Minutes

Planning Commission August 6, 2012
City of Orange Monday 7:00 p.m.

PRESENT: Commissioners Buttress, Cathcart, Gladson, Grangoff and Steiner
ABSENT: None

STAFF
PRESENT: Leslie Aranda Roseberry, Planning Manager
Robert Garcia, Associate Planner
Doris Nguyen, Associate Planner
Chad Ortlieb, Senior Planner
Gary Sheatz, Assistant City Attorney
Sandi Dimick, Recording Secretary

ADMINISTRATIVE SESSION

Chair Steiner opened the Administrative Session of the Planning Commission Meeting at 6:52 p.m. He stated they had a full agenda with one continued project.

Ms. Aranda Roseberry stated Agenda Item No. 3.4 was continued due to the applicant's request for a continuance. The item would require re-noticing and was continued to a date certain of August 20, 2012.

Chair Steiner asked if there was any policy or procedural information to discuss.

Ms. Aranda Roseberry stated the only item was in regards to the Administrative Session of the meeting, it had been agendized for the Commissioner's discussion.

Chair Steiner stated the Commissioners had previously discussed whether or not to continue to hold an Administrative Session prior to the regular session of the Planning Commission meeting. His concern was to maintain transparency; and if the administrative meetings would continue, to ensure that the public was aware that they were welcome to sit in on that portion of their meetings. He had discussed the issue with the Mayor; it would be left up to the Planning Commissioners to decide if the administrative portion of the meeting would continue. Chair Steiner stated in his experience with other boards that he had held a seat on, there had not been separate Administrative Sessions held. He appreciated that the Commissioners were brought in occasionally for study sessions or overviews on certain issues or projects. He wanted to understand how the other Commissioners felt regarding the Administrative Session.

Ms. Aranda Roseberry stated any policy or procedural information along with the review of the minutes could be rolled over into the regular session of the Planning Commission Meeting. Any additional information from Staff would also be provided and there would

not be any loss of information to the Commissioners.

Commissioner Buttress stated she would be o.k. with that.

Commissioner Gladson stated as a new member of the Planning Commission, she liked the Administrative Session of the meeting and felt it was beneficial in allowing her to frame up the night and allow her the opportunity to ask questions. It was a chance to allow her to get focused on the meeting. Her concern was what if the Commissioners would not arrive to the meeting on time and what impact would that have on the meeting.

Commissioner Cathcart stated he was fine with either having the Administrative Session or not having it.

Ms. Aranda Roseberry had a concern if they no longer held the Administrative Session and arrived to the meeting prior to 7:00 p.m. where would they gather?

Assistant City Attorney Gary Sheatz stated it would be worse if they gathered before hand, even informally, the appearance would not be good. It would be best if upon arriving at the Planning Commission Meeting, the Commissioners would go directly to the dais.

Chair Steiner stated it had been his practice if there was an agenda item that he had a question on or needed to gain clarification on a point, to directly call Staff to have a discussion with them prior to the meeting.

Commissioner Grangoff stated he felt it would not be important to maintain the Administrative Session of the meeting, however, if it was decided that the Administrative Session would continue to have a sign out front noting that the public was welcome to that portion of the Planning Commission meeting that would begin at 6:45 p.m., or to have a Staff member announce to the public present that the session was being held.

Chair Steiner stated the Administrative Session had been noted on the agenda. He was hearing from the Commissioners that for most of them it would be o.k. to discontinue holding an Administrative Session and to conduct all of their business on the dais beginning at 7:00 p.m.

Commissioner Gladson stated she was the only one that felt strongly that the Administrative Session should be maintained.

Chair Steiner asked if they should take a vote.

Mr. Sheatz stated they could do that informally, with a show of hands.

Chair Steiner asked the Commissioner if they wanted to eliminate or maintain the Administrative Session of the Planning Commission Meeting. He would vote to eliminate the session.

Commissioner Cathcart stated eliminate.

Commissioner Buttress stated eliminate.

Commissioner Grangoff stated eliminate.

Commissioner Gladson stated maintain.

Chair Steiner stated based on that input, the Planning Commission would no longer hold a separate Administrative Session.

Chair Steiner asked if there was any input or corrections for the minutes that were before them for approval. There was none.

There was no further discussion.

Administrative Session adjourned @ 7:00 p.m.

REGULAR SESSION:

Chair Steiner announced that the Commissioners had a discussion in regards to the continuation of the Administrative Session of the Planning Commission meeting and it had been decided that they shall have full transparency and the Planning Commission would begin their meetings at 7:00 p.m. on the dais with all of their business handled during the regular session of the Planning Commission meeting. He announced that agenda item No. 3.4 had been continued.

PUBLIC PARTICIPATION: None

Consent Calendar:

(1) APPROVAL OF MINUTES FROM THE REGULAR SCHEDULED MEETING OF JUNE 4, 2012.

Commissioner Buttress made a motion to approve the meeting minutes from the June 4, 2012 Planning Commission meeting.

SECOND: Commissioner Grangoff
AYES: Commissioners Buttress, Cathcart Gladson, and Grangoff
NOES: None
ABSTAIN: Commissioner Steiner

MOTION CARRIED

(2) APPROVAL OF MINUTES FROM THE REGULAR SCHEDULED MEETING OF JULY 2, 2012.

Commissioner Gladson made a motion to approve the meeting minutes from the July 2, 2012 Planning Commission meeting.

SECOND: Commissioner Buttress
AYES: Commissioners Buttress, Gladson, Grangoff and Steiner
NOES: None
ABSTAIN: Commissioner Cathcart

MOTION CARRIED

New Hearings:

(3) CONDITIONAL USE PERMIT NO. 2855-12 - WINGSTOP RESTAURANT –TUSKATELLA LLC

The applicant proposes to sell beer and wine under a California Department of Alcoholic Beverage Control Type 41 license in association with an approximately 2,400 square foot restaurant use.

LOCATION: 1541 E. Katella

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 only involves the licensing of alcohol sales and no new construction is proposed in association with the request.

RECOMMENDED ACTION:
Adopt Planning Commission Resolution No. 28-12 to allow an ABC Type 41 license for a proposed restaurant

Senior Planner, Chad Ortlieb presented a project overview consistent with the Staff Report.

Chair Steiner asked if there were any questions for Staff.

Commissioner Gladson stated she wanted a better understanding on the hours of operation and how a conclusion was reached in recommending times, how that was addressed from the Police Department's perspective, and how it related to some of the other applications that were before them. She wanted to understand why the condition was not included, she thought it stemmed from the Planning Commission, but she wanted to be reminded of why. She needed clarification.

Mr. Ortlieb stated as far as what the City was allowed to condition, the City was permitted to condition anything more so than the State. As far as the State was concerned, the Department of Alcohol and Beverage Control, that agency regulated the hours that alcohol could be sold. The City had the ability to be more stringent, the State could regulate the alcohol sales; however, the City could impose hours of operation for the business to have a business close earlier than 2:00 a.m. The City technically could ask a business owner to close at 10:00 p.m. or midnight. What currently existed were CUPs that were older and had no restriction on hours of operation, and there were some relatively newer CUPs where that condition had not been placed on a business; and the reason for that had been that Staff had not wanted to have several like businesses in one business center that had different hours imposed that would present an unfair playing field for some businesses.

Planning Manager, Leslie Aranda Roseberry stated generally the Police Department's recommended hours of operation were taken from the applicant's requested hours of operation from their application. Simply it was a reflection of the applicant's request and occasionally the Police Department might request a change in what those hours might be.

Chair Steiner asked if an applicant chose to request a change of hours at a later date would they need to go before the Planning Commission with that request.

Ms. Aranda Roseberry stated that was correct and another reason the limitation had not been added. It was within the Planning Commissioner's purview to add that.

Chair Steiner asked if any additional information had been received on the item. There was none.

Chair Steiner opened the item for Public Comment and invited the applicant to address the Commission.

Sherrie Olson, address on file, stated she had read the Conditions of Approval and concurred with them. She was available for any questions the Commissioners had.

Chair Steiner asked what was her preference to Item No. 5 and the Police Department's recommendation?

Ms. Olson stated she had spoken with the City's Police Department and they concurred with the hours that were recommended; they had no issue with that. They closed at midnight and had no issue with that.

Commissioner Buttress stated if the applicant wanted a change in hours it would require a request to the Planning Commission.

Ms. Olson stated she was aware of that. The application with the Department of Alcohol and Beverage Control also was only until midnight.

Chair Steiner brought the item back to the Commission for further discussion or action.

Commissioner Grangoff made a motion to adopt PC Resolution No. 28-12, CUP No. 2855-12-Wingstop Restaurant-Tuskatella LLC subject to the conditions contained in the Staff Report and noting the items categorical exemption from CEQA.

SECOND: Commissioner Buttress
AYES: Commissioners Buttress, Cathcart, Gladson, Grangoff and Steiner
NOES: None

MOTION CARRIED

(4) CONDITIONAL USE PERMIT NO. 2857-12 –VALIANT BREWING

The applicant proposes to operate a small beer manufacturer facility requiring a Type 23 (Small Beer Manufacturer) Alcoholic Beverage Control (ABC) license. In addition, the applicant is requesting an accessory tasting area of about 200 square feet for customers to sample and purchase the specialty beer.

LOCATION: 2294 North Batavia Street, Unit C

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. 31-12 to allow a Type Alcoholic Beverage Control License to operate a small beer manufacturer and to allow an accessory tasting area with limited hours.

Associate Planner, Robert Garcia presented a project overview consistent with the Staff Report.

Chair Steiner asked if there were any questions for Staff. There were none.

Chair Steiner asked if any additional information had been received. There was none.

Chair Steiner opened the item for Public Comment and invited the applicant to address the Commission.

Brian Shroepfer, address on file, stated he was owner, with his wife Kelly, of Valiant Brewing. They both graduated with degrees in engineering and begun their careers in the aerospace industry right out of college. He had been in the industry for about 11 years. His wife stayed at home to care for their children. The idea of having a family business had gone back for some time. There had been several attempts made to start a business and the only one that succeeded was Valiant Brewing Company. They had begun home brewing about 8 years ago. As an engineer he wanted to know the details and the science behind brewing and it was a perfect opportunity for his family. He had entered into competitions for home brewing and his product began to win awards and he decided at that point to become a beer judge and he received his certification about 4 years ago. He then began to fabricate his own home brewing equipment. The passion continued to grow and he and his wife began to analyze the possibility of opening a brewery. As they started to develop their business plan, he enrolled in school to gain his certification as a Brew Master through American's Brewers Guild. They were also members of the American Brewers Association of American and they frequently attended

seminars. He felt they had the ability to start a successful business and looked forward to the opportunity to stay in the area and watch their daughters grow up in a family environment.

Chair Steiner asked Mr. Shroepfer if he was in agreement with the Conditions of Approval.

Mr. Shroepfer stated yes.

Chair Steiner brought the item back to the Commission for further discussion or action.

Commissioner Buttress made a motion to adopt PC Resolution No. 31-12, approving CUP No. 2857-12 Valiant Brewing, subject to the conditions contained in the Staff Report and noting the items categorical exemption from CEQA.

SECOND: Commissioner Gladson
AYES: Commissioners Buttress, Cathcart, Gladson, Grangoff and Steiner
NOES: None

MOTION CARRIED

(5) CONDITIONAL USE PERMIT NO. 2870-12 AND DESIGN REVIEW COMMITTEE NO. 4634-12-TILTED KILT

The applicant proposes 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. They are also voluntarily surrendering CUP 2821-11 which permitted 12 amusement devices.

LOCATION: 1625 West Katella

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:
Review and take action by the Planning Commission. A Resolution will be provided for approval or denial at the next Planning Commission meeting.

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

Chair Steiner asked if there were any questions for Staff.

Planning Manager, Leslie Aranda Roseberry stated she had some additional information. It had been unusual for the Planning Commission to receive a packet from Staff without an actual recommendation from Staff. She wanted to clarify that information from the Police Department was always added, as that agency was reviewing the crime statistics and the history of the area, however, from a land use perspective and in what was being proposed, a restaurant that served alcohol, there had been a restaurant that served alcohol at the same location and the statement had been made that those types of uses made sense at the subject site. Staff was not prepared to recommend a denial of the project or an approval and that was a rare case on items brought before the Planning Commission. She believed, in the Staff Report, there were a number of options for consideration.

Chair Steiner asked what was the position from Staff that led them to not prepare a Resolution?

Ms. Aranda Roseberry stated there had not been a full recommendation. There had been a recommendation of denial from the Police Department for a number of crime related reasons. From a land use perspective, there had already been that entitlement at the subject site. In theory, if the applicant so chose to do, they could move in and begin

operating under the current entitlement if that fit their plan. If a resolution of denial had been brought forth and the Planning Commission determined they would approve the proposed project, that would require a return in two weeks with a resolution of approval. If the Planning Commission had determined a denial for the project, a resolution would have needed to be drafted and presented in two weeks. The Planning Commission was free to take action on the proposed project; a resolution would then be drafted based on the outcome of the Planning Commission's decision. The applicant had put together a resolution for consideration in their proposal.

Commissioner Gladson stated it was unusual to have a recommendation from the Police Department for denial which had been clearly communicated. She was hearing a kind of verbal recommendation on the land use aspect of the project. She asked if that was a fair statement.

Ms. Aranda Roseberry stated if the existing CUP had met the business plan of the applicant, they would not be before the Planning Commission. There were some modifications being requested and that would have gone to the DRC only if that had been the extent of the changes. The applicant was seeking a change in the operation of the site and that was what had brought them before the Planning Commission. The land use of a restaurant with alcohol had already been established.

Commissioner Buttress stated the DRC had already given their approval for the design changes to the building.

Ms. Aranda Roseberry stated that was correct.

Commissioner Cathcart stated he had a question for the Police Department. For the previous tenant at that site, Johnny Carino's, he asked if the Police Department had opposed that restaurant.

Orange Police Department's Lieutenant Burton stated as far as the Police Department's position on the Johnny Carino's application he was not certain if that had been approved or opposed by the Police Department and his best guess would be that they had not opposed that restaurant. The issue with the Tilted Kilt was that it was a significantly different business model and created significantly different issues for the Police Department.

Chair Steiner asked if there had been any additional information received on the proposal. He stated he had received one addition which was a letter from the management firm of the Stadium Promenade in support of the proposed project.

Chair Steiner opened the item for Public Comment and invited the applicant to address the Commission.

Matt Cunningham, address on file, presented a PowerPoint presentation on the item before them. He provided an additional handout for the Commissioners. He stated he

was representing the applicant and was with OC Restaurant Group. He thanked the Commissioners for hearing the item and stated he had communicated with the Commissioners by sending over a letter along with a draft Resolution for approval and a letter responding to the information contained in the memo from the Orange Police Department. They were both extensive letters and unless the Commissioners wanted, he would not go through those again. He would hit some highlights of the information. It had been mentioned that the background of the site was a former restaurant, Johnny Carino's, that operated at the site for approximately 2 years and the building had been vacant since 2008. Shakey's was approved by the Planning Commission in February of 2011, but that restaurant never opened and the site had been left in a fairly disastrous condition and the PowerPoint slides highlighted how much work would need to be done to bring the site back to an operational situation. He pointed out the various stages of disrepair at the site. There was a lot of work to be done and the reason for the request of approval on the draft Resolution before them and he understood that it was an unusual request. They had gone to great pains to model, as closely as possible, previous CUP's that had been approved by the Planning Commission. The findings in their draft were based on the findings for the Shakey's application and Staff had already mentioned it had been established that a restaurant serving alcohol was an established use at the site. The conditions mirrored the Buffalo Wild Wings, as it was a similar type of restaurant. The conditions that they were seeking approval on were for the patio expansion, hours of operation, happy hour and an admission fee for Pay Per View events for the purpose of helping the applicant defray the costs of those broadcasts. As part of that condition, it would be stipulated that patrons who chose not to view the Pay Per View broadcast would be accommodated in alternate seating.

Mr. Cunningham stated his group had met with the Police Department in April and had met with Sergeant Nichols and that had been a very positive meeting and they had come away with the view that the Police Department was amenable to their proposed project and they had been asked to submit draft language regarding the admission fee for the Pay Per View events. Subsequently, they met on July 5 and by that time Sgt. Nichols was no longer assigned to ABC duty and they had met with Sergeant Monjaraz and Lt. Burton and at that time the Police Department notified him that they would be opposing the hours of operation modification, happy hour and the request to expand the patio. The representatives for the Tilted Kilt respectfully disagreed with the opinions expressed by the Police Department and the proposed conditions from the Police Department would place the Tilted Kilt at a competitive disadvantage to other restaurants in the center. They disagreed with the Police Department's opinion that the patio expansion was unsecured and inhibited monitoring of patrons on the patio. The existing patio was 774 square feet and the proposal was for expansion to 1832 square feet with an indoor/outdoor bar with a large garage door sized window which would improve line of site monitoring of the patio by restaurant staff. The patio landscape would act as a buffer and would be more secure than what currently existed at the site. He presented various slides for comparison with other Stadium Promenade venues.

Mr. Cunningham stated on the issue of happy hour, all the other venues in the Stadium Promenade offered happy hour. There were conditions in their respective CUPs' that

prohibited 2 for 1 drink specials and that same condition was included in the Tilted Kilt's proposal; Condition No. 21. Denial of a happy hour would place the Tilted Kilt at a severe disadvantage. He presented slides of the other restaurant's happy hour advertisements. The draft resolution mirrors the findings for approval of the previous approval for the Shakey's venue, the conditions were nearly identical with the following changes to Condition No. 5, 21, 22, 23, and 25; with deletion of 24 and 34 and they were asking to combine Conditions No. 27 and 32; and to add the Police Department's Condition No. 21. It was an unusual request, however, based on the economic hardship even a 2 week delay would cause. By taking an action of approval and adopting the draft Resolution that was been presented, this would allow the applicant to open for business in November; a delay in a decision would delay them to opening in February based on a number of factors. Their request was to bring an exciting and successful proven use to a site that had been vacant for nearly 4 years and the property owners were in full support of the proposed project to renew vitality and attractiveness to the center. The restaurant would generate tax revenue and provide job opportunities and bring a good corporate citizen into the community of Orange.

Mike Ayaz, address on file, thanked the Commissioners, Staff and Police Department for their time and consideration. He stated it was unusual to prepare a Resolution, but the reasoning was that a 2 week delay would result in a delay of the restaurant's opening as the corporate offices for the Tilted Kilt were closed for the month of December and he would not be allowed to offer training to his staff. The proposed draft Resolution had been sent in advance to the Commissioners and the City Attorney's office as well for their review. He was a businessman and a lawyer by trade and all he wanted to do was be on a fair playing field. The Police Department's memo requested a change to the hours of operation; however, all the other businesses in the center were allowed to remain open and were not limited. Happy hour was another component of their business that everyone else was being able to hold and to be ostracized as the only restaurant not being able to offer happy hour would put him behind the eight ball even before his $2,000,000 investment began. He had members of his team present to explain what a delay would cost him in sales as well as to advise them of the training schedule.

On the patio, and if they had reviewed renderings of the patio, they had gone to great lengths to ensure a buffer area to address the concerns of the Police Department. There would be only one gate on the patio with an alarm for unauthorized entry. There would be a camera system installed over the gate and throughout the patio to ensure that Staff could monitor the patio area. He had a good plan and had the support of the center's landlord. It was a use that was growing and a corporate representative had mentioned that he had flown around the country and there were 35 locations operating successfully. He would clarify the Pay Per View events through one of his representatives and with regard to charging an admission fee, it was to defray his costs and control with attendance. He respectfully requested approval of the proposed project to allow him to begin the construction process and to allow him to start his business in the City of Orange.

Tony Loretti, address on file, stated he was an attorney in San Diego and he was part owner of 3 Tilted Kilt locations; one in Temecula, Echo Park and Mission Valley. He had gone through the same hearings with the City and everything had turned out fine. At his Mission Valley location, with a similar size patio that had been expanded, everything worked out well. With the Pay Per View, boxing matches and MMA were very popular with most young and some older patrons and the occupancy of the restaurant for the event had to be sent in to Direct TV who then charged them based on the number of seats at the location. It ran anywhere from $1,000 to $1,400. If someone wanted to watch with Pay Per View from their own home, it ran approximately $40.00 to 50.00, they broke even on their events and the charge was between $5.00 to $10.00 per person. It was good energy for patrons to watch the event together and then there were patrons who just wanted to eat or enjoy a drink. If patrons wanted only to eat, they would not be required to pay the admission fee. It worked out very well. His locations had happy hour and they had not seen an increase in intoxication. People came to save money and not drink more and they offered food specials along with alcohol service.

On the patio, he had a similar set up with the garage door type window and with the nice weather people enjoyed sitting outside at the indoor/outdoor bar and restaurant staff had greater visibility. Having a liquor license was crucial to a restaurant and he would not want to loose that, they were diligent to ensure there was not over intoxication or minors. As an owner he wanted to provide information for the Commissioners and was available for questions.

Commissioner Buttress asked if service on the patio would include waiters or waitresses that would bring drinks to and from tables?

Mr. Loretti stated it depended on how busy they were. Sometimes the bartender would come out, but typically it was a waiter or waitress that would take the order and deliver the drinks.

Commissioner Gladson asked what the square footage of the San Diego location was.

Mr. Loretti stated it was approximately 1600 square feet and Temecula was 2200 square feet.

John Horian, landscape architect, address on file, stated his firm had been involved with the design of the Lazy Dog landscape. Over the years Johnny Carino's sat idle. Now there was the opportunity with the Tilted Kilt and OC Restaurant Group hired his firm for the outdoor patio. One of the key things with regard to the patio was that there were 4 raised planters inside, the previous use had a patio that was 744 square feet and with the proposed project 1062 square feet would be added; with a deduction of the four planters and the gas fire pit, the addition of useable space was approximately 864 square feet. The same plant materials from across the street were picked up. They took the same image of the patio from the other side and put their own style into it, with a uniqueness that related to the Tilted Kilt. One thing unique about the Tilted Kilt was that on the entry road coming into the project, there was approximately 9' to 11' of separation to the sidewalk

and in the back 5', and in comparison to other restaurants, they had the most separation. There would be a landscape buffer and they would have a gate with an alarm, and there would only be one gate; it would be a safe and secure environment. There would be canopy landscaping to create a nice outdoor space.

Commissioner Cathcart asked Mr. Horian what the actual useable space differential would be from what existed to what was proposed?

Mr. Horian stated it would be 874 square feet. The original existing patio was 744 square feet.

Richard Berns, address on file, stated he was with Tilted Kilt franchise operations. He wanted to provide an overview of how their training occurred. During the month of December there was no training due to the Christmas holidays and basically to push the opening of the proposed Orange restaurant back, would push them into a January training date. They had asked of their franchisee that they have 4 weeks from the time construction was complete to opening. That time was used to complete hiring and training on site.

Commissioner Buttress asked if the Pay Per View events were mandatory?

Mr. Berns stated no, but most of the pubs would have that event, approximately 98% of the restaurants chose to do it, there were a few that chose not to, but it was highly recommended and typically it brought in an additional 35% in sales. The restaurants were typically maxed out for those events. Patrons sometimes came up to 2 hours before the event and stayed after the event ended and they made use of the pub for a longer period of time.

Commissioner Buttress asked if there had been any problems gaining approval from other cities?

Mr. Berns stated no, they had a very stringent training program on how to serve correctly and they had not been met with opposition. The Pay Per View ranged from a charge of $3.00 to $10.00, some of the pubs returned the fee against their bill as some municipalities would not allow them to charge. Most pubs charged for it to offset their costs.

Chair Steiner asked for the Police Department's input. Lt. Burton stated the Police Department opposed the use of a cover charge and there was no other establishment in the City, or history in the City, that had allowed the use of a cover charge. Buffalo Wild Wings had requested to use cover charges and the Police Department had opposed that, therefore, there was not a cover charge situation. To combine that with the expansion of the patio, which was a net expansion of 1062 square feet was not just a slight expansion it was more than doubling the current size of the patio. It created issues when there was a cover charge situation when patrons wanted to get in to see an event and the seating was

filled to capacity. People would have to be turned away. The patio would provide an opportunity for patrons to gain access by just stepping over the fence and creating a public safety issue for those in attendance. The patio buffer currently was quite large on the west side of the patio. Due to the existing patios depth, currently there was little exposure to the north and south side sidewalks. The proposed patio expansion brought the patio right up to the sidewalk and the idea that an open indoor/outdoor bar created a better view; with a lot of people on the patio and looking from a longer distance it would actually create an issue with the number of people coming in and out and over a longer distance it would be difficult to monitor the amount of alcohol patrons were consuming. There would be nothing that would prevent a patron from walking up to the bar and taking the drink out to the patio and taking it to another patron who had been over served. When alcohol was being served by waiters or waitresses, the amount of alcohol being consumed was easier to monitor. Those were some of the concerns with the patio and the design that was being proposed. They understood that the happy hour practice was in place with the other establishments at the Promenade, the last two CUP requests that came through the Police Department opposed, with the Planning Commission exercising its right to allow that to occur. The other businesses that existed there occurred back in 1997, 1998 and 1999 and at that time there was no opposition from the Police Department. Conditions over time had certainly changed. Additionally, despite what some might state, there were studies that indicated that the use of drink promotions such as happy hour increased consumption. The National Highway Safety Commission had completed a study in 2005 and in some cases the consumption of alcohol almost doubled when the use of happy hour or other drink specials were employed. The Police Department opposed that.

Lt. Burton stated in the rendering of the proposed project of the patio, and despite the claims that there was only one gate, the renderings showed one view with 2 gates and one with 3 gates. There was some discrepancy there. The gates would be alarmed, but what was concerning was that the fence was a low fence and a close access to the sidewalk and a far access from the building and would allow easy access for someone to cross over the fence without an alarm being set off. Buffalo Wild Wings was not being allowed to charge for special events for all the reasons that were explained and the Police Department felt that practice was not consistent with what had been done in the past. The OC Sports Bar was not allowed to charge for special events and they were not allowed a happy hour or drink specials. That business was more similar to the Tilted Kilt; the serving staff at the OC Sports Bar are dressed in very small shorts and low fitting tank tops with a sports theme which was the emphasis of their business and they were geared toward alcohol sales; much like the Tilted Kilt was.

Johnny Carino's was a traditional restaurant that focused on the service of food and had been more family oriented and had hours of operation that were more consistent with other restaurants in the center. The concern with the hours of operation, centered around the clientele that the Tilted Kilt would bring, the sports events would draw a younger crowd and predominantly male. That was evidenced by the costumes or the uniforms of their servers and that environment. That group was the group that created the most problems when combined with alcohol from the Police Department's perspective. It

would be far different from what Johnny Carino's had been. In regard to the hours of operation, studies had shown that the greatest impact for alcohol related crime occurred between 10:30 p.m. and 3:00 a.m. Currently with the other ABC establishments, and with the Downtown establishments the Police Department on a routine basis deployed all of their field resources to those areas at approximately 1:00 a.m. in preparation for the eventual 2:00 a.m. closing with the fights and things that occurred. Having the Tilted Kilt with hours of operations in line with the other establishments in the Stadium Promenade would cause the Police Department to split their resources for calls to services and responses to disturbances and fights; which they anticipated with a 2:00 a.m. closing.

The Tilted Kilt in Long Beach had hours of operation similar to what was being proposed by the Police Department and they had fewer problems at that location than they had in their Temecula location. In their research in a 1 year period for the Temecula location there were 7 aggravated assaults, which was quite high in comparing that to similar situations in Orange; there were also DUI arrests of 52 people in and around the restaurant location.

Lt. Burton indicated that Mr. Loretti had mentioned that there had been no problems with the Pay Per View at other locations, however, there were articles about the Chicago location that had significant problems. It was not to state that Mr. Ayaz would poorly manage his business, but they were gateway issues and once they allowed that to occur with the CUP the subsequent business would be allowed those privileges and may not be as responsible. They were gate keeping issues for the Police Department. The business model was much different than any of the other facilities in the Stadium Promenade. The Tilted Kilt focused on the service of alcohol and served food, their own website gave that impression very clearly. It was an environment where people were encouraged to drink and "get loose" as quoted from their website by their Vice President of marketing. It was a location where the Police Department expected some problems to occur. You Tube videos would provide information of what occurred at Tilted Kilt locations, not to state it would occur in Orange, but would they want to take that chance and there were all kinds of activities that were occurring that they would not want in their City. Restrictions were placed in their recommendation to the Planning Commission out of an over abundance of caution and for the health, safety and welfare of the citizens of Orange; that was their primary focus and a responsibility of the Police Department. The Planning Commission had a much broader view and other responsibilities to consider. Over the last few years the Police Department was consistent in their recommendations as demonstrated with Buffalo Wild Wings and OC Sports Bar and Grill.

Chair Steiner asked Lt. Burton if he had reviewed the alcohol management plan for the proposed project.

Lt. Burton stated he had and there were a few little issues; it was generally what would be written for most businesses. In the security plan, there were a few issues of when to contact the Police Department and how to handle the disposition of narcotics and those kinds of things; they would want a stricter response to those issues. All in all it was a

fairly consistent management plan.
Commissioner Grangoff asked if the proposal was approved with Conditions of Approval; if the applicant was found to violate those conditions what would be the next step.

Lt. Burton stated as with any CUP, there was a stipulation that on the anniversary of issuance they could go back to the Planning Commission for a modification or revocation of the CUP. Along the way various citations or arrests would be made with a record of all events.

Commissioner Cathcart asked if it was within the PC's purview to ask for a review after 6 months.

Ms. Aranda Roseberry stated certainly. There had been instances where the Planning Commission revoked a CUP and ultimately a CUP could be revoked through another hearing process and that would be the final step. Staff worked very hard with business owners, property owners and code enforcement to bring a business into compliance.

Commissioner Gladson asked Lt. Burton if he had checked out the Long Beach and Temecula locations, was there a sense in speaking with his colleagues in Long Beach and had he gained information on things that should be addressed?

Lt. Burton stated he had not had those discussions. One of the unique things about Long Beach was that they had a large number of ABC facilities and a policy of what types of things they would and would not respond to. Temecula's numbers were pretty straight forward.

Commissioner Gladson asked if it was fair to summarize the Police Department's objection in the context of attempting to prevent incidents through proposed conditions and to eliminate calls for service completely.

Lt. Burton stated they would want to eliminate calls for service, but that was not realistic. The Police Department positioned themselves from a standpoint of experience and what they had learned from other cities and similar businesses. The OC Sports Bar and Grill had, for a period of 2 years, 33 calls for service at their location and another 50 calls for service in a subsequent year. During that same period of time at Johnny Carino's there had been 6 calls for service and that showed a comparison between types of businesses.

Chair Steiner asked what was the Police Department's issue with the charging for Pay Per View?

Lt. Burton stated he believed there would be disgruntled patrons that could not get in and he knew, and he applauded Mr. Ayaz's attempt to control the number of people, but he felt that could be done without a cover charge. The problem it created was that with those types of events, a larger crowd would be drawn to the location. Tilted Kilt's website stated they were filled to capacity for those types of events. In their compromise

to not charge some patrons that would create other issues which would create calls for service.

Commissioner Grangoff asked if there was a maximum occupancy set for the business.

Lt. Burton stated yes, however, people could get in over the patio fence that would not be counted and the business might believe they were at capacity, but were in actuality not.

Commissioner Grangoff stated at that point, would it become the owner's responsibility to ensure he controlled that.

Commissioner Buttress stated she was curious as the crime statistics for the Tusketella project which they had just approved, that would also serve alcohol, showed 58% but the area of the proposed project showed 22% and the business at Tusketella was not opposed, but there was strong opposition to the Tilted Kilt. She understood there were several reasons and the Police Department was concerned with an increase in crime, but she had not understood how the Police Department could validate a business that was 58% over and one business that was at 22%.

Lt. Burton stated they not only looked at the crime percentage but at the type of business. Watson's was a good example and that establishment was in an area with high crime, but it was a much different establishment.

Commissioner Cathcart stated he was in a quandary with the proposal before them. It was stated that the business that had been previously at that location had failed, they were food distribution businesses that had not broken any rules or pushed the envelope. The program would need to be changed or face failure. When a new concept came along, why would they want to say no, as that would just lead to another failure. It seemed that they had not wanted anything done differently, which might lead to success, and were asking the applicant to stick to the old way that had been proven not to work. He was a law abiding citizen and he loved the Police Department, but he would not want to restrict someone from doing something different that would be successful. He would want to add a stipulation for a 6 month review of their CUP.

Commissioner Buttress stated Commissioner Cathcart had stated his opinion very well.

Chair Steiner asked if the applicant wanted to respond to the Police Department's comments.

Mr. Ayaz thanked the Police Department and appreciated their comments. He wanted to be on a level playing field for his business. He was a land use attorney and he understood what it meant to have rights. The right of property was one of the most valuable things that were taught the first day of law school. He just wanted the same rights as everyone else. If the Police Department was sincerely concerned about the cover charge and that was their major issue, he was willing to walk from that. He had not

wanted that battle with them. In their proposed plan, it would help their business and without it, be a detriment.

A patron would need to be Carl Lewis to jump over the 9' buffer and fence without anyone noticing. It was designed to be difficult to gain access and he was not naïve. He was a staunch business person and he would be living there, he understood not only that he was being regulated by the Conditions of Approval, but also by the Business & Professions Business Codes and by the ABC License that was an extra set of teeth. As part of their corporate model, there were companies that came to the site wired and with cameras on a bi-monthly basis to monitor the business. He was happy to work and abide by the Resolution before them and he asked for a recommendation. If the cover charge was a major hurdle for their consideration in making a recommendation of approval, he was willing to walk from that condition; and he needed all the other privileges to keep him on a level playing field and to justify his 2 million dollar investment. He was putting a $300,000 kitchen into the restaurant because he wanted to sell food. He was putting a lot into the site as it was a mess and he only had weeks to get it going.

Commissioner Buttress asked what type of plants would be along the fence area.

Mr. Ayaz stated they would be putting into 2'-3' tall shrubs and there would not only be grass that someone would walk over. He worked with ABC and he understood their requirements and he was taking every measure possible to avoid problems.

Commissioner Cathcart asked Mr. Horian to provide some landscape information?

Mr. Horian stated first of all he wanted to clarify that the patio only had 1 gate. One of the criteria that they were given was that they needed to match the landscape of Johnny Carino's and they had a mixture of plant material. The DRC had suggested grasses and those types of treatments. There was never any idea from the get go for a barrier. The idea was to obscure the fence and that was the reason for the cable fencing to allow the landscape to be seen.

Commissioner Gladson stated she felt the Police Department's major objection was with the applicant's business plan and she had reviewed the website. She gathered that there were concerns with the clientele and it appeared that it would be a male draw for the facility and that group seemed more prone to crime issues. She had a concern of how that would be managed, as the other facilities in Orange that had been approved had solid management, and she was sensing that the Police Department had not had a sense of comfort that it could be achieved. She appreciated the Police Department's feedback.

Mr. Ayaz stated with the website, they were in the business of marketing and if they reviewed competitor's websites, such a Buffalo Wild Wings, it was a beer tap being poured into a giant glass with the slogan "live by the sauce", it was a marketing campaign. In speaking of management, he was a practicing attorney and he was taking a leave from that to run the business. He was very familiar with running a restaurant. His family owned Renata's across the street for a number of years, they owned Giovanni's in

Fullerton for a number of years, New York Pizza and others. On top of that, there would be 5 weeks of training for managers in Arizona. It was paid training to go through the corporate brand training and upon their return, there was an additional training session of 4 weeks. There was an extensive training packet.

Mr. Loretti stated in regard to the demographics, they had completed a study and their actual demographic was a 36.7 year old male, and 68% were male patrons and 32% female. The average income was $100,000.00 and they were not going after younger males, but the businessman who had American Express, who was traveling, who was staying at a hotel and needed a place to get food, have a drink and watch sports. They were a sports bar. They showed Pay Per View for MMA and that was 22 days per year. The restaurant was a Scottish, Irish, English pub, a restaurant that served alcohol. Across all of their pubs as a whole, there were no locations that were strictly bars. The demographic was me.

Commissioner Gladson stated it was probably not her.

Mr. Loretti stated it was a rich environment with little competition.

Commissioner Gladson stated she was a huge sports fan.

Mr. Burns stated the pub had 35 TVs for viewing sports.

Karen Clemens, address on file, stated she had not planned on speaking but some of the things she had heard she could talk about from experience. She had been to the Auld Irisher and there was a fence that was really little and she could step over it and it was not in plain view of the bar and they managed that very well. She had been there on St. Patrick's Day when everyone wanted in and that was just not going to happen. There were not only young people there. She was Scotch Irish and she liked going to those types of restaurants for the food, for the music, the ambiance and the sports. She was over 50.

Chair Steiner stated the Police Department had provided their most professional advice based on their review. Police Departments were realistic and they understood that the Planning Commission could provide for more latitude on happy hour and hours of operation. They wanted business owners to have a competitive edge and as Mr. Ayaz was speaking of a level playing field, it was not a level playing field for the applicant to get everything. He closed the Public Hearing.

Commissioner Grangoff asked the Assistant City Attorney if the Planning Commission had the ability to approve the resolution as brought forth by the applicant.

Assistant City Attorney, Gary Sheatz, stated it was permissible. The most important thing was that the findings could be met. Omissions and additions could be made, as long as the findings were met.

Commissioner Grangoff stated he was prepared to make a motion to approve the resolution presented by the applicant and he would add the condition as presented by Commissioner Cathcart as mentioned earlier, that the applicant would come back in 6 months. He would put that motion before them.

Chair Steiner asked for a second?

Commissioner Cathcart stated he would second the motion to continue the discussion.

Commissioner Gladson stated she felt it was worth talking about the issues as CUPs for alcohol were critical. They were a critical use and typically had not posed land use issues if they were well executed. When they went sideways, and through her experience it was those locations that had poor management at the site. When she first had received the Staff Report, she was surprised with the recommendation for denial by the Police Department and in reviewing the findings for the CUP, the Planning Commission could find with the Police Department based on the information that had been presented. She felt there were grounds for a denial. She thought it should be difficult for them to approve a proposal that had been recommended for denial by the Police Department and they had brought to mind those areas of concern. She was troubled with the cover charge and the issue with a crowd that could be drawn to those events. She had been denied entry at a Buffalo Wild Wings because she had not wanted to pay a cover charge, there had not been an option to sit at their patio; it was at a location outside of Orange. She was not in opposition to happy hour and it was a nice asset to a restaurant. In the future, if that was becoming a real issue for the Police Department, she would want to hear more about that. She had not had a problem with the hours of operation. There would be challenges at the proposed restaurant, because a lot of people were not responsible and she could not prevent that when it came to alcohol. She agreed with Commissioner Cathcart's idea about a review in 6 months and she would even propose to limit the hours to midnight and provide a later closure if all went well. On the conservative side of things, they could bring the business before them in no time with conditions 1, 2, and 3 and all the other conditions would be gravy for them. If there were issues they could be looked at. She could support the motion that was presented.

Commissioner Buttress stated if the maker of the motion would remove Condition No. 27 which had allowed the Pay Per View and she would want to keep Condition No. 35 which stated Pay Per View sporting broadcasts were not considered special promotional events.

Commissioner Grangoff stated he would be willing to do that.

Commissioner Gladson stated for a special event she would think that some notification to the Police Department would be required.

Commissioner Buttress stated she would not want to require that and respectfully disagreed with Commissioner Gladson. If the Pay Per View admission would be dropped, it would be as if there was just a TV on and if it was done 22 times a year, it

would not need to be reported. It would be an inconvenience for the business owner. She would prefer to keep the resolution without a restriction on hours of operation.

Chair Steiner stated he wanted to ensure that the conditions would be revised and those were 5, 21, 22, 23, 24, and 27 would be deleted.

Mr. Sheatz stated in deleting Condition No. 27, would it be acceptable to replace that with the standard condition that stated at no time shall there be a fee for entrance/admittance into the premises.

Chair Steiner stated he would agree to that.

Ms. Aranda Roseberry stated part of the condition that was proposed to be removed also talked about security on site during a Pay Per View event.

Commissioner Gladson stated she would propose to include it, to keep that in.

Commissioner Grangoff stated as the maker of the motion he would delete that requirement as well, the applicant would not be able to charge for the Pay Per View and he would not want to condition more costs for the applicant. The consensus was to remove Condition No. 27 in its entirety.

Commissioner Buttress stated and to replace that with the information provided by Mr. Sheatz.

Commissioner Cathcart stated he wanted to make it clear that if the applicant truly wanted the restaurant to be a success, he would manage the 36 year olds with testosterone flowing through their veins and to keep them in line; otherwise the Police Department would show up and explain he was in violation of what had been stated before them.

Chair Steiner stated the Police Department's report indicated that there were an additional 41 conditions and was that consistent with what the applicant had proposed?

Ms. Aranda Roseberry stated there were a few differences; one being that there should not be any self seating and all seating shall be by a host or hostess and there was another one regarding live entertainment. The question was whether or not they should add Condition No. 23 regarding seating of patrons?

Chair Steiner asked if there was any reason the Police Department would oppose the removal of Condition No. 23.

Lt. Burton stated they would prefer that the condition remain.

Chair Steiner asked if the Police Department was pleased with the removal of the admittance fee.

Lt. Burton stated he was pleased.
Commissioner Grangoff would support leaving that condition out of the Resolution.

Chair Steiner asked if they would have a Resolution that looked like a Resolution and would the applicant need to wait 2 more weeks?

Ms. Aranda Roseberry stated she wanted to go through all the conditions to ensure that they were in agreement and that they had included everything. There was a condition for no live entertainment and she asked if they wanted that in or out?

The Commissioners agreed to leave the condition in.

Ms. Aranda Roseberry stated they wanted to ensure in the title to add DRC No. 4634-12 for exterior improvements.

Commissioner Grangoff and Cathcart agreed to add that to the motion.

Ms. Aranda Roseberry stated and to add along with CUP 2870-12, the DRC number.

Commissioner Grangoff and Cathcart agreed.

Ms. Aranda Roseberry stated further in the resolution there should be a whereas added, add the addition of DRC findings included in the DRC Staff Report and those could be brought over from the Design Review Committee's notes. There were also a handful of standard conditions that were added such as all work shall be constructed as per plans.

Commissioner Grangoff and Cathcart agreed to those additions.

Ms. Aranda Roseberry stated on Section No. 2 of Page No. 3 there was the finding of convenience and necessity and in their on going discussions with ABC they had indicated that such a finding was not required for restaurants, it was not necessary and could be stricken.

Commissioner Grangoff and Cathcart agreed to strike.

Ms. Aranda Roseberry stated there were no changes to Condition No. 1, 2 and 3, Condition No. 4 to be changed to 6 months from the date of opening; Condition No. 5 to be stricken; Condition No. 27 shall be stricken and replaced with condition as presented by Mr. Sheatz. According to her notes there were no other changes.

Commissioner Buttress asked where would "no live entertainment" be added.

Ms. Aranda Roseberry stated at the end for numbering purposes; and they would add to the end the DRC's conditions that pertained to the design. Staff would make the changes and that would be brought forth in the hot file to Chair Steiner. In the interest of time, the Resolution could be emailed to him for his review.

Commissioner Buttress stated the project could be approved and the applicant could get started.

Mr. Sheatz stated the date of approval would be August 6, 2012.

Chair Steiner stated he wanted to ensure that they were allowing happy hour and that there would be no 2 for 1 drink specials.

Ms. Aranda Roseberry stated that was the standard language.

Chair Steiner asked for a vote.

Commissioner Grangoff made a motion to approve CUP No. 2870-12 and DRC No. 4634-12-Tilted Kilt subject to the revised conditions included in the Resolution and noting the item is categorical exemption from CEQA.

SECOND: Commissioner Cathcart
AYES: Commissioners Buttress, Cathcart, Gladson, Grangoff and Steiner
NOES: None

MOTION CARRIED

(6) CONDITIONAL USE PERMIT NO. 2859-12-FORSDICK RESIDENCE

The applicant proposes to add a 22 SF bathroom with plumbing facilities (toilet, sink and shower) within an existing detached 286 square foot accessory structure used as a recreation/pool room

LOCATION: 2294 North Batavia

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 is to construct a 22 square foot bathroom with a toilet, sink and shower within an existing 286 square foot accessory structure.

RECOMMENDED ACTION:
Adopt Planning Commission Resolution 30-12 approving the construction of a toilet, sink and shower within a 286 square foot detached accessory structure upon property zoned R-1-8.

The item was continued due to a request by the applicant.

Commissioner Gladson made a motion to continue CUP No. 2859-12-Forsdick Residence to a date certain of August 20, 2012.

SECOND: Commissioner Buttress
AYES: Commissioners Buttress, Cathcart, Gladson, Grangoff and Steiner
NOES: None

MOTION CARRIED

(7) CONDITIONAL USE PERMIT NO. 2862-12-OC MARTIAL ARTS

The applicant proposes martial arts and fitness classes for children and adults in a commercial center. A Conditional Use Permit is required for the school use.

LOCATION: 3126 East Chapman

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 includes no expansion of the existing building.

RECOMMENDED ACTION:
Adopt Planning Resolution 29-12 approving the allowance of a martial arts and fitness school.

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

Chair Steiner asked if there were any questions for Staff. There was none.

Chair Steiner opened the item for Public Comment and invited the applicant to address the Commission.

Kris Whittington, address on file, stated he had been a martial arts instructor in Orange County for the past 12 years, he had trained in martial arts for 28 years and he had been ranked in the top 10 nationally in Taekwondo and he wanted to teach kids in the area.

Chair Steiner brought the item back to the Commission for further discussion or action.

Commissioner Buttress made a motion to adopt PC Resolution No. 29-12, CUP No. 2862-12-OC Martial Arts, subject to the conditions contained in the Staff Report and noting the items categorical exemption from CEQA.

SECOND: Commissioner Cathcart
AYES: Commissioners Buttress, Cathcart, Gladson, Grangoff and Steiner
NOES: None

MOTION CARRIED

(8) ADJOURNMENT:

Commissioner Buttress made a motion for adjournment to the next regular scheduled meeting of the Planning Commission on Monday, August 20, 2012.

SECOND: Commissioner Gladson
AYES: Commissioners Buttress, Cathcart, Gladson, Grangoff and Steiner
NOES: None

MOTION CARRIED

Meeting Adjourned @ 9:10 p.m.