Minutes

Planning Commission January 19, 2009
City of Orange Monday–7:00 p.m.

PRESENT: Commissioners Cunningham, Imboden, Merino, and Steiner
ABSENT: Commissioner Whitaker

STAFF
PRESENT: Ed Knight, Assistant Community Development Director
Gary Sheatz, Assistant City Attorney
Robert Garcia, Associate Planner
Sandi Dimick, Recording Secretary

ADMINISTRATIVE SESSION:

Chair Steiner opened the Administrative Session @ 6:45 p.m. with a review of the Agenda.

Commissioner Whitaker was absent.

Review of the agenda:
Item #1, Step Up Recovery. Chair Steiner stated the resolution with the findings from the January 5, 2009 meeting would be presented. He asked if there were any questions or discussion. There were none. Commissioner Imboden asked if he needed to leave during the presentation of Item #1, as he had been absent at the last meeting. Assistant City Attorney, Gary Sheatz, stated no, it would not be necessary.

Item #2, Sprout's Farmers Market. Chair Steiner stated he would be recused from the item due to the location of the market to the proximity of his residence. He asked Commissioner Imboden to Chair the meeting in his absence.

Commissioner Imboden stated on crime statistics were there any means to have information presented that would give a correlation between the crime statistics and those crimes related to alcohol?

Mr. Sheatz stated that the information had been asked for in the past and he had understood that the statistics were based on the type of crime and there was no nexus between the applied for CUP and the number of alcohol related crimes as the stats were compiled based on the type of crime, be it assault, burglary, etc., many of those could be alcohol related, however, were not logged in that manner.

Chair Steiner stated it was an issue with the way the crime data was compiled.

Imboden stated it would be beneficial when reviewing an application to understand if 200 of the 300 crimes, for example, were alcohol related.

Chair Steiner stated the crime stats were only defined by the section of the penal code and that had no relationship to whether it was alcohol related, although that information could be noted in the police report narrative.

Mr. Sheatz stated that he had spoken with the Police Department and historically 90% of the assault and battery calls were alcohol related.

Commissioner Imboden asked if traffic accidents at that address would be included in the crime statistics.

Mr. Sheatz stated that typically when there was a traffic incident the Police Officer would look up the address that the traffic stop was made at or in front of, and write down that address which would be used in the report and ultimately in the crime stats, depending on the type of crime involved.

Commissioner Cunningham stated the crime stats would also include arrests that were alcohol related.

Chair Steiner stated they would include DUI's.

Assistant Community Development Director Ed Knight stated that would also include arrests due to outstanding warrants.

Commissioner Imboden stated for that matter, based on the location of the applicant, the stats they were reviewing also included shoplifting crimes in the shopping center.

Mr. Sheatz stated they were all correct and made a valid point.

Chair Steiner stated the statistics were not very helpful in evaluating a CUP in a high crime area.

Commissioner Merino stated he generally relied heavily on the Police Department's recommendation if it was clear.

Chair Steiner stated it would be helpful if the Police Department representative could expand on the crime statistics and what they included.

Mr. Sheatz stated that the Police Department's representative, Sergeant Lopez, had stated that he could gather additional information as needed.

Chair Steiner stated it could be helpful to break up the stats into violent vs. non-violent crimes. Most violent crimes were alcohol related.

Chair Steiner asked if there was any additional information from Staff.

Mr. Knight stated that the Orange Lutheran High application would be presented to the Planning Commission next month. The 2009 Planning Institute Conference would be held in Anaheim from March 25 through 27. He asked the Commissioners to check their

calendars and advise him if there was an interest in attending? The plan was to purchase a couple of 3 day registrant passes to be used by the Commissioners in order to allow all of them to attend a portion of the conference. They could send him or Jackie an email with their availability. Senior Planner, Dan Ryan, would be presenting a discussion on Historical Preservation.

Mr. Sheatz asked the Commissioners if they had received the memo from the City Attorney's Office regarding additional guidelines pertaining to the Brown Act. The Commissioners acknowledged receipt of the memo. Mr. Sheatz stated as of February 1, 2009 the guideline would prohibit the members of a body from essentially having discussion on an item with the majority of the members of that body prior to their meeting. The memo gave advice on conduct regarding the additional Brown Act restrictions. The additional restriction resulted from a case where it was determined that there had been collective concurrence between not only members of a voting body, but also included other Staff members. The case sighted that the actions of the City Manager or anyone that held briefings with those that fell under the Brown Act were in violation. Although the prohibition would be placed on Staff, it had not changed the penalty.

Commissioner Merino asked if there were any further restrictions placed on discussion the Commissioners might have with the public?

Mr. Sheatz stated no.

There was no further discussion.

The Administrative Session closed @ 7:02 p.m.

REGULAR SESSION:

PUBLIC PARTICIPATION: None

CONSENT CALENDAR:

(1) APPROVAL OF THE MINUTES FROM THE REGULAR MEETING OF DECEMBER 15, 2008.

Commissioner Merino made a motion to approve the minutes of December 15, 2008 as written.

SECOND: Commissioner Imboden
AYES: Commissioners Cunningham, Imboden, Merino, and Steiner
NOES: None
ABSTAIN: None
ABSENT: Whitaker

MOTION CARRIED

(2) APPROVAL OF RESOLUTION PC 01-09 FOR THE DENIAL OF VARIANCE 2195-08-STEP UP RECOVERY

Commissioner Merino made a motion to adopt Resolution of PC 01-09, denying Variance No. 2195-08 Step Up Recovery located at 235 S. Craig Drive.

Commissioner Imboden stated before the Commission voted he wanted to state for the record that he was absent during the previous meeting and he would not be voting on the item.

SECOND: Commissioner Cunningham
AYES: Commissioners Cunningham, Merino, and Steiner
NOES: None
ABSTAIN: Commissioner Imboden
ABSENT: Commissioner Whitaker

MOTION CARRIED

NEW HEARINGS:

(3) CONDITIONAL USE PERMIT 2734-08-SPROUT'S FARMERS MARKET

A proposal to allow Alcoholic Beverage Control Type 20 (Off-Sale Beer and Wine) License for a new grocery market and making a finding of Public Convenience and Necessity.

LOCATION: 1500 E. Village Way #2279

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 consists of the operation and licensing of an existing private structure.
.

RECOMMENDED ACTION:
Adopt Planning Commission Resolution 37-08 to allow an Alcoholic Beverage Control Type 20 License.

Chair Steiner was recused from the item due to the proximity of the applicant to his residence. He asked Commissioner Imboden to Chair the meeting in his absence.

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

Chair Imboden opened the item for any questions to Staff. There were none. Chair Imboden opened the Public Hearing and asked the applicant to step forward.

Applicant, Greg McCafferty, address on file, stated he had a Power Point presentation that he wanted to provide to the Commissioners. Copies of the packet were distributed. He thanked Staff for the tremendous job they had done to get them to the hearing. The Staff Report was very well written and factual. He thanked Robert Garcia, Sergeant Lopez and the Economic Development Staff for assisting them. Sprouts had started in

the San Diego area a long time ago and that business was sold to Wild Oats, part of the Henry's Market chain. The Sprout's chain was opened in Arizona and expanded to Texas and now to California. There were other stores, including stores in Tustin, Irvine and Seal Beach. The layout of the store was very clean, with visibility from the front to the back of the store. An overwhelming part of their business was produce; they had a lot of produce with a meat and deli counter that prepared hot foods. The type of customers that visited Sprouts were those that were very health and value conscious. It probably was not their primary market, typically they would go to a Von's type store to get their mainstream items, then make a 2nd stop at Sprout's for produce and fresh meats. More often than not they would visit a Sprout's more than once a week. The store was not a Trader Joes. There was a smaller percentage of the floor space that was devoted to beer and wine as opposed to a Trader Joes. Only 3-5% of total sales were from alcohol. There was no on site consumption, such as a Whole Foods market, where a customer could purchase a sandwich and have a beverage on site. Sprouts would not offer that.

The store also offered a training program for its employees. The next slide, showed a proposed floor plan of where the beer and wine would be displayed, which was a very small percentage of the total floor plan. The stores had not promoted beer and wine, rather it offered it as a convenience to their customers. The location was in the back of the store. Part of the reason they wanted to provide alcohol to their customers was that they had not wanted to be at a competitive disadvantage to the other markets such as Henry's and Trader Joe's that offered that to their customers.

Mr. McCafferty stated there were some Conditions of Approval that he wanted to review with them, starting with Condition No. 13, which related to the business operation. He had wanted to ensure that if employees were in the market before and after regular customer business hours that it would be permitted, it was probably implied, however, they had not wanted to violate any conditions. On Condition No. 25, they wanted to clarify that it referred to the licensed premises only, and not the entire Village Shopping Center; the same issue on Condition No. 26. The main condition that Sprout's was concerned with was Condition No. 14 which related to the sale of single unit quantities of beer. The format of the store was that all stores carried the same merchandise. In terms of the types of beers, specialty beers, imported beers and wines, they all carried the same merchandise and the preference was for internal consistency between stores. Part of the reason was due to advertising and the stores not wanting to have separate advertising for each store. Sprout's had a very limited supply of single unit quantities and they wanted to maintain that. The other stores in Orange County had no restriction on their sales of single unit quantities. Those were the specifics of their concerns with that condition. If the Commissioners required further justification for public convenience and necessity he was prepared to do that.

Chair Imboden asked if there were any questions for the applicant. There were none.

Commissioner Merino stated he had a question for Sergeant Lopez. He asked for clarification on the Police Department's support of the application. It was in the Staff Report, however, as a matter of record, the Police Department was in support of the application and he wanted some clarification on the support of the application vs. other applications that had not been supported.

Police Department Representative, Sergeant Lopez, stated one of the main criteria that went into, not only Sprout's Market, but other applications in an area that was over concentrated with alcohol licenses or was in a high crime area, was the question of whether the additional license would create any undue hardship on the community or the Police Department.

The prior occupant at that location, Linens and Things, in a five year period only had 8 calls for service. Only 3 of those calls for service were actual occurrences in that location that were shoplifting. Historically speaking, shoplifting, at super market venues was very low and generally 1% of shoplifting crimes. Past indicators of that type of crime led the Police Department to believe that those types of crimes would not continue with the Sprout's facilities. Yes, there had been a lot of crime in the reporting district, however, none that the Police Department felt would be attributed with someone wanting to steal groceries. That was one of the reasons they had not objected to the application. The other factor was that the Police Department had not felt that the customers who would frequent a Sprout's Market were not going into that business to purchase alcohol, but rather going in to purchase a specialty item that they could not purchase at a market such as Von's – that was in close proximity and in the same census tract. Those things were taken into consideration. The Police Department felt that the project would not cause undue hardship or create additional crime for the City of Orange and they chose not to oppose the project.

Commissioner Merino stated, for clarity, the assumption that the crime statistics were generated by calls for service that were alcohol related was not necessarily the case, and crimes could include shoplifting in the statistics and all other crimes were rolled into the statistics for that location.

Sergeant Lopez stated that one of the things not measured in crime statistics was the number of crimes that were alcohol related. When the Police Department responded to a domestic violence report, it would be a question that was asked, but it was not an aspect of a crime that was categorically tracked. It was consistent with any Police agency and had not only pertained to the City of Orange's Police Department.

Commissioner Merino stated in understanding the Staff Report, it was not an establishment that served alcohol, but rather an adjunct to their sales and a small percentage of sales. He assumed that the Police Department had not anticipated alcohol related issues related to those sales.

Sergeant Lopez stated not only that, but the hours of operation were not conducive to the times that they generally responded to alcohol related problems, which generally occurred after midnight. Generally alcohol related problems, such as DUIs, generally came from on-sale type licenses. He anticipated people would go to the market, buy groceries, buy a bottle of wine, go back to their home and consume the alcohol with the food they purchased. That scenario would not create a problem for the Police Department or the community.

Commissioner Merino stated the applicant had asked about Condition No.14. As he understood the items they sold were specialty items, and asked if there was a concern

with the sale or the break-up of, a six pack of a malt beverage product vs. the sale of a 6 pack.

Sergeant Lopez stated he understood there had been a lot of work on the application and he had not wanted it to fall apart based on a Condition of Approval. The condition for off-sale type licenses was consistent with all the licenses that had been approved over the last 5 years. The Police Department had not wanted to be arbitrary in their decision to remove a condition. Many people would offer the same conclusion that Sprout's Market had presented and it was not unusual that a business would want that. The reason the Police Department supported the condition was that alcohol related offenses, such as DUI's and drunk in public, were related to people consuming alcohol in a vehicle and generally after the purchase of a 40 oz. beverage. It was a concern with any off-sale establishment the Police Department had reviewed during the past 3-5 years where the condition had existed. In tracking crimes that involved drinking in public, it generally involved the consumption of a 22, 32 or 40 oz. beer, and was the reason they were opposed to it. It was not a deal breaker, however, it was very important for the Police Department to remain consistent and it would not be fair that all the other applicants that had applied for off-sale licensing with the standard condition included, to then arbitrarily make an exception, and not include it for Sprout's Market.

Commissioner Merino stated he was attempting to understand that the issue was the actual size of the container of alcohol and the statistics had shown that the larger container created the problem. The concern from the applicant was to enable a customer to purchase one beer of a specific special brand. If the concern was the size, would it be agreeable to condition a limit of the size of the single unit beverage that could be sold. He asked Sergeant Lopez if that made sense?

Sergeant Lopez stated the reason he would stay away from modifying the condition was that in the experience of the Police Department, customers who broke up a six pack for one beer intended to consume that beer prior to reaching their home. Most people would not purchase one 12 oz. specialty beer. If a person wanted Japanese beer they generally would purchase a six pack and that was why they were packaged in that manner. To his knowledge there was not a specialty drink that came in a 32 or 40 oz size, generally they were sold individually. That was where the problem was created, when someone purchased just one 40 oz. beer and it was consumed in public or while driving and they wanted to stay away from that. It was not only a problem in the City of Orange, but in the county. He would be opposed in modifying the condition, creating an exception, as the condition was not an arbitrary part of the application, as it was the Police Department's experience of alcohol-related problems associated with the purchase of single unit beers. He was opposed to changing the condition that was a standard condition for off-sale licenses.

Commissioner Cunningham stated he understood the reasoning from the Police Department in not wanting to appear arbitrary. When the condition was drafted was consideration for the type of establishment considered? His observation was that if a person wanted to purchase a 40 oz. beer for immediate consumption they would be more likely to go to a convenience store and purchase a King Cobra, rather than go to a Sprout's Market to purchase a high end specialty imported beer for $7.00 or $8.00. If

they had a need to satisfy they would probably go somewhere else where they could obtain the beer quicker and cheaper. While he understood the desire for uniformity, he was not convinced that the rationale held in the proposed application. He felt the store would attract a more high-end demographic customer; customers who would consume their wine or beer at home.

Sergeant Lopez stated, in speaking to the high end customer, it was his opinion that there was no need for those customers to want to purchase a 40 oz. anything, unless it was a bottle of wine. If the sales of alcohol beverages accounted for less than 5% of their sales, he felt it was even a smaller portion of sales that would be attributed to a 32 or 40 oz. beverage. He felt the Police Department had made a lot of concessions with the business in consideration of the high crime and over concentration of licenses, and it would be a very small concession on the part of Sprout's Market.

Commissioner Cunningham stated he understood that the applicant wanted a uniformity of appearance of their beer and wine gondolas in all their stores. He failed to understand the necessity of the condition and making an exception would not endanger the public. He heard the argument, however, had not understood the reasoning.

Sergeant Lopez stated he would not be too over dramatic about endangering the public; he wanted to convey that the problems the Police Department encountered with drunk in public were related to the purchase of such beverages. He understood the comments Commissioner Cunningham made regarding a quicker way for a customer to purchase alcoholic beverages, and many people would not spend 10-15 minutes parking in the mall parking lot, when it could be accomplished at any of the many liquor stores located throughout the City. With the same token, he felt it accounted for a very small percentage of the applicant's business, and where the store set up might be uniformity with other Cities – this was the City of Orange, and there was a reason they had done things differently from Tustin or Irvine and there could be things that they had not considered.

Commissioner Merino stated, as he read the condition, the first part of the condition, prohibited the sale of large containers of malt or beer beverages. The condition essentially prohibited the sale of that type of product. In reaching a common sense or logical perspective, if they were to allow the sale of smaller containers of specialty beers, why prohibit the applicant from being able to break up the smaller products. In leaving the prohibition of the sale of the larger containers he felt that addressed the Police Department's concern. The likelihood that a small container of a single unit specialty beer being purchased, he felt, was largely remote and the applicant should be able to sell the smaller units.

Chair Imboden stated he understood the logic, however, the condition that they had been discussing was a standard condition; it had been applied to similar applications. The issue of why the condition was applied in its format was because it was a standard condition.

Commissioner Merino stated he understood that. The testimony was centered around the sale of larger single units and if that prohibition was kept with an allowance for smaller

single units to be sold it could be a way to go with the particular application that was before them due to the specialty products being sold.

Sergeant Lopez stated he understood Commissioner Merino's reasoning, however, he was concerned with the next time a similar venue applied for a CUP that was not similar to a Sprout's Market and the issue would arise and he would not want to create a precedent for such an exception. The Police Department would not want customers to be able to walk into a liquor store that had easy access and grab one 12 oz. beer, as that type of customer, through his experience, would more likely consume that beer on site or while driving. Generally speaking he would not purchase a single unit of a specialty beer, he had never done that. If there was a particular type of beer that one liked, it was generally purchased in a six pack or twelve pack. It was important, beyond everything that had been discussed, to be consistent and not create exceptions. It was a standard condition for off-sale licenses, and if it was an issue that needed to be addressed or changed, it could be done at a later time rather than to make the exception for Sprout's Market.

Commissioner Cunningham stated he had to disagree. In visiting a sandwich shop similar to the one located near the hospital that had a large variety of imported beers, with many being in larger containers, it was apparent, based on the display, that customers would purchase different kinds of beer, sampling different varieties. In a store such as Sprout's or in his experience, a Bev Mo, for example, he would purchase singles of different types of beers as he wanted to try them and that was more of the case of what would occur at a store such as Sprout's. He felt they were attempting to impose a uniform standard to an exceptional circumstance. He had not felt that a person would go into a place like Sprout's to purchase a malt liquor for immediate consumption, those customers would take it home to enjoy later. Judging by the photos of the market, the selection appeared to be those that would appeal to the beer connoisseur, rather than the heavy drinker.

Sergeant Lopez asked if the Commission wanted him to address any of the other conditions.

Chair Imboden stated they had been speaking to Condition No. 14 specifically.

Commissioner Merino asked if Staff had any other concerns with the applicant's requests regarding the other Conditions of Approval.

Chair Imboden asked Sergeant Lopez if he had any additional comments or concerns regarding the other Conditions of Approval.

Sergeant Lopez stated he would defer that to Mr. Garcia.

Mr. Garcia stated on Condition No. 13, it pertained to hours of operation to the public and would not affect the employees being at the site earlier or later than the public operating hours.

Commissioner Merino asked if the language on Condition No. 13 needed to be changed.

Mr. Garcia stated no, he felt it was more of a clarification for the applicant.

Chair Imboden asked if he felt that replacing business hours with customer hours would meet the objectives of the Planning Department. As far as the other conditions, on graffiti, the applicant wanted to ensure it pertained to their address only and the language should be changed to licensed premises as well as licensed property on both Conditions No. 25 and 26.

Mr. Garcia stated the changes were appropriate and met the objectives of the Planning Department.

Chair Imboden asked the applicant if he had any additional comments.

Mr. McCafferty stated, regarding the single unit sales, he had walked into Trader Joe's which had single unit quantities of imported and specialty beers available for sale. That store was located just across the corner. They had not intended to sell large unit quantities of Budweiser or Miller or any of those beers. In reviewing the photos presented, it was a very small cooler area that contained the specialty beers. The applicant was willing to strike the malt beverages, stating that imported and specialty beers could be sold in sizes no larger than 22 and 32 oz. and to strike the word beer, and changing the language to read malt beverages and wine coolers in containers 16 oz. or less could not be sold as single containers.

Chair Imboden stated for clarification removal of the words "or malt" in the first sentence, and beer in the second sentence. He asked the applicant if he was comfortable with that wording.

Mr. McCafferty stated that was correct.

Commissioner Merino stated he believed that the 40 oz. size would also be prohibited. He felt that what the applicant wanted was to have the 40 oz. size prohibited and the malt beverages to be taken out.

Mr. McCafferty stated that was correct, take 40 oz. out and they would not sell malt beverages. They had wanted the ability to sell the 22 and 32 oz.

Commissioner Merino stated that was essentially stating that the sale of malt beverages of 40 oz. or similar containers was prohibited. The word beer would be stricken and it should read: malt beverages in containers of 16 oz. or less could not be sold in single units and must be sold in manufacturers pre-package containers.

Mr. McCafferty stated that was correct.

Chair Imboden closed the Public Hearing and brought the item back to the Commission for further discussion.

Commissioner Merino stated the type of store in that location would be beneficial to the shopping center and the community. It would compliment the Trader Joe's that was

nearby and he fully understood the Police Department's concern, and they too agreed that it was a store that they would permit the CUP and that the concerns could be addressed with a modification to Condition No. 14. He would be in support of the application with the modification to Condition No. 14.

Chair Imboden stated he agreed with what had been stated and with the concerns that were presented by the Police Department, however, crafting conditions was part of what the Commission did and he had reviewed the application on its own merits. Taking into consideration the applicant, the projected customers and the user group he might or might not have the same concerns on another application. He agreed with the modification, to what was typically their standard condition, and it would not mean that he would ever make the exception again as it was based on the application before him, and based solely on the merits of that application.

Commissioner Merino stated he felt the modification to the Condition was a good compromise and addressed Sergeant Lopez's concerns in a win/win situation.

Commissioner Merino made a motion to adopt PC 37-08, a resolution of the Planning Commission, approving Conditional Use Permit 2734-08, Sprout's Farmers Market, making a Finding of Convenience and Public Necessity, noting that the item was categorically exempt from CEQA and with the following modification to the conditions. Modify Condition No. 13 to read customer hours not to commence prior to 8:00 a.m. and cease by 10:00 p.m. daily; on Condition No. 25 that graffiti be removed from the exterior walls and windows of the licensed premises within 72 hours of discovery. Condition No. 26 - there shall be no special promotional events held on the licensed premises related to the sale of alcohol unless a written request for such is received and approved by the City of Orange Redevelopment Director and the Police Department's Vice Unit at least one week in advance. Condition No. 14 - that the sale of malt beverages in quantity of quarts, 40 oz. or similar size containers, were prohibited and malt beverages in 16 oz. or less were not to be sold as single containers, but must be sold in manufacturer pre-packaged multi unit quantities.

Chair Imboden asked the applicant for affirmation in the form of a nod for the conditions stated. Applicant nodded yes. Chair Imboden stated they were all in agreement to the modification in the Conditions as stated.

SECOND: Commissioner Cunningham
AYES: Commissioners Cunningham, Imboden, and Merino
NOES: None
ABSTAIN: None
ABSENT: Commissioner Whitaker
RECUSED: Commissioner Steiner

MOTION CARRIED

(4) ADJOURNMENT

Commissioner Merino made a motion for adjournment to the next regular scheduled meeting of the Planning Commission on Monday, February 2, 2009.

SECOND: Commissioner Cunningham
AYES: Commissioners Cunningham, Imboden, and Merino
NOES: None
ABSTAIN: None
ABSENT: Commissioners Steiner and Whitaker

MOTION CARRIED

MEETING ADJOURNED @ 7:45 P.M.