Minutes

Planning Commission
City of Orange

October 7 2013
Monday 7:00 p.m.

PRESENT: Commissioners Buttress, Correa and Gladson
ABSENT: Commissioner Steiner

STAFF PRESENT: Leslie Aranda Roseberry, Planning Manager
Robert Garcia, Associate Planner
Anne Fox, Contract Planner
Wayne Winthers, City Attorney
Katie Ong, Recording Secretary

REGULAR SESSION

1. OPENING:

Commissioner Buttress called the meeting to order at 7:00 p.m.

FLAG SALUTE:

Commissioner Correa led the flag salute.

ROLL CALL:

All Commissioners present except for Commissioner Steiner

PUBLIC PARTICIPATION: None

CONTINUED OR WITHDRAWN ITEMS: None

PLANNING MANAGER REPORT:

Planning Manager Roseberry stated there was nothing additional to report.

APPEAL ANNOUNCEMENT:

Commissioner Buttress reviewed the appeal process.

2. COMMISSION BUSINESS:

2.1 DESIGN REVIEW COMMITTEE NO. 4672-13 – ROXSTROM RESIDENCE

The applicant is proposing an addition to an existing non-contributing one-story unit for a total of 1,293 SF, and to construct a new attached 1,238 SF one-story second unit. The proposal will also require demolition of a one car garage and construction of a new 433 SF garage. The existing and new overall development will consist of 2,531 SF of living space and parking for five cars on the 7,920 SF lot. The project requires Planning Commission approval based on the Design Standards for Old Towne Orange, which include review of additional units when an existing structure is retained in place and doesn't have a significant adverse impact upon the surrounding area.

LOCATION: 215 N. Clark (Old Towne Historic District)

NOTE: The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines Section 15303 (Class 3 – New Construction or Conversion of Small Structures).

RECOMMENDED ACTION:

Adopt Planning Commission Resolution 36-13 to allow an addition to an existing non-contributing one-story unit for SF one-story second unit.

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

Commissioner Correa had a question in regards to the DRC report that had some members concerned with the landing, open spaces and that it was under-utilized and was wondering why. Mr. Garcia mentioned that those concerns were from previous meetings including: that there was more hardscape than landscape; the second unit didn't have an entry porch area and it opened up onto the parking spaces next to it; and there were some areas that were not used properly. Therefore the architect revised the plans to address the concerns.

Commissioner Correa mentioned that under the fourth paragraph of the Advisory Board of Recommendations of the Design Committee, it mentioned that the second unit had been modified and the two sliding doors no longer open up to the common space area. Commissioner Correa referenced page A1.11, the right side at Unit B, there is still sliding doors. Mr. Garcia stated that the original plan shows the sliding door opened up

into a common open space area, which is to be used by both units. The revised plan now shows the sliding door opening into the private open space for the second unit.

Commissioner Correa also mentioned that the carport of Unit A shows a 10'-0" wide space with a water heater which is 2'-0", it will leave the carport to be 8'-0" wide. Commissioner Correa would like to get clarification on that issue. Commissioner Gladson mentioned the note D6 on the plan. Mr. Garcia will review and make sure it doesn't get in the way of the carport and meets all requirements.

Commissioner Correa also recalls the plan does not indicate the location of the air conditioning units. Mr. Garcia stated that he will check with the designer of record.

Commissioner Gladson mentioned that there is a block in the National Historic District on Clark that has all 9 non-contributing structures. There are structures on Batavia, Palm and Maple that aren't contributing to the District; this gives us something that the DRC wrestles with in regards to the structure not being 60, 70 or 100 years old like Old Towne, but a 50's structure. Is this where we can apply the standards to this new realm? Planning Manager Roseberry stated that the standard for this area goes toward a non-contributor, not contributing to the district, even if they have their own charm for being a post war style. Therefore, the design still needs to be compatible and within an integrated design theme, which DRC approved.

Tony Roxstrom, address on file, is the owner of the house and is present to answer any questions. He stated that he is planning to keep this property for a long time and is now more involved with the project. He wants to make sure that the project fits with the whole district and would like to address all the concerns the City may have.

Commissioner Correa stated that all the windows are being changed from aluminum to plastic; will this be done to the original house also? He wants to know why the owner is doing this. Mr. Roxstrom stated that he wanted to keep the noise from the neighbor and to reduce energy bill. This will be done to the new and existing house.

Commissioner Correa would like to know about where the air conditioning units will be located. Mr. Roxstrom asked the architect of record to answer the question. Commissioner Buttress stated that there will be two condensers for the two units and Commissioner Gladson asked if it could be located in the attic. The Architect of Record stated that the air condition units will be located at the rear left side of the backyard, 2' away from the property line.

Commissioner Correa would like to know the water heater pad in the carport. The Architect of Record stated that the water heater will be removed per plan.

Commissioner Correa motioned to accept the addition to an existing non-contributing one –story unit, and to construct a new attached one-story second unit.

SECOND: Commissioner Gladson
AYES: Commissioners Buttress, Correa, and Gladson
NOES: None
ABSTAIN: None
ABSENT: Commissioner Steiner

MOTION CARRIED

3. NEW HEARINGS:

3.1 CONDITIONAL USE PERMIT NO. 2914-13 – WAYS & MEANS RESTAURANT

The applicant is requesting to open a new restaurant with an Alcoholic Beverage Control Type 47 (On-Sale General – Eating Place) License in order to sell beer, wine, and distilled spirits with food.

LOCATION: 513 E. Chapman Avenue (Old Towne District)

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).

RECOMMENDED ACTION:

Adopt Planning Commission Resolution 34-13 approving an ABC Type 47 (On-Sale Genera- Eating Place) License.

Contract Planner, Anne Fox presented a project overview consistent with the Staff Report.

Commissioner Correa asked if there is a specific time that the kitchen will be in full/partial operational? When referring to the menu, will it be a full menu with complete meals and not just finger food at a certain time? Ms. Fox mentioned that one of the Conditions of Approval states that a full menu be available at all times that alcohol is served.

Commissioner Gladson asked if the time of operation is consistent with the other restaurants? Since the restaurant is adjacent to residential properties, are there concerns that the hours will impact the residents? Ms. Fox addressed that residents within the 300' radius have been notified and no residents raised a concern.

Bill Cathcart, address on file, agreed that the applicant will comply with any City concerns. He wanted to mention that all of the Conditions of Approval have been addressed and that the owners are here to answer any questions.

Jennifer and Parnell Delchan indicated they were available to answer any questions.

Commissioner Correa wanted to address his two concerns, item number 18 and 19 of the Conditions of Approval. For Item 18, he wanted alcohol to always be sold with complete meals and not partial. For item 19, there will always be a complete menu and not modified, that it be consistent throughout the whole evening. Mrs. Delchan stated that

there will be an 'a la carte' menu as well as a reduced menu, but the full menu will be served at all times. Mr. Delchan said that there will be a pre-fix menu for the early and late comers. Commissioner Correa asked what time will the pre-fix menu be provided. Mr. Delchan is offering a pre-fix menu for the late comers at around 10 pm at a lower price. The late comers can have the pre-fix menu and can still order a la carte at a reduced price. Commissioner Correa would like to know what kind of food is on the pre-fix menu. Mr. Delchan stated that it will be a three course menu for the price of $22, which is fine with Commissioner Correa (he doesn't want to see finger food being served). Mr. Delchan said that the chef has relocated his entire family here and wants to impress the customers with quality food and not finger food. Commissioner Correa wants to know what time the pre-fix will be served. The pre-fix menu will be from 10-11 pm (targeted towards the grad students) and closed by 12 midnight. Commissioner Correa wants to know what percentage of the kitchen will be cut during this pre-fix time; Mr. Delchan indicated 20% will be cut.

Commissioner Gladson wants to know if this will be in competition with The Hobbit in regards to the pre-fix menu. Mr. Delchan mentioned that this is a high end restaurant, but the restaurant welcomes students and residents. Commissioner Correa questioned what time the pre-fix will start and the owner mentioned 9 or 10 pm, which will gear towards their customer time of arrival.

Commissioner Gladson addressed many concerns that Commissioners may have on the question of a restaurant functioning as a bar, but feels comfortable with the eating provision that the ABC has placed on this license. Therefore, Commissioner Gladson doesn't feel that more notes need to be added to items 18 and 19 of the Conditions of Approval as Commissioner Correa suggested.

Commissioner Buttress asked if there were any members of the audience that wanted to speak on this item. There were none and Commissioner Buttress closed the public hearing.

Commissioner Gladson motioned for approval of the ABC Type 47 License for a new restaurant noting the project is categorically exempt from CEQA .

SECOND: Commissioner Correa
AYES: Commissioners Buttress, Correa, and Gladson
NOES: None
ABSTAIN: None
ABSENT: Commissioner Steiner

MOTION CARRIED

3.2 CONDITIONAL USE PERMIT NO. 2910-13 – PROVISIONS MARKET RESTAURANT

The applicant is requesting to modify an existing Alcoholic Beverage Control (ABC) Type 20 (Off-Sale Beer & Wine – Package Store) and Type 42 (On-Sale Beer and Wine – Public Premises) license to an ABC Type 41 (On-Sale Beer and Wine – Eating Place) License to have on-site consumption of beer and wine with food.

LOCATION: 141-143 N Glassell (Plaza Historic District)

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).

RECOMMENDED ACTION:

Adopt Planning Commission Resolution 33-13 approving an ABC Type 41 (On-Sale Beer and Wine-Eating Place) License

Contract Planner, Anne Fox presented a project overview consistent with the Staff Report.

Commissioner Correa is really concerned with the hours of operation from 6:00 AM to 2:00 AM, asking for a Type 41, but it is more like a Type 48. He would also like to know the menu that will be provided.

Commissioner Gladson is also concerned with the hours of operation and asked Ms. Fox what are the hours of the other surrounding restaurants.

Both Commissioners Gladson and Correa stated they are primarily concerned with the hours in which the restaurant wants to serve alcohol.

Ms. Fox redirected the question to City Attorney Winthers in regards to the hours of operation with the serving of alcohol.

City Attorney Winthers stated that legally we cannot require conditions that limit the hours of alcohol which ABC does; however, the applicant can agree to what they have agreed to. Therefore, it is up to the applicant as to what they want to do with the hours of operation.

Commissioner Buttress opened the public hearing. Ms. Fox stated there was no opposition to the project.

The applicants, Alkech 'Ace' Patel, Wil Dee, and Greg Daniels are here to speak on behalf of the project. Mr. Dee stated they are making it better going from License Type 41 to 48, where License Type 42 is not a full liquor license but provides a tasting license. With License Type 41, they are expanding the food menu to include sandwiches, cheese, meat and salad, which they are offering all of these items in a restaurant. They expanded the bar area in order to provide a tasting area for their customers. A patio has also been added for a place where a family can be seated to have dinner.

Commissioner Correa wanted clarifications that the menu has been expanded. What percentage of kitchen will be in operation? Will it be modified at a certain time of the evening? If a family comes into the restaurant at 1:45 AM, will a full dinner be provided to them? What time will the kitchen be closed? Mr. Dee stated the last call for food will also be the last call for alcohol. There will be a breakfast component like coffee that will be provided throughout the day for customers. The food that they provide will be the same from open to close throughout the day.

Commissioner Correa wants to know what is their rationale to have the restaurant open until 2:00 AM? Mr. Dee stated that there is a market for beer and wine, along with the coffee component; therefore, they realized that the business is there and want to provide what the people in the city will want.

Commissioner Correa is not concerned with the type of license that they are requesting, but the hours of operation is more of his concern. Commissioner Correa wants to know if the applicants are ok with putting in the Conditions of Approval that the consumption of alcohol will cease at the last call for a meal as well. Mr. Dee said that he will be okay with that condition. He stated that there would be no problem since ABC requires that the serving of alcohol cease at the time that food is stops being served.

Commissioner Gladson wants to know if they are aware of the time other restaurants in the neighborhood are open. Mr. Dee stated that Haven opened late, but has recently changed their license type to 48.

Commissioner Buttress asked the applicants if they have read all of the Conditions of Approval and are in agreement with them. Mr. Dee mentioned that he has concerns on a couple of items and wishes to discuss them at this time.

Mr. Patel mentioned that he wanted to discuss Items 18 and 20. At this moment, there is a bar where customers order their food and drinks. Once the food is ordered, a server will bring the food to their table.

Mr. Patel mentioned that in Condition 18, it states that they would have to seat the customers at a table and provide them with a waitress or waiter. They currently don't do

that because they have enough members of their staff roaming the retail area of the restaurant answering questions and helping people decide what they would like to purchase. Changing to a table seating service would almost double the amount of staff they would need.

Mr. Dee stated that it is not the same if the customer wants to drink it on the premises; there is a corkage fee.

Commissioner Correa stated that a customer coming into their establishment and a purchasing a beer or wine without sitting down at a table is not considered a restaurant to him.

Mr. Daniels stated that the customers do eventually get seated at a table, but they are not seated by a hostess and handed a menu. The restaurant is more interactive with the staff and customers.

Mr. Dee mentioned that the customer gets a number when they purchase the item and one of the restaurant staff brings the opened bottle to them at the table. He mentioned that the customer cannot open it themselves and there is no staff on the floor that can open it for them.

Mr. Patel stated that it is a hybrid system between a waiter/waitress and coming up and ordering. The customer comes to the counter and places an order and the staff delivers that order to the table.

Commissioner Gladson stated that how Mr. Patel described the service of food and drink is exactly how it is stated in Condition 18.

Mr. Dee mentioned that with Condition 20, there shall be no bar or lounge area. He stated that the tasting area where it is set up has a countertop and people would consider that a bar top, but that area is where people would order from. The condition states that's where customers can get their product direct for consumption, but that's not the case; there are no bar stools.

Commissioner Correa is still concerned with the 2:00 AM hour. He states that if they would change it to 12:00 AM, he would not have a problem. The business has a responsibility to the community itself and in relationship to the location of Chapman University, we already know that stats show that young adults do consume quite a bit of alcohol. That's the concern - the relationship of the restaurant to that of the university.

Mr. Dee mentioned that they would definitely work with the Commission on concession of hours. He stated that they could see a midnight closing on all days but Friday and Saturday.

Commissioner Correa stated that on Friday and Saturday you would like to close at 2:00AM.

Mr. Dee stated they would like to have the ability to close at 2:00 AM. If the business allows for it, they would like to close at 2:00 AM and then would adjust from there.

Mr. Daniels stated that he would like the Commission to take into consideration that they are a different concept than most businesses that are open until 2:00. They are very different than The District, O'Hara's or Paul's.

Mr. Dee mentioned that in the past 5 years, it has been a great equally factor to be able to deal with the elements we don't want in our restaurant.

Mr. Patel mentioned that there are a lot of late night eaters. They don't just come into the restaurant to drink, they come in to eat.

Commissioner Correa stated that he would accept their concession to open from 6:00AM-12:00 AM on Sunday through Thursday and from 6:00 AM to 2:00 AM on Friday and Saturday.

Mr. Dee mentioned that they have three more conditions they would like to discuss. Condition 27 talks about the patio shall be enclosed and gates located; basically an emergency exit only. The parking for the space is in the back. There is no walkway that goes from the parking lot to the front; you have to walk all the way around and it becomes a very different situation. We would ask that that condition be modified so that it can be used as an entrance and exit.

Commissioner Buttress stated to allow them to use the gate as an entrance and an exit.

Mr. Patel mentioned that they would like to be able to use the patio gate as an entry and exit point.

Sergeant Monjarez stated that he doesn't have a concern with making it an entry point, but he does have a concern with using it as an exit point in that persons drinking on the patio where employees have additional surveillance where they can see and monitor the activity and see who is going out to their vehicles especially if they are going to be operating until 2:00 AM.

Commissioner Buttress stated that was a good point and asked the applicants if they have a way to resolve that because she knows that they would like to have an entrance and an exit.

Mr. Dee mentioned that the entrance/exit is staffed at all times and the patio is monitored constantly because it is a good chunk of the seating capacity of the restaurant.

Commissioner Buttress asked if they would have someone out there up to 2:00 AM.

Mr. Dee stated yes they would. Staff is out on the patio collecting dishes from 1:30 AM on and monitoring the gate exit so currently we have already addressed these issues with our normal practices.

Commission Buttress asked if they have electronic surveillance. Mr. Dee stated yes they do. Commission Buttress asked if it was in the patio area and Mr. Dee stated yes it is.

Commissioner Gladson asked Ms. Roseberry if that gate is just for safety in leaving the patio in case of an emergency..

Ms. Roseberry said it is very likely that it is because otherwise you only have one exit from the building.

Commissioner Correa stated that he agrees with the Police Department that he has no problem with the entry, but does have a problem with the exit. He believes that they are going to be too busy and try to do their own policing.

Mr. Daniels stated that for the elderly woman who is coming in from the parking lot out back to get two pounds of cheese and then having to walk around the building to get back to her car. Mr. Daniels stated that he has an 85 year old woman that he ordered a whole wheel of cheese for and that would be very difficult for her to walk around the building to get to her car. What he is saying is that it is considered an exit because of where the entry is. Since the entry is off of Glassell, more people are using the back entrance.

Commissioner Correa stated that he doesn't really think that's going to be a problem because people park there as it is to go to Glassell to do other shopping. If you have an elderly lady, you can escort her out, but he really agrees with the PD that the exit is not going to be as policed at the level that we expect.

Commissioner Gladson stated they would discuss other issues as soon as they finished discussing the conditions. Maybe the Police Department was thinking that they would require a sign stating that they could not take open alcoholic beverages outside of the patio which is already a requirement from ABC.

Mr. Daniels stated that if anyone is intending to drink and drive they are going to walk out either the front door or the back door. It's a matter of responsible beverage service which we take a part in and making sure that we monitor the customer's alcohol consumption.

Commissioner Correa stated that what we are trying to do here is not so much the driving under the influence but containing it within your premises.

Mr. Dee stated that all you can do is have the proper signage posted and to completely monitor the best we can.

Commissioner Correa mentioned that he really has reservations on that and cannot yield on that.

Mr. Dee stated that Condition 28 states that patrons on the patio will be seated by a host or hostess only; no self seating permitted. As discussed earlier with regards to the concept and the number system where people can order and the item will be dropped off to them at a seat with the number.

Commissioner Buttress stated that she understood what they were talking about and wanted to know if anyone from the Police Department had any discussion about that.

Commissioner Gladson asked how do you control the back patio?

Mr. Dee stated that if you read the condition just past that, it states that there is always an employee stationed out on the patio to monitor the alcohol.

Commissioner Correa asked if that was their sole purpose to monitor the patio?

Mr. Daniels stated that they multiple employees are bussing tables and monitoring how many drinks are being consumed and whether people are over 21 who are drinking.

Commissioner Correa states that what you need because you may have a brief moment when your eyes lapse and the person walks out.

Mr. Dee states that you can't watch everybody 100% of the time.

Commissioner Correa stated that it isn't realistic but at the same time we can control it by a person coming in and out from the rear entrance.

Commissioner Buttress stated that she was a little confused because they can't get any alcohol unless they go up to the front and order it because if they don't have a number on their table, they aren't going to get whatever it is they ordered.

Commissioner Correa stated that once they have their alcohol on the table and their number taken, the employees are tending to other customers as well as other responsibilities, they're not going to be that focused especially when they're very, very busy and what's going to stop a person from saying I can just walk right out and they right out the gate.

Commissioner Buttress reiterated that Commissioner Correa's concern was that they take their drink and walk out the gate.

Commissioner Correa stated yes.

Mr. Patel stated that they have been dealing with that situation at Haven but it is in the front of the restaurant.

Sergeant Monjarez stated that the challenge is at the Haven Gastropub there is natural surveillance from the inside of the business to the outside patio area. The concern with the Provisions Market is the patio to the rear is somewhat secluded and there is no natural surveillance from the inside to that patio area and that creates concern for the Police Department.

Mr. Patel asked what if we install a small closed circuit screen at the counter where we can always monitor the patio that would give us one more level of surveillance. Mr. Dee pointed that if there is a lapse of someone going from the patio to the counter and passing back over or checking out onto it, there would still be eyes.

Commissioner Correa stated that by the time you get to the patio area, that person is out and gone.

Commissioner Buttress asked if they were serving these in plastic containers. Mr. Patel answered no, they are glass that look like wine glasses.

Commissioner Gladson asked if the applicants had more conditions they were concerned with.

The applicants stated there was just one more condition they were concerned about.

Commissioner Gladson stated that it is a little concerning that these conditions were being brought up at the public hearing for them to resolve. She stated that she gets the nuances of what they are trying to achieve, but it is a little bit last minute to try to get to it and make sure that we're giving all the fairness that we need on both sides. We clearly want to be fair to you and be safe for the community because that's where we get the balance.

Commissioner Buttress asked what was their other condition of concern.

Mr. Patel answered on Page 4 of 9 right above the word "Section 2 – Environmental Review."

Commissioner Buttress reads "other conditions have been placed on the project to reduce crime inducing activities on managing the food to alcohol service ratio and manner of alcohol dispensing and prohibiting of offsite sales of alcohol."

Mr. Dee mentioned that that line basically stops us from doing part of our business.

Commissioner Gladson stated that the findings need to be cleaned up by Ms. Fox.

Mr. Daniels stated that they were under the impression that this was the next stop if they were unresolved in what was being presented to us, Condition #21 "there shall be no happy hours when alcoholic beverages are offered at a reduced rate." All of our

competition that surrounds us offers alcohol at a reduced rate. It puts us in a position that we are unable to compete on any level and we're already priced out of the market offering items that are more expensive than everybody else and we're not allowed to discount in anyway.

Sergeant Monjarez stated that the Orange Police Department has consistently opposed "happy hour." Anytime you provide more alcoholic beverages at a discounted price, you're going to increase the consumption and that is going to create concern for the Orange Police Department. One of our pillars is reducing crime and we feel that "happy hour" is counter to that.

Commissioner Gladson stated that in previous reviews the Commissioners wondered if it would be comfortable if it was the restriction for a late "happy hour", i.e. after 9 or 10 PM, that early "happy hour", i.e., 5-7 PM football time is a little less objectionable or it is across the board.

Sergeant Monjarez stated that they have consistently, across the board, opposed "happy hour."

Commissioner Gladson stated that they've wrestled with this a couple of times and have some disagreement with Commissioner Correa.

Mr. Dee mentioned that the only reason he brought it up was there is a place across the street and next door that run a "happy hour" consistently.

Commissioner Buttress stated that they were well aware.

Mr. Dee thanked the Planning Commissioners for their time.

Commissioner Buttress asked if there was anyone else who wanted to speak on the project. There were none. She closed the public hearing.

Commissioner Gladson asked if Ms. Fox could give some clarification on hours in the immediate area and then we can talk about some of these condition requests and language changes.

Ms. Fox stated as it relates to hours, I'm afraid that as a Staff we did not review every one of those alcohol licenses. What we tried to analyze was the overconcentration and perhaps in a given area and so our survey doesn't necessarily delve into that. I can modify the condition as agreed upon by the Commission and the applicants to change the closing time from 2:00 AM to 12:00 AM on Sunday-Thursday and leaving the closing time of 2:00 AM on Friday and Saturday.

Commissioner Buttress mentioned that she was curious about Condition #20 where it mentions that there will be no bar or lounge area upon the licensed premises maintained for purpose of sale, service or consumption of alcoholic beverages directly to patrons for

consumption. She stated that she believes they clarified that enough and asked the applicants if they were alright with that and that they understand exactly what they are saying and that they said the only reason it looks kind of like a bar is because that's where they come and make their selection.

Ms. Fox stated that she would describe it more as a counter than a bar.

Commissioner Buttress stated that she didn't want a police officer to go in and try to close them down.

Ms. Fox stated that the applicants were already in compliance with their conditions, they were just looking for clarification.

Commissioner Buttress stated that it is actually served by a waitress but the selection is made at the counter.

Ms. Fox stated yes, someone is taking it to the table.

Commissioner Buttress stated that Condition #18 can stay as it is because they've made that clarification.

Commission Buttress stated that regarding the gate, they are okay with the self-seating because the patrons are not taking the alcohol with them to their seat, the alcohol is actually served to them at their table.

Ms. Fox stated that it sounds the way they operate is in compliance with the condition as far as the Police Department and Staff are concerned.

Commissioner Buttress stated that she wanted to be sure that everyone was on the same page.

Commissioner Gladson asked what if they change the word "seated" to "served", reading "patrons on the patio shall be served by a hostess or a host with no self-service permitted".

Ms. Fox stated that one of the concerns with modifying that to some degree language wise is that I believe we are all in understanding that the CUP runs with the land and if the operator changes the operation, it is always a consideration.

Commissioner Buttress asked the applicants that as long as you're okay with that interpretation, we're okay with that interpretation and we'll leave it like it is.

The applicants agree.

Commissioner Buttress then states in Condition #27, she would like Ms. Fox to change the sentence under that condition. Ms. Fox states that she believes that they need to strike

the very last sentence under the Findings. She states that if you just end the sentence where it says "alcohol dispensing" period that should resolve it.

Ms. Fox stated that the supporting evidence that supports that finding is still there.

Commissioner Buttress states that the most controversial of the conditions is the patio shall be enclosed and any gates located on the patio shall remain closed during business hours and used as an emergency exit only. Signs shall be posted on all patio gates indicating emergency exit only.

Commissioner Gladson stated that she thinks that the last sentence should be struck because I'm not a building official and a code person. I don't think we can restrict somebody from leaving that area because it's a normal required exit for the space.

Commissioner Correa asks if the Commissioners think that other businesses and restaurants have rear doors that say "for emergency only."

Commissioner Gladson stated that she thinks that would not be a public assembly area such as the patio or a restaurant like this. This emergency exit area would be alarmed. If you hit the crash bar and the exit bar, an alarm went off. I just think that barrier can't be there. I would be more inclined to strike it.

Commissioner Buttress stated that she agrees with Commissioner Gladson

Commissioner Gladson stated that jumping to Conditions 28 and 29 even though the applicant isn't happy, we would have to leave them as written even though I see them being very challenging to execute, I think that would give them a little protection the Police Department would like that they're not getting with the exit door.

Commissioner Buttress asked Mr. Winthers if he has any comment.

Mr. Winthers states as far as the exit goes, whatever you decide about use of the patio is one thing but the exiting itself, I don't believe, building requirements wouldn't require that exit to be opened at all times. I think what's requires that there is an ability to exit in case of emergency and it doesn't mean you have to have entrances and exits from both sides during regular business hours; it just has to be kept open and available for emergencies. I don't believe there is anything in the Building Code that requires that to be open for business at any time; it can't be blocked, it can't be chained.

Commissioner Buttress states it has to be an exit for emergency purposes you have to be able to go through it but it doesn't have to be alarmed.

Mr. Winthers states that he believes for an "emergency" it might have to be alarmed because that alerts someone that there is an emergency in case something occurred to create an emergency. I do think it's alarmed when it is an emergency exit. It can just be

a regular entrance and exit into the building if that's what's so desired, but I don't think it's required to be.

Commissioner Buttress stated that she's inclined to agree with the applicant in that knowing the parking area; I would rather exit out the back directly to my car at 1:00 in the morning instead of walking around the building by myself as a single older woman. I would not be as comfortable and I know that's not what the Police Department would like to hear me say, but it is true. If I were in there and you told me no you can't go out through that gate, it might well be the last time I came into the establishment just because it would not feel as safe to me as it would if I could just go out and get into my car. I do understand why we want to be cautious out there, but if you can give us some sort of guarantee that you're going to do the best you can to keep an eye on that gate because unlike your Haven on South Glassell where you have those glass windows and you can look out at your patio, you really don't have that on that particular area so you do need to do it and I don't think having the monitor would hurt, I think that's probably a good idea and maybe even some type of noise that the gate makes when somebody goes in and out. Not something that disturbs everybody, I'm just saying to call people's attention to your monitor that you know that people are going in and out of the gate.

Mr. Winthers stated that if there is an issue regarding alcohol leaving the premises, the applicant risks their license if that happens to be a problem; both their CUP and their alcohol license so PD will be monitoring it, like they should be, if that ends up being a problem and reports come in about that, that's something we can go for revocation both here and they'll also be an ABC concern and I'm sure they're well aware of that.

Commissioner Buttress stated that one of the things that we could do is change the 1 year follow-up time to six months to be sure that the situation with the gate is working well.

Commissioner Gladson mentioned that Condition #4 states for a one year review.

Commissioner Buttress states not for all time, but for the first year change it to six months to make everyone feel more assured that this has been well monitored.

Mr. Winthers stated that the first review would be in six months and then 1 year thereafter.

Commissioner Gladson stated what about the condition on "happy hour."

Commissioner Buttress stated she would strike that and allow them to have it.

Commissioner Correa stated that he thinks it should be left in because "happy hours" are a little more troublesome with problems with the PD. If they were going to function as a restaurant, this is leaning more into a bar atmosphere and it is a family restaurant so I have my reservations on that and think that we should keep it.

Commissioner Buttress stated that she totally respects that concern but she believes that restaurants have a right to compete with other businesses and this is what's down there right now.

Commissioner Gladson stated that the ones that are there right now have been there for a good long time and we didn't have this condition imposed on new conditional use permits.

Commissioner Buttress stated that this condition has always been a struggle because when you put businesses in, you don't want to put up road blocks if you can avoid it. I don't think you can be overly free with happy hours. I would like to see you monitor that closely, but I do think you have the right to compete. She stated that she believes Citrus City Grill has had a happy hour and even the newer restaurants have had happy hours at an early time and not for a long period of time.

Commissioner Gladson stated that she thinks when Provisions first got their Type 42 license, their current CUP probably has a "no happy hour" clause.

Ms. Fox stated that she hasn't been at the City for about 4 years, but 9 years ago when she first came to the City, that condition has been around for a long time.

Commissioner Gladson stated that she is fine with the downgrade, but her bigger issue is that it is a downgrade and a change of class to a less problematic alcohol license. We struggled with Provisions because they did come back before when they expanded for the tasting and remodeling the restaurant and going to a full Type 41 and being a bona fide eating restaurant. Having also the package service is actually a benefit and it gets a lot more tighter control of the operation. The addition of the coffee is also a real asset because it puts the non-alcohol drinker would enjoy the business more for that reason than for the adult beverages. The bottom line is that we want to arm our Police Department with tools to prevent crime, but we blend and we balance the two and that's the real challenge and in terms of me making the recommendation to approve this, we're going to have to go through all the conditions of approval and see where we stand because there are a couple I can agree with and change and modify.

Conditions 4, 5 & 6 are really the heavy lifting of the resolution. They give the City and the applicant's awareness. We can bring you before this body if there is a problem in a flash. If we find that there is excessive alcoholic gross sales and excessive calls for service, we have enough grounds to bring you before the body to revoke the conditional use permit. We just like putting more parameters in the resolution to give you more guidelines as to how you operate so if there's an issue, we can deal with it ahead of time so you don't have to come back to us. My comments on the changes in conditions are not meant to be harsh, it's just nice to have all that stuff worked out before you come to the Planning Commission. You should sit down with the Police Department and Staff because we're not the technical experts like they are and we rely on them to deal with these little issues. Frankly if this had been an application that I was really concerned with, it would be grounds for me to say lets continue this item; let the applicant go work

out all these things and then come back to it when it is all ready and we'll take it up again, but I don't want to necessarily put you on delay so in terms of my thinking on it, I will make a motion.

Ms. Fox stated that she would summarize what she has taken notes on.

Commissioner Gladson stated sure.

Commissioner Gladson made a motion to approve Planning Commission Resolution 33-13 entitled the Resolution of the Planning Commission approving Conditional Use Permit No. 2910-13 to allow an Alcoholic Beverage Control Type 41 (On-Sale Beer & Wine – Eating Place) License and accept the voluntary surrender of CUP 0259-06 and 2539-05 at 141-143 N Glassell Street and make the appropriate environmental findings pursuant to CEQA of an exemption for Class 1 and will also clean up the finding as part of the draft resolution deleting the last sentence on Page 4 of 9 at the end of that first paragraph the words "and prohibiting off site sales of alcohol" and then changing Condition 4 to add wording "shall be reviewed at six months and then in one year thereafter." Condition 12 will state the hours will be Sunday through Thursday 6:00 AM to 12:00 AM and on Friday and Saturday, 6:00 AM to 2:00 AM. Conditions 18 & 20 will be left alone and Condition 21 regarding "happy hours" will be deleted. Condition 27 delete last sentence "signs shall be posted on all patio gates indicating emergency exit only."

Ms. Fox stated that she wanted to add on the sentence prior to that the patio shall be enclosed and that any gates located on the patio shall remain closed during business hours and available as an emergency exit.

Commissioner Gladson stated that Conditions 28 and 29 were to be left as written.

Commissioner Correa asked if the gate was only going to remain as an emergency exit?

Ms. Fox stated no it would allow to ingress and egress and would be available as an emergency exit only to clarify that in the event of an emergency you should be able to exit.

Commissioner Correa stated that regarding the "happy hour", granted police can monitor, but the purpose of the Commission is to make sure that they don't have to come back and that their conditions are in compliance and carried out and so I really have a concern about the "happy hour" being struck from the resolution.

Commissioner Gladson stated that she appreciates that and understands what he is wrestling with. If this was place that was not a bona fide restaurant where the meal and the food was part of it, specifically for this license type, I would be in agreement with you on it and not having a happy hour option, because that's really where you are coming to solely drink and not eat too much and that is where I have been typically comfortable with having that condition be there.

Mr. Winthers stated that he just wanted to clarify the language on Condition #27 to be sure they agree on how is should read. It should be "the patio shall be enclosed and any gates located on the patio shall remain open for egress and ingress during business hours and available as an emergency exit.

Commission Gladson stated that she didn't think they needed to include "available as an emergency exit" language per suggestion from the City Attorney, but was okay with the language.

Commission Buttress seconded the correction and the motion.

SECOND: Commissioner Buttress
AYES: Commissioners Buttress and Gladson
NOES: Commissioner Correa
ABSTAIN: None
ABSENT: Commissioner Steiner

4. ADJOURNMENT:

Commissioner Correa motioned to adjourn until the next regularly scheduled meeting on Monday, October 21, 2013.

SECOND:	Commissioner Gladson
AYES:	Commissioners Buttress, Correa and Gladson
NOES:	None
ABSENT:	Commissioner Steiner

MOTION CARRIED

Meeting adjourned at 8:46 p.m.