Minutes

Planning Commission January 7, 2013
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
Gary Sheatz, Assistant City Attorney
Sandi Dimick, Recording Secretary

REGULAR SESSION:

Chair Steiner called the meeting to order at 7:00 p.m.

Roll Call

All Commissioners present.

PUBLIC PARTICIPATION:

None

PLANNING MANAGER REPORT:

Planning Manager, Leslie Aranda Roseberry, stated there was nothing additional to report.

Chair Steiner provided an overview of the City's appeal process.

Consent Calendar:

(1) APPROVAL OF MINUTES FROM THE REGULAR SCHEDULED MEETING OF DECEMBER 17, 2012.

Commissioner Gladson made a motion to approve the meeting minutes from the December 17, 2012 Planning Commission meeting as written

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

MOTION CARRIED

New Hearings:

(2) CONDITIONAL USE PERMIT NO. 2872-12 – MARISQUERIA & TAQUERIA MEXICO

The applicant proposes to sell beer and wine under a California Department of Alcoholic Beverage Control Type 41 (On-Sale Beer and Wine for a Bona Fide Public Eating Place) license in association with an existing 1,984 SF restaurant.

LOCATION: 4509 E Chapman

NOTE: The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) 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.

RECOMMENDED ACTION:
Adopt Planning Commission Resolution 02-13 approving the allowance of an ABC Type 41 license for an existing restaurant.

Planning Manager, Leslie Aranda Roseberry, provided a project overview consistent with the Staff Report.

Chair Steiner opened the item for any questions for Staff.

Commissioner Gladson asked for a crime summary from the Police Department's representative from 2006 to the present application date for the census track.

City of Orange Police Department Representative, Sergeant Fred Lopez, stated in Orange crime was tracked per reporting districts and crimes per reporting districts in 2011 were 77 per district for the entire City of Orange. Reporting district 54E, which was where the subject site was located, was one of the lowest in the City of Orange and currently they reported 40 crimes for the year 2011 which was 48% below the average. He took it one step further, because the restaurant was surrounded by some County of Orange pockets, he pulled some crime stats from the Orange County Sheriff's that patrol that area; keeping in mind how they document things was a bit different. Currently for 2011 the Orange County Sheriff's Department had an additional 15 part one crimes, which included homicides, there were no aggravated assaults, which would be any injury that would require a hospital visit even for stitches, burglary, larceny and stolen vehicles were also included in part 1 crimes and those were the crimes they tracked in considering CUP's. That number added an additional 19% increase in crime, but still below the City's average, 29% below the average of any of the reporting districts in the City.

Commissioner Gladson stated the applicant had a prior application in 2006 and she asked for statistics for that time frame.

Sgt. Lopez stated he had not had the crime stats for 2006, as the requirement in considerations for CUP's was to go back one year prior to the year that the application was being requested. A couple of things he could state about the business was that in the past year, the Orange Police Department had responded to 2 calls for service at that business and they were both false alarm calls; which was not unusual and was a very common call for service in the City, due to malfunctioning alarms or employees who were not familiar with operating the alarm system. Some things to consider and he had gone over the entire CUP, often times when owners were looking to increase or add alcohol they were also looking to add an entertainment permit, looking to have parties or rent the facility out, looking to remain open extended hours, but that was not the case with the particular business before them. The business was asking for hours to remain open until 11:00 p.m. Many of the alcohol related crimes that occurred in the City of Orange occurred well after that time, generally closer to bar closing hours and certainly not at 11:00 p.m. Another thing that was unique about the business was that they were not looking for bands or D.J.'s and was agreeing not to have those types of things. They could apply for a one time permit for a wedding reception, but for day to day business they were not asking for any of those things and it was an established business where there had not been any problems. The business was looking to add beer and wine to enhance their business and sales as well. The Orange Police Department could find no reason to oppose the permit based on the factors as stated.

Chair Steiner opened the item for public comment and invited the applicant to address the Commission.

Dick Evitt, address on file, stated he was a real estate broker and specialized in selling liquor licenses throughout the Inland Empire. His clients had gone through all the Conditions of Approval and they agreed and had no objections on the conditions that had been set by the City and the Police Department. The applicants were a young couple trying to help out their business.

Chair Steiner stated there were 44 Conditions of Approval and asked if they agreed to all of them?

Mr. Evitt stated they had read through all of them and he believed that there was a question on one, but basically they had read through all of them and they had no objections to any of them.

Chair Steiner asked how long had the business owners been in business at that location?

Mr. Evitt stated almost 8 years.

Chair Steiner asked if there were any questions for the applicant's representative. There were none. He invited public speakers to address the Commission.

Max Amaro, address on file, stated he lived in the Modena area where the restaurant was located. He was present to ask that the CUP not be approved. The reason was that he did not want people drinking and driving, there was another restaurant close to the other restaurant and he saw people coming in and eating and drinking. They had a lot of illegals and there was trash everywhere and there was not another place that needed drinking. There was a store, an Albertsons, a liquor store and a 7 Eleven store and he did not think they need another place for drinking. They did not need another permit for people to go and drink again. He lived there, he was a tax payer and a citizen and he had not thought it was right to have another place to drink. There were already a lot of problems and the City did not know because his area was County. He had to call the sheriff's department because of people blocking his driveway, blocking the street, and a lot of illegals there. There was a school pretty close and it was not o.k. to have another place for people to come and drink. Mr. Amaro stated the applicants wanted their restaurant to be more profitable and they needed to fix it or make better food. Sometimes he went to the other restaurants where the food was good and he had not thought that they needed alcohol to have a better business. He was very opposed to it.

Chair Steiner asked Mr. Amaro if he had been opposed to the CUP in 2006.

Mr. Amaro stated they urinated outside and around there was a lot of graffiti and gangs and he saw the Police Department there all of the time.

Jeanette Palacio, address on file, stated she was a home owner and she had opposed the permit in 2006. Sergeant Lopez was correct, El Modena had jumped leaps and bounds and they referred to themselves as county folks there. The restaurant submitting the permit was directly across the street, they were their neighbors, and they were not talking about other parts of Orange where there was a business area and then a residential area; her home was directly across the street. Since 2006, El Modena had come a long way because of groups like hers, which was the El Modena in Action Community. They knew they had to police themselves. Statistics may show that there was less crime in El Modena and she understood every business needed their start and the opportunity to do the best with their business, but the business had been there for 7 years and they had not been selling liquor in all that time. The restaurant had weathered a recession and that said a lot for them. The community and they asked as fellow citizens, although they were county folks, that the community had not needed another liquor license in that area. Maybe the statistics showed that crime was not as heavy, but it had taken citizen's groups and the Sheriffs Department to get a hold on El Modena and they refused to let it go down again. The restaurant had been in business and had been doing well, through a recession and they were still in business and they wished them the best. She thanked the Commissioners.

Chris Feliujan, address on file, stated she liked to deal with the reality and the facts and what the statistics showed. The important thing to look at was what were they doing to their community that was starting to improve and was doing better. According to the American Journal of Public Health in adding an additional outlet for alcohol there would be an increase of crime in the city of 3.4 assaults per year. According to the Journal of

Public Health Policy the single most important reason for environmental factors explaining why violent crimes were hirer was due to alcohol outlets. The Journal on Studies of Alcohol had completed a comparison for every 100 alcohol outlets and if one more was added in Orange the crash level would be increased by 9.27 crashes and vehicular problems. The Journal of Criminology indicated the risk of murder taking place on that block would increase 5% and adding one bar would result in an increase of 3.38 crimes and violent crimes of all types would be an increase of 17.6%. It was also noted under the temporary economic policy, October 1996, whenever there were a lot of alcohol outlets around high schools and junior high schools there was a lot of under age drinking. There was a high school and two junior high schools in the area. It also became a problem with the quiet enjoyment of property; it would become noisy and people would be rude and there were enough problems with people not being so polite in walking down the street where the restaurant was located. Her mother had problems, she was 77 years old and she had not needed those problems and it was annoying. The Department of Justice stated alcohol abuse was a factor in 44% of violent crimes committed in the United States. 35% of victimization involved people who had been drinking. In about 2/3 of violent crimes they were described as simple assaults. The victims might not wind up in the hospital, but she had not wanted to be grabbed or attacked as she was walking down the street. If they had not believed the Government, there was a very conservative group that found 60% of alcohol costs were not related to alcoholics, they were related to social drinkers that got out of control and stuff happened. It accounted for 185 billion dollars per year in societal costs; those costs were related to loss of productivity, absenteeism, diabetes complications, some cancers, unprotected sex leading to pregnancy and fights. Half of the trauma patients in the ER were related to alcohol. Who would bear the cost; the City or County of Orange? Although the Police Department gave statistics for the immediate area it was not as if a person would crash their car in the first block, it might occur miles away or on the freeway. She would hope that the Planning Commission would oppose the request before them. Statistics were not on their side.

David Cortez, address on file, stated that he opposed the application because it would not improve the community. It would exclude children, there were a lot of children that lived in El Modena and it would open the door for people who wanted to drink. People would be drinking; when people should be having breakfast with good nutrition, orange juice, and pancakes. The restaurant used to open at 10:00 a.m. Mr. Cortez presented a map and stated the restaurant was on the border of the County line and one block south of Chapman and other off site locations was located within a mile of the restaurant in their community. There were the other markets.

Chair Steiner stated the applicant was not requesting an off sale license, they were requesting an on sale license.

Mr. Cortez stated there was an abundance of on sale and the numbers that he had gotten from the last submittal was not correct because 3 they got from the county and were not in the City; it was something to think about. Some of the locations were just 2 to 3 blocks from each other. The day laborers would hang around there sometimes and the

police came by and it would give them another chance for a hang out at 7:00 a.m. Most of the time when he went by the restaurant the owner was not there and most of the time there was just one person there. On Monday there was just 1 person there. The restaurant was in close proximity to the El Modena Center, a preschool and the church. Everything was close. He opposed the application and it would not benefit the City. It would exclude the children and the children needed things to do and that was his main point. It was a good place and was succeeding without alcohol.

Tuyet Mai Ho, address on file, stated she had a 17 year old daughter and if the restaurant would sell beer and wine it would bring strangers into the community. There were enough problems and trouble in the community and with a new alcohol license it would create a problem. As the El Modena community children walked to school, walk to church or the library; and those were really good places for the community for their children – the new generation and she would want children raised with a good value for the community and raised with their family, for the community and with good results for society. She opposed the application.

Chair Steiner invited Mr. Evitt to present any comments with regard to the public speakers.

Mr. Evitt stated most of the speakers had good causes, but what they were speaking to was off sale beer and wine licenses. The CUP before them had conditions that there would be no signs for beer or wine advertisement and it would not be visible that beer and wine would be offered at the restaurant. He referred to Condition No. 32. As far as the schools, Conditions No. 39 and 40 specifically stated that no child under 18 years of age shall be allowed, at any time, to sit in the restaurant at any time without the supervision of a parent. The hours being from 8:00 a.m. to 3:00 p.m. that unaccompanied students would not be allowed in the restaurant, unless accompanied by an adult. He had just celebrated his 78th birthday last week and he had gone to a Mexican restaurant and had cocktails with his dinner and what was wrong with having a cocktail, beer or wine with a meal. The applicant was asking for that situation. Customers of the restaurant had been asking for beer and wine. There was no graffiti at the restaurant or trash or any of the things at their shopping center; things that had been brought up by the speakers. He was not a heavy drinker, but liked to have a drink once in a while. He was asking the Planning Commission to consider the application and the Police Department had not considered the area as a high crime area. It was in the scope for the City to allow the license and he was asking a consideration of the information as presented and to approve the request. He thanked the Commissioners.

Commissioner Gladson stated a Type 41 license was a particular number and she asked what would that entail if a patron walked into a facility and sat down to order just a beer?

Mr. Evitt stated with a Type 41, the condition specified that alcohol only service was not allowed. A patron must order food. The beer or wine would be served with food only. It was specifically stated in the Conditions of Approval.

Ms. Feliujan stated she found it important that the applicant had stated just alcohol in general; the statistics that she had quoted were for outlets such as restaurants and bars and places where people ate and drank. She wanted to clarify that. They needed to have a real understanding of the type of restaurant they were talking about. The restaurant had a glass counter at the front and a few simplistic tables and essentially looked like a Del Taco. Basically the restaurant was asking to grant a beer and wine license to a Del Taco; and maybe Del Taco would now want to serve beer and wine. There was a Del Taco down the street and it was a little bit nicer. There were other fast food locations around the area and not dissimilar in appearance. The restaurant was not a fancy sit down restaurant; it was a totally different atmosphere. Maybe the area was not high crime currently, but putting beer and wine in a fast food restaurant they might wind up with a high crime area.

Chair Steiner closed the meeting to public comment and brought the item back to the Commission for further discussion or action.

Commissioner Grangoff made a motion to adopt PC Resolution No. 02-13, approving CUP No. 2872-12-Marisqueria & Taquieria Mexico, subject to the conditions contained in the Staff Report, and noting the item was categorically exempt from CEQA.

Commissioner Grangoff stated he made the motion not falling to deaf ears to the public's concerns, but with a lot of confidence in the Police Department's recommendation. Often times the Police Department came to the Commission with conditions that he found very restrictive. The Police Department was stating that the application before them would not endanger the public and it was imperative for the business to remain competitive in the area.

Commissioner Gladson stated she would second the motion and further add in terms of their discussion that the key land use for the equation was that the location before them was a restaurant and it was a bone-fide eating establishment that would primarily offer food as the main draw. The ancillary part of it was that if a patron was of age, legally 21, an adult beverage could be ordered to go with a meal and enjoy that. As Commissioner Grangoff had stated so wonderfully there were a number of strong Conditions of Approval attached to the CUP that should provide a sense of confidence to the neighbors that if issues arose, there would be an annual review that would go through the Planning Director and the Chief of Police to ensure everything remained on the up and up. If there was a problem or if the community found problems that could be communicated with the City's Staff and there were grounds for revocation of the permit. The fact that the license was for a restaurant she was comfortable with that. A bar would be a totally separate issue and the crime statistics would show a different picture. It was legal to drink in the United States of America and they were all supposed to be responsible with that. If someone became inebriated and had not acted appropriately there were nice men in uniforms to take the citizens away. She could support the CUP.

Commissioner Cathcart stated he understood the neighbors concerns and they were relevant, but the facts presented would not disallow the applicant a beer and wine on site license.

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

MOTION CARRIED

(3) CONDITIONAL USE PERMIT NO. 2880-12 - TELACU

The applicant is proposing an administrative office in excess of the 25% allowed in an industrial zone. The office area would be 3,428 SF, which is 53% of the tenant building space.

LOCATION: 604 E Eckhoff

NOTE: The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines Section 15301 (Class 1 – Existing Facility) because the project is for the interior improvement of an existing structure.

RECOMMENDED ACTION:
Adopt Planning Commission Resolution 03-13 for an administrative office in excess of the 25% allowed in an industrial zone.

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

Chair Steiner opened the item for any questions for Staff. There was none. He stated that the application would be phased in and there were 3 phases to the project.

Chair Steiner invited the applicant to address the Commission.

John Clem, address on file, stated his firm had purchase the building and they were excited to be part of the community of Orange. He completely agreed with Staff's recommendations.

Chair Steiner closed the public hearing and brought the item back to the Commission for further discussion or action.

Commissioner Buttress made a motion to adopt PC No. 03-13, approving CUP No. 2880-12-Telacu, 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

(4) ADJOURNMENT

Commissioner Buttress made a motion for adjournment to the next regular scheduled meeting of the Planning Commission on Monday, January 21, 2013.

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

MOTION CARRIED

Meeting Adjourned @ 7:39 p.m.