Minutes

Planning Commission

City of Orange

July 19, 2010

Wednesday 7:00 p.m.

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

ABSENT:

STAFF

PRESENT: Ed Knight, Assistant Community Development Director

Robert Garcia, Associate Planner Doris Nguyen, Associate Planner Dan Ryan, Historic Preservation Planner

Gary Sheatz, Assistant City Attorney Sandi Dimick, Recording Secretary

ADMINISTRATIVE SESSION:

Chair Whitaker opened the Administrative Session @ 6:53 p.m. with a review of the Agenda and stated there were no minutes to review.

Item No. 1, CUP Peltzer Ranch, Commissioner Merino stated he would have a few questions on the item.

Item No. 2, CUP Village Farmer's Market, Chair Whitaker stated the item was for a CUP from a temporary to a permanent situation, he asked if there would be any questions on the item. Commissioner Imboden stated he would have a question regarding parking. Commissioner Merino stated he would have a question regarding restrooms.

Item No. 3, CUP Haven Gastropub, Commissioner Imboden stated he would be recused from the item's presentation as the address was within his conflict area. Commissioner Merino stated he would have a few questions.

Assistant City Attorney, Gary Sheatz, stated that he had distributed new maps to all Commissioners in their folders and to replace the maps in their binders with the new map. Chair Whitaker stated, in reviewing the maps, he would have a conflict on Item No. 2, as Red Robin was a client of his firm. Commissioner Imboden asked if Jennifer Lopez, in regard to the Ridgeline project, had received the maps as previously requested? Mr. Sheatz stated that the maps requested had been for a specific period in time and her office had been sent the maps as requested, he also mentioned that the new maps that were given to the Commissioners had everything with the exception of the railroad spur and those sections were still being updated. If there were any changes necessary at anytime he asked the Commissioners to notify him and he would provide them with updated maps.

Mr. Knight stated there would no longer be pitchers of water set out on the dais for the Commissioners and they would be using water bottles. He had nothing additional to

report. Commissioner Merino asked if the second phase of Ridgeline/Sully Miller would be heard soon. Mr. Knight stated those projects were a long way out.

There was no further discussion.

Administrative Session closed at 7:00 p.m.

REGULAR SESSION:

PUBLIC PARTICIPATION: None

CONSENT CALENDAR: None

NEW HEARINGS:

(1) CONDITIONAL USE PERMIT NO. 2775-09 – PELTZER RANCH

The applicant proposes to operate a wholesale commercial tree and shrub farm in a residential zone.

LOCATION: 7680 Amapola Avenue

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 No. 17-10 approving a request to operate a wholesale commercial tree and shrub farm in a residential zone.

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

Chair Whitaker opened the item for any questions to Staff.

Commissioner Merino stated it was something that he had brought up on previous occasions and it was in regards to the Orange Park Acres Board's position in conducting reviews on projects within their sphere of influence and the Specific Plan. The president of the OPA Board, Tom Davidson, had contacted him and asked whether or not the OPA Board should have been given the opportunity, in the capacity of an advisory board, to review the plans. He asked for an answer to that question?

Mr. Garcia deferred the question to Assistant Community Development Director, Ed Knight.

Mr. Knight stated he would need to verify if the particular project before them fell under the purview of the OPA Board.

Commissioner Merino stated the OPA Board certainly thought it was the case and if they could not come up with a good reason why the OPA should not have the opportunity to review the project, he certainly thought it would be the right thing for the Commission to

allow that. He would support a motion to exercise their expectation of the OPA Board's role.

Mr. Knight stated the OPA Board review pertained to Tract Maps, Major Site Plan Reviews, Conditional Use Permits, proposed Zone Changes, Specific Plans and General Plan Amendments. As the proposal before them was for a Conditional Use Permit, it fell under a project that should be referred to the OPA.

Chair Whitaker asked if Commissioner Imboden had a question for Staff.

Commissioner Imboden stated in the introduction of the proposal, Mr. Garcia had mentioned that there would be no retail sales on the property and it was not conditioned or anywhere that he could find a condition regarding retail sales. Under the analysis of the issues, under issue No. 2, it was stated that the project was located within the Natural Community Conservation Plan, and it was not a plan he was familiar with. The Commission was being asked to approve the CUP under a categorical exemption and categorical exemptions generally had not applied to sites that were environmentally sensitive and he asked for justification on the use of a categorical exemption in relationship to the Natural Conservancy Plan that was in place?

Mr. Garcia stated within the Natural Conservancy Plan there were areas that were designated as environmentally sensitive areas. In reviewing the plans, the specific site of the nursery was not within one of those environmentally sensitive areas, therefore, the classification was utilized.

Commissioner Imboden stated he assumed the Natural Conservancy Plan had designated uses that were appropriate within the district, and he asked if that was the case.

Mr. Garcia stated Staff had a contact person within the Conservancy Department which they would contact if there were questions. The specific site that was proposed for the CUP they were reviewing was outside of the NCCP boundary.

Commissioner Imboden stated he was not certain he understood him. He asked Mr. Garcia if he was stating that the plan had been reviewed by someone affiliated with the Conservancy agency and they were o.k. with the proposal.

Mr. Garcia stated no, the proposed CUP before the Commission had not been reviewed by the Conservancy Agency. While it was within the NCCP area, the site was not a specific sensitive area.

Commissioner Imboden stated then back to his original concern, he asked if the use was appropriate under their plan?

Mr. Knight stated in the NCCP area there were specific areas set aside, such as Irvine Park, and if there was an attempt to do anything within that site they would need direct approval from the Conservancy. There were other areas within the sphere of the NCCP,

such as private properties, homes and such, and in those instances as the City of Orange was a participant of the NCCP, if resources were being impacted it was a matter of paying a mitigation fee to the Conservancy. The Conservancy would use those funds to take care of the areas that fell under the NCCP. He understood the area in the proposed CUP had not fallen under the protected area of the NCCP, and had no valuable resources assigned to it. He had asked Mr. Garcia to review that, and there was not a need for a mitigation fee to be paid.

Commissioner Imboden stated he had wanted to ensure that they were o.k. with the categorical exemption.

Commissioner Merino stated before they moved on.

Chair Whitaker stated no, he would like to move on to the other Commissioners.

Commissioner Merino stated Mr. Knight was able to offer something and he would want the same opportunity if he might.

Chair Whitaker stated that Mr. Knight was answering a question that Commissioner Imboden had asked. If Commissioner Imboden was finished he would provide an opportunity for questions from the other Commissioners.

Commissioner Merino stated he had a point of order that might influence the Chair's decision, and if he would indulge him. If the Commission had determined that it was appropriate for the OPA Board, in their capacity as an advisory body, to review the project, it would appear to him that the item should be continued and to allow some of the other issues to be dealt with by the OPA as it seemed to him that they were taking things out of order, as they had acknowledged that the review should take place. He felt there were issues that might be taken care of during the OPA review.

Chair Whitaker stated he had not necessarily disagreed with Commissioner Merino's position, however, there had been a noticed hearing for the item and he had speaker cards. His intent, as Chairman of the Commission, was to vet out all of the issues, conduct the Public Hearing, and if there was a motion to continue, that motion would be heard.

Commissioner Merino asked if that was the manner in which the Chairman chose to proceed?

Chair Whitaker stated it was the manner in which he chose to proceed.

Mr. Garcia stated back to Commissioner Imboden's question regarding a condition restricting retail sales. For the particular use, the code would not allow retail sales and is the reason it had not been listed as a separate condition.

Commissioner Steiner stated the Nursery had been operating at its present location for 6

years, and he asked during that time had there been any complaints from OPA regarding the operation of that business?

Mr. Garcia stated he was not aware of any complaints, the first time Staff had been made aware of any problems was based on a code violation that stemmed from other materials on the site and overgrown vegetation.

Commissioner Steiner asked if OPA had been on record as having any complaints or having an issue with the site during the past 6 years?

Mr. Garcia stated not to his knowledge.

Commissioner Steiner stated it appeared the item had been kicking around since January or February of 2010, and he asked how were they at the point currently where they were just finding out that the OPA Board should have reviewed the CUP?

Mr. Garcia stated it was something that he had not looked at; he had not believed it would have been something the OPA Board would need to review.

Commissioner Cunningham asked if it was required that the proposal be reviewed by the OPA Board before it came to the Planning Commission?

Mr. Knight stated it was Staff's position that it should, evidently it was an oversight. It was not a prerequisite. The Planning Commission could approve the project if they wanted to and it was not a prerequisite that the item be reviewed by OPA, however, the intent was that Staff had always taken the position that if it was applicable, it should go to the OPA Board. The list that he had referred to had big ticket items and had also contained CUP review and had not detailed what type of CUPs would be reviewed. It fell under their scope of interest, although it was a relatively minor project that had not generated much interest on the part of OPA in general.

Chair Whitaker stated he had a question for Assistant City Attorney, Gary Sheatz. Mr. Knight had stated that it was not a prerequisite, but that it was something that should be done; he asked if that was an accurate assessment of what the City Council provided for?

Mr. Sheatz stated it was a policy and the policy he believed stated encouraged, in was not required but encouraged to allow the OPA's review of the project. What Mr. Knight had stated was correct, the Commission could move forward with the proposed project without getting sideways with the policy, but it was something that the City Council had put in writing after they had removed the OPA Board as an officially appointed body.

Commissioner Merino stated it was his understanding that the purpose of the change that took place regarding the OPA Board was to remove the body as a separate Commission and invest the review authority with the OPA Board and it had not been a move to do away with the process. It was his understanding of the City Council's intent and the manner in which the policy was written. Specifically in speaking to the Ridgeline project

that they had reviewed previously, the City Attorney's office had felt that it was of such importance that there had been a written opinion that on the Ridgeline project, specifically, the Board was conflicted out. To state that they should ignore that whole issue seemed contrary to the intent of the policy.

Chair Whitaker asked Mr. Sheatz if he had a response to Commissioner Merino's comments.

Mr. Sheatz stated no, other than it was what it was.

Chair Whitaker opened the Public Hearing and invited the applicant or applicant's representative to address the Commission.

David Rudat, address on file, thanked the Commissioners for the opportunity to be heard before them. He stated he would want to press the Commission to grant the CUP. In the example that Commissioner Merino had been given, Ridgeline Ranch was very large in scope and impact, but for the fact that Orange Park Acres Mutual Water Company sold out to the Irvine Ranch Water District, the site that Mr. Peltzer had occupied for the last 5 or 6 years was previously occupied by the heavy equipment, pipes and supplies of the Orange Park Mutual Water District for decades. It was allowed to exist, it was nonconforming and no one filed any complaints. Commissioner Steiner had pointed out no one had complained to Mr. Peltzer, with the exception of the one code enforcement issue regarding the CUP. Mr. Peltzer had not realized he had needed that. It had been many months and OPA had been noticed to be present. The impact the time line had on the site was infinitesimal and he urged the Planning Commissioners to think about the issues and weigh that which was required and the ability to move ahead. The impact on OPA was only of a positive impact. There was no additional traffic generated by the site of any measurable amounts. Mr. Peltzer and a worker or two and a truck coming in and out on occasional basis was the only traffic and the site was very clean and complied with code enforcement requirements of what was allowed on the site. They had been waiting many months to get to the hearing and he had no problem speaking with Mr. Davidson and the OPA group; had they been noticed by the City or contacted by Mr. Davidson, as he saw him now and then and he had not expected Mr. Davidson to notify him, but certainly Mr. Peltzer had not received any contacts from Mr. Davidson or the OPA Board. He asked for the Commission's indulgence and consideration in moving ahead as it would be most appreciated.

Commissioner Merino asked if Mr. Rudat had known, in fact, that the OPA Board had been noticed, as Mr. Davidson had contacted him and was not aware of the project?

Mr. Rudat stated properties within a specific area around the project were noticed. If it had been an issue for anyone within that 300' notification area, they could have made contact. Mr. Davidson was not within that 300', but they receive notices of these things and they watched things closely. As Commissioner Steiner had pointed out, it had been on the radar screen for a while.

Commissioner Merino asked Staff if OPA, as a body, had received noticing.

Mr. Garcia stated no, it was properties within 300'.

Commissioner Merino stated unless someone on the OPA Board was within that area, no one on the OPA was directly noticed.

Mr. Garcia stated that was correct.

Commissioner Imboden stated in reviewing the plans, upon entering the driveway just past the first tree growing area, there was a small area blocked out that was noted as 8' x 40', but it was not identified as to what it was.

Mr. Rudat stated it was one of the storage containers for housing the fertilizers, pesticides and those types of things.

Commissioner Imboden asked how many storage containers were on the site, because they were not called out.

Mr. Rudat stated there were a couple of them, farming implements and storage containers so items would not be subject to theft, one gallon and five gallon containers and herbicides were kept inside them.

Commissioner Imboden stated there was also an 8' x 20' out in the middle of the tree area.

Mr. Rudat spoke with Mr. Peltzer and stated one of the 8' x 40' containers was being removed.

Commissioner Imboden stated he wanted to understand what the applicant was asking to be included in the CUP.

Mr. Rudat stated an 8' x 40' and an 8' x 20'. He was not certain what the timing would be for the removal of the other container and they were attempting to be all inclusive.

Commissioner Imboden asked if there was any type of security lighting on the property.

Mr. Rudat stated no, and there was not a proposal to do any.

Commissioner Steiner asked if there was to be site screening, a fence.

Mr. Rudat stated there was screening; there was some natural vegetative screening off of Amapola that was done with vines and some of the specimen trees.

Commissioner Imboden asked which storage container has been removed, the one closer to the horse trail or the one closer to the driveway?

Chuck Peltzer, address on file, stated the one closest to the driveway.

Chair Whitaker opened the hearing for Public Comment.

Rod Stone, address on file, stated he was a member of OPA and he wanted to clarify a couple of things. It had been stated there had been no complaints and they had made numerous complaints to the City about the project. Over the years the business had not acted in good faith; Mr. Peltzer was very familiar with what was required and the permits required, he never sought one and tried to circumvent the rules. Peltzer Ranch had put their families, pets and property at danger. He passed out a set of photos to the Commissioners that were taken July 19, 2010 at 4:00 p.m. The applicant had mentioned if was very clean and it was not. He apologized, he had just come back into town on Sunday and he had very little notice. The public notice sign had been posted right up against the fence which could not even be seen from across the street. It was in their bushes that blended in with the color of the bushes. There were containers and numerous bags of pesticides, fertilizers and equipment used to disburse the pesticides that were dumped over and laid out. The applicant stated that there was no environmental impact and there was a huge environmental impact; they went in and out of the site continually. It had been stated that there were no retail sales. He walked on the property and he asked specifically if he could purchase items directly off the site or was it grown to be sold only commercially and he had been asked what he needed and that they could sell it to him. Obviously there were retail sales to anyone who walked onto the property. The site added no benefit whatsoever to the community, but it was hugely detrimental. In his case and his neighbor's situation, it was a huge devaluation of their property. When he looked out of his backyard and saw the eyesore; it was in his backyard. He had tried to contact Mr. Peltzer and the only time he ever responded to 5 times of handing his business card to Mr. Peltzer's employees and numerous phone calls, was when his employees were throwing rocks at his barn just to listen to the rocks bounce off of his metal roof. When he went out to speak with them and Mr. Peltzer, Mr. Peltzer told him no way his people would do that. He stood in his vard and heard it; they could not throw rocks with horses and everything else there. Mr. Peltzer started it from day one and had that type of operation for many, many years and he knew what was required, and until he was cited by the City, after probably 20 calls from the neighbors to code enforcement, did he then apply for a permit. He never acted in good faith, he wouldn't do what was required and they could see it was not a clean operation. It had not circumvented anything environmental, there were trucks in and out all day, chemicals being disbursed and it was a huge environmental impact. There was no environmental study. He hoped the Commission would consider all of that as it was a huge detriment to the OPA community and OPA Board had not been contacted and the only reason he knew about it was that his property backed the site and he had been noticed. He apologized for not having the satellite photos, they could review those and go all the way back to 2002 to see when it started and how small it was and how the site had grown; and to see that there were no pipe and tractors on the site prior to Mr. Peltzer going in there; that was just a flat lie.

Dave Swoish, address on file, stated he thinks this all came up because the Peltzers were over across the street at Albertsons where the school was and they had lost that lot so

they had to find something close to that community and this is the reason Peltzer leased the property from the Church. At that time when they moved in all of the residents who lived in the neighborhood had not traveled much on Amapola. If they had been notified that a commercial agricultural lot with large storage bins of pesticides and fertilizers, leaked into the ground and entered the ground water; that was at the top point of the hill for all the homes in OPA, and where he lived on Saddlehill, that was a concern and they would have had a big meeting 6 years ago if they had done what they should have done in seeking a CUP. For the applicant to state that he was not aware, that was no defense, as the OPA and the whole Planning Commission would have been there for OPA in droves if they knew what was going in. They were very clever initially, what they had done was plant a lot of tall trees so it was not visible what was going in there. In looking past the bushes, there was commercial and industrial equipment with big storage containers which they had admitted contained pesticides and fertilizers that ultimately leaked into the soil and the reason there had not been an outcry yet, was the site had been very stealthy. He was a jogger and the way he found out about it was he had been running the trails and saw the little sign posted on the fence, he had 20/20 vision and he had to walk up about 3' away from the sign to actually read it. If the community had been correctly notified they would have been present; it was a residential community, put it out there by Black Star where there was 10's of thousands of open acres. They lost their local one in East Orange and moved up there. It was a real hazard to the community and if the community had been notified what was behind the bushes, they would be motivated and energized to disagree with the CUP and he recommended that it be turned down.

Tracy Chaix, address on file, stated her backyard was the nursery, not Amapola but on the other side. It was pretty much an eyesore. She had called the City on them, several times, and they had finally gotten the inspectors to go out and look at it. The only thing that Peltzer could do to have their site look clean again was to install a green mesh fence which would camouflage what she had been looking at. It had not worked for her as she had not wanted to see a green fence and she wanted to view open land and the reason she bought in the area. She felt the site was depreciating the value of her home.

Carol Cora, address on file, stated she was not directly behind the nursery, but very close. Her concern was that there was a commercial operation in a residential neighborhood and her understanding was that there was vehicle storage on the site that people paid on a monthly basis to have vehicles stored there. She was not certain if that was factual or not, it was what the grapevine was stating in her neighborhood and she wanted that looked into to insure that was not also a storage area. When the property first came in, it was small with no major implications. It has grown considerably and has appeared to be poorly managed as there was a lack of attention to trash and dry brush and the green screen had been put up as a camouflage. If they had maintained the site, they would not need camouflage.

Mark Sanford, address on file, stated he represented the OPA Board. He and Tom Davidson had found out about the meeting within the last hour and Mr. Davidson could not be present. The issue was a procedural issue; as far as the OPA Board was concerned. In early 2000, the OPA Board was designated as the Orange Park Advisory

Committee. There had been another advisory Committee, but the City Council designated the OPA Board as the Advisory Committee that would undertake all development issues, and look at variances, CUP's, etc. that took place within the OPA Sphere of Influence and Specific Plan area. The item before them had never come before the OPA Board, whether it was good or bad. There was a Specific Plan that designated areas as commercial or not commercial or what could be done. The neighbors out there deserved to be represented, deserved to be helped. Whether it had been going on or not, the plan needed to go back to the OPA Board for review, to speak with neighbors and then bring it forth after the OPA Board evaluated it. The only plan, and based on the coagreement between the City's attorney and OPA Board, was on the Ridgeline-Sully Miller issue to not be involved so that they could represent their community in a more activist manner and the reason for that situation and it had not taken away any of the other involvement the OPA Board had; based on what the City Council had directed them to do. What he was asking for was for the Planning Commission to take the plan to the OPA Board, through Mr. Davidson, and again address the Staff that every CUP, every variance, every developmental agreement, everything needed to have as a check mark go directly to the OPA Board that would ensure that the applicant had not wasted all their time. There was a process, they had a process with the County and the City and they just needed to follow it. Thank you.

Chair Whitaker asked the applicant to step forward with any rebuttal statements to the Public Comments heard.

Mr. Rudat and Mr. Peltzer stepped forward.

Chair Whitaker stated they had been given photos from one of the speakers and he provided a copy of the photos to the applicants to verify it was the property in question and speak to some of those issues brought up.

Mr. Rudat and Mr. Peltzer took a moment to review the photos and they discussed the photos amongst themselves.

Chair Whitaker asked Mr. Peltzer if the photos were of his property.

Mr. Peltzer stated so many of the photos were taken outside of his 2 acre site. There were 19 acres that his 2 acres were a part of and those areas were native brush. There was a major determination made that the outlying areas were part of the nursery and it was not the case. He also took exception to individual, close up photographs of trash that was approximately 1 or 2 water bottle containers that were outside the fence of his site; it was in the public parking area alongside the road. Much of the photos were taken from inside where he had used Bougainvillea that grew along the fence and some of the photos were close up shots of his supplies. Apparently the person with the camera entered the property and they very carefully had kept the property locked at all times, someone had a free for all with their camera.

There were nursery trailers parked on the site, with the exception of the irrigator that

visited the farm 3 times a week and would be on site for several hours and there were no other employees.

There were no pesticides currently on the property, no fertilizers and when they were brought in, they were used and that was the end of it. He had to defend the fact that he was also concerned about pesticides and fertilizers and they were expensive and he had not used them incorrectly. There was a nice picture of the OPA pipes, and a Mr. Robert Groedack parked his grader, backhoe and bulldozer there and for many years. For the first few years he was on his site, he worked around the OPA Mutual Water Company. He had a mutual agreement, it was fine between them and he wondered where the complaints were when all the equipment had been there. He was startled by the complaints. He had a Sea Land container that they would be moving storage items into and as part of the permit process; he was only able to have 2 containers on site. He was limited, early on, of not being able to store everything. He held up a photo of one of the containers and stated that the containers had been painted green because they were ugly and dark green made them less visible. When he found out one of the homeowners disliked looking at palm trees, he had put up the green screen fence. There was an irrigator pick up truck that came in twice a week during the winter.

Chair Whitaker opened the item for any questions to the applicants.

Commissioner Steiner asked when the original complaint was received by Staff, had code enforcement gone to the site and issued any type of written report as to what they had observed at that time?

Mr. Garcia stated yes, he believed they had. Shortly thereafter, after the applicant had received a notice from the City, the applicant came to the Planning counter and began working with Planning Staff. He stated he had been out to the site twice with the Code Enforcement Officers.

Commissioner Steiner asked if Mr. Garcia was aware if the report indicated those types of conditions that were captured in the photographs.

Mr. Garcia stated he was not aware of that, however, he was aware that there was overgrown vegetation, trash and items that were not to be on the site and those items were being removed.

Mr. Peltzer stated he was very conscious of what they would be doing at the nursery and he knew that everyone was very sensitive. Part of his business was palm trees; he was astounded by the fact that there were people who had not liked to look at them. When he had designed the layout of the property he had purposely designed it so there would be Bougainvilleas along Amapola and he always had an eye out for what the eye would see. He knew there were areas he would need to shield and he was not attempting to be pretentious by installing the green fencing. He wanted to be a good neighbor and he was surprised in what he was hearing.

Commissioner Imboden stated one of the Conditions of Approval stated that the two acre

site shall be completely fenced; however, the plan only indicated fencing across the front of the site.

Mr. Peltzer stated the horse trail along the west edge was fully fenced. The south side was also fenced. Three sides of the property were fenced; and the entire 19 acres was fenced.

Commissioner Imboden stated that had not answered his question. He was reviewing the site plan and it only showed fencing on the street side and he asked if there was a fence around the entire perimeter of the parcel that Mr. Peltzer used?

Mr. Peltzer stated the only portion that was not fenced was the separation of his 2 acre parcel from the entire 19 acre parcel. That would be an internal fence.

Commissioner Imboden asked if it would be fenced.

Mr. Peltzer stated no because the public would not be able to get through.

Commissioner Imboden stated there was a Condition that stated the 2 acre site would be fenced, and asked if he was aware of that requirement?

Mr. Peltzer stated no, because the entire 19 acres was fenced and he was inside with his 2 acres.

Commissioner Imboden stated he understood that, however, he wanted to ensure that the applicant understood and he read: The 2 acre subject site shall be completely fenced from the rest of the property in order to avoid any disturbance to the native vegetation within the Natural Community Conservation Plan. It sounded like a Condition he was not aware of.

Mr. Peltzer stated no, he was not, as he was thinking in terms of the perimeter fencing.

Commissioner Cunningham stated with that information on the Condition regarding fencing was he asked if Mr. Peltzer was willing to comply with that condition to fence in the entire 2 acre site?

Mr. Peltzer stated as it would not be a security fence, as the main parcel was totally chain linked with first class fencing, he would put in a fence that would apply to the word fence. What could that be barbed wire, 3 strands, 4 strands, since he would not be attempting to keep people out as the entire property was totally secured. He needed help in defining that.

Chair Whitaker stated with Commissioner Imboden's reading of the Condition he indicated it probably had to be a pretty significant fence as it would be in place to avoid any disturbance of the vegetation within the Natural Community Conservation Plan. The idea of the fence would be to not allow vegetation to go beyond the barrier, into the

NCCP from his property, or from the NCCP to his property. It would probably need to be a significant fence.

Mr. Peltzer stated he was not certain he could afford to do that and be able to remain there under that condition. To match the existing high quality fence that totally surrounded the parcel; it was a very high quality chain link fence.

Chair Whitaker stated he had a couple of other questions regarding the conditions. In reviewing the photos, he had seen a number of spare wheels and tires, a trailer with vegetation climbing on it and Condition No. 4 stated that the operator shall be responsible for maintaining the area free of litter adjacent to the premises over which he had control. Currently if that Condition was in place, the applicant would not be in compliance and he asked Mr. Peltzer could he be in compliance with that Condition and was he willing to accept that Condition?

Mr. Peltzer stated yes he would. He would use a nearly prison-like quality fence to separate the vegetation from his area and routinely mow and weed whack the area free of weeds.

Chair Whitaker stated he was speaking to Condition No. 4 which required that the area be maintained free of litter. For instance, there were the spare tires, wheels, water bottles in the parking lot and the condition stated that the operator shall maintain the area free of litter. That was not occurring now and if he was granted the CUP, it would be something that Mr. Peltzer would need to do and was he agreeable that he could comply?

Mr. Peltzer stated he was not aware of any spare tires on his site and he had no idea where that photograph of spare tires had come from. If they were there he was not aware of them and he was there frequently. He truly had not known they were there or where they would have come from.

Chair Whitaker stated there was also a pile of bricks and asked where those had come from?

Mr. Peltzer stated some of their landscape supplies used a storage area that was not visible from the road and those items were not to be considered trash, it was an integral part of his operation.

Chair Whitaker stated on Condition No. 6, vehicles must be parked in clearly marked parking stalls and vehicles shall not be parked in drive aisles or areas not designated for parking. There were a couple of different vehicles, one was a trailer with some material on it, the irrigation truck and the bobcat that had not appeared to be parked in any individual organized manner or any marked stalls, and he was not certain marked stalls were available; he asked if that was a Condition that was realistic for the property?

Mr. Peltzer stated they had purposely designed the property so the very interior which was not visible from all three sides would be used for parking of any vehicles. It was a

nursery, so as far as lining and delineating, they could do that. Would it be overkill? Probably.

Chair Whitaker stated there was an accusation that there were vehicles on his site that people paid to store there and he asked if that was correct.

Mr. Peltzer stated that was not correct. The photo of the vehicle was for an irrigator, and employee that came by for several hours every other day to water.

Commissioner Cunningham stated as a follow up to Chair Whitaker's questions regarding Condition No. 4, regarding trash and the maintaining of litter free areas adjacent to the premises; and the tires aside, he wanted to be certain the applicant understood that Condition and he was willing to comply with the condition. It meant that in the areas next to the applicant's property, he was to keep it free of litter. The applicant's contention was that the water bottles photographed were not placed there by Mr. Peltzer's employees; however, his understanding with regard to Condition No. 4 was that Mr. Peltzer would be responsible for keeping that area clean.

Mr. Peltzer stated they already did that, they would pick it up. Also, one other thing was that people should be made aware of and the neighbors as well, was that people who came by and picked up horse manure used his entire front parking area outside the fence of which they very carefully graded and they used it to load their dumpsters of horse manure. It was fine with them. Someone should be complaining about that but they were not. People were being very selective about their complaints and he was happy to work with the OPA Mutual Water Company when they were there and stored all of their cast iron pipes on the site, and the transite pipe that had been left there and it would probably be up to him to get rid of it.

Chair Whitaker asked if it was on his 2 acres.

Mr. Peltzer stated yes.

Chair Whitaker asked if there were any further questions for the applicants. There were none. He asked Mr. Peltzer if he had any additional comments.

Mr. Peltzer stated he was absolutely astounded by the interest generated over a little 2 acre green spot.

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

Commissioner Cunningham asked Staff who would be responsible for debris left on the property, which would need to be cleared according to the Conditions of Approval, those items that had not belonged to the applicant?

Mr. Knight stated they would need to review the chain of ownership from the OPA Mutual Water Company to Irvine Ranch Water District, because the pipe was not owned

by the applicant and he claimed it was something leftover from the water district. He would assume that when IRWD had come in, that they would be the owner of the pipe. It would need to be determined and if the pipe was needed, IRWD would need to remove it. They would need to take a look at it. He had not believed the old water district existed anymore as it was not an entity of IRWD.

Commissioner Merino stated he would ask that the Commission consider without a valid judgment initially about the application and the applicant. The Planning Commission had a policy, to quote Mr. Sheatz, before them that stated the OPA Board was an advisory body to the Planning Commission and that seemed to him that those requirements of the advisory body for their purview of review were very clear. For the Planning Commission to unilaterally decide to dismiss that, he believed set a precedent that he felt the Planning Commission had the authority to do and he would not recommend that they would do that. It was pretty clear as to what the policy document that Mr. Knight read dictated. On a separate issue based on some of the dialogue that he heard between the applicant and some of the Commissioners, he was not 100% positive that the applicant had a clear grasp, and maybe he had and he apologized for making judgment, but he was not certain there was a clear grasp of all the Conditions and implications that were contained in the CUP that was before them; and in that regard he was not 100% comfortable in voting on the item without the applicant being able to state with certainty he understood the conditions and he would accept them regarding the size of the fence, the implications of the fence, and some of the other Conditions. He would want the applicant to not have any reservations or doubts in his mind and to go back to his first point if the OPA process had been followed, that dialogue would have taken place and they would come before the Commission as a unified front. They would have the OPA and the applicant with a clear understanding of what was before them and it would be a win-win. He would be comfortable giving the application another look to a date certain to allow the item to take its natural and appropriate course.

Commissioner Imboden stated he was very much in agreement with the thoughts of Commissioner Merino. The discussion had illustrated that there were 2 conditions that appeared the applicant had not been in complete understanding of and he thought they all needed to be on the same page. The information that had been brought forth regarding the OPA Board sounded like they were not on the same page and they needed to fulfill that obligation as well. He was making a list of items during the hearing and there were a number of Conditions that had not been addressed in the item that was before them and they were items that had been addressed with similar applications with nurseries located adjacent to residential neighborhoods. Those had been good Conditions and things they would need to discuss. He also had concerns about the use of a categorical exemption and the location within the Natural Community Conservation Plan and there were other things that had been discussed; the use of a fence and what exactly would that fence need to be as it was not defined. He found it difficult to believe that they could throw a categorical exemption on the proposed project when they spoke about installing fencing in an area designated as a Nature Conservancy without having a firm understanding whether or not the proposed project fully complied with that plan. He was not looking for an Environmental Impact Report, he was not seeking that at all, but they had a plan in

place and they were using a categorical exemption that was clearly not to be used inside environmentally sensitive areas and he was not certain what they were attempting to accomplish would allow them to use that. He was seeking clarification. He was not arguing the point, he wanted clarification. There were a number of Conditions that had been used on similar applications and he was not certain they wanted to discuss those now, but they were areas that needed to be discussed.

Chair Whitaker stated it would be good to have those things noted for the record and to have the applicant hear those regardless of how they would move the item.

Commissioner Imboden stated he asked the question about lighting and there was not lighting on the site and there was not a plan for that. Sometimes they got into conflict on what the Orange Police Department required and the Municipal Code required for security lighting.

There was also the concern about the impact on the residential uses next to the site. He wanted those things addressed in the Conditions and what he was looking for was if lighting was required, that they get it out there now for discussion and not have homeowners complain at a later date, he would be wanting to understand the point source of the light and that it would not be directed to the neighboring properties, not that the light fell upon those properties, but that the point source was not visible on the neighboring properties.

There was no prohibition of retail sales in the Conditions and they would be setting the applicant up by not being very clear and up front in the Conditions of what was expected. Hours of operation; it was a CUP putting a commercial use next to residential uses and there was no indication regarding hours of operation and that could be left up to the Municipal Code, if it became a nuisance and work went on until 11:00 p.m. with noise and light. The structures and enclosures, there was no discussion about those whatsoever and he was not certain how the City could enforce what could come on and off of the property if that had not been discussed.

In regard to the perimeter treatment, they had spent time speaking of that. Was there a fence, would there need to be a fence or not, if a fence was required would vegetation be against the fence and what would that be? They discussed that at length with other applications and he was not certain why the application before them would be any different.

Getting back to the NCCP, what he was interested in was clearly from the language of that plan that the nursery use was permitted on the site and that there was not a conflict and that storage and use of the chemicals associated with the use were not in conflict and that the fence being proposed was acceptable as well. Those were the things he wanted to see before he could approve the CUP.

Commissioner Steiner stated he appreciated the fact that they were hearing from OPA and he wished that within the process that it would have been heard 3 or 4 months ago so

they were not so far down the road and having the item come in at the last minute. He supported the suggestion of having the item go back to the OPA for their review.

Commissioner Cunningham stated he concurred with what had been stated.

Chair Whitaker stated he agreed with his fellow Commissioners and initially at the beginning of the hearing he was inclined, because of a Staff error and there was not a prerequisite to go back to the OPA, it was simply a policy that was not mandated and he had been inclined if it appeared the item was moving forward without issues, he would have wanted to move it forward as he was very sensitive to an applicant that had been in the process for 6 months and to ensure the applicant had their due process and that they had some action or resolution. After the discussion, it was very clear, especially with respect to Condition No. 7, Mr. Peltzer had not given them any assurance that he could move forward with a fence that would be significant enough to prevent the native vegetation from moving into other areas and to comply with the Conservation Plan. He felt he had not obtained a clear answer with respect to the litter on the property or the adjacent property and he agreed with Commissioner Merino in having the applicant go back to OPA and to go through that process and outline the things that Commissioner Imboden spoke to would actually bring forward a project that the neighborhood could live with and that would sail through the Commission. If Commissioner Merino would be moving the item to continue as he had mentioned earlier, after hearing all the facts and circumstances, it would be the only helpful thing they could do for the applicant. If they would be making a decision currently, he would be against the application.

Commissioner Merino stated he would want to move the item to be continued to a date certain and asked Staff for their input?

Mr. Knight stated if the Commissioners would want to continue the item to a date certain; as project proponent, it was the owner's responsibility to submit the project to the OPA Board. It would have been Staff's responsibility to advise the applicant about that process early on, even though they should have known, it was not safe to presume that the applicant would have known to do that. He felt the first meeting in September would allow time as the OPA shall provide written comments to the Community Development Director within 15 days of receipt of the preliminary plans or designs. If Mr. Rudat or Mr. Peltzer submitted the information to the OPA Board within the next week or so, OPA would need to report back by early August and that would allow sufficient time for Staff to complete their research on questions raised. Staff had a good idea about the fence and the type that would be appropriate and they could provide that information back to the Commission and the applicant. It was nothing exotic; it was just a way of trying to keep the workers or other people from areas which contained native shrubs.

Chair Whitaker stated the first meeting in September was on the first Wednesday after Labor Day.

Mr. Garcia stated the applicant was requesting to be heard at the second meeting in

September, which he believed was September 20.

Chair Whitaker asked Mr. Rudat if he was in acceptance of moving to a continuance.

Mr. Rudat nodded he was in agreement with a continuance.

Commissioner Merino made a motion to continue, CUP No. 2775-09-Peltzer Ranch, to a date certain of September 20, 2010.

SECOND: Commissioner Imboden

AYES: Commissioners Cunningham, Imboden, Merino, Steiner and Whitaker

NOES: None ABSTAIN: None ABSENT: None

MOTION CARRIED

(2) CONDITIONAL USE PERMIT NO. 2781-10 – VILLAGE FARMER'S MARKET

The applicant proposes to host a permanent Farmer's Market in the existing Village at Orange shopping mall parking lot fronting Tustin Street between Sears and old Navy on Thursdays between the hours of 8:00 a.m. - 2:00 p.m.

LOCATION: 1500 E. Village Way (parking lot fronting Tustin Street

between Sears and Old Navy)

NOTE: This project is categorically exempt from the provisions of the

California Environmental Quality Act (CEQA) per State CEQA Guidelines Section 15304 (Class 4 – Minor Alterations to Land).

RECOMMENDED ACTION:

Adopt Planning Commission Resolution No. 22-10 allowing a permanent farmer's market and one banner in the parking lot of an existing shopping mall.

Chair Whitaker stated his law firm had Red Robin as a client and he declared a conflict due to location and he would be recused from the item's presentation.

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

Vice Chair Cunningham opened the item for any questions to Staff.

Commissioner Merino stated in the Staff Report on page 3, there was information regarding the Health Department's requirement for a restroom and that hot water be available for vendors. The City Wok Restaurant was being used to accommodate that requirement and he asked if there was an agreement or how had that been worked out?

Ms. Nguyen stated there was a condition that stated a restroom needed to be provided whether it was City Wok or not, in general a restroom would be provided.

Commissioner Merino stated as there was a Condition for that, it was Staff's understanding that the Village Center would provide for that requirement.

Ms. Nguyen stated yes, it was Condition No. 17.

Commissioner Imboden asked how was the property parked and how had the market being placed on the site impacted parking? There was information regarding spaces, but there were also vehicles related to the vendors and he wanted a more clear understanding of the parking impacts on the site.

Ms. Nguyen stated she had checked the original entitlements which had 4,300 parking spaces which had not changed. The farmers market used 67 spaces and Staff conducted a

parking study. On Thursday, July 1 at 12:45 p.m. she checked 3 drive aisles to the south and north while the farmers market was in session and out of 243 parking spaces, 17 spaces were open and on Friday, July 2, between 12:45 p.m. and 1:00 and at that time 80 spaces were open vs. 17. The farmers lined their cars up behind their actual tent areas and would not take up any additional parking with their vehicles outside of the actual quarantined area.

Commissioner Imboden stated the area that was marked off contained both the market area and parking for the vendors.

Ms. Nguyen stated yes, that was correct. It was also used for safety to provide a buffer from cars running into their tented areas.

Commissioner Imboden stated he thought that was a great idea and was that a Condition?

Ms. Nguyen stated Condition No. 15 stated: Vendors shall not park on the drive aisles either permanently or temporary, but within the limits of the parking stalls behind the yellow tape. It addressed that issue.

Vice Chair Cunningham invited the applicant to address the Commission.

Michi Ward, address on file, stated she was a farmer's market girl. When she was asked to market manage she said yes, because she went to a lot of farmer's markets and when they asked her to open one, she jumped at the chance. She knew all the farmers, she visited the farmer's markets in Los Angeles and she was certain she could manage a market in the City of Orange and bring the best quality to the market. There were currently 12 farmers who came each week, rain or shine, to bring fresh fruit and vegetables. She worked at the farm and knew what farming was. It was hard work, rain or shine, they picked and they wanted to bring food to a City that welcomed a farmer's market. She hoped the Commissioners welcomed farmer's market to their City to bring fresh fruit.

Vice Chair Cunningham opened the hearing to any questions for the applicant.

Commissioner Imboden stated the Village had asked that part of the application included vendors from inside the mall, that they could potentially sell goods at the farmer's market and that the City had conditioned that it not be the case and the market remain a farmer's market with produce and plants.

Ms. Nguyen stated SRC had conditioned that the market remain food and live plants only and the manner it had been expressed to her was that the Village requested that there be information booths, not that retail items would be sold at the market and to have a booth that would display products as technically that would not be food or plants. The customer would need to go into the mall to purchase those items.

Commissioner Imboden stated it appeared they would prohibit that as the vendors needed to be those that sold food or plants.

Ms. Nguyen stated yes.

Commissioner Imboden asked the applicant if she was comfortable with that Condition?

Ms. Ward stated yes. Sometimes the Village of Orange would have a special event, for example Coffee Bean was having a special event and they would bring their product to farmer's market to promote an event that would support the military, she asked if that would be permitted?

Ms. Nguyen stated if it was a food product it would be allowed. They had compliance issues with a watch vendor and there had been a complaint and it appeared to have been taken care of through the discussion with SRC.

Commissioner Imboden stated that was his concern, he was supportive of a farmer's market, but he had not wanted it to become a swap meet and he would not want it to become an industry event with choppers and frying pans and to keep it for what it was. It appeared that the Conditions would take care of that.

Ms. Nguyen asked Commissioner Imboden if he was proposing that no items be cooked at the market as there was a Kettle Corn vendor.

Commissioner Imboden stated no.

Vice Chair Cunningham brought the item back to the Commission for further discussion or a motion.

Commissioner Imboden made a motion to adopt PC Resolution No. 22-10, approving CUP 2781-10-Village Farmer's Market, subject to the conditions contained in the Staff Report, noting the item was categorically exempt from CEQA.

SECOND: Commissioner Steiner

AYES: Commissioners Cunningham, Imboden, Merino, and Steiner

NOES: None ABSTAIN: None ABSENT: None

RECUSED: Commissioner Whitaker

MOTION CARRIED

(3) CONDITIONAL USE PERMIT NO. 2793-10 AND DESIGN REVIEW COMMITTEE NO. 4445-09 – HAVEN GASTROPUB

The applicant proposes to modify an existing Conditional Use Permit No. 2532-05 to expand Alcoholic Beverage Control License Type 47 for a new 258 square foot outdoor patio area fronting on Glassell Street. Exterior modifications include patio railings, outdoor heaters, door change and installation of an 11' x 7' freezer on the exterior of the rear of the building.

LOCATION: 190 S. Glassell, Suites C & D (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).

RECOMMENDATION ACTION:

Adopt Planning Commission Resolution No. 21-10 approving the expansion of the Alcoholic Beverage Control Type 47 license for a new outdoor patio area with exterior modifications.

Commissioner Imboden stated he had a conflict based on his association with the property owner and he would be recused from the items presentation.

Historic Preservation Planner, Dan Ryan, presented a project overview consistent with the Staff Report.

Chair Whitaker opened the item to any questions for Staff.

Commissioner Merino stated on the application the outdoor seating area was a bit different. For example, Gabby's across the way and a few of the other places where the outdoor seating was set back in the façade of their overall establishment. The application before them had seating that pushed out into the actual public walkway. He asked if Staff had carefully reviewed that and the implications it might have.

Mr. Ryan stated the property line had been identified and there was enough space to allow for the public, including wheelchair access, and it had not encroached any further than where the property line was. The area within the property line and the front of the restaurant would be the outside seating area.

Commissioner Merino stated that was from a technical and clearance perspective, and the other part was from a precedent setting perspective, as he could see other applications pushing into that walkway, and he asked Mr. Ryan if Staff had weighed those concerns?

Mr. Ryan stated in the case of Gabby's and Francoli, both original buildings had recessed store fronts and there was historic precedent setting for those restaurants. The

building in the application before them was designed with a setback and at some point in time, might have accommodated a small patio out front.

Commissioner Merino stated the only plan that showed the cooler was on the last page and it showed in the diagram that the cooler was almost directly at the rear door and it would need to shift from an ADA perspective as the area appeared very tight. If the cooler would, in fact, need to be shifted, it could impact a parking stall or the configuration of the cooler may need to change. He asked if there was a space for another parking stall at the back of the building and if the cooler needed to change, how would that change parking?

Mr. Ryan stated the overhang area was striped for loading. The cooler placement required 18" beyond the door swing.

Commissioner Merino stated it appeared that was the case and that there was not enough room without impacting a parking stall.

Mr. Ryan stated he would defer that to the applicant.

Commissioner Whitaker asked if there had been any discussion of stacking of individuals waiting to be seated. In visiting Haven Gastropub on the weekend, and he understood the outside seating would be within their property lines equivalent to Kimmie's next door, but once it was fenced off especially on weekend evenings, there were a lot of people in that area and now they would be waiting out on the sidewalk. He asked if Staff had studied that impact.

Mr. Ryan stated he hoped the restaurant would be that successful. The option might be a requirement that the line be queued around the antique store to the north as there were wide walkways there.

Chair Whitaker stated in regard to the cooler, was there a description of the door type? He was always worried about a walk in cooler that contained outside access and the chance that an individual, be that a child or homeless person, get into the cooler and get locked inside.

Mr. Ryan stated he would allow the applicant to address that issue.

Chair Whitaker opened the Public Hearing and invited the applicant to address the Commission.

Alkesh Patel, address on file, stated on the door swing, the door actually swung in and it might change that, they had looked at the ADA clearance and had kept it a bit off of the wall. He corrected himself, and stated the door swung out from the left and it would not impact parking. They planned on securing the cooler door 24 hours a day and it would not be accessed often. It was a customizable piece and they were considering a swinging door.

Wil Dee, address on file, stated he was familiar with the type of door the Commissioners were speaking of. If a vagrant or a child unintentionally entered the cooler, the doors were required to have a safety mechanism on the inside for emergency exit. The door would be pad locked from the outside. There would be a pull pin that could be pulled from the inside that glowed in the dark to allow exit from the cooler. It was a mandatory component of walk in coolers.

Mr. Patel stated they had wanted to address one issue with the CUP. Since September 4, 2009 they had operated from 11:00 a.m. to 2:00 a.m. with alcohol service stopping at 1:00 a.m. to follow all the local ordinances with the Orange Police Department. The perception and concept of their restaurant was that they were open late and they served food and alcohol until 1:00 a.m. and they had not had any problems with the Police Department. Their landlord and property owner, Mr. Jensen, was available to attest to that. They wanted to be able to remain open until 2:00 a.m., with alcohol service ending at 1:00 a.m. They were pleased with that and would want to continue with that and they had been operating within those hours for the past 10 months and it would be a big impact on their business if they had to change their hours of operation.

Commissioner Merino asked if the restaurant was currently operating until 2:00 a.m.

Mr. Patel stated yes.

Chair Whitaker stated, speaking to Assistant Attorney, Gary Sheatz, he understood that the previous ABC CUPs approved by the City where there had been a designated end to alcohol service 1 hour prior to closing was not considered permissible under California Law and the only thing they were able to specify in regard to the Land Use element would be the hours of operation and not the hours of alcohol service. It was the reason the City was requesting earlier close of business hours for those businesses seeking alcohol licenses.

Mr. Patel stated possibly they could sign an agreement or have the landlord sign some sort of agreement that they would not be able to serve alcohol beyond 1:00 a.m.

Chair Whitaker stated legally they could not do that.

Commissioner Cunningham stated he wanted to be clear that the applicants had an objection to the Condition to limit the hours of operation to 1:00 a.m., and the applicant wanted to remain open until 2:00 a.m.

Mr. Patel stated they had wanted to remain open until 2:00 a.m.

Commissioner Cunningham asked if the applicant was asking for a modification to that condition.

Mr. Patel stated ideally they would want the hours of operation to be open at 7:00 a.m. and close at 2:00 a.m.

Commissioner Cunningham stated currently they stopped alcohol service at 1:00 a.m. and if they had to close at 1:00 a.m. they would need to stop alcohol service at midnight.

Mr. Patel stated if they closed at 1:00 a.m. they would need to start wrapping everything up at 12:30.

Commissioner Cunningham stated with the new condition regarding hours of operation, it would cut into their money making time by approximately ½ hour.

Mr. Patel stated that was correct.

Mr. Dee stated it was more of a perception of their restaurant concept. If patrons had to be out of there by 1:00 a.m., they might not go to their restaurant. At least with the 2:00 a.m. close time, patrons could go in and wind down between 1:00 and 2:00 a.m. They had not had a lot of people in the restaurant at that time, but again, it was the perception of what their business was.

Commissioner Cunningham asked if the applicant felt the change in hours would impact their business.

Mr. Dee stated yes, he believed that would be the case.

Chair Whitaker stated in speaking to Mr. Ryan regarding the queuing issue for waiting, he asked the applicant if they added a condition that waiting patrons would need to wait between the antique mart and the walkway could they comply.

Mr. Patel stated they would not have a problem.

Commissioner Merino asked the applicant if he believed they needed to shut down the service of alcohol 1 hour prior to closing.

Mr. Patel stated yes.

Commissioner Merino stated, speaking to Mr. Sheatz, he believed it was no longer a requirement that they could add and if the proprietor wanted to serve alcohol up until 1:00 a.m. he would be able to do that as the City could no longer condition the hours of alcohol service. With the new Condition the restaurant would cease operations completely at 1:00 a.m. and that would allow the applicant to serve alcohol up to 1:00 a.m.

Mr. Patel stated they would need to have everyone out of the building at 1:00 a.m. and they would not serve someone at 12:59 a.m.

Commissioner Merino stated for clarity, the manner in which the legal language was written, the restaurant would not need to stop alcohol service 1 hour prior to closing time based on a Condition of Approval.

Mr. Sheatz stated he would need to review the original CUP to see how the Condition read. The City's ability to regulate hours of alcohol service was preempted by the State in regulating sales, service and consumption which included the hours of service. Some of the older CUPs had listed as a Condition that service of alcohol would need to stop one hour prior to closing and they had learned that it was not an enforceable Condition. What the City could do by State Law was to dictate the hours of operation for the establishment and it was a way to allow the City to have some control of the time alcohol was served without getting into the sales, service and consumption issue.

Mr. Patel stated was there any agreement that could be signed with the building or with the applicants as tenants to hold them in agreement to stop alcohol service at 1:00 a.m.?

Mr. Sheatz stated there was no legal means to enforce that through a Conditional Use Permit.

Commissioner Steiner asked if the other restaurants in the area ceased operations at 1:00 a.m. or were they open until 2:00 a.m., and had their business remained open until 2:00 a.m.?

Chair Whitaker asked if Staff had hours of operation of some of the other area restaurants?

The question was deferred to the Orange Police Department's representative, Sergeant Peterson. He stated all newer CUPs were 1:00 a.m. The older ones had different hours.

Mr. Patel stated they were not attempting to be the District or an O'Hare's where patrons were taking shots at 1:30 a.m. It was not what they were about and not their concept. Patrons came in had a couple of drinks and ordered food, which was the main focus of their business. They came in and ate until 1:30 a.m. and they were not attempting to be just one of those bars, it was not that type of environment. They wanted to remain open until 2:00 a.m. and not serve alcohol after 1:00 a.m.

Chair Whitaker opened the hearing for Public Comment.

Dan Jensen, address on file, stated he was the developer and property owner at 190 S. Glassell and given what he had read in the Staff Report, the applicants had earned an A on their report card from the Police Department. They had not had any calls out there and they had not been a nuisance to the properties around there. One of the things that was a concern was that they were in a business environment now that was rather tough for many retailers and he felt that having the business close at 1:00a.m. and to adjust their hours, he had not had a problem with the business operators and they had a good handle on the operation. His family had been on that corner for 44 years and they were not about to start any trouble. He thought that Mr. Sheatz had indicated that the City had not had much control over alcohol sales, but they could control the hours and it might be something to consider in paragraph 3 of the requirements. Perhaps there could be an annual review and some type of criteria the restaurant needed to meet in not having the

Police Department out there where there could be some restrictions. In today's economic conditions, the restaurant needed to remain open and the rent would not go down just because they closed at 1:00 a.m. He attested to their integrity and business ethics. They closed liquor sales at 1:00 a.m. because most of the patrons that wanted to drink after 1:00 a.m. had not wanted in their restaurant anyway and many of those people shifted over to other establishments. He believed that if they were allowed to remain open until 2:00 a.m., that alcohol service could not be restricted, but he felt the applicants had the integrity to follow through with what they stated they would do.

Paul Hudson, address on file, stated he lived about 300' away from Haven Gastropub. The amount of alcohol that was now being sold in Old Towne affected him directly and made an absolutely huge difference in his life. The Staff Report had not jived with what he witnessed on his own street, which is 2 doors south. Just last weekend there was a 4 Police car call for an arrest for an assault on an officer. Several months back there was a fight just after 2:00 a.m., there were 6 or 7 guys that broke 2 of his 4" x 4" posts on his front fence and one was taken away in an ambulance and they left blood pools the size of dinner plates in front of his home and the apartments next door. He had not wanted to single out Haven's or Gabby's or anyone else. He just felt they had hit some level where the alcohol was becoming a problem and he had not looked forward to having alcohol served on the street in Old Towne after 11:00 p.m. He had not heard anything from Francoli and Gabby's that closed at 11:00 p.m., he was o.k. with an open patio but that they should not serve alcohol out there as it would become a smoking porch for a bar. Frankly, the way he saw Haven, and it was different as it was presented as a bar that served food and not a restaurant that served alcohol, at least that was certainly true after 10:00 p.m. and it was true of what he had seen when he had been there. He had been in the back of Paul's at 1:30 in morning smoking and drinking when he was younger, and he had not wanted that on the main street in Old Towne and not within 300' of his home and felt anyone in the room would not want that either. He was not certain how that could not be mitigated and he was a small business owner in the City and he understood the need to create revenue, but there needed to be a way that the quality of life would not be degraded for everyone living close to an open bar. He asked that the Commission consider the amount of alcohol or the time it would be served on the street.

Chair Whitaker invited the applicant to provide a rebuttal to the Public Comment.

Mr. Patel stated he understood the comments that were made and they had done their best to insure there was no loitering outside of their restaurant, obviously they had people coming in and out of the restaurant, but they had not had crowds assemble outside. The other thing was that much of their business late at night was alcohol but it was also food and their overall business was 53-54% food sales. They were not a bar that served food; they were a restaurant that served alcohol. He understood the points made and once the patio was in place they would do their best to control the noise and that there would be a manager on site.

Commissioner Merino asked if the applicant viewed the patio being used until 1:00 or 2:00 a.m., or as an alternative and after hearing the concerns about the consumption on

the main street, if the patio was required to close earlier what would their position be.

Mr. Patel stated they would prefer not to, especially being in Southern California the patio was used, but they would be willing to work out a compromise.

Chair Whitaker stated on the door change, the DRC had approved the door change to the old European style door which had not seemed to be in keeping with the building and he asked for a bit of clarification?

Mr. Ryan stated the DRC had wrestled with that and there had been a quite lengthy discussion. He believed that with the modern building and the Condition that the original door be saved, it was a good compromise. The applicant felt the new door was reflective of their theme. It was a quite expensive door and they had purchased it prior to going through the DRC. Because it was versatile change and it was a non-historic building with a themed restaurant, they were able to approve that.

Commissioner Merino asked Mr. Sheatz if the patio could be conditioned to stop alcohol service at a specific time.

Mr. Sheatz stated they would need to Condition no service completely on the patio at a specific hour.

Mr. Patel stated if people wanted to smoke and the patio was closed, those patrons would then be on the street, or in the public walkway.

Commissioner Merino stated the reason he was asking the question, was that if the patio was shut down for an activity, it would be shut down to service and drinking on the patio to address a little bit of the public's concerns. They could not condition hours, but they could condition location. He asked if the alcohol service was pushed back into the restaurant there would be more control, rather than pushing it out onto the street.

Mr. Patel stated they could be agreeable to that.

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

Commissioner Steiner stated he thought they were fortunate to have a responsible business that had a good track record and he would not want to place too many obstacles in their path of success. He would encourage the Commission to not adjust the patio use other than what was recommended in the Staff Report.

Commissioner Cunningham stated he thought Haven's was a great place. He was fine with the earlier opening hours of operation and understood neighborhood concerns, but he had not seen the logic in shutting down earlier than the hours they were operating at currently, they would stop making money and lose revenue. He was not certain if the logic was if they opened earlier they would need to close earlier or was it a part of an

overall effort to get establishments in the area to stop serving alcohol earlier and they were the first on the block because they were attempting to get their CUP extended. He was not supportive of a change in the hours to close earlier. He understood what the applicant was stating. They served food late.

Sgt. Peterson stated the old CUP had nothing about remaining open until 2:00 a.m.

Commissioner Cunningham stated they could legally serve alcohol until 12:59 a.m., but there was a process, lights go on and there would be last call and his point was that it would cut into their hours of operation.

Chair Whitaker stated by their current CUP their hours of operation were until 1:00 a.m. and the applicant had been violating their permit by operating until 2:00 a.m.

Sgt. Peterson stated there were no hours of operation listed in the current CUP.

Mr. Knight stated that was a new aspect to the CUPs due to the one hour alcohol service stop. They had realized that once they were unable to regulate that, but they could regulate the hours of operation. They were setting the hours of operation and they were setting those in accordance with the Police Department's recommendation and it was a new endeavor.

Commissioner Merino stated where he was going in discussing the patio he was also of not being in favor of currently placing restrictions on a business as they needed to provide as many incentives as possible. The things they worried about was if Haven's failed and they got another restaurant in there that was not as diligent and responsible as the managers of Haven's seemed to be, the CUP for alcohol went with the property and it was something they wrestled with. A lot of the issues were when there was alcohol and a patio the alcohol spilled onto the street and the applicant appeared to be amenable to placing limits on the locations where alcohol could be served to consider the neighbors who lived in the area and it would seem to be a reasonable compromise. Possibly it was something the other Commissioners could consider as it was a win-win and a reasonable compromise.

Commissioner Steiner stated the applicants were requesting a CUP and if they became non-compliant could the City revoke that permit?

Mr. Knight stated absolutely.

Chair Whitaker stated Mr. Jensen had spoke about the possibility of an annual review and with Condition No. 10, CUPs would be reviewed one year from the date of approval and each year thereafter as necessary and would be conducted jointly by the Community Development Director and the Police Chief or his designee. The review shall identify adverse conditions such as loitering, vandalism, criminal activity, noise, nuisance resulting from the approval of the CUP and if such issues were identified the CUP shall be referred to the Planning Commission for their consideration, modifications or

revocation. From his point of view, that gave sufficient controls and enforcements back to the City and the Commission. If the applicants could not control their patrons, they could take the whole thing away. He felt there was every incentive for them to do it right and there was sufficient neighborhood concern with what had been occurring with the Chapman students and other things in the Old Towne district and there would be a lot of eyes on their business and they would not be given a lot of grace. From his point of view he was o.k. with allowing Haven to operate at its current operating hours, until 2:00 a.m. and he was o.k. with the patio. They would be returning to the Design Review Committee to get the railing and planters approved. There would be a lot of eyes on the business and if the patio became a problem with patrons passing beers back and forth and there was a lot of noise the whole thing could be taken away. With that said he would be willing to entertain a motion (Commissioner Merino begins to speak).

Commissioner Merino stated he would want to make a comment before.

Chair Whitaker stated no, he would finish his comments and then Commissioner Merino could speak.

Commissioner Merino stated you were about to make a motion.

Chair Whitaker stated no, he was not, he had stated he would entertain a motion, allow him to finish his comments and then Commissioner Merino could add his comments. Chair Whitaker stated he would entertain a motion that would change Condition No. 13 to allow for 2:00 a.m. and to add Condition No. 4 to allow for stacking of anyone waiting to be seated to be done north of the property on the private property area between the market and restaurant.

Commissioner Merino stated he would just ask that in the future that he would be given the same amount of grace as their new Commissioner, Commissioner Steiner or Commissioner Cunningham as he felt that sometimes Chair Whitaker tended to treat him differently than he treated the other Commissioners. His statement was for the record. The comment he was going to add, which was in response to Commissioner Steiner's point was that the issue with regard to the revocation, they had seen the level of Staff effort and taxpayer's dollars that were spent to revoke the Quan's CUP and liquor license and he wanted to state it was always easier, and the Police Department representative was nodding as well, it was always easier to err on the side of caution instead of expending that amount of effort; both Staff time and taxpayer revenue to revoke. He wanted the Commission to give that some thought, revocation appeared simple, but it was much more difficult to apply.

Chair Whitaker stated Quan's had an ancient CUP that had no provisions for review and they had to go back beyond a shadow of a doubt that there were issues. The current application before them had teeth for an annual review that included the potential for revocation.

Commissioner Cunningham stated he believed in being cautious, however, he had not believed in viewing applications with the presumption that the applicant would fail or violate their requirements. He would presume they would succeed, honor their requirements and be around for a long time. If anyone drove by Haven they would get the impression that they would be there for a long time. He had not known many restaurants that he drove by at 10:00 p.m. on a Monday that were full, especially in the current economy. They opened in very auspicious conditions and had done a bang up job.

Commissioner Cunningham made a motion to adopt PC Resolution 21-10 approving CUP No. 2793-10 and DRC No. 4445-09-Haven Gastropub, subject to the conditions contained in the Staff Report and with changes to Condition No. 13 to substitute 2:00 a.m. for 1:00 a.m. as the close of hours of operation and to add Condition No. 40 that waiting patrons queuing shall be to the north between Haven's and the neighboring antique store, noting the item was categorically exempt from CEQA.

SECOND: Commissioner Steiner

AYES: Commissioners Cunningham, Merino, Steiner and Whitaker

NOES: None ABSTAIN: None ABSENT: None

RECUSED: Commissioner Imboden

MOTION CARRIED

(4) **ADJOURNMENT:**

Adjourn to the next regular meeting scheduled for Monday August 2, 2010.

Commissioner Merino made a motion to adjourn to the next regular scheduled Planning Commission Meeting on August 2, 2010.

SECOND: Commissioner Cunningham

AYES: Commissioners Cunningham, Merino, Steiner and Whitaker

NOES: None ABSTAIN: None

ABSENT: Commissioner Imboden

MOTION CARRIED

Meeting Adjourned @ 9:07 p.m.