Minutes

Planning Commission December 6, 2010
City of Orange Monday 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
Gary Sheatz, Assistant City Attorney
Sandi Dimick, Recording Secretary

ADMINISTRATIVE SESSION:

Chair Whitaker opened the Administrative Session at 6:55 p.m. with a review of the Agenda.

Items No. 1 & 2, meeting minutes - Chair Whitaker stated on Item No.1 all Commissioners would vote and on the meeting minutes from November 15, 2010 he and Commissioner Merino would abstain as they had been absent from the Planning Commission Meeting.

Item No. 3, The Pump Room - Chair Whitaker asked if there would be any questions on the item? Commissioner Merino stated he would have questions for the Police Department representative. Commissioner Cunningham stated he had nothing now, but possibly after discussion. Commissioner Steiner stated the site had a lot of advertisements in their window.

Item No. 4, AT & T - there were no questions or discussion.

Item No. 5, El Nuevo Mariachi - Commissioner Cunningham stated he would have a few questions on this item. Commissioner Merino stated he may have a question.

Item No. 6, Wal-Mart; there were no questions or discussion.

Item No. 7, Cyrano's Caffé - Chair Whitaker stated he would have questions on the item. Commissioners Imboden, Merino and Cunningham stated they would have questions. Commissioner Steiner stated due to the location of the café, it would seem that the noise from the site would magnify and affect the residential properties in the area.

Chair Whitaker asked if there was anything coming up that they should be aware of? Assistant Community Development Director Ed Knight stated there was nothing in the immediate future. He stated that the Commissioners had received information in their

Hot File on the CUP for the Pump Room and he asked if they had reviewed that. Associate Planner Doris Nguyen stated there was a letter submitted by the applicant with proposed conditions along with letters from residents that were directly behind the site, who wrote in support of the project. Commissioner Imboden asked if Ms. Nguyen would be discussing those proposed conditions. Ms. Nguyen stated she would if asked. Assistant City Attorney Gary Sheatz stated there was a condition he had noted that they would not be able to recommend, as it had to do with the hours of alcohol service. Chair Whitaker stated that the hours of alcohol service were controlled by the ABC licensing board.

There was no further discussion.

Administrative Session adjourned @ 7:00 p.m.

PUBLIC PARTICIPATION: None

REGULAR SESSION:

Presentation by Commissioner Cunningham.

Adopt Planning Commission Resolution No. 42-10 expressing appreciation to Fred M. Whitaker for four years of dedicated service to the City of Orange Planning Commission.

Commissioner Cunningham stated it was the last Planning Commission Meeting for Chair Whitaker as he had been elected by the people of Orange to the City Council and he would be sworn in for that position on December 7, 2010. The Commission wanted to recognize his service on the Commission. He presented a resolution and a gift to Chair Whitaker. Commissioner Cunningham stated he and Chair Whitaker had been friends for many years and it was bittersweet to see him leave.

Chair Whitaker stated it had been his honor and privilege to have served on the Commission for a little over 4 years and he appreciated the trust Mayor Cavecche and the City Council had placed in his appointment on the Commission and he had enjoyed his time on the Commission. He felt the Commission had done good things for the community as a body, and he appreciated all the hard work that the Commissioners put in and all the support from City Staff.

Consent Calendar:

(1) APPROVAL OF MINUTES FROM THE REGULAR PLANNING COMMISSION MEETING OF NOVEMBER 1, 2010

Commissioner Merino made a motion to approve the minutes from the regular Planning Commission Meeting on November 1, 2010 as written.

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

MOTION CARRIED

(2) APPROVAL OF MINUTES FROM THE REGULAR PLANNING COMMISSION MEETING OF NOVEMBER 15, 2010

Commissioner Steiner made a motion to approve the minutes from the regular Planning Commission Meeting on November 15, 2010, as written.

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

MOTION CARRIED

COMMISSION BUSINESS:

(3) CONDITIONAL USE PERMIT NO. 2767-09 – THE PUMP ROOM

A proposal to upgrade an Alcoholic Beverage Control Type 42 License (On-Sale Beer for Public Premises) to a Type 48 License (On-Sale General for Public Premises) for an existing bar within a retail center. They are also voluntarily surrendering CUP 2342-00 which permitted 14 amusement devices.

LOCATION: 1532 W. Chapman

NOTE: This project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15270 (Projects Which Are Disapproved) because CEQA does not apply to projects which a public agency rejects or disapproves.

RECOMMENDED ACTION:
Review and take action on Planning Commission Resolution No. 45-10 denying an upgrade from a Type 42 ABC License (On-Sale Beer for Public Premises) to a Type 48 License (On-Sale General for Public Premises) and accepting the voluntary surrender of CUP 2342-00.

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

Chair Whitaker opened the item for any questions to Staff.

Commissioner Merino stated the applicant was not offering to surrender his existing CUP under any circumstances and if the item before them was not approved, the existing CUP would remain with the site, and he asked if that was correct?

Ms. Nguyen stated as the City was recommending denial of the item before them, the applicant would fall back on their existing CUP.

Commissioner Merino stated he had a question for the Police Department representatives. On page 3 of the call log in regard to the issues with the applicant/employees, the implication was that the applicant or one of the employees had been cited and he asked if that could be explained?

Investigator Steve Booze stated in reference to OMC Section 5.86.160, the violation had taken place in January 2006. An employee of the business was cited and the City Ordinance stated no person shall operate a sexually oriented adult business without permit, operate such business in violation of the terms of the permit including any

diagram or attachment in part thereto or operate such business other than in proper and approved location of the business. No person shall perform any service or entertainment for sexual orientated adult business where an employee license was required. No person shall violate any provision of that chapter.

Commissioner Merino stated that was a broad statement and he asked if there was someone soliciting?

Mr. Booze stated he believed the incident was some type of exposure.

Commissioner Merino asked if that was an isolated incident.

Mr. Booze stated that was the only incident of that nature that he was aware of.

Commissioner Merino asked if anything had occurred since 2006.

Mr. Booze stated no, not of that nature.

Chair Whitaker asked, in regard to the violation, were the employees participating in some sort of unlicensed exotic dancing or something of that nature?

Mr. Booze stated there was an undercover officer at the location when the incident occurred. A waitress exposed a part of her anatomy that would be covered under the OMC Section referenced.

Chair Whitaker stated with the voluntary surrender of the CUP for games, he asked if that was being surrendered regardless of any action the Commission took?

Ms. Nguyen stated that was correct.

Chair Whitaker invited the applicant to address the Commission.

Mike Ayaz, address on file, stated he was representing the applicant. He wanted to touch on what was just discussed. The violation back in 2006 was for a waitress wearing a too small pair of underwear. There was no genitalia exposed or anything like that. It was too small of a bathing suit bottom and he was certain the Police Department would confirm that. There position was that the business had already been granted the right to sell beer and alcoholic beverages pursuant to the CUP which was granted back in 1959. They had been discussing the matter with City Staff for over a year and a half and in the spirit of cooperation, they had decided to file a CUP. However, it remained their position that they had not necessarily needed it.

With that stated, he wanted to discuss the applicant's operation and other operations. Ocean View Realty, the owner and operator, owned three other businesses with liquor licenses. The other two were allowed to serve distilled spirits. Mr. Weiss had owned the Pump Room since 2004. The Pump Room was certainly a City of Orange landmark and

had the distinction of being one of the City's oldest taverns, having been licensed with ABC as early as 1962. The Staff Report stated the records had been purged and there was no record earlier than 1984; but their records, in fact, showed the license was applied for in 1959 and granted in 1962. He had those documents available. He presented documents for the Commissioner's review. He stated they were geo cards, cards that were maintained on the property and the electronic records were purged. In reviewing the cards and flipping to the last page, there was the applicant name, Robert Walls which was consistent with the 1971 CUP that was referenced in the Staff Report. The request before the Commission was to add the additional line of product of distilled spirits and it was being done to reach out to the existing customer base who overwhelmingly requested that type of product line. Most of their customers were patrons that lived in the local area and walked to their location and they had been overwhelmed with the requests. The request was being made to also attract a higher class clientele. Mr. Weiss, who was an experienced entrepreneur and licensed attorney knew the ins and outs of the bar business and that women and couples enjoyed mixed drinks rather than beer. They were attempting to diversify their clientele to include women, couples and higher class clientele. They had discussed the issue with City Staff and the City Attorney for some time as well as the Police Department. Staff acknowledged the 1959 CUP also indicated there were 10 other locations within a 600 foot radius that sold alcohol and of the 10 locations, 5 were restaurants, 2 were grocery stores, a billiard hall, a liquor store and a convenience store and those types of businesses catered to a different type of clientele.

Mr. Ayaz stated he wanted to speak to the Staff Report and namely some points he wanted to clarify. Specifically there was an issue with 198 sensitive receptors and the basis was the ABC stance on consideration points. The Business & Professions Code had not defined residences as sensitive for purposes of an ABC application; those were churches, schools, parks and child day care centers. The only reason he pointed that out was that he wanted the Commissioners to have a clear picture of the circumstances. There was only one sensitive use within that 600 foot radius, not 198, as determined by ABC. They had needed to send notification to all the residences and they were sensitive to them as homes and residents, but there were certainly not 198 sensitive uses as considered by ABC.

Staff indicated there were 3 grounds for denial of the request; the first being that the addition of distilled spirits to a location that already sold beer and wine could increase crime. The problem with that statement was that there was no statistical data or study that their location that already served beer and wine, would increase the crime rates with the additional alcohol . There was no concrete evidence that was presented that proved adding distilled spirits to their location would increase crime at the location. What they had known, since 2007 and 2008, the Fresh and Easy and Circle K Markets had gone in and the crime rate in the area had dropped with the addition of locations that sold alcohol. Without anything more, it was just a blanket statement that just adding distilled spirits would increase crime. He was asking that the Commission looked at it on a case by case basis, and not just a blanket statement. With the addition of two licenses crime decreased, and with an additional distilled spirits license, crime could actually decrease. He had not known that as they had not done a study or a report, but certainly his applicant

could not be held to such an egregious type of restriction on their particular application. The second reason for denial was the neighbors, those directly behind the property. He and Mr. Weiss had personally met with the neighbors directly behind their location at least 5 times during the past year. They had given them their good neighbor policy, giving them their direct contact numbers and all of those neighbors had written to the Commission in support of the proposed project. They had no problems with the project. He was not aware of anyone present who would speak in opposition to the project, nor had he been advised by Staff that any letters in opposition had been received.

The other issues, such as over concentration and the crime statistics they had touched on. Over concentration would not be affected with their applicants as they were not adding a license to the license count, they would be surrendering their existing Type 42 license and add a Type 48 license and their would not be a net increase in the license count and no real over concentration issue. There had been 18 calls for service since 2008, most of those calls for service were those that were made by his client to the Police Department when they needed assistance. They had been trained through their own security policy and manual to always call the Police Department when there was a need and they had not wanted to be punished for making those calls. Not to state those calls should not have been made, most of the calls, and they could review the call report which had been provided. The calls were made by the Pump Room in order to preserve the safety of the patrons and community at large. The Commissioners understood what were high calls for service and 18 calls for service were not that high, as it related to similar uses within and outside of the City of Orange.

There were also 25 voluntary conditions that had been submitted; conditions they had spoken with the Police Department and Staff about, and also the City Attorney's office. Those conditions included keeping the back door shut during normal business hours, alarming doors with panic hardware, no smoking in the back of the premises and equipping the premises with cameras and additional lighting. His client had created, at great cost and expense, a security policy and procedure manual that was highly proprietary since they had spent so much money putting it together and they had not wanted it published for everyone to copy. It was very expensive, 48 pages, and it was the basis for their Staff, employees and security personnel. The bar was a landmark in the City of Orange. Whether people liked it or not, the applicant was requesting approval as the grounds for denial were not present.

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

Commissioner Merino stated that one of the opening statements was that the business was attempting to attract a higher class clientele, but it was his understanding that the Bikini Bar type of business would be maintained and it was Mr. Ayaz's contention that a Bikini Bar, with the addition of hard liquor, could upgrade the clientele that would be attracted to the establishment.

Mr. Ayaz stated beer and the cost of alcohol were two things and they were stating that statistically adding distilled spirits tended to attract a client that spent more money and

was a higher class of clientele.

Commissioner Merino stated if conditions were added that were similar to a sexually oriented business and could potentially prevent them from maintaining a Bikini Bar, he asked if that would be something that the owner would find acceptable.

Mr. Ayaz stated no, the business had been developed over a number of years and it was known as a Bikini Bar and to basically give up that right to offer distilled spirits would kill what had been known as the Pump Room for several years.

Commissioner Cunningham stated on the conditions that were submitted by the applicant, if they were conditions regarding things that were not being done currently and they would be doing them; or things currently being done that they were willing to have written into the CUP?

Mr. Ayaz stated the business currently existed without conditions, although some of the conditions were already being implemented because of the nature of the business. They were willing to codify those into conditions and some of the conditions that were submitted would be additional conditions that they were willing to add to the entitlement, as well as any other reasonable conditions. It was important to understand that currently the business operated without any conditions. He understood that the Bikini Bar might bother some people, but it was a lawful business and they were attempting to bring the business into conformity with conditions which would offer the City some teeth to take action toward the applicant for any violations of any kind. In the current situation, the City had some teeth, but not what would exist with the added Conditions.

Commissioner Cunningham asked if he disputed any of the allegations made by the residents.

Mr. Ayaz stated, with all due respect to the Police Department, he had spoken with the neighbors and that was not the information he received. He could not state that the Police Department was making it up or anything of that nature; but he had spoken with the neighbors and had spoken with them regarding the outlandish statements that had been made and none of the neighbors had indicated that those statements were true. There was no one present that he was aware of that would ask for denial of the project. All the neighbors had submitted letters to ask for approval. There were four that were directly behind his client and those residents were in complete and full support of their proposal and short of dragging them in, they had asked them to write letters and they had.

Commissioner Cunningham asked if there was an outreach to other neighbors down the street. He had driven down the alley and if there had been occasion for patrons to stumble out the backdoor there was nothing to prevent them from going further down the alley. He was attempting to clarify what the Police Reports had documented from the residents that they had spoken with stating one situation and then the other four neighbors that wrote letters stating another thing?

Mr. Ayaz stated it was a case that the Police Department could not identify who they had spoken with, or he and the applicant would have focused their energy on those people. He had walked up and down Robyn and they had passed out their good neighbor policy with their phone numbers on it and had focused their efforts on the residents directly behind the business. As a matter of knowledge, the Police Report stated that people would come out of the bar and urinate on the fences; and having been there, how would that occur. There was a 6' concrete wall that ran the length of the alley. Unless guys were jumping over the fence and peeing in their yards, it had not made sense.

Chair Whitaker stated it was stated that they had urinated on the fence. On the back fence, which he assumed was the concrete fence.

Commissioner Whitaker stated it was a question he had and the reason he had driven down the alley.

Mr. Ayaz stated their concern were the neighbors directly behind them and they would go to those residents bi-monthly to insure there were no problems, happy neighbors made for an easier business operation. His client understood the conditions, the law and those types of things and they would welcome Conditions of Approval as long as they were reasonable and allowed the business and City to work hand in hand.

Commissioner Steiner stated that one of the conditions from the applicant referenced advertising that was exposed and there currently was advertising on their windows.

Mr. Ayaz stated it was a pretty standard condition placed on locations that upgraded their liquor license. They were currently unrestricted and the conditions were provided in good faith and they would adhere to those conditions. He understood the City's position on the issue and the only caveat would be the logo emblem which was a part of their logo which had a beer sign on it. The painted outdoor advertisement would not remain.

Commissioner Imboden asked if Mr. Ayaz was the author of the letter from the office of Rick Blake that was dated December 6, 2010 and spelled out the conditions of approval?

Mr. Ayaz stated yes he was.

Commissioner Imboden asked if the conditions were submitted on a prior date to City Staff.

Mr. Ayaz stated no, that he had spoken with Ms. Nguyen and apparently it had been brought up in their conversations with the Police Department and they had been going through their situation since 2008. Conditions of Approval had been submitted previously and he was not certain it was ever codified in a document, but they had certainly discussed the submission of voluntary conditions and it had always been a part of their plan.

Commissioner Imboden asked if there was a reason that the applicant had waited until December 6, 2010 to get the proposed conditions to them.

Mr. Ayaz stated he had spoken with Ms. Nguyen and they had missed including the voluntary conditions, but the idea had remained that they had been willing to volunteer conditions. He had not anticipated that the City would not also provide a resolution in the event that the proposal was approved and that would have included conditions. He had received the Staff Report and put the conditions together.

Commissioner Imboden asked if Mr. Ayaz had just received the Staff Report on December 6, 2010?

Mr. Ayaz stated he had received the Staff Report approximately 10 days prior to the Planning Commission Meeting.

Commissioner Imboden stated it was a bit problematic for the Commission to have been currently presented with the conditions and then asked to approve the project based on those conditions when they clearly had not had time to review those conditions.

Mr. Ayaz stated he had not anticipated there being any Conditions of Approval if the Commissioners had voted in favor of their proposal, and the only resolution presented was for denial.

Commissioner Merino stated he had wanted to clarify a point, when he had leaned over to ask the City Attorney a question it had raised an issue. He asked if the existing CUP had any conditions at all.

Ms. Nguyen stated the existing CUP No. 357-66, PC Resolution 11-7-66 had the following conditions that Chapman Avenue be dedicated and Fire fighting facilities be provided as required.

Commissioner Merino asked if it was better to have a situation that the applicant had conditions that could be enforced; or to deny the proposal and leave the status quo in place without conditions.

Sergeant Peterson stated if the City imposed conditions, they opened the door by adding the alcohol that had not existed there; which would add the problems similar to those across the street at Extremes. It was a license that the applicant wanted and he felt leaving it alone would be the best thing.

Commissioner Merino stated there was an implication by the applicant in coming forward to ask for the change that they had actually done something kind for the City as there was nothing that prevented them from selling hard liquor in the first place.

Mr. Ayaz stated that was their position and it would be a legal issue.

Commissioner Merino asked Sgt. Peterson if that was correct.

Sgt. Peterson stated the applicant could not sell hard liquor with their current application. The ABC License would not allow them to sell hard liquor.

Ms. Nguyen stated the OMC also required, when upgrading for a general license, the applicant needed to come before the city for a CUP.

Mr. Ayaz stated their position was that the 1971 granted CUP stated the site was granted the sale of beer and alcoholic beverages. That was what the CUP stated. ABC would grant them the liquor license if they had the appropriate entitlements. They had a 1971 CUP and they were going to go to the ABC licensing board and battle it out, however, the applicant wanted to work with the City rather than going to battle with the City over the issue and the reason they filed the current application was under protest without waiver of rights so they could preserve the 1971 CUP. They were not stating that the 1971 CUP was their catch all; but that they had the legal right to do what they were requesting. He would disagree with the Police Department in stating that the imposition of conditions was something that was generally done as a Planning Commission to regulate businesses. The Planning Commission knew the affect of conditions to regulate businesses in accordance with City code, State law and it was the reason conditions were imposed.

Chair Whitaker asked if they were to issue a CUP with Conditions of Approval would they be able to obtain surrender of the original CUP; in effect they could not go back to the 1971 CUP?

Assistant City Attorney Gary Sheatz stated it was within the Commission's purview to ask for a condition that would in essence wipe the slate clean. All previous entitlements could be revoked and the new entitlement would take place and they could not go back to the previous CUP.

Chair Whitaker asked if Mr. Ayaz's client understood all of that.

Mr. Ayaz stated yes, and if the Planning Commission approved their proposal, they would be able to clean up and get rid of all the old half conditions and have not conditions.

Commissioner Merino stated if they had a set of conditions that the Police Department, Staff and the applicant had agreed upon, he would feel more comfortable moving forward.

Commissioner Cunningham stated in follow up to the original CUP that the applicant stated allowed them to sell distilled spirits, he asked why had the applicant not gone to ABC licensing to clear it up? He commended the efforts of the applicant in wanting to be neighborly and work together. He had not understood why their licensing issue had not been cleared up ahead of time and they would not be having the argument whether the applicant was allowed to sell distilled spirits or not; then the applicant could return to the

Planning Commission with their security procedures and conditions. In reference to the applicant's security procedures, and he appreciated that they had a handbook, but it would be helpful to allow them to see what it was. A previous submittal had presented a PowerPoint on their security program. It was great to have the binder, but they were being asked to vote blindly on taking the applicant's word that a top shelf security program existed.

Mr. Ayaz stated he had supplied the security manual a year ago to Staff; the idea was that they had not wanted it plastered everywhere and for everyone to be able to copy what they had just spent thousands of dollars doing. Staff had the report for some time and they had indicated that it should not be a matter of public record. With regard to the ABC issue, they had contacted ABC. When an upgrade was being applied for there needed to be a zoning affidavit, which was an ABC 255 standard form and the City would not sign off on that form and it was the reason he was before them.

Commissioner Cunningham stated the applicant still needed a new license.

Mr. Ayaz stated they were currently attempting to transfer their license and they had a license pending currently with the department. They had initially come to the City with a zoning affidavit to sign off on the 1971 CUP, they refused, and they were now before the Planning Commission. He had communications with Mr. Sheatz dating back to 2008 on the issue. With regard to the conditions not being before them, he would be amenable. If they were receptive to receiving conditions and possibly pushing it back to allow the Planning Commission to review the additional information, it would also allow him and the applicant to work with Staff to develop conditions. It had not been easy as City Staff's position had been no and it was difficult to get Conditions of Approval.

Ms. Nguyen stated she had an email from Mr. Ayaz asking specifically not to provide the policy manual in the Staff Report.

Mr. Ayaz stated that was correct and due to the proprietary nature of the information.

Commissioner Cunningham stated he understood, however, other applicants had provided their security manuals; applicants who had also put time and energy into their plans. It made it difficult to incorporate that into their decision making when they had not had the opportunity to review the information.

Mr. Ayaz stated he believed Staff and the Police Department had the opportunity to review the manual and that the Police Department could speak to the extensive coverage of the security plan that had been provided.

Commissioner Cunningham stated he had not wanted to go back and forth. He directed his next comment to the Police Department representatives, and stated the applicant had brought letters signed by actual people but in the report from the Police Department, the complaints were noted as just residents and he asked where had those residents lived?

Sgt. Peterson stated they had addresses and those were from the original canvassing of the neighborhood.

Investigator Booze stated they had gone out in November 2009 to do canvassing and they had a prepared questionnaire, some residents filled it out in their presence and some were mailed back. They had the resident's names and addresses.

Commissioner Cunningham asked if the individuals that submitted letters a few days ago in favor of the applicant were the same individuals who had submitted complaints?

Sgt. Peterson stated it had appeared that way.

Commissioner Steiner stated with the 18 calls for service and the 14 DUI stops for the establishment over a 3 year period; he asked if that was average, high or low?

Sgt. Peterson stated for the type of establishment it was average, as compared to the business across the street that had a very high number. There were some businesses that held the same type of license as the Pump Room, such as the Chili Pepper Restaurant that had very few calls for service.

Commissioner Steiner stated in reading the letters from the residents, he felt it was a pretty good accomplishment to gain such support, however, he could not forget about what had been included in the Police report and they were items as recent as two weeks ago. It had been very negative from neighbors who lived in the area and he could not reconcile the two or ignore that information.

Mr. Ayaz stated he believed 18 calls for service in a 3 year period equated to 6 calls a year, 1 call every 2 months was not average. He thought it was remarkably low. He represented bars and night clubs and other liquor license establishments and 6 calls for service in a year were low. They were speaking about a business across the street and inputting their bad behavior on his client and he had not felt that was just. With regard to the letters from the neighbors, perhaps when the Police Department showed up at the door they had given different answers. The people lived there and if they had an issue, they would have been present and what they had were four very specific letters from the residents behind the business asking for support of the project. The letter writers could be contacted. The neighbors had lived their in total over 100 years and they remembered the past, but were writing to the City about what was currently happening at that location.

Commissioner Imboden stated the Staff Report had not included conditions; but there were conditions provided by the applicant and he asked Staff if they had time to review those conditions and were there any thoughts or concerns to share regarding those conditions if, in fact, the Commission was to move toward an approval?

Assistant Community Development Director Ed Knight stated he had received the proposed conditions from the applicant on December 6, 2010, and what they would do was to follow the same procedure in that when a resolution was not submitted, City Staff

would work with the Police Department to develop conditions; to return in approximately one month with another resolution included on the Agenda and the Planning Commission would have had the opportunity to review that information prior to moving on the item.

Commissioner Imboden stated he had not wanted to cut anyone off but felt they were spending a lot of time with he said-she said and that type of thing. He was getting the feeling from one side of the Commission that there was not an interest in moving forward and he wanted to state that he would not be able to begin to move on information that he had just received and his other concern was the safety report. The two arms of the City that it had been supplied to had not supported the project and it might be critical for the applicant to get that information to the Commissioners.

Mr. Ayaz stated, having discussed the conditions, they were completely open to re-visiting the issue to allow the Commissioners to review their manual and to prepare conditions.

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

Commissioner Cunningham stated he had not had a problem in principal in adding distilled spirits to what was currently being served, but the application was very messy. He would not be willing to move on the item based on information that had just been handed to them and they had not had a chance to review thoroughly. He would be much more comfortable considering the application if there had been a draft resolution; which he understood was not prepared as Staff had recommended denial. He was not ready to move forward on the item.

Commissioner Steiner stated in one of the Conditions of Approval, under general operation, the City was not able to regulate the sale of alcoholic beverages and that was under the purview of ABC Licensing. He would want the Police Department to scrub the conditions and re-look at them in more depths and to continue the item to perhaps a date certain of 30 days.

Commissioner Merino stated the issue was that Staff recommended denial and in the applicant's defense, that was the reason there was not a resolution. He got the sense that they were leaning toward hearing the applicant's perspective and Commissioner Steiner stated it very well, he would want to have Staff and the Police Department lay out any of their concerns and to provide conditions to address those concerns. If the applicant chose not to work with the conditions, they could state that and get an up or down vote. He felt the fact that the Commission was providing an additional opportunity that the applicant should be grateful and he personally recommended that the applicant came to some agreement with the Police Department and Staff if they wanted to be successful.

Chair Whitaker stated he was in general agreement with the rest of the Commissioners and it was a slightly different issue and application, where in the past they had enough information in front of them even though Staff had recommended denial to move for an

approval and then to instruct Staff to return 30 days later. He felt they had not had enough information before them, and he agreed with Commissioner Cunningham that the lack of the security plan was a critical piece in terms of the evidence for enforceable conditions; conditions that if not complied with, had consequences. He would go along with a motion to continue, however, it would be a motion to obtain more evidence and to give up whatever they felt was proprietary regarding their security manual, as they had other bar owners before them that had provided their entire manual; and then the Commission could review the manual and conditions and he could bet that Staff would not change their recommendations. They were asking Staff to do a bit more work by providing conditions.

Commissioner Imboden made a motion to continue, CUP 2767-09-The Pump Room, to allow Staff time to work amongst themselves and with the Police Department to craft conditions that more closely aligned themselves with other applications that had come before the Planning Commission and to address concerns shared by the Commissioners, and to work toward supplying the Alcohol Preparedness manual for the Commission's review.

Commissioner Imboden asked if they were looking to continue to a date certain.

Chair Whitaker stated he was not certain if a month was adequate time.

Mr. Sheatz stated a date certain would be preferred in order to avoid the need to re-notice the item.

Commissioner Imboden stated he would not want to incur that expense and if Staff was able to give them a date that was reasonable to accomplish what they were being asked to do.

Ms. Nguyen stated they could move it to the second Planning Commission meeting in January.

Commissioner Merino suggested moving it to 60 days as there would be challenges between the Police Department, Staff and the applicant and he felt there would be some back and forth negotiations.

Chair Whitaker stated they were looking at February 7, 2011.

Mr. Ayaz stated the sooner the better and he understood the Police Department needed to put together conditions and the manual for them would be an instantaneous availability and they would prefer meeting in January.

Commissioner Cunningham asked if Staff needed 60 days and they had already gone over a lot of ground. He was sensitive to the applicant.

Mr. Sheatz asked if it was the intent of the maker of the motion to have the item return with some conditions or the intent to re-work or change the findings. From a condition standpoint, it would be relatively easier to sit down and address the problems that had been identified at the project site and what types of conditions would mitigate the problems; that would take less time then going back and also having to re-work the findings as well. The findings concern him a great deal as there were already findings to the contraire.

Commissioner Imboden stated he was not interested in changing Staff's recommendation; they had already had the proposal for some time. The Commission was not convinced that they had not wanted to move in the same direction. He would allow the other Commissioners to speak up if they were looking for something else, but it was not a concern of his. He wanted a list of conditions that he could evaluate and respond to as well as obtaining the Alcohol Preparedness manual from the client. Getting back to a date, what he cared about was that Staff had adequate time to prepare them for a decision, whatever direction that was.

Ms. Nguyen stated February 7, 2011 would work.

Commissioner Imboden asked the applicant if he was available February 7, 2011.

Mr. Ayaz stated yes.

Commissioner Imboden stated there was a question from Staff regarding the license surrender?

Ms. Nguyen asked if the motion included that the applicant surrender the existing CUP.

Commissioner Imboden stated he felt they would leave things as they stood and asked Mr. Sheatz if he advised otherwise?

Mr. Sheatz stated leave it where it stood as it existed, yes.

Chair Whitaker stated for clarification they were not asking for a voluntary surrender letter from the applicant as part of the next hearing?

Ms. Nguyen stated the voluntary surrender that was part of the current application was only for amusement devices, what she was requesting was the voluntary surrender of the existing ABC license.

Mr. Sheatz stated it was the CUP from 1966.

Chair Whitaker stated it would be a conditional surrender.

Commissioner Steiner stated speaking as an individual Commissioner, he was not asking the Police Department to come back and change their recommendation, he just wanted to

allow them to take a look at what was provided and he wanted a chance to read the four page letter in more depth and not with only a 5 minute notice and then have the applicant return with a recommendation whether it remained the same or changed.

Chair Whitaker stated he agreed and would want to see the information vetted out by the Police Department.

Commissioner Merino agreed.

Commissioner Cunningham stated he agreed, however, he felt they had not needed to wait until February 7, 2011 to hear the item and that two months from now to deal with what was not a huge amount of extra information was unreasonably long and that they should be able to get through the item and have it cleared out much sooner than that. Neither the applicant or Staff had asked for 60 days, the request had emanated from the dais.

Commissioner Imboden stated in response to that comment, February 7, 2011 was the date that had been requested by Staff.

Ms. Nguyen stated that was the date that she had suggested.

Commissioner Cunningham stated the 60 days came from the dais and he could count to three and realize where it would go.

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

MOTION CARRIED

NEW HEARINGS:

(4) CONDITIONAL USE PERMIT NO. 2770-09, VARIANCE 2199-09, DESIGN REVIEW COMMITTEE NO. 4449-09 & MINOR SITE PLAN NO. 0617-09 – AT&T MOBILITY

A proposal to convert a co-located, non-stealth wireless facility from a 61' tall monopole to a 70' tall stealth monopine. Nine new panel antennas will be added to the pole at the lowest position below the other two existing providers. Four new equipment cabinets and one GPS antenna would be added to the east of the existing equipment. A maximum 12'-2" tall CMU equipment enclosure would be constructed, requiring a Variance.

LOCATION: 595 City Drive

NOTE: This project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15301 (Class 1 – Negligible Expansion of an Existing Utility).

RECOMMENDED ACTION:
Adopt Planning Commission Resolution No. 43-10 allowing conversion of a co-located, non-stealth monopole to a stealth monopine, the addition of nine panel antennas, four equipment boxes, a GPS antenna, and the construction of a maximum 12'-2" tall split face CMU equipment enclosure.

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

Chair Whitaker opened the item for any questions to Staff. There were none.

Chair Whitaker invited the applicant to address the Commission.

Beth Broussard, address on file, stated she worked for Trillium Telecom representing AT&T, she wanted to thank the Commissioners for their time in hearing their project and she also thank Ms. Nguyen for her attention to detail in assisting them in preparation for their presentation. The Staff Report was very detailed and spoke very well of the project.

Chair Whitaker opened the item for any questions for the applicant, there were none. He asked Ms. Broussard if she was in agreement with the conditions as presented.

Ms. Broussard stated she had one clarification issue on the lattice, the Staff Report noted lattice/chain link and she wanted to ensure that they were still speaking to the chain link mesh cover that she had discussed with Staff or if there was a change?

Chair Whitaker stated she was speaking to Condition No. 9 which referenced equipment enclosure.

Ms. Nguyen stated a mesh lid complied with the condition.

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

Commissioner Merino made a motion to adopt PC 43-10, approving CUP 2770-09, Variance 2199-09, DRC No. 4449-09 and Minor Site Plan No. 0617-09-AT & T Mobility, subject to the conditions contained in the Staff Report, noting the item was categorically exempt from CEQA.

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

MOTION CARRIED

(5) CONDITIONAL USE PERMIT NO. 2798-10 – EL NUEVO MARIACHI

A proposal requesting an Alcoholic Beverage Control Type 47 (On-Sale General – Eating Place) License to have on-site consumption of alcohol for the guests of the eating establishment and live entertainment.

LOCATION: 650 N. Tustin

NOTE: This project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15301 (Class 1 – Existing Facilities) because the project consists of the operation and licensing of an existing restaurant.

RECOMMENDED ACTION**:**
Adopt Planning Commission Resolution No.46-10 approving a request to allow an ABC Type 47 License and live entertainment.

Associate Planner Robert Garcia presented a project overview consistent with the Staff Report. He noted that on page 3 of the Staff Report there was an error on the hours of operation and it should read Sunday 10:00 a.m. to midnight.

Chair Whitaker opened the item to any questions for Staff.

Commissioner Merino stated the Staff Report referenced that the Police Department's concerns were alleviated, and on page 2 of the letter to City Staff, there was a bold paragraph that identified concerns and he asked if those were the concerns from the Police Department.

Sergeant Peterson asked for clarification of what Commissioner Merino referred to?

Commissioner Merino read from the letter before him and he asked if those had been the concerns of the Police Department that had been alleviated?

Sgt. Peterson stated yes.

Commissioner Steiner stated for the entertainment which would be an eight piece Mariachi band, how were the homes that sat behind the strip mall affected whether the windows were closed or not?

Mr. Garcia stated if there should be a noise complaint City Code Enforcement would go out to the site and take noise level readings to ascertain if they complied with the City Code.

Chair Whitaker stated it appeared that the live entertainment had different hours of operation than the business itself and he referred to the Staff Report page 6, where they would have hours of operation until midnight, but the live entertainment was conditioned from noon to 10:00 p.m.

Mr. Garcia stated the Mariachi music would end at 10:00 p.m.

Commissioner Imboden stated if a complaint was received City Code Enforcement would go out to determine whether the noise level exceeded the levels allowed under the OMC; and he asked if the noise had not exceeded the limit regardless of the number of complaints filed, would anything happen?

Mr. Garcia stated he believed Staff would work with the applicant to resolve the noise issue and they could add a condition that addressed that to avoid any prolonged issues.

Commissioner Imboden stated what the Code and neighbors felt was acceptable could be two different things.

Commissioner Merino stated it appeared that very little of the restaurant was exposed to the residential properties. There was the existing strip mall, parking lot and he asked if he was reading the site correctly, that the residences were not directly behind the restaurant?

Mr. Garcia stated that was correct. The dining area faced Tustin and the kitchen and preparation area separated that area from the residences.

Commissioner Merino stated there was a buffer between the actual dining and entertainment area and the residential properties.

Mr. Garcia stated he agreed with that.

Chair Whitaker invited the applicant to address the Commission.

John Castro, address on file, representing the applicant, Rudolfo Garduno, who was present had limited English but was available for questions. He thanked the Commissioner for taking the time to review the CUP and the restaurant owner was waiting very anxiously to have his item heard so he could move on with ABC licensing. He had been leasing the premises and it had been a business with a Type 47 permit and that restaurant had existed for many years until the owner had passed away. The Nuevo Mariachi had lost previous clientele and they had made some changes and they were starting over again as a new restaurant. The premises had a patio that was outside with strong windows and the music from the inside was not audible to the outside. There was a big parking lot on Tustin which was a major street. The residents could not hear the music.

Chair Whitaker asked when had the prior establishment closed?

Mr. Castro stated about a year and a half ago.

Chair Whitaker asked Staff if the existing CUP had expired due to inactivity.

Mr. Garcia stated there was an ABC License, Type 41 that had been issued back in 1964 and not a Type 47.

Mr. Castro stated they had attempted to grandfather that ABC License, however, they were unable to and that was the reason for the proposal before them.

Chair Whitaker asked the applicant if they had reviewed and were in agreement with all 41 conditions contained in the Staff Report.

Mr. Castro stated they had a concern with the hours of operation, and most people would listen to Mariachi music from 8:00 to midnight and most birthday celebrations went on until midnight and patrons would want to stay until then or a little bit over to 1:00 a.m. If anyone wanted to celebrate their birthday and alcoholic beverages were not available, they would go home, and that was a concern. It was the owner's concern.

Chair Whitaker asked if he had reviewed the hours of operation for the live entertainment.

Mr. Castro stated they would want to squeeze the live entertainment to midnight; it would be the most appropriate thing to do. They would want to be able to sing happy birthday at midnight.

Chair Whitaker stated if the Commission had not found that persuasive to change the hours of operation, would the applicant agree to the condition?

Mr. Castro stated yes, that was fine.

Chair Whitaker asked if the applicant understood all of the conditions and particularly the advertisement condition and not having signage for alcohol in the front.

Mr. Castro stated the applicant agreed.

Commissioner Cunningham stated it was striking to have a request for an alcohol license and to have the Police Department supporting it; it was a good sign. He was fully prepared to support the recommended action and to amend the conditions based on the applicant's request.

Chair Whitaker asked if that would be a recommendation for the live entertainment hours or hours of operation, Condition No. 10 was hours of operation and Condition No. 28 was for live entertainment.

Commissioner Cunningham stated he would amend both.

Commissioner Cunningham made a motion to adopt PC No. 46-10, CUP 2798-10-El Nuevo Mariachi, subject to the conditions contained in the Staff Report and with the change to Condition No. 28 for the hours of live entertainment to be amended to allow live entertainment until midnight on Friday and Saturday, noting the item was categorically exempt from CEQA.

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

MOTION CARRIED

(6) CONDITIONAL USE PERMIT NO. 2801-10 – WAL-MART

A proposal to upgrade an Alcoholic Beverage Control Type 20 (Off-Sale Beer and Wine) to a Type 21 License (Off-Sale General) for an existing 142,000 square foot store and garden center and a Finding of Public Convenience or Necessity.

LOCATION: 2300 N. Tustin

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 restaurant.

RECOMMENDED ACTION:
Adopt Planning Commission Resolution No. 47-10 approving the upgrade from a Type 20 ABC License to a Type 21 ABC license and making a Finding of Public Convenience or Necessity.

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

Chair Whitaker stated he had just been advised by the Assistant City Attorney, Gary Sheatz, that his law firm's client Red Robin was within 500' of the project and he would be recused from the item's presentation.

Vice Chair Cunningham opened the item for any questions for Staff. There were none.

Vice Chair Cunningham invited the applicant to address the Commission.

Debra Meier, address on file, stated she represented Wal-Mart and was available for questions.

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

Commissioner Merino made a motion to adopt PC No. 48-10, CUP 2801-10- Wal-Mart, subject to the conditions contained in the Staff Report and noting the item was categorically exempt from CEQA.

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

(7) CONDITIONAL USE PERMIT NO. 2806-10 – CYRANO'S CAFFE

A proposal requesting an Alcoholic Beverage Control Type 41 (On-Sale Beer and Wine – Eating Place) License to have on-site consumption of alcohol for the guests of the eating establishment and live entertainment.

LOCATION: 7446 East Chapman

NOTE: This project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15301 (Class 1 – Existing Facilities) because the project consists of the operation and licensing of an existing restaurant.

RECOMMENDED ACTION:
Adopt Planning Commission Resolution No.47-10 approving a request for an ABC Type 41 License and live entertainment.

Associated 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 there were issues brought forth by members of the public and he asked if the current owner was the same owner of the establishment when the issues were brought forth?

Mr. Garcia stated there had been an ownership change.

Chair Whitaker asked if there were any public records of the concerns that had occurred several years ago.

Investigator Booze stated the City's record management system was turned over in 1998 and they could not run calls for service from the old data base. They had gone back and the only thing they could locate was that in 1999 there had been a juvenile cited for a minor possession of alcohol. That was not in the business but in a shared courtyard outside the business. In 2008 there had been an attempted burglary at the location. In 2010 there had been vandalism and those had been all the calls he could locate.

Commissioner Merino stated there had only been 3 calls for service.

Investigator Booze stated that was correct.

Chair Whitaker invited the applicant to address the Commission.

Keith Gardner, address on file, stated he was representing the business owner and he thanked Staff in their diligence in moving the project along very efficiently.

They were in complete agreement with the Conditions of Approval and the restrictions on entertainment, happy hour and all the other conditions mentioned earlier. The letter from the Police Department and the ABC statistics all spoke for themselves.

Steve Nichols, address on file, stated he had been a resident of east Orange with his wife for approximately 26 years and they were located about 3 minutes from the Cyrano's Caffé that they had purchased. In answer to Commissioner Merino's question, yes it was an entirely new group and a new entity had been formed. This group had purchased the assets from the former operation owners. There were three partners for this new company and one of the partners was a neighbor of his and another long term resident of Orange Park Acres. There would be new owners, different people from when the other issues had occurred, issues that he was not privy to. The intention of this new partnership was to have a nice, clean café that served beer and wine as a compliment to food service in the evenings. The café was open in the morning and for lunch.

Chair Whitaker opened the hearing for Public Comment.

Bianca Bavand, address on file, stated she had been a resident of the City of Orange for over 50 years and she was the owner of the Da Bianca Trattoria which was a small family restaurant located at the corner of Chapman and Newport Blvd. She and her husband opened the restaurant in 1990, and she was present to share her past experience and concerns related to the pending application for Cyrano's coffee shop to serve alcohol and have live entertainment. Cyrano's was next to her restaurant, although she had no personal dispute with the Cyrano's owners and she had amicable relationships while she had operated her own business. She had serious concerns regarding issues that would undoubtebly arise if Cyrano's served alcohol and had live music. Her concerns stemmed directly from past experiences.

In the early 1990's when Cyrano's first opened for business it had operated as a coffee house and was open at night with entertainment. The entertainment affected the area significantly. Crowds of teenagers flocked to the area. Cyrano's being a small space could not accommodate the crowds which led to loitering in the common areas of the center and the sidewalks were blocked with large groups of kids. These kids would stand around smoking cigarettes and would harass elderly people. She had been blocked while attempting to get to her car and leave the parking lot. There was also foul language that she observed and kids climbing on the roof of her restaurant. They experienced vandalism and there were multiple calls from the Police Department at 3:00 or 4:00 a.m. advising her to go to the restaurant and view the consequences of the kids, which included windows being broken, stealing outdoor equipment and damage of their cash register. There were restrooms that were shared by all businesses in the complex that were constantly trashed by young people. They would smoke in the restrooms and engage in sexual encounters. There had been frequent fights and there had been a stabbing incident that she herself had witnessed. Those were things she had personally

observed. Cyrano's might not condone the behavior, but the reality of the situation was that the café had a small space and if a large group of people were attracted to Cyrano's, those people would loiter in the surrounding areas and the Police had been contacted regularly to break up fights and move people along. She asked if that was the type of things they had wanted to dedicate the Police Department to? The complex was small. She felt a Police patrol would once again be required. In the end the business was located in a highly residential area, it was not Tustin area with blocks of businesses, and it was a small business center surrounded by homes. The space would not lend itself well to large groups. The past would repeat itself if Cyrano's was allowed to open at night with alcohol and live music. The results would be vandalism, harassment, and violence. As a resident and business owner of Orange, she implored the Commission to not allow alcohol and live music.

Marjon Dunn, address on file, stated she was a life long resident of Orange and her mother owned Da Bianca Trattoria which was located next to Cyrano's. As far as the petition went, it was been there-done that and she was sorry the Police Department had not had the records to share with them as they could not go past 1999. They were speaking about the mid 90's and they could attest to the serious problems that had occurred. The business was open at night and frequently had live music and throngs of teenagers flooded the parking lot, taking drugs, vandalizing the center and harassing customers. The patrons of Cyrano's would listen to the music and spill out onto the common patio to smoke and engage in elicit activity. Non patrons would simply flock to the scene simply to hang out in the parking lot. If they had been to Cyrano's, they would understand that the place was tiny and could not support live entertainment. She had witnessed first hand what happened when the business had tried. The business owners could not control the situation outside the coffee house. Why did Cyrano's close their evening business? Bear in mind the spike in criminal activity took place even without alcohol service and adding alcohol into the mix would certainly increase the trouble which included a violent stabbing.

The packets the Commissioners had contained crime statistics that indicated a low crime rate in the area, however, when records were requested from the Police Department, she had been told that the records only went back to 1999 and the statistics before them had not reflected the period where Cyrano's had been opened in the evening with entertainment. During that period Police were forced to respond to calls for service constantly. The 18 calls that they had heard about on a previous application was nothing and they had many, many more. With the strains on the City's budget had they wanted to extend resources in monitoring a bar in a residential neighborhood? Her objection had nothing to do with the applicant, and by the way the property owner was the same person and the applicant was leasing the business. Changes to the CUP would remain with the establishment even when the current owner no longer held the lease. Their reassurance about their particular plans for the business were irrelevant, because they were not the property owners and the next lease owner might want to establish a Bikini Bar or another Pump it up or whatever was there. Her mother owned the property adjacent to Cyrano's and had been a successful business owner there for over 20 years and she deserved to feel safe in her own business. After what the City had gone through to shut down Quan's

Rockin Sushi, she would ask that the Commission carefully consider the repercussions of allowing alcohol and live entertainment in a restaurant nestled into a small residential area. Cyrano's prior attempt to open in the evening with live entertainment proved to be an epic failure that drained Police resources and negatively impacted the neighboring business, please ensure that history would not repeat itself.

Chair Whitaker invited the applicant to comment on the Public Comment.

Mr. Gardner stated the only thing he thought he could address was that they had leased the space from the landlord and they operated their own business there. Beyond that what had occurred 15 to 20 years ago he had not known the details of what happened, but it was not them and had nothing to do with the new business. It was all he could offer.

Commissioner Merino stated in looking at the floor plan that was submitted, one of the questions raised was how in the small space would live music be provided? There was nothing that indicated how the applicant could execute that and if it was not accommodated in the plan he could understand how there could be a concern about spillage onto the other areas of the complex.

Mr. Gardner stated what they had in mind was a very limited possibility of having live music; there thought was that they might bring in local people from Chapman University or Rancho Santiago's music program to provide live background music for the restaurant. It was their concept and they would envision possibly one to three persons that would stand in the North West corner of the building, next to the French doors and perform quietly. That was the concept for their live music and they had no intention of hosting raucous rock and roll, they would invite acoustic quiet singing.

Commissioner Merino asked if it would be confined to the inside of the restaurant and not pushed out onto the patio.

Mr. Gardner stated that was correct and he had thought the conditions addressed that.

Commissioner Merino stated it sounded as if the applicant expected some of the Chapman students to support the business model and he asked if there was a plan to deal with disturbances or issues that should arise.

Mr. Gardner stated yes, it was a part of their Alcohol Management Plan, to maintain an incident log and to track any occurrences; also staff would be trained to deal with any situations. Although students might be brought in to provide background music, the real target for patrons was not students but primarily the people who lived in Villa Park and the Orange Park Acres areas and those were mostly families and retirement age patrons. Their advertising was focused on that group of patrons.

Commissioner Merino directed his question to Staff, stating one of the concerns brought forth was the impact of the volume of the music, and the applicant had indicated they would keep the volume down. In other applications there had been a maximum decibel

level conditioned for enforcement purposes. In Condition No. 19 it was noted as music should be subdued, which was difficult to measure and he asked if that was something that could be addressed?

Mr. Garcia stated there could be modifications to the condition.

Commissioner Merino asked the applicant if a decibel level was added to the condition would that be agreeable.

Mr. Gardner stated that would be fine.

Commissioner Steiner asked the applicant if there would be an amplification system.

Mr. Gardner stated the conditions spoke to that, which stated non-amplified acoustic music.

Commissioner Steiner stated the business was tucked in the corner right up against the embankment and obviously it would not be Mariachi music, but certainly if there were no constraints it could bother the residents.

Mr. Gardner stated the conditions spoke to that as well in that the doors would remain closed during times that acoustic music would be performed.

Commissioner Steiner asked the applicant if they accepted all of the conditions.

Mr. Gardner stated yes.

Commissioner Steiner asked if in doing their due diligence, had the applicant picked up on any of the feelings that the location had been a problem location in the past, even though there were no Police records that far back. Had he heard any rumbles or comments about a problematic site?

Mr. Gardner stated he had heard about the problems historically and he had lived in the area for 26 years and he had been a customer for about that long. He had been to the site mostly in the mornings and on occasion in the evenings. He had not observed anything and he understood there had been a break into the business many years ago and he had not heard about stabbings or the other things that the public had commented on. The area was currently very quiet and they would maintain that, they would also be present to watch and track and he had not believed their new business would have the types of issues or clientele that had been a problem perhaps 18 to 20 years ago.

Commissioner Steiner, directing his question to the Police Department, stated there were five or six other operations in the complex that were not very large and he asked if there had been problems with the other restaurants?

Sergeant Peterson stated no.

Commissioner Steiner stated he had visited the restaurant, and it was a beautiful restaurant and the business owners were local and they would not want a problematic establishment. He asked that back in the 90's when the problems had presented themselves was there a management program that the Police Department had in place to prevent those types of activities, or had those been a more recent addition?

Sgt. Peterson stated the site had not had an alcohol license and he was not certain if there was one in place.

Commissioner Cunningham stated in judging from what was presented, the concern with the coffee house attracting a crowd, he asked how would the business owner deal with loitering teenagers in the area of the restaurant and that appeared to be the crux of the problem? Would the business owner have the authority to ask people to leave, or who had that responsibility?

Sgt. Peterson stated the area could be posted as a no loitering area and the Police could be contacted.

Chair Whitaker stated one of the concerns that had been brought up from previous experiences was with a younger crowd and a younger crowd that might have been drawn to the site by live entertainment. There was a college across the street and he was not certain if they could condition something with respect to not advertising to the college. They had placed conditions on advertising of alcohol sales, but he was not certain if there was anything that could be done for entertainment?

Mr. Sheatz stated that was a slippery slope and he was not certain how they would be able to fashion a condition such as that without entering into some first amendment issues with regard to the entertainment. From a signage standpoint that could be limited, but with regard to what could be done in a local college paper with the issue of advertising itself, that could not be addressed.

Chair Whitaker stated it appeared to him that the coffee house model had not worked as a money maker from 6:00 a.m. to 9:00 p.m. and was that the issue?

Mr. Gardner stated that was correct and what they had envisioned was with the fixed costs of the business with a manager and rent they were attempting to spread the costs across a broader range of operations to bring in more revenue. The concept was that it was important to be open in the evenings with food and alcohol service. The other restaurants in the center offered alcohol service with dinner, Wise Guys and Da Bianca served beer and wine with dinner and that was their concept as well. He had not thought it would be workable to serve meals in the evening and not be able to offer beer and wine based on the patrons they wanted to attract, which was the crowd from Orange Park Acres, East Orange and the Villa Park community. He wanted to point out that the conditions had addressed loitering and particularly Condition No. 7, it gave the Police Department and others the opportunity to review the permit a year from now and to consider such things as loitering, vandalism, criminal activity and noise and they were

open to that review. He was confident about the way those reports would come back.

Chair Whitaker asked if the kitchen was large enough to serve large meals.

Mr. Gardner stated it was large enough for full meals, they currently served sandwiches, chili and soups for lunch and they had all the egg dishes and such for breakfast.

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

Commissioner Merino stated as much as he appreciated the concerns that were raised and he understood if the CUP was approved that it would remain with the site; but with that being stated, he had not felt it was fair to punish a new owner or leaser and a potential business owner that was attempting to start a successful business. There were other restaurants serving alcohol and doing well and although 15 years ago there had been issues, what it came down to was management. Police enforcement and the conditions placed on the current applicant were not conditions that had been in place with the previous business. They had seen that all evening, conditions that had not been in place years ago, conditions that dealt with problems today were significantly greater than tools that the City and Staff had 15 years ago. He was considerably more comfortable with moving forward and he felt they should not attempt to manipulate advertising or to do anything that they had not required of other business owners in the complex to do. He would want the decibel level placed in the conditions as a tool for noise monitoring and that had been a problem in the past.

Chair Whitaker stated he had an issue with the live music and he had not had an issue with the alcohol, as the management program would monitor that. There was 600 square feet of seating and in the floor plan it was very confined where they had planned to put up to 3 entertainers, and if they were against the French doors, people would be going in and out to the patio and if there was anything that occurred on that side of the building, it would just go out to the residents on that side of the business. He was in support of the application, but was not in support of the live entertainment, the space was limited and if they had live entertainment, the tables would not turn as patrons would remain and that could create the potential loitering issue. If there was more space, it would be a different analysis for him.

Commissioner Merino asked if the decibel level would be conditioned would that not be a monitor to some extent, especially if the decibel level was set relatively low that would take care of any potential problems.

Chair Whitaker stated he was not a sound engineer and he would not know what the proper decibel level would be.

Commissioner Merino stated that had been included in previous applications.

Commissioner Steiner asked if there was a standard decibel level.

Chair Whitaker stated he was not aware of a standard.

Commissioner Cunningham stated he was initially in agreement with adding a decibel level condition, but he had not known what that would be. Acoustic music could be a saxophone or a trumpet and he agreed with what Chair Whitaker had brought forth. He was in support of the application, but not the live entertainment. It was a very small space and he understood it was being proposed to draw more patrons in, but it would tend to draw patrons that might contribute to problems. The noise would come out with doors being opened and it was a very small space.

Commissioner Imboden stated he was very much of the same thought and it was a very limited evening menu with the limited space and they could potentially open it up to a situation that would not be expected also keeping in mind that the CUP would remain with the site. He echoed the concerns regarding the live entertainment.

Commissioner Steiner stated he obviously had concerns about what had occurred in the past and had not wanted the situation to repeat itself. He had faith that there would be monitoring and that the Police Department would be available to not have it turn into a nightmare or a disaster. To place obstacles in the path of businesses in the economic environment was making it more difficult to allow the applicant to have a successful operation and he was not in support of not allowing live entertainment as described in the Staff Report and as verbalized by the applicant.

Chair Whitaker made a motion to adopt PC No. 47-10 approving CUP 2806-10-Cyrano's Café, subject to the conditions contained in the Staff Report and with the striking of the allowance for live entertainment, noting the item was categorically exempt from CEQA.

Commissioner Merino stated he would echo what Commissioner Steiner had stated, that it was not the Commission's place to limit a business owner's ability to do what they needed to do to be successful, however, the Commission had the ability to place conditions, criteria and metrics that would state if the requirement were violated they would be addressed accordingly and he would not support the motion.

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

MOTION CARRIED

(8) ADJOURNMENT:

Commissioner Cunningham made a motion to adjourn to the next regular scheduled Planning Commission Meeting on December 20, 2010.

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

MOTION CARRIED

Meeting Adjourned @ 9:11 p.m.