chair Whitaker invited the applicant to address the Commission.

Monica Moretta, address on file, stated she was present on behalf of T-Mobile West Corporation and T-Mobile had reviewed and discussed the Conditions of Approval as presented in the Staff Report and they would accept the conditions without any changes and she was available for any questions.

Chair Whitaker brought the item back to the Commission for discussion or a decision.

Commissioner Cunningham made a motion to adopt, PC 01-10, approving CUP No. 2749-09, DRC No. 4461-09, and AA 0177-10, T-Mobile, subject to the conditions contained in the Staff Report and noting the item was categorically exempt from CEQA.

SECOND: Commissioner Imboden

AYES: Commissioners Cunningham, Imboden, Steiner and Whitaker

NOES: None ABSTAIN: None

ABSENT: Commissioner Merino

MOTION CARRIED

(4) CONDITIONAL USE PERMIT NO. 2759-09 – PANCHO'S GRANADA RESTAURANT

A request to upgrade a CUP for a Type 47 ABC License for an existing restaurant.

LOCATION: 131-135 E. Collins

NOTE: The proposed project is categorically exempt from the provisions

of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15301 (Class 1 – Existing Facilities) because the project involves negligible expansion of an existing use, as the subject establishment is operating in an existing suite in the

building.

RECOMMENDED ACTION:

Adopt Planning Commission Resolution No. 44-10 to upgrade an existing Type 47 Alcoholic Beverage Control License (On-Sale General Eating Place – Restaurant) to include the previously unpermitted restaurant expansion area as licensed alcohol premise area.

Assistant Planner, Sonal Thakur presented a project overview consistent with the Staff Report.

Chair Whitaker opened the item to any questions for Staff.

Commissioner Steiner stated in regard to the recent request to modify the hours as presented he asked if that was included in the notification to the public?

Ms. Thakur stated it was not included.

Commissioner Steiner asked if there were any sensitive uses in the area?

Ms. Thakur stated there was residential approximate to the subject site, however, Staff was not concerned that it would be an impact to the surrounding community. The residential had no direct access to the site and additionally the restaurant had operated in its present location for 27 years and had not depleted police resources in the area.

Commissioner Steiner stated but not until 1:00 a.m.

Ms. Thakur stated that was correct.

Commissioner Steiner stated in reading the diagram correctly there was residential to the immediate east of the site.

Ms. Thakur stated that was correct. Residences were located to the north east and south of the site; there were also mobile homes located to the west of the site.

Commissioner Steiner stated there was a street that separated the location from the residences to the north and Collins that separated the residences to the south. He asked if Ms. Thakur could describe the demarcation between the location and the addresses to the immediate east, south of Jacaranda, north of Collins and west of Grand and in other words, was there a wall or fence of separation?

Ms. Thakur stated to Staff's memory she had not recalled that a wall or fence existed. The entrance to Pancho's and the other establishments faced Collins.

Commissioner Steiner stated with his familiarity of the location he thought it faced west. He wondered what the nature of the property was that faced the east side and if there was a rear door located there. His concern was that whether or not the residences to the immediate east, now apparently unaware of the request for a modification to hours until 1:00 a.m. and whether the Commissioners would be confronted with complaints or concerns regarding the request for operation of the restaurant until 1:00 a.m.; given the proximity of the residences to the business. He asked if there was any other information available from Staff to assist him in making a determination?

Ms. Thakur stated Staff and the Police Department's review and the restaurant's history of operation thus far had not presented any issues.

Commissioner Steiner stated the location had been in operation since 1984 in violation of the ABC licensing?

Ms. Thakur stated that was correct.

Commissioner Steiner stated there had been an indication that there had been no depletion of Police resources.

Ms. Thakur stated to Staff's knowledge that was correct and it was also based on the Police Department's information.

Commissioner Steiner asked if a representative from the Orange Police Department was present?

Ms. Thakur stated Sergeant Ross Peterson from the Police Department was present.

Commissioner Steiner asked Sgt. Peterson if he was familiar with the area?

Sgt. Peterson stated he was.

Commissioner Steiner asked if he could shed some light on the area to the immediate east of the property and if there was a fence or wall?

Sgt. Peterson stated he believed there was a wall.

Commissioner Steiner asked if he had personal knowledge of any calls for service, disturbing the peace, or other disturbances reported by residents to the immediate east of the restaurant?

Sgt. Peterson stated he was not aware of any.

Commissioner Steiner stated with his own professional experience was Sgt. Peterson aware of any issues with calls for service at the location?

Sgt. Peterson stated there had not been any incidents.

Commissioner Cunningham asked on the tenant space at 135 E. Collins, did the ABC License have permitted hours of operation similar to the amended condition?

Ms. Thakur stated there were currently no conditions that limited the hours of operation.

Commissioner Cunningham asked if 135 was the bar?

Ms. Thakur stated 135 was actually the restaurant and 131 would have the additional dining area as well as the bar.

Commissioner Cunningham stated the bar had been serving without the license. His follow up question would be how late would the bar be open until currently?

Ms. Thakur stated currently she believed that the establishment closed no later than 11:00 p.m.

Commissioner Cunningham stated after listening to Commissioner's Steiner statement, he asked if whether the license recognized the de facto hours of operation for alcohol service or extending the hours where service was provided?

Chair Whitaker asked when ABC had done its review if there was any disciplinary action taken?

Ms. Thakur stated she had not believed there had been any disciplinary action, but rather an investigator came upon the situation in their files and at that point notified the City and the applicant of the issue.

Chair Whitaker invited the applicant to address the Commission.

Greg Badgwell, address on file, stated what had occurred was when the restaurant expanded in 1984 the permit was obtained through the City and had not been finalized and the restaurant owner was unaware that ABC should have been notified. He was adding his name onto the license and the ABC inspector had gone to the site and checked the square footage and realized it was different. He had been told that a CUP was needed and that brought them to the current process.

Commissioner Steiner asked when had Mr. Badgwell had the opportunity to submit his request for the modification to the hours of operation?

Mr. Badgwell stated basically the restaurant closed at 9:00 p.m. during the week and there was no one there later than 10:30 or 11:00 p.m. The reason the modification of hours was being sought was that on Friday and Saturday if someone had a birthday party and patrons wanted to stay later; he had not wanted to break any of the rules or laws. Most of the time they were out of the restaurant by midnight. It was just a little something he had thrown in there in case there was a party or they actually wanted to stay beyond midnight.

Commissioner Steiner asked if the request had been put in on Friday?

Ms. Thakur stated the request was put in Wednesday or Thursday and Staff had needed to wait for a response back from the Police Department that would show they supported the modification.

Chair Whitaker brought the item back to the Commission for further discussion or a decision.

Commissioner Steiner stated he was in support of the Resolution No. 44-10, however, he had reservations concerning the very recent request by the applicant for a modification to the hours of operation. He had been on the Planning Commission for almost 4 years and he suspected that a business that was in relative proximity to residential uses asking to remain open until 1:00 a.m. where alcohol was served would have engendered some degree of public interest, and certainly not just in opposition and the delay in the request was a concern for him and the lack of notice. He was not unpersuaded by the fact that the Police Department and City had reviewed

the request in light of their knowledge of the area and were in support of the change. He would not be comfortable supporting the new hours of operation and it had not appeared to be an acute need by the business owner and was more of an afterthought. The remedy he supposed would either be a delay, in order to allow re-noticing, which he was not particularly enthusiastic about, or to simply not authorize the requested change. He was thinking out loud and the site was in proximity to a residential area. It was a bona fide restaurant and it was that nature that caused him some degree of apprehension with the need for the business to remain open until 1:00 a.m.

Commissioner Imboden stated he was having some of the same concerns. They all knew that the CUP would remain with the site and not to the particular business. The applicant had indicated that he had not intended to be on the premises that late and they would be granting the privilege to future owners of the business and that needed to be considered.

Commissioner Cunningham stated he echoed his fellow Commissioners. He had not had a problem with the expanded hours per se, and he had qualms about it going forward without the residents having an opportunity to share their input on the matter. It would be the additional hour from midnight to 1:00 a.m. He and his family ate at the restaurant regularly. He felt it translated into the bar remaining open later and not necessarily the restaurant and it was very close to residential neighborhoods. As it stood, he probably would not support the amended condition; or if they wanted to delay and re-notice.

Chair Whitaker stated he had a question for Assistant City Attorney, Gary Sheatz, and asked on the notice to the residents for the CUP would all the conditions including the hours be posted in the notice or would there just be the notice that there would be an upgrade to the hours of operation?

Mr. Sheatz stated to his knowledge he believed they were not, and he was just scratching a note out to hand to Ms. Thakur to address that information. If she had the file they would be able to view the notice that was mailed or posted. The notice was a general notice that would state that the applicant, at a specific location, was filing for a listed purpose and would not typically list the conditions. The notice would not note the change in hours from 12:00 to 1:00; it was more of a notice that there was an expansion to the site and that the public could be present for that request.

Chair Whitaker asked Staff if they had a copy of the notice?

Ms. Thakur stated she had a copy and as Mr. Sheatz had stated there was not a list of conditions and she read from the notice:

The applicant is requesting CUP approval for a Type 47 ABC License On-Sale General for an existing restaurant. While the restaurant had been in operation since 1983; only the portion addressed under 135 Collins is licensed with the ABC Department. The restaurant's square footage was expanded in 1984 to the adjacent suites 131 and 133 E. Collins, however, the applicant failed to modify his alcohol license with the ABC Department and the City and the applicant is

therefore requesting CUP approval to update his license and include the additional restaurant square footage where alcohol can be served and consumed.

Chair Whitaker stated under the current CUP that covered just 135 Collins, that had no conditions for hours of operations and if the restaurant closed at 9:00 on the weekdays and 11:00 on the weekends the City could not currently restrict that.

Ms. Thakur stated that was correct and the hours that alcohol could be served would go back to what the ABC Department would allow; which was one hour prior to 2:00 a.m.

Commissioner Imboden stated it could not be done in the space that they were using.

Ms. Thakur stated that was correct, only in the restaurant portion of the business.

Commissioner Cunningham stated in theory if the item was approved with the condition as it stood; and not the modified condition, the restaurant would need to stop serving alcohol at a certain time and could continue serving alcohol in another portion of the restaurant?

Chair Whitaker stated no.

Commissioner Cunningham stated he was a bit confused.

Ms. Thakur stated currently there were no conditions. If the business owner wanted to change the hours of operation he could do so, however, if the Commission approved the Resolution with the original Condition No. 24, the business would continue to operate until 11:30 p.m.

Commissioner Imboden asked with the recipients of the notices where would they be directed to receive further information?

Ms. Thakur stated they would be directed to contact her and the address of the City Hall was provided, as well as her direct phone number and email address.

Commissioner Imboden stated it would be reasonable to assume that no one was reviewing the item being presented at the library or on line to gather further information and if there had been concerns there would have been initial contact made to City Staff.

Ms. Thakur stated that was correct.

Commissioner Imboden asked if she was stating that she had not received any inquiries?

Ms. Thakur stated that was correct and she had not received any public comments.

Commissioner Steiner stated there was nothing in the notice that would inform a potential reader that there was a change to the hours being contemplated and his initial reservations remain. He thanked Ms. Thakur for reading the notice and the fact that no commentary was received was suggestive of exactly the fact that the reader was unaware that a potential hours of operation change was being requested. He had nothing further.

Chair Whitaker stated the CUP was a fix it item and to correct the mistake they received a second bite at the apple that the City had not taken back in 1984. To have conditions on the sale of alcohol and when there were well reasoned conditions there was a more enforceable regimen in the City and better law enforcement. At the same time he was not particularly keen of taking away anyone's property rights and the applicant had, at least in the 135 suite, the ability to serve alcohol until 2:00. He saw the sense in the Commission and would not want the owner to have to go through renoticing and currently the hours of operation were 11:00 p.m. on Monday through Sunday and they appeared to be operating within that time frame and he would be supportive of a motion to pass the resolution as originally written, noting that the applicant could always return to request a modification.

Commissioner Steiner made a motion to adopt PC 44-10, approving CUP No. 2759-09-Pancho's Granada Restaurant, subject to the conditions contained in the Staff Report, noting that the item was categorically exempt from CEQA

SECOND: Commissioner Imboden

AYES: Commissioners Cunningham, Imboden, Steiner and Whitaker

NOES: None ABSTAIN: None

ABSENT: Commissioner Merino

(5) CONDITIONAL USE PERMIT NO. 2768-09 – LUCILLE'S RIB SHACK

A request to upgrade an Alcoholic Beverage Control Type 41 License (On-Sale Beer and Wine for a Bona Fide Public Eating Place) to a Type 47 (On-Sale General for a Bona Fide Public Eating Place) for an existing restaurant (previously Hof's Hut) and the voluntary surrender of the existing CUP 0558-72 for on-sale alcohol.

LOCATION: 4050 W. CHAPMAN AVENUE

NOTE: The proposed project is categorically exempt from the provisions

of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15301 (Class 1 – Existing Facilities) because the project consists of the operation and licensing of an existing

private structure.

RECOMMENDED ACTION:

Adopt Planning Commission Resolution No. 05-10 to upgrade an Alcoholic Beverage Control Type 41 License (On-Sale Beer and Wine for a Bona Fide Public Eating Place) to a Type 47 License (On-Sale General for a Bona Fide Public Eating Place).

Associate Planner, Doris Nguyen, presented a project overview consistent with the Staff Report.

Chair Whitaker opened the item to any questions for Staff.

Commissioner Steiner stated he had a question for Sergeant Peterson. He asked if Sgt. Peterson was aware of what fast casual meant in relationship to the type of restaurant Ms. Nguyen had described?

Sgt. Peterson stated not necessarily, he had been to the restaurant.

Commissioner Steiner stated his concern was that it was not a sit down restaurant, apparently, at least not in the traditional sense of the word; and it was something less or more than fast food and not a restaurant in the traditional sense where someone came to the table and took an order and brought food or beverages to the table. He asked Sgt. Peterson if he had a concern with the notion of serving spirits or hard liquor at a restaurant as described in the presentation?

Sgt. Peterson stated he had no concerns based on the type of restaurant it was. He had eaten lunch there and had seen how the service worked. It was fast, people coming and going quickly and it had not appeared that people stayed there a long time.

Commissioner Steiner asked if a patron came in and wanted a Bloody Mary could they have it brought to their table?

Sgt. Peterson stated he had not known how that would work as the bar was separate from the restaurant section.

Commissioner Steiner asked Staff for an explanation of what the applicant was wanting to do?

Ms. Nguyen stated the applicant had communicated to Staff that someone could order food at the front counter and sit down, then go to the bar and purchase an alcoholic beverage. Inside the bar there was a bartender and servers, and it was her understanding that a server would not leave the bar area and bring a beverage to someone in the restaurant or on the patio. She stated they would want to gain clarification from the applicant.

Commissioner Steiner asked if Sgt. Peterson was aware of how long the restaurant had been in operation?

Sgt. Peterson stated it was just a few months.

Commissioner Steiner asked if it had been smooth sailing thus far?

Sgt. Peterson stated yes, as far as he was aware there were no problems.

Chair Whitaker invited the applicant to address the Commission.

Craig Hoffman, address on file, stated he was president and owner of Hof's Hut Restaurants that owned Lucille's Rib Shack. He needed to bring up that the last time he was before the Planning Commission was in 1972 as a 21 year old when his family had opened the Hof's Hut Restaurant that started in Orange and they had been operating as a Hof's Hut for most of those years and now as a Rib Shack since October; 38 years in the City of Orange and they were looking forward to many more years.

As part of the Conditions of Approval, there were 32 conditions and most all of those they agreed to. There were two of them that they had concerns with and those were Conditions No. 6 and 14. Condition No. 6 required the sale and service of alcohol only in conjunction with food; except at the bar, and to explain to Commissioner Steiner a bit about how the restaurant worked; there was a separate bar area with a bartender and servers all the time. If a patron went into that room food or beverages could be ordered and it would be brought to the table. In the other room food was ordered at the counter and there were no servers so there was no tipping necessary. If alcohol was wanted, a person would go to the bar and if they were underage they would need to show ID and a reason they had not had servers going into the other side of the restaurant. The Condition No. 6 restriction required that food be served all the time with alcohol. The establishment was not a bar, they were a restaurant and even with the new concept only 4% of their sales were alcohol related. If they upgraded the license and their alcohol sales doubled, they would still remain at under 10%. It was a restaurant.

Mr. Hoffman stated what he worried about with that specific condition was that if two people came to the restaurant and one person ordered a sandwich and a beer and the other person, with a separate check, just wanted a margarita or a beer, with Condition No. 6 that person would not be able to be served unless they ordered food and he felt it was an unreasonable condition. It would be very hard to observe and very hard to enforce. He felt it was unnecessary with the provisions of Condition No. 10 which was the gross sales condition and it required that they were a bona fide restaurant.

The other condition that he had spoken to the Police Department about was the restriction on drink specials and happy hour. Due to the economy and the effects on the restaurant industry, almost every restaurant today offered happy hour, Cheesecake Factory was offering happy hour for the first time in 31 years and PF Chang's happy hour had gone nationwide. Every restaurant they competed with had a happy hour. At the Block, there was TGI Fridays, Dave & Busters, Alcatraz, Lucky Strike and El Torito that all had happy hours. At the Stadium Promenade, Chili's, Kings Fish House, Lazy Dog, Bob's Big Boy, Prime Café and the Auld Irisher all had happy hours. In the old days where happy hour was an opportunity for someone to get totally drunk and cause problems in the city was not like that anymore; patrons were looking for a food special and they might get a drink at the same time. It was a way to get seats in a restaurant and to spend money

and they may stay for dinner or they might not. He felt it should not be a restriction. The other 30 conditions were pretty specific. Hours were restricted until 10:00 p.m. during the week and 11:00 p.m. on the weekends and they could not have entertainment and all those things that they had not considered. Those were his only comments and he was available for any further questions.

Chair Whitaker stated he would have questions for Staff. He would keep the Public Hearing open in case there were further questions for the applicant.

Chair Whitaker stated Mr. Hoffman had brought up Condition No. 6; and the way he was reading that condition was in separating the two concepts, the quick service restaurant side and the bar side. If someone was in the bar under the second sentence of the Condition No. 6 they could order a drink and only a drink.

Ms. Nguyen stated that was correct, while the restaurant was open for business the service and sale of alcoholic beverages shall be made only while in conjunction with food and the exception would be with the seats in the bar with a full menu offered to bar patrons. The menu would be offered to bar patrons, however, it was not required that the bar patrons purchased food with their beverage and had been further reiterated on page 3 of the Staff Report where it stated the full menu would be available in the bar and that food purchases would not be required in conjunction with the sale of alcohol in the bar area.

Chair Whitaker stated if someone was in the quick service restaurant area they would need to purchase food before they could go over to the bar and bring it back to the quick service side of the restaurant and was that the intention of that condition?

Ms. Nguyen stated that was correct.

Mr. Hoffman stated he may have read the condition incorrectly as he assumed it was seats at the bar as it had not been clearly defined. If it was the whole bar area he would not have an issue with that condition.

Chair Whitaker stated perhaps they could add additional language to better clarify that condition.

Ms. Nguyen stated they could add that it was approximately 960 square feet.

Commissioner Steiner stated even adding the word "area" after the word "bar" would clarify that concern.

Chair Whitaker stated the applicant had mentioned some other competitors and he knew that in the Block and the Stadium Promenade those areas were treated as entertainment areas and there were possibly different restrictions imposed on those CUP's, and asked if they had allowed drink specials in those particular zones?

Ms. Nguyen deferred the questions to Sergeant Peterson.

Sgt. Peterson stated as far as the Block he was not certain, he had only been in his present position since September and he was aware that since September, happy hours were not allowed as they were not wanting the bar atmosphere and he would need to look back at applications prior to that.

Chair Whitaker asked if Sgt. Peterson had knowledge regarding the Stadium restaurants?

Sgt. Peterson stated he had not believed that the Auld Irisher had happy hour.

Commissioner Cunningham stated they had happy hour as he was at that establishment a few weeks ago.

Commissioner Imboden stated that with a few of the applicants at the Stadium Promenade there were some old existing licenses on those sites; and some had come before the Commission and they had thought those through in that those businesses were immediately adjacent to another restaurant with different circumstances based on the scope of their permits and there had been some exceptions that he recalled at that specific location. It had been viewed as having direct competitors being adjacent to each other that would have different situations. As far as the Block was concerned, it had been built out and permitted prior to his seat on the Commission.

Chair Whitaker asked Assistant Community Development Director, Ed Knight, if he had any knowledge of those permits?

Mr. Knight stated Commissioner Imboden was correct that many of the licenses at the Stadium were old to the point where there was not a condition regarding happy hour and they had accommodated some of the new businesses that had gone up to have a level playing field within that center. He was unaware of the conditions as they were placed in the Block.

Commissioner Imboden stated on the request the applicant was seeking, it was conceivable that there could be patrons outside of the bar having drinks brought to them with no monitoring by restaurant staff; he understood the drinks would not be brought to a table by restaurant staff. In the conditions he could not find a limit of drinks a person could order at any one time.

Mr. Hoffman stated they had an alcohol plan that they had agreed to that required them to monitor and log consumption and to train their employees in responsible alcohol service. He had 19 other licenses throughout California, Arizona and Nevada and they had no issues. In the 38 years that he had been in the Orange location, they had not had a revocation or suspension or had been put on notice for any type of alcohol related problems and he felt it was not an issue. He felt in all fairness that they should have the same conditions as all the other restaurants that they would be competing with in offering specials and happy hour.

Commissioner Imboden stated he understood that the applicant was not concerned with problems associated with happy hour, but he had concerns and the question he was asking was if the applicant could offer any specifics and there would be a training plan in

place. As the business owner, what measures would be in place to alleviate the concerns as it was not a typical type of operation. Alcoholic beverages would be taken into a space that had no staff that would be regularly monitoring the tables and checking on the patrons, and how would that be alleviated?

Mr. Hoffman stated a patron would go to the bar to get their drinks and they would be carded at the bar area; if they took a drink to the other area of the restaurant there would be staff on site in the restaurant working the floor at all different shifts. They would be looking at what was going on and ensuring that there would not be a problem with over drinking and he was not certain what the problem would be, and something could happen in a rare circumstance.

Commissioner Imboden stated his concern went back to the comment that was made with the last application that the permit would remain with the property regardless of the concept that was being proposed; it would be something that was in place for perpetuity and that was where his concern arose.

Chair Whitaker stated in other CUP's with alcohol they had conditions, at least while he had been on the Commission, that addressed no service of an empty seat and that type of thing and he could not remember word for word how those conditions were crafted. It was a type of condition that had been placed routinely with other applications and he had not seen it with the current applicant.

Ms. Nguyen stated the conditions were pulled from the Police Department report and memo and from previous Staff Reports and it might have been a condition that had been missed.

Chair Whitaker stated if they were to add that condition would that alleviate the concerns?

Commissioner Imboden stated he felt they needed to address it in some manner.

Ms. Nguyen stated the Alcohol Management Program addressed some of the issues; there was a pitcher requirement that in serving more than 24 ounces to one person there were restrictions to that type of service.

Chair Whitaker asked Mr. Hoffman if he would have an issue with the additional requirement of no serving an "empty seat"?

Mr. Hoffman asked what was meant by serving of an "empty seat"?

Chair Whitaker stated typically that condition stated that service would be to a person who would be taking possession of the drinks and was a safeguard of underage drinking and to avoid the issues of over drinking, where someone would be paying and taking the drink to an empty seat with no control on that.

Commissioner Imboden stated on that condition he was not certain that it solved the situation with someone going into the bar and buying three of four beers and those being

carried back to others at the table without any monitoring of ID of the person consuming the alcohol or of how many drinks they might have had.

Mr. Hoffman stated as part of the Alcohol Management Program, there was a provision when someone ordered two margaritas or a pitcher of beer where ID would be required for each person or they would ask it at the table.

Commissioner Imboden asked Staff how that would be regulated in the documentation?

Ms. Nguyen stated it was not in the conditions and she would check the AMP for that language.

Chair Whitaker asked for the location of the AMP in their reports?

Ms. Nguyen stated it was in the attachment on page 3, there was a reference to no stacking of drinks by or for a single patron and on I, it was stated that when serving 24 ounces or more of an alcoholic beverage that all patrons receiving such pitcher as well as all patrons who would be consuming all or any portion of the pitcher shall present an ID to the server if appearing under the age of 30 if not previously checked at the entrance of the premises.

Chair Whitaker asked Commissioner Imboden if that helped with clarification?

Commissioner Imboden stated it would not help with 25 year olds; and he could understand that there was certainly an intent to address the situation.

Chair Whitaker asked if there were any further questions for Staff? There were none.

Mr. Hoffman stated he hoped they would consider the happy hour provision as it really had more to do with service of food.

Chair Whitaker brought the item back to the Commission for discussion or a decision.

Commissioner Steiner stated he would be in support of the applicant's request to Item No. 14 and that one of the factors that they should take into consideration would be in granting a request in respect to that condition, was the history of the applicant and the number of years that the business had been in operation. It persuaded him as well as the nature of the restaurant as described by Sgt. Peterson as it related to Item No. 14 being reasonable; particularly in respect to doing all they could as a City to accommodate the competitive challenges the applicant was faced with. As far as Condition No. 6, it appeared to have been solved through the information brought forth and if he was to move a motion he would want to add additional language to Condition No. 6 to include the square footage of the bar and add to the last sentence the word "area", to define bar area subsequent to the hearing and any future approvals. He had no other comments.

Commissioner Cunningham stated he agreed with the sentiment of Commissioner Steiner and he also supported the removal of Condition No. 14 and to the changes in the language for Condition No. 6.

Commissioner Imboden stated he was in agreement with one exception; he would not hold the item from moving forward. He stated for the record on the request for happy hour, Condition No. 14, it would not be his choice to remove it for this application and that it had been done previously by the Planning Commission on other applications and it had been instances when applicants had been at a distinct disadvantage without a happy hour provision. They reviewed many of the same types of applications throughout the year and typically they had not caused hardships for businesses at all and he wanted to state, for the record, that although he had not supported removal of Condition No. 14, he would support the application.

Chair Whitaker stated he was a bit confused; he understood that if someone made a motion with that exception he would be opposed to the motion.

Commissioner Imboden stated he would support a motion, however, for the record, he wanted to note his position on that issue.

Chair Whitaker stated he would support the direction that the Commission was moving toward and Mr. Hoffman had been an excellent operator for some time and as long as the changes were made as described by Commissioner Steiner he would be in support of the application.

Commissioner Steiner made a motion to adopt PC 05-10, CUP 2768-09-Lucille's Rib Shack, subject to the conditions contained in the Staff Report and noting that the item was categorically exempt from CEQA and to incorporate the changes described previously for Conditions No. 6 and 14.

Ms. Nguyen asked if he wanted to add the "empty seat" condition as well?

Commissioner Steiner agreed with the sentiment expressed by Commissioner Imboden and he had not heard an opposition to that addition and the applicant was nodding his head in agreement; his motion would include that and exclude Condition No. 14.

SECOND: Commissioner Imboden

AYES: Commissioners Cunningham, Imboden, Steiner and Whitaker

NOES: None ABSTAIN: None

ABSENT: Commissioner Merino

(6) CONDITIONAL USE PERMIT NO. 2777-09 AND DESIGN REVIEW COMMITTEE NO. 443-09 – ESSENMACHER RESIDENCE

A request to convert an attic into 351 square feet of second floor living space. No change

in existing roof form is proposed; project includes the addition of two skylights on an elevation not visible to public view.

LOCATION: 704 E. MAPLE

NOTE: The proposed project is categorically exempt from the provisions

of the California Environmental quality Act per State CEQA Guidelines Sections 15301 (Class 1 – Existing Facilities) and 15331 (Class 31 – Historical Resource Restoration or Reconstruction) because no change in roof form is proposed.

RECOMMENDED ACTION:

Adopt Planning Commission Resolution No. 04-10 to allow the conversion of an attic area into second-floor living space for a contributing property.

Historic Preservation Planner, Dan Ryan, presented a project overview consistent with the Staff Report.

Chair Whitaker opened the item to any questions for Staff. There were none.

Chair Whitaker invited the applicant to address the Commission.

Commissioner Imboden asked with the insertion of a second floor there were the structural upgrades that would be completed and was all that expected to take place within the building envelope?

Todd Essenmacher, address on file, stated it was all in the inside.

Chair Whitaker asked if the applicant was in agreement with the condition of recording the second story as a non-habitable bedroom?

Mr. Essenmacher stated yes, it would be a home office.

Mr. Frankel, address on file, representing the OTPA, stated he wanted to thank Mr. Ely for involving the OTPA in the preliminary plans and they were pleased that the applicant had not altered the roof form. His only concern would be the skylight visibility from the street and they had agreed that using attic space to expand living area was the most sympathetic method of increasing that space.

Chair Whitaker brought the item back to the Commission for discussion or a decision.

Commissioner Imboden stated he was in support of the project and he applauded the applicant as it was the most sensitive addition that could be done. On the concern over the skylights, he had not shared too much concern over those as they were out of sight as they could possibly be and skylights had been used in buildings for over 100 years, and not perhaps the same type of skylight and not particularly in Old Towne,

but they were not out of place. In allowing the applicant to gain space with only a small change in the historic resource he would support the application.

Commissioner Cunningham made a motion to adopt PC 04-10, approving CUP 2777-09-Essenmacher Residence, subject to the conditions contained in the Staff Report and noting the item was categorically exempt from CEQA.

SECOND: Commissioner Imboden

AYES: Commissioners Cunningham, Imboden, Steiner and Whitaker

NOES: None ABSTAIN: None

ABSENT: Commissioner Merino

(7) ADJOURNMENT:

Commissioner Imboden made a motion to adjourn to the next regular meeting scheduled for Monday, March 15, 2010.

SECOND: Commissioner Cunningham

AYES: Commissioners Cunningham, Imboden, Steiner and Whitaker

NOES: None ABSTAIN: None

ABSENT: Commissioner Merino

MOTION CARRIED

Meeting adjourned @ 8:13 p.m.