Planning Commission
Agenda Item

August 6, 2012

TO: **Chair Steiner and**
Members of the Planning Commission

THRU: **Leslie Aranda Roseberry**
Planning Manager

FROM: **Doris Nguyen**
Associate Planner

SUBJECT

COMMISSION BUSINESS: Conditional Use Permit (CUP) 2870-12 and Design Review Committee (DRC) 4634-12 – The Tilted Kilt, located at 1625 West Katella Avenue, Stadium Promenade center.

SUMMARY

The applicant is requesting to expand the outdoor patio from 774 SF to 1,836 SF and exterior improvements to the building. They are also proposing to modify the existing Conditions of Approval for the Alcoholic Beverage Control (ABC) Type 47 License (On-Sale General for a Bona Fide Public Eating Establishment) and to expand the CUP to include the larger patio. If the proposed CUP 2870-12 and DRC 4634-12 are approved, they would also voluntarily surrender the existing CUP 2821-11 which permitted 12 amusement devices. The existing CUP 2812-10, which permitted the Type 47 License, would be superseded.

RECOMMENDED ACTION

A Resolution will be provided at a future hearing date based on the Planning Commission action.

AUTHORIZATION/GUIDELINES

Orange Municipal Code (OMC) Section 17.30.030.C. and Table 17.08.020.B authorizes the Planning Commission to review and take action on Conditional Use Permits for eating establishments modifying on-site sales and consumption of alcohol beverages in the Commercial Recreation (C-R) zone. Section 17.10.080 requires that the project be reviewed in accordance with California Environmental Quality Act provisions and the City of Orange Environmental Review Guidelines.

PUBLIC NOTICE

On July 26, 2012, the City sent a Public Hearing Notice to a total of 52 property owners/tenants within a 300-foot radius of the project site, and persons specifically requesting notice. The project site was also posted in two locations with the notification on that same date.

ENVIRONMENTAL REVIEW

Categorical Exemption: The proposed project is categorically exempt from the provisions of the California Environmental Quality Act per State CEQA Guidelines Section 15301 (Class 1 – Existing Facilities) because the project only involves the licensing of alcohol sales and no new construction is proposed in association with the request. There is no environmental public review required for a Categorical Exemption.

PROJECT BACKGROUND

Applicant:	OC Restaurant Group dba The Tilted Kilt
Property Owner:	Sywest Development
Property Location:	1625 W. Katella Ave, Stadium Promenade
General Plan Land Use Element designation:	Commercial Recreation (C-R)
Zoning Classification:	Urban Mixed Use (UMIX)
Old Towne:	Not Applicable
Redevelopment Project Area:	Orange Amended Redevelopment Project Area
Specific Plan/PC:	Not Applicable
Site Size:	6,892 SF restaurant with 774 SF patio on a 24.5-acre lot
Circulation:	The building is located in the Stadium Promenade center that is accessed via Katella Avenue, which is considered a Smart Street and Main Street, which is a Primary Arterial.
Existing conditions:	6,892 SF restaurant with a 774 SF outdoor patio
Surrounding land uses and Zoning:	Surrounding property to the north, south, east, and west include a mix of industrial, commercial, and office tenants in the CR zone.
Previous Applications/Entitlements:	**MJSP 09-96 & ND 1497-96:** On September 10, 1996, the CC approved the demolition of a drive-in theatre to construct the majority of the existing center. **MJSP 0388-05 & DRC 3991-05:** On July 20, 2005, the DRC approved the construction of approximately 18,000 square feet of multi-tenant commercial buildings and the demolition of 12,493 square feet from existing Building Number 3 to accommodate greater interior vehicular and pedestrian flow. **DRC 4517-10:** On November 17, 2010, the DRC approved minor façade changes to the subject building including paint and signs.

	CUP No. 2585-06 & DRC 4089-06, PC Reso 23-06: On June 19, 2006, the Planning Commission approved the construction of the building and a CUP for an ABC Type 47 license (on-sale general at a bona fide eating place). The tenant was Johnny Carino's. This CUP was replaced with CUP 2812-10 and 2821-11. **CUP 2812-10 & CUP 2821-11, PC Reso 03-11:** On Feb 23, 2011, the PC approved the replacement Type 47 ABC License and 12 amusement devices. The applicant was Shakey's Restaurant; however, they did not move into the location. Although Shakey's did not use the entitlement, it has not passed the 2 year expiration date.

PROJECT DESCRIPTION

The applicant, The Tilted Kilt, proposes to open a sports pub/bar in a freestanding 6,892 SF building that has a 774 SF outdoor dining area. The existing building is currently vacant and is the site of the previous Johnny Carino's Italian Grill restaurant.

The Tilted Kilt is described as an "American/Irish/Scottish/English sports pub." They are requesting to be open from 9:00am to 2:00am, seven days a week with 20-30 employees per shift. There is one main public entrance located on the northeast elevation, facing the driveway off of Katella Avenue.

The applicant is requesting DRC 4634-12 to modify the exterior of the building and expand the patio from 774 SF to 1,988 SF. The DRC staff report, Attachment 8, details the exterior changes by elevation. In summary, they will repaint the trims a dark green color, add artwork to the walls, change out the wall lighting fixtures, remove the lights on the roof, change out the exterior doors, and change out some of the windows. The outdoor patio on the northwest elevation would expand from 774 SF to 1,836 SF. Within the expanded patio, the applicant would change out the fencing and the awning. They would also add trellises, landscaping, and a firepit. The applicant has retained the same landscape architect as the Lazy Dog Café so that the two patios would be compatible in design. Staff conducted a parking study for the Stadium Promenade and found that there is enough parking to cover the 1,062 SF patio expansion.

CUP 2812-10, CUP 2821-11, and PC Resolution 03-11 are currently in effect at the subject building. The existing CUPs permit an Alcoholic Beverage Control (ABC) Type 47 license (On-Sale General for a Bona Fide Public Eating Place) to sell beer, wine, and distilled spirits and allow 12 amusement devices within the licensed premises. The applicant does not intend on having amusement devices and is requesting to keep the ABC Type 47 license. However, since they are proposing to expand the patio, they need to modify the existing Conditional Use Permit to cover the expansion. At the same time, they are also requesting to add Happy Hours and modify three

Conditions of Approval listed in PC Resolution 03-11. Below are the four conditions that the applicant is requesting to modify or add:

1. **Condition 16** currently reads, "At no time shall there be a fee for entrance/admittance into the premises."

   The applicant is proposing to modify the condition to state, "Fee for entrance/admittance to the premises shall be permitted only for Pay-Per-View (PPV) sporting events. Applicant shall not be permitted to charge an admittance fee to patrons who patronize the premises solely for food and/or beverage service, and without watching the PPV event. Those patrons may then be seated in areas of the restaurant with limited or no view of the sporting event, including seating on the patio. If requested by the Orange Police Department, the applicant shall provide up to 2 security personnel within the premises 30 minutes prior to the event, during the PPV event, and up to one hour after the event."

2. **Condition 24** currently reads, "There shall be no special promotional events held on the property, unless a written request is received and approved by the Community Development and Police Department at least two weeks in advance."

   The applicant is proposing to modify the condition to state, "There shall be no special promotional events held on the property, unless a written request is received and approved by the Community Development and Police Department at least two weeks in advance. The term "promotional events" shall not include or pertain to Pay-Per-View events."

3. **Condition 31** currently reads, "Business hours shall be limited to 10:00am to 12:00pm Monday through Saturday and 10:00am to 11:00pm on Sunday." This condition was most likely intended to state 10:00am to 12:00**am** Monday through Saturday.

   The applicant is proposing to modify the condition to state, "Business hours shall be limited to 9:00am to 2:00am Monday through Sunday, with the last call for service of alcoholic beverages to be no later than 1:30am."

   Should the PC agree to the change in hours, staff recommends not including the portions referring to last call for service since the ABC regulates the hours that alcohol can be sold.

4. **Happy Hours** The current PC Resolution 03-11 does not mention happy hours because Shakey's did not intend on hosting happy hours with drink specials. It has been staff's policy that if something is not specifically mentioned, it is not permitted. The applicant is requesting to host happy hours to serve drink and food specials from 3pm-7pm Tuesday-Saturday, and from 10 am-7 pm Sunday and Monday.

There are currently two CUPs on site, CUP 2812-10 for the Type 47 ABC License and CUP 2821-11 for twelve amusement devices. The landowner intends to provide a CUP voluntary surrender letter to staff prior to the Planning Commission meeting for the amusement device CUP. They wanted time to review the Police Department Memo prior to releasing the letter. They would only

surrender CUP 2821-11 if the current proposal, CUP 2870-12 and DRC 4634-12, are approved. CUP 2812-10 would be superseded if CUP 2870-12 were approved.

Since the vacant restaurant currently has a CUP for an ABC Type 47 license, the applicant would be able to move in without a modification to the CUP. In this instance, they are required to process a modification to the CUP because they are proposing to expand the outdoor patio and requesting modifications to the existing Conditions of Approval. Issue item #6 in the Analysis Section discusses the Planning Commission's options in approving, denying, or continuing the application.

The applicant has created an Alcohol Management Plan (see Attachment 7) to show the Planning Commission how they intend on regulating the sales, service, and consumption of alcohol within their establishment.

The applicant has requested that signage be reviewed separately from the current application. Signage is required to comply with the approved Stadium Promenade Sign Program. Artwork is considered signage and will be subject to the regulations of the Sign Program.

Development Standards

	Required	**Proposed**	**Code Section**
Building Height	Existing building; no changes to building.	N.A.	N.A.
Distance between structures	Existing building; no changes to building.	N.A.	N.A.
Fence height	N.A.	N.A.	N.A.
Floor Area Ratio (FAR)	Existing building; no changes to building.	N.A.	N.A.
Landscaping (non-residential)	N.A.	N.A.	N.A.
Loading area (non-residential)	Existing building; no changes to building.	N.A.	N.A.
Lot size (residential)	N.A.	N.A.	N.A.
Lot frontage	N.A.	N.A.	N.A.
Lot depth	N.A.	N.A.	N.A.
Open space, common (residential)	N.A.	N.A.	N.A.
Open space, private (residential)	N.A.	N.A.	N.A.
Open space, useable (residential)	N.A.	N.A.	N.A.
Parking (non-residential)	Existing building; no changes to building.	N.A.	N.A.
Parking (residential)	N.A.	N.A.	N.A.
Parking, guest (residential)	N.A.	N.A.	N.A.
Setback, Front	Existing building; no changes to building.	N.A.	N.A.
Setback, Rear	Existing building; no changes to building.	N.A.	N.A.
Setback, Side	Existing building; no changes to building.	N.A.	N.A.
Setback, Side	Existing building; no changes to building.	N.A.	N.A.

APPLICATION(S) REQUESTED/ REQUIRED FINDINGS

Conditional Use Permit: The applicant proposes to modify the Conditions of Approval of an existing Alcoholic Beverage Control Type 47 License (On-Sale General for a Bona Fide Eating Establishment and make exterior improvements to an existing 6,892SF square foot restaurant with 774 SF outdoor patio. The patio would be expanded to 1,988 SF.

Required Findings:

1. A Conditional Use Permit shall be granted upon sound principles of land use and in response to services required by the community.
2. A Conditional Use Permit shall not be granted if it will cause deterioration of bordering land uses or create special problems for the area in which it is located.
3. A Conditional Use Permit must be considered in relationship to its effect on the community or neighborhood plan for the area in which it is located.
4. A Conditional Use Permit, if granted, shall be made subject to those conditions necessary to preserve the general welfare, not the individual welfare of any particular applicant.

Design Review Committee: The applicant proposes to expand the outdoor patio from 774 SF to 1,836 SF and make exterior changes to a vacant restaurant building within the Stadium Promenade.

Required Findings:

1. The project design upholds community aesthetics through the use of an internally consistent, integrated design theme and is consistent with all adopted specific plans, applicable design standards, and their required findings.

ANALYSIS/STATEMENT OF THE ISSUES

Issue 1: Existing Alcohol Entitlements within the Stadium Promenade Center

For information purposes, staff identified the following 7 facilities with CUPs to sell alcohol within the Stadium Promenade.

Existing Alcohol-Related Entitlements

Establishment Name	CUP Entitlement	Address
Lazy Dog Café within the Stadium Promenade	CUP 2608-06 approved a Type 47 (On-Sale General – Eating Place) license	1623 W. Katella Ave # 212
Acapulco within the Stadium Promenade	CUP 2295-99 approved a Type 47 (On-Sale General – Eating Place) license	1535 W. Katella Avenue
King's Fish House within the Stadium Promenade	CUP 2224-98 approved a Type 47 Type 47 (On-Sale General – Eating Place) license	1521 W. Katella Avenue
Prime Cut Café and Wine Bar within the Stadium Promenade	CUP 2688-07 approved a Type 47 (On-Sale General – Eating Place) license	1547 W. Katella Avenue #101
Chili's Grill and Bar	CUP 2172-95 approved a Type 47 (On-Sale General – Eating Place) license	1411 W. Katella Avenue

Establishment Name	CUP Entitlement	Address
The Pint House (previously the Auld Irisher)	The Pint House is conducting renovations to open in Fall 2012. CUP 2665-09 remains active for a Type 47 (On-Sale General – Eating Place) license.	1547 W. Katella Avenue #102
Bob's Big Boy (closed)	This restaurant is closed; however, CUP 2738-08 remains active for a Type 41 (On-Sale Beer and Wine – Eating Place) license	1623 W. Katella Avenue

Issue 2: Sensitive Receptors

The OMC requires a Conditional Use Permit for the sale of alcoholic beverages to ensure there will be no adverse impact on surrounding land uses or allow the availability of alcoholic beverages to minors. When reviewing alcohol permits, the Zoning Ordinance details specific land uses that are sensitive to alcohol activities, but does not establish any specific distances for these uses. The State Alcoholic Beverage Control Board investigation requires applicants to identify the sensitive land uses within 600 feet of the site. There is a church within 600 feet of the subject property as shown below:

Sensitive Receptors

Establishment Name	Address	Distance To Project Site
Breath of Spirit Ministries	1624 W. Katella Ave	Across Katella Ave

The Breath of Spirit Ministries is located across Katella Avenue and slightly west from the proposed Tilted Kilt location.

Issue 3: Census Tract Alcohol and Crime Statistics Information

The Orange Police Department's Vice Unit reviewed the proposal (Attachment 4) and finds that the census tract where the alcohol license is requested is over concentrated with alcohol licenses as follows:

Alcohol Licenses

	Existing	Allowed
On-Sale Licenses	14	7
Off-Sale Licenses	5	4

Census tracts are defined as small geographical areas established by local committees and approved by the Census Bureau, which contain a population segment with relatively uniform economic and social characteristics and clearly identifiable boundaries averaging approximately 1,200 households.

The ABC establishes an over concentration of alcohol licenses based on the average of alcohol licenses versus the population in a given census tract. However, the ABC and the City recognize that licenses should be reviewed on a case-by-case basis to ensure that such sales will not adversely affect surrounding residents, businesses, and institutions and to ensure that any such use operates in a manner compatible with existing and future adjacent uses.

The current concentration levels do not favor the issuance of a Type 47 License (On-Sale General for a Bona Fide Eating Place). The number of existing on-sale establishments in the census tract is 14 with 7 being allowed. The current concentration level is double what is allowed in the tract. Although there is a CUP on-site, there is no active alcohol license registered with the State Department of Alcoholic Beverage Control. If The Tilted Kilt moves in and purchases a Type 47 license, they will increase the number of alcohol licenses to 15 on-sale licenses when 7 are allowed in the tract. They are allowed to move in with the existing CUPs; however, they are requesting Planning Commission consideration because of the patio expansion and Conditions modification.

As shown in the table above, named Existing Licenses, there are 4 existing businesses that have an alcohol beverage license within a 600' radius of the Tilted Kilt building. All four of the businesses are within the Stadium Promenade center and all have a Type 47 (On-Sale General Bona Fide Public Eating Place) license. There are also two other closed business that have alcohol CUPs at the Stadium Promenade. They are the previous Auld Irisher with a Type 47 license and Bob's Big Boy with a Type 41 (On-Sale Beer and Wine at a Bona Fide Public Eating Place). Since those spaces are vacant, they do not have active licenses with ABC. New businesses are looking to fill those locations and can move in under the existing approved CUPs. Those would add two more licenses to the center.

The applicant is applying for an ABC license in a Reporting District (RD 45W) that is considered a high crime area. The Police Department Memo (Attachment 4) stated that in 2011, crime figures show 94 crimes in this reporting district. In 2011, the average reported crimes per district citywide was 77, therefore, the crime statistics indicate this district had 22% more crimes than the average district in the City.

Crime Statistics (2009)

Census Tract Arrests	Citywide Average Arrests	Percent Difference
94	77	+22%

The Police Department is not in support of the applicant's efforts to increase the size of the patio or modify the Conditions of Approval for the existing CUP. Based on the over concentration of alcohol within the census tract licenses and high crime within the reporting district, the Police Department memo states that the proposed modifications to the existing CUP and patio expansion will likely have an adverse impact, from a crime perspective, on the surrounding community based on the over-concentration of on-sale and off-sale licenses within the census tract and high crime in the area. This could increase the potential for deterioration to, or special problems at adjacent uses that could lead to an increased number of calls for police and/or fire services, increased crime, and diminished quality of life in the area.

Issue 4: Modifications to the Conditions of Approval

The applicant is requesting to add happy hours and modify Conditions 16, 24, and 31 of the approved PC Resolution 03-11, as approved for CUP 2812-10 and CUP 2821-11 on February 23, 2011. The approved Conditions of Approval and proposed modifications are stated in the Project Description section above. Below is a summary of the proposal and discussion of the issues.

Condition 16: Currently, the condition does not allow a fee for entrance into the premises. The applicant is requesting to modify the condition to allow a fee for Pay-Per-View (PPV) sporting events. They would set aside the patio for persons who only want to eat at the restaurant and not watch the PPV events. The Police Department researched the Conditional Use Permits for all the restaurants within the Stadium Promenade. The Conditions of Approval for the Lazy Dog Café, King's Fish House, Chili's, Auld Irisher, and Prime Cut Café explicitly do not allow the restaurants to charge a fee for entrance. The Police Department is concerned that this will start a precedent of supporting exclusionary fee-for-entrance events at restaurants and bars within the City and would not allow the business to be fully open to the general public. As a precedent, the CUP for Buffalo Wild Wings at the Outlets at Orange was not restricted from showing PPV events; however, they were not permitted to charge a fee for entrance.

Condition 24: Currently, the condition does not allow special promotional events without a written request and approval from the Community Development and Police Departments. The applicant is looking to specifically exclude Pay-Per-View events from the definition if special promotional events. The Police Department is not supportive of the PPV events; therefore, modification of this condition would not be needed if Pay-Per-View events are denied.

Condition 31: Currently, the condition limits business hours to 10am to 12pm Monday through Saturday and 10am to 11pm on Sunday. The applicant would like to modify the hours to 9am to 2am Monday through Sunday, with the last call for service of no later than 1:30am. The Police Department does not support the change in the hours of operation because it is not in line with the other restaurants in the center. As noted in the Police Department Memo, other restaurants within the Stadium Promenade close between 9:00pm and midnight. Allowing the Tilted Kilt to stay open past midnight would require additional resources that are not currently required for the center. This is also a hazard for patrons and employees leaving the restaurant at such a late hour. Employees could leave as late as 3am after the clean-up and close-out processes are completed. Since no other businesses would be open, there would be less people around to witness and prevent crime.

Should the PC agree to the change in hours, staff recommends not including the portions referring to last call for service since the ABC regulates the hours that alcohol can be sold.

Happy Hours: The current PC Resolution 03-11 does mention happy hours because Shakey's did not intend on hosting happy hours with drink specials. It has been staff's policy that if something is not specifically noted it is not permitted. The applicant is requesting to serve drink and food specials from 3pm-7pm Tuesday-Saturday and from 10 am-7 pm Sunday and Monday. As shown in the Police Department Memo, the other restaurants in the Stadium Promenade center are allowed to have Happy Hours. However, it should be noted that they are restricted from allowing, "alcoholic

beverages sold at a ratio of two for the price of one; no 'stacking' of beverages, which means the serving of two alcoholic beverages at one time to the same customer; and no sales to an 'empty chair,' which means that each customer must be physically present at the time of the order of any alcoholic beverage." The Police Department is against Happy Hours because the promotions draw larger crowds to become intoxicated in a shorter amount of time. After the happy hour, patrons typically leave and drive home or to other location. It has been Police Department policy in recent years to oppose happy hours within the City of Orange because of the additional risks it creates.

Issue 5: Voluntarily Surrender of CUP 2821-11

The site possesses CUP 2812-10 and CUP 2821-11 for a Type 47 ABC License and 12 amusement devices, respectively. They were approved by the Planning Commission through PC Resolution 03-11 on February 23, 2011. They allow the site to maintain the Type 47 ABC (On-Sale General for a Bona Fide Eating Place) License and a maximum of 12 coin operated amusement devices. They were originally processed for the Shakey's Pizza. Although Shakey's did not use the entitlement, it has not passed the two-year expiration date; therefore, it is still active. If the proposal for CUP 2870-12 and DRC 4634-12 are approved the property owner would voluntarily surrender all entitlements associated with CUP 2821-11 to the City of Orange and the entitlements associated with CUP 2812-10 would be superseded. The Tilted Kilt does not intend on having amusement devices and they are requesting to modify the existing alcohol CUP. The current land owner, Sywest Development, will provide the Voluntary Surrender letter prior to the PC meeting date.

Issue 6: Options for the Planning Commission

The Planning Commission (PC) has options to continue, deny, approve, or approve portions of the application. The options are explained below:

Continue for More Information
If the application is continued, the applicant shall return with the information that the Planning Commission requests at a later hearing date.

Denial of the Entire Application
If the PC denies the entire application, the applicant would not be able to make any of the exterior building changes, nor expand the patio, nor modify any of the Conditions of Approval. The applicant could still move in under the existing CUP 2812-10 and CUP 2821-11 with the Conditions of Approval listed in PC Resolution 03-11 (See Attachment 2).

Approval of the Entire Application
If the PC approves the entire application as requested, the applicant would be allowed to expand the outdoor patio, make improvements to the building, and modify the Conditions of Approval.

Approval of a Portion of the Application
The PC may consider approving certain portions of the application. For example, if the PC denies the patio expansion and modification of the Conditions, the PC can still approve the changes to the exterior of the building itself. This is because The Tilted Kilt would be able to occupy the building regardless of a denial for the modification. Also, the PC is the final determining body for both the

CUP and DRC applications, so a complete denial determination would mean that they cannot make any of the exterior building changes either.

If the PC approves the expansion of the patio, the CUP must be modified to include the patio expansion. The existing approved CUP 2812-10 and CUP 2821-11 only cover the 774 SF patio.

If the existing CUPs are modified due to approval of the patio expansion or Conditions modification, staff suggests that the PC consider accepting the landowner's voluntary surrender of the existing CUP 2812-10 and CUP 2821-11.

ADVISORY BOARD RECOMMENDATION

The Design Review Committee recommended approval on July 18, 2012 by a vote of 5 to 0 regarding the modification to the exterior of the building and aesthetics of the expanded patio. They requested that the following changes be made to the plans:

1. To clarify that the trellis would not extend all the way over to the corner and to be corrected on elevation Sheet C3.2.
2. The post base shall be reconfigured to resist the bending moment.
3. Trim to be added around the roll-up window at the bar to match other existing windows on the northeast elevation.

These issues were addressed in the plans submitted to the PC for review (See Exhibit B).

Staff requests that Planning Commission take action on the requests. A resolution reflecting the Planning Commission's action will be provided at a later meeting.

ATTACHMENTS/EXHIBITS

Attachments to Report:

1. RESERVED for future Resolution
2. PC Resolution 03-11 for the existing CUP 2812-10 and CUP 2821-11
3. Existing Alcohol Licenses within 600 feet of the Site
4. Orange Police Department Memorandum (date stamped received August 1, 2012)
5. Proposed Menu and Inventory of Alcohol
6. Existing Site Photos
7. Alcohol Management Plan
8. DRC 4634-12 Staff Report
9. Vicinity Map

Exhibits

A. Legal Description
B. Existing & Proposed Site Plans, Floor Plan, Existing & Proposed Elevations, Existing & Proposed Roof Plans, Grading Plans, Irrigation Plan, and Planting and Lighting Plan (date stamped received June 23, 2012)

cc: Pacific Strategies
ATTN: Matt Cunningham
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File