

M I N U T E S

GARDEN GROVE PLANNING COMMISSION

REGULAR MEETING

COMMUNITY MEETING CENTER
11300 STANFORD AVENUE
GARDEN GROVE, CALIFORNIA

THURSDAY
JANUARY 15, 2009

CALL TO ORDER: The regular meeting of the Planning Commission was called to order at 7:00 p.m. in the Council Chambers of the Community Meeting Center.

PRESENT: COMMISSIONERS BANKSON, BEARD, BRIETIGAM,
KIRKHAM, PAK, PIERCE
ABSENT: NGUYEN

ALSO PRESENT: Omar Sandoval, Assistant City Attorney; Susan Emery, Community Development Director; Karl Hill, Planning Services Manager; Erin Webb, Senior Planner; Lee Marino, Senior Planner; Chris Chung, Assistant Planner; Sid Ashrafnia, Associate Civil Engineer; Sergeant Kevin Boddy, Police Department; Chief Joe Polisar, Police Department; Kyle Rowen, Deputy City Attorney; Judith Moore, Recording Secretary

PLEDGE OF ALLEGIANCE: The Pledge of Allegiance to the Flag of the United States of America was led by Commissioner Bankson and recited by those present in the Chamber.

ORAL COMMUNICATIONS: None.

APPROVAL OF MINUTES: Commissioner Brietigam moved to approve the Minutes of December 4, 2008, seconded by Commissioner Kirkham. The motion carried with the following vote:

AYES: COMMISSIONERS: BANKSON, BEARD, BRIETIGAM,
KIRKHAM, PAK, PIERCE
NOES: COMMISSIONERS: NONE
ABSENT: COMMISSIONERS: NGUYEN

CONTINUED PUBLIC HEARING: NEGATIVE DECLARATION
PLANNED UNIT DEVELOPMENT NO. PUD-121-08
SITE PLAN NO. SP-444-08
TENTATIVE TRACT MAP NO. TT-17276
DEVELOPMENT AGREEMENT

APPLICANT: EMPIRE HOMES
LOCATION: NORTHWEST CORNER OF HAZARD AVENUE AND EUCLID STREET AT
10901 HAZARD AVENUE
DATE: JANUARY 15, 2009

REQUEST: To rezone a 5.47-acre lot from Planned Unit Development No. PUD-104-81 to Residential Planned Unit Development for the allowance to create a residential condominium/townhouse development that consists of 90 homes; a Site Plan to construct the 90 condominiums/townhomes with associated site improvements that include parking facilities and open space areas; and a Tentative Tract Map to create a one (1) lot subdivision for the purpose of selling each unit as a condominium/townhouse. The site is in the PUD-104-81 zone.

Commissioner Brietigam moved to continue the case to the February 19, 2009 Planning Commission meeting, seconded by Commissioner Kirkham. The motion received the following vote:

AYES:	COMMISSIONERS:	BANKSON, BEARD, BRIETIGAM, KIRKHAM, PAK, PIERCE
NOES:	COMMISSIONERS:	NONE
ABSENT:	COMMISSIONERS:	NGUYEN

CONTINUED
PUBLIC HEARING: CONDITIONAL USE PERMIT NO. CUP-253-08
APPLICANT: CITY OF GARDEN GROVE
LOCATION: NORTH OF BUSINESS CENTER PARKWAY, SOUTH OF FORBES AVENUE ON WEST SIDE OF EUCLID STREET AT 14241 EUCLID STREET, SUITE C-101
DATE: JANUARY 15, 2009

REQUEST: A request from the City of Garden Grove to revise the 'conditions of approval' for an existing restaurant with entertainment (The Can Restaurant and Club) that operates with a State Alcoholic Beverage Control Type "47" (On-Sale General, Eating Place) License. The conditions of approval shall be revised through the approval of a new Conditional Use Permit No. CUP-253-08, that replaces the existing Conditional Use Permit No. CUP-285-96. The proposed conditions will clarify the operational requirements of the business and add new strategies to reduce criminal activity, problems, and CUP violations. The site is in the PUD-104-81 Rev. 86, 90, 91/ Planned Unit Development-Euclid Business Park zone.

At the December 4th, 2008 Planning Commission meeting, staff distributed a comprehensive staff report to the Planning Commissioners for their review. On January 8, 2009, and January 15, 2009, the Planning Commissioners received supplements to the staff report for their review.

Overview of staff report was read by staff.

Chief Joe Polisar stated that the purpose is to modify The CAN Conditional Use Permit (CUP); that the Staff Report lays out a pattern and practice of violating the CUP that requires nearly full time service from the Police Department; that there have been calls for service, liquor law violations, crime statistics, shootings, stabbings, fights, gang issues and more; that there are photographs of underage juveniles clothed in shorts, bikini tops and heels; that these juveniles are dropped off by family members and they change into their underwear in the bushes; that an undue concentration of liquor licenses in areas contributes to a host of problems; that the study identifies The CAN as the Police Department's number one problem; that two traffic accident fatalities are connected to The CAN; that the City has repeatedly tried to get The CAN to run a respectable and safe

business, but to no avail; that the City wants The CAN to be successful, but there needs to be a willingness to do so; that meetings were held with attorneys, police, staff and the owner to discuss concerns; and that it is time for The CAN to be accountable and to abide by a new CUP.

Staff stated that the old Conditional Use Permit does not provide clear direction, therefore, modifications are recommended to clarify the use and requirements of the operation to help the owner to have a successful business; to remove the drain on Police resources; and to protect the public's health, safety and welfare.

Staff further stated that a pattern of behavior has emerged in which the owner/operator of The CAN makes the attempt to operate the business in compliance for a short period of time but is unable to maintain this permanently; that there were two office hearings, one in March of 2008 and one in October of 2008 as there had been no change in the operation; that in October, the owner was given a draft copy of the new Conditions of Approval, that included, for example, Condition No. 20 regarding cover charges and Condition No. 5 regarding the dividing wall; that The CAN is a restaurant with entertainment, a bona fide eating place with a kitchen that is to be open and preparing food during all hours the establishment is open; that no one under 21 years of age is allowed in the bar area, therefore, Condition No. 5 instructs the owner/operator to provide a full height wall that clearly separates the areas; that the low wall partition has disappeared and the entire floor area is used for events; Condition No. 20 allows for a cover charge after 10:00 p.m. only at the bar and nightclub entrance; Condition No. 17 addresses live entertainment; Condition No. 10 addresses the ratio of food to alcohol sales; and also addressed, are the hours of operation and the cessation of alcohol sales and entertainment thirty minutes prior to closing.

Staff added that The CAN is allowed to have entertainment in the restaurant, however, flyer and promoter parties advertised as 18 and older or 'teen nights' have occurred along with adult oriented activities; that these parties are a direct cause of violations, therefore, Condition No. 17 prohibits promoter/flyer parties and defines the types of adult oriented entertainment that are expressly prohibited; that Staff modified the proposed condition to remove the restriction limiting live entertainment to music conducted by a DJ and dancing, therefore the operator is allowed to have live bands and karaoke; that the owner/operator is solely responsible for the live entertainment.

Staff explained that Condition No. 10, explains incidental alcoholic beverage sales in that alcohol sales shall not exceed 35%; that 35% is consistent with current approvals of Type "47" ABC licenses; and that the revenue from the sale of non-related food, cover charges, and merchandise are not included in the business gross sales.

Staff stated that the hours of operation have been reduced as Police records indicate that serious violations occurring at the CAN occur in the early morning hours; that the Police Watch Commander states that there is nightly monitoring of The CAN; that indoor and outdoor disturbances occur at or near the closing time of approximately 1:00 to 2:00 a.m.; that Police have monitored the egress of customers in order to prevent disturbances from occurring; that the CLEW study indicates that crime

connected with ABC outlets increases in the late hours; and that stopping alcohol sales and entertainment thirty minutes before closing allows a more orderly exiting of the establishment.

Staff added that a packet of new statistics has been handed out regarding time, costs, and calls for Police service, along with a letter from the owner/operator's attorney, Mr. Andrew Couch, and the attorney representing the property owner, Catherine Weinberg.

Staff pointed out the location of The CAN restaurant at 14241 Euclid Street; that 365 man hours costing over \$16,000, from January 1 through December 31, 2008 is a documented minimum estimate of the cost for the year, not including officer time writing reports or spot checking and monitoring the business; that 153 out of 218 calls for service were for The CAN, the other 65 calls were for other businesses; that 31 calls were dispatch calls for issues such as noise issues, thefts of purses, cell phones, vehicles broken into in the parking lot, vehicles stolen, and assaults; that the 122 self-initiated calls were the Police monitoring the business; that eight significant arrests included:

March 22, 2008: Officers heard a fight and stopped, 25-30 suspects on patio, seven arrests for drunk in public, one arrest for assault on a Police officer.

July 7, 2008: Two females fighting in business, two arrests for fighting in public, one arrest for assault with a deadly weapon.

September 6, 2008: Patrons leaving The CAN, fight in parking lot, five arrests for drunk in public.

September 20, 2008: Patrons leaving The CAN, argument resulting in suspect hitting officer in face, pepper spray used, six arrests.

September 20, 2008: Two suspects fighting in front of business, batons used, one arrest for assault and battery.

October 18, 2008: Fight inside business, attempt to assault officer, two arrests for resisting arrest and drunk in public.

October 19, 2008: Two suspects fight, one arrest from drunk in public.

November 8, 2008: Suspect hit security guard, 25-30 people fighting in parking lot, one arrest for assault with a deadly weapon.

November 7, 2008: The kitchen is closed, no evidence of food being served, two 18-19 year olds on table on dance floor.

November 14, 2008: The kitchen is closed, no food being prepared, alcohol on the patio, 17 year old and 20 year old on patio, and the patio is unlicensed and not part of the original floor plan.

December 25, 2008: 19 year old inside being offered alcohol by a male subject.

Staff added that documentation includes undercover officers observing minors drinking and being handed alcohol; patrons placing dollar bills in go-go dancer's clothes, alcohol on the patio; fights on the dance floor; kitchen being closed with no evidence of food on tables; photographs of the 14 to 18 year old night in July and August of 2008; foam parties with young girls in the foam pit; that the bar area, though closed, was unsecured; and that the proposed conditions will help the business succeed and address the concerns.

Staff recommended approval of Conditional Use Permit No. CUP-253-08, subject to the conditions of approval, the addendum staff report, and the revisions to Condition Nos. 10, 12, 17, 20, 41, and 45.

Chair Pierce opened the public hearing to receive testimony in favor of or in opposition to the request.

Mr. Andy Couch, lawyer for the applicant, approached the Commission and asked for a two-week continuance of the hearing in order to study the addendum received the previous Friday and the CD of the raw data provided to CLEW, which he received just before the Planning Commission meeting; that an agreement is close regarding the modified CUP; that The CAN has retained a law enforcement consultant who is preparing a security plan for The CAN; that a new security director will be hired; that more time is needed to complete the security plan and refine conditions of the CUP; that he sent a November 24th letter to the City and the response was the addendum from January 9, 2009; that the closing time is the biggest issue; that the new security plan would demonstrate the prospect for a reduced need for Police services in the early morning hours to allow The CAN to be open to 2:00 a.m. due to the competition; and that not all the photographs were taken at The CAN.

Commissioner Kirkham stated that he was not in favor of the extension as The CAN had ample time to change their behavior.

Commissioner Brietigam asked Staff to describe the new information provided to Mr. Couch.

Staff responded that on Sunday, January 11, 2008, Mr. Couch requested the raw data for the CLEW study from 2005, 2006, and 2007; that the data was provided by the Police Department for the CLEW study, which in turn, was provided to Mr. Couch on a CD; that the 2008 data in the staff report binder is not included in the CLEW study; that the CLEW study is a useful analytical tool to evaluate issues related to alcohol, however, the facts for calls for service are not in the CLEW study; and that Staff came to the recommendation based on the demands on the Police services, not based on the CLEW study.

Vice Chair Pak asked Mr. Couch if he followed up his request for the extension.

Mr. Couch responded that he contacted the applicant on January 9, 2008, the day he received the addendum; that on January 12, 2008, he spoke with the City attorney to discuss the addendum and further discussions followed, along with a fax this afternoon; that he received the staff report on December 4th; that a law enforcement expert was hired and the

holidays intervened; that the City took seven weeks to respond to his November 4th request for information; that he has letters signed by City officials stating that The CAN is in compliance with the original conditions of approval; that The CAN has not been in violation of its CUP for the last ten years; and that The CAN CUP was updated in 1996.

Vice Chair Pak asked Mr. Couch if he agreed that the CLEW study is not the reason for modifying the CUP.

Mr. Couch replied that in the meetings, the CLEW study was mentioned repeatedly; that there are ten businesses at the 14241 Euclid Street address with no reference to suite numbers; and that in two weeks, the owner/operator may choose to accept the modified CUP as presented; that he was also present at an office meeting in October 26, 2006 at which activities in The CAN parking lot were discussed and addressed by installing security cameras; and that between October of 2006 and October of 2008, he could have been reached if there were issues to deal with at The CAN.

Commissioner Brietigam asked Mr. Couch if he represented the owner. Mr. Couch replied yes.

Commissioner Brietigam then asked Mr. Couch if it is the City's responsibility to notify him or to notify the owner/operator?

Mr. Couch replied yes, that it is the City's responsibility to notify the owner/operator, however, he could be reached and did not see much correspondence from the City concerning issues.

Chief Polisar stated that the Police Department gave their opinions regarding over concentration of liquor licenses in areas of the City and were subsequently asked to find studies to support their professional opinion; that an independent group did the CLEW study; that the bulk of the information provided deals with issues of responses and that the CLEW study is an addendum for staff to understand questions asked by City Council and Planning Commission regarding undue concentration of ABC licenses.

Vice Chair Pak asked staff for the number of businesses at 14241 Euclid Street that operate beyond 12:00 a.m.

Staff replied there are issues with at least one other business with regard to violating their CUP; that 153 service calls were for The CAN including the eight significant issues; and that all of the photographs are from The CAN.

Commissioner Brietigam asked Staff to explain why the applicant would abide by the new CUP?

Staff responded that the violations of the CUP are violations of the Municipal Code and could be prosecuted as misdemeanors; that the Code could be enforced by civil nuisance abatement and revocation proceedings on CUP's; and that the City's wish is to help the business be successful, and therefore, has revised the conditions.

Commissioner Brietigam commented that the City has been patient long enough and that a revocation should be processed.

Staff added that revocation is a different application process and a hearing would need to be properly noticed.

Commissioner Kirkham asked staff if the owner/operator is notified when major arrests occur?

Staff responded that it is not clear if the owner/operator is on the property when the business is open; that employees should notify the owner; that the owner is aware of the documents; that there is no 'report of service' left on the property after an incident; that the Code does not have administrative fines for the owner as that would be imposed by a court of law; and that sale of alcohol to a minor is within the State Code and not the Municipal Code.

Staff provided additional information to clarify the violations, as there are times when the owner has been present for CUP violations:

September 20, 2008: Alcohol drinking on patio, the kitchen was closed, the owner was present, a go-go dancer was present in violation of nudity laws.

September 20, 2008: Same day, owner present, under 21 on the patio drinking alcohol, dancers were employees of the promoter and were in violation of nudity laws.

August 15, 2008: Owner present, alcohol violations with under 21 on the dance floor, go-go dancers with nudity violations, male handed minor alcohol, dollar bills placed in go-go dancer's outfits, owner working the bar.

Mr. Couch reiterated that the closing time is a main concern and he would like a two-week postponement to study and talk with staff about a security plan.

Chair Pierce commented that the problems occur later at night.

Vice Chair Pak asked Mr. Couch if there were any promoter events in the next two weeks. Mr. Couch replied no.

Chief Polisar stated that businesses that give the City the most problems are the restaurants that act like nightclubs; that under the existing CUP, The CAN is required to have two security guards on duty all hours the restaurant is open; that the problems do not go away; and that there is no security plan that would change his position.

Commissioner Bankson asked Mr. Couch to explain that if the owner/operator and her representative had been in meetings with Staff since October of 2008, why was there another violation on December 24, 2008? He then commented that instead of ignoring the CUP, the owner/operator should show the City that she is trying to accommodate the City.

Mr. Couch stated that the business is trying to reinvent itself such as keeping alcohol and people under the age of 21 off the smoking patio; that there are conditions that have been complied with; that the existing CUP requires two unarmed licensed security guards; and that on a typical evening there are four to eight security guards.

Staff clarified that the existing CUP requires one licensed uniformed security officer and the revised conditions require a minimum of two security guards from 9:00 p.m. on.

Ms. Victoria Tieu, the owner/operator, approached the Commission and thanked the City and Staff. She stated that she has had the business for 20 years in the same location; that occasionally problems occur; that she would be willing to abide by the rules; and that two weeks are required to review the new information.

Commissioner Beard asked Ms. Tieu if she is the original ABC License holder and if the business is the same. Ms. Tieu replied yes, since 1983 and that she has no other businesses.

Commissioner Beard asked Ms. Tieu for a response to all she has read and heard. Ms. Tieu replied that she is surprised at the figures in the CLEW report; her suite is prominent in the area; the Police Department should investigate the two other clubs that serve alcohol; that one other business should close at 11:00 p.m. or 12:00 a.m. and they are open until 2:00 or 3:00 a.m.; that her business closes at 1:30 a.m.; that she considers her business a restaurant with entertainment and club; and that the alcohol sales are low compared to food sales as people are drinking more water and Red Bull, and that food is always available.

Commissioner Brietigam asked Ms. Tieu to explain why complying with the conditions is so inconsistent. Ms. Tieu replied that in 2006, security cameras were installed; that the business is closed on Mondays; that a promoter approached her to do 'teen' parties and that when she saw the photographs, she stopped the 'teen' parties; that the Friday night parties have also been stopped.

Commissioner Beard asked if Ms. Tieu agreed with the condition to disallow outside promoters. Ms. Tieu replied yes.

Staff added these statistics regarding the kitchen being open:

March 7, 2008: Tables in restaurant area pushed back along wall to extend dance floor; under 21 at bar and appear intoxicated.

April 11, 2008: 18 and over night, the kitchen is closed and dark, cover charge at front door.

August 16, 2008: Tables are pushed back for extended dance floor, under 21 on dance floor, owner present, alcohol consumed on patio.

August 21, 2008: Go-go dancers nudity violations and working for The CAN, kitchen closed, under 21 on patio.

August 23, 2008: Go-go dancers nudity violations and working for The CAN, the kitchen is closed, under 21 at bar and at patio.

August 24, 2008: The kitchen is closed, 100-125 people on dance floor, over 21 had orange wristbands, two underage on patio.

August 25, 2008: Under 21 on dance floor and patio, Club Stars Night for 14 to 18 years old, no food being prepared in kitchen.

September 20, 2008: Drinking on the patio, kitchen closed, owner present, dancer walking around violating nudity laws.

September 24, 2008: No one working kitchen, patrons dancing on elevated box.

September 26, 2008: Kitchen closed, go-go dancer hired by promoter to dance, 19 year old near bar, no food seen.

September 28, 2008: Two go-go dancers on stage, one paid by business to dance, kitchen closed, under 21 on dance floor, 21 year old allowed inside without identification, no one eating food.

Ms. Teresa Pinon approached the Commission and expressed her concerns that the situation was not improving with regard to excessive noise, kids wandering disoriented, kids on lawn either high or intoxicated; that she cannot believe a business like this operates in Garden Grove; that the problems have progressively become worse over the last two years; and that she replaced her windows due to the loud noises, which could still be heard. She also stated that the owner of The CAN has shown a lack of respect to the community, the other tenants and the Police. She was asked the frequency of problems and replied that they called the Police four times last year and that the business is a nuisance.

Staff added that a current condition states that sound emitted from the premises shall not be audible outside the boundaries of the establishment.

Ms. Catherine Weinberg, the property owner's attorney, approached the Commission and stated that she supports the City's efforts; that the owner wants to protect property values; and that the property owner is in agreement with the City's revised conditions and would be willing to consent to all necessary modifications including the higher wall with proper permits.

Commissioner Kirkham stated that per Ms. Weinberg's letter, the tenant's lease expires on April 30, 2009 with a five-year option to extend.

Ms. Weinberg replied that the tenant has the option to lease the premises for an additional five years.

Ms. Blandina Bryant approached the Commission and expressed her concerns regarding the loud music; that she has called the police; that nothing has been done about it; that teens are all over the parking lot; that the kids should be inside the building especially at 1:00 a.m.; and that there is smoking and card playing.

Staff provided more information regarding the revocation, that under Title 9 of the Municipal Code Section 9.24.030 Subsection D, Subsection 10, a hearing body may initiate revocation proceedings for any land use action designated by this title, and require findings, the hearing body may revoke or modify the land use action if any one of the findings are made.

- 1) The approved use is being or recently has been exercised contrary to the terms of or conditions of such approval or in violation of any statute, ordinance or regulations.
- 2) The approved use was so exercised that to be detrimental to the public safety or so as to constitute a public nuisance.

Staff explained the four options available; to continue this matter asking Staff to return with additional information; to adopt Staff's recommendation to revise the CUP and/or to modify the Staff's recommendation; to deny Staff's recommendation and allowing the current CUP to stand; and to bring back the matter for a revocation hearing. If so, a 10-day notice would be provided to the property owner stating the Planning Commission's intention to revoke the CUP.

Mr. Couch approached the Commission and referenced the 2006 letter by Catherine Weinberg that was included in the December 4th staff report; that in 2004, The CAN filed a lawsuit against the landlord over the option to extend the lease; that the lawsuit was resolved, however, a letter was only sent to the City; and that any card playing or smoking inside a building was probably the coffee shop next door to The CAN.

Vice Chair Pak asked Ms. Tieu to clarify the Fire Department letter dated August 6, 2008 with regard to occupancy from 1999 to 2008, specifically that the counter and chair area has been removed and the food tables were moved to enlarge the dance floor.

Ms. Tieu stated that the rails and bar stools were removed so that people wouldn't sit around the dance floor and block the view; that tables replaced the stools; that a 36" flower box on wheels had divided the restaurant from the dance floor, and now a \$7000 wall has been installed.

Commissioner Beard asked Ms. Tieu to explain the employment of dancers, underage drinking, and how often she is on the premises.

Ms. Tieu eliminated the dancer after the office hearing; that wristbands are used for 21 and over; that on December 24th, two underage ladies came in with the band; that she is present every night; that the kitchen is always open and serving food; that when there is no food order, the kitchen area is dark.

Commissioner Brietigam stated that the Police reports indicated that underage people were intoxicated and asked Ms. Tieu if anyone that is intoxicated is allowed into the restaurant.

Ms. Tieu replied no; that drinking could occur in the car and they come back in unnoticed.

There being no further comments, the public portion of the hearing was closed.

Chief Polisar stated that this is a critical and very important public safety issue; that Staff's recommendation is to modify the CUP; that the City wants The CAN to be successful, however, if past performance is any indication of future behavior, other recommendations would come back to the Planning Commission.

Commissioner Beard commented that The CAN is a big problem occurring now as is clear from the reports and testimony; that the pattern needs to be broken; that he supports Staff's recommendation; that the City Attorney shows there were findings; that they need to be supportive of the residents; and that this is The CAN's last chance.

Commissioner Brietigam commented that the City has been lenient with the business, however, revocation is necessary and imperative, especially with the assaults on the Police Department.

Commissioner Kirkham agreed with Commissioner Brietigam as there is a limited amount of Police officers; that there were 142 violations in 2008; that the owner knows this is happening; and that we want to save businesses, however, this is costing the City too much.

Commissioner Bankson asked Staff to clarify why they did not recommend the revocation process.

Chief Polisar replied that there were many discussions with legal counsel about how to handle this case; that the City's intent is to help make the business successful, and based on direction from the City Attorney, they chose to modify the Conditions of Approval. He also told the Commission there is a strong message that if the establishment does not comply with its requirements, Staff would be back with a case for revocation.

Commissioner Bankson commented that he supports Staff's recommendation, however, at a moment's notice, if there is one violation, he would support a revocation.

Vice Chair Pak agreed that Staff's recommendation should help the restaurant to be a nice dining venue with entertainment; that The CAN has gone beyond the limits of being a restaurant and breached the trust of the public; and that the CUP should be followed for The CAN to succeed in the community.

Commissioner Beard asked staff if The CAN is pending a revocation of their liquor license. Staff replied that they are unaware of any pending issues; that the ABC has their own administrative board with investigators checking into noise violations.

Chair Pierce commented that he supports the City's recommendation.

Commissioner Brietigam moved to bring back a resolution for a revocation hearing on the original Conditional Use Permit No. CUP-285-96, seconded by Commissioner Kirkham. The motion failed with the following 3-3 vote:

AYES: COMMISSIONERS: BEARD, BRIETIGAM, KIRKHAM
NOES: COMMISSIONERS: BANKSON, PAK, PIERCE
ABSENT: COMMISSIONERS: NGUYEN

Vice Chair Pak moved to approve Conditional Use Permit No. CUP-253-08, seconded by Commissioner Bankson, pursuant to the facts and reasons contained in Resolution No. 5665. The motion received the following vote:

AYES: COMMISSIONERS: BANKSON, BEARD, PAK, PIERCE
NOES: COMMISSIONERS: BRIETIGAM, KIRKHAM
ABSENT: COMMISSIONERS: NGUYEN

Chair Pierce issued a five-minute break. The meeting reconvened at 9:20 p.m.

CONTINUED

PUBLIC HEARING: CONDITIONAL USE PERMIT NO. CUP-252-08
APPLICANT: 888 BROTHERS, INC.
LOCATION: WEST SIDE OF BROOKHURST STREET, SOUTH OF CHAPMAN AVENUE AT
12119 BROOKHURST STREET
DATE: JANUARY 15, 2009

REQUEST: Conditional Use Permit approval to operate an existing restaurant, Four Seasons Hot Pot Chinese Restaurant, with a new original Alcoholic Beverage Control Type "41" (On-Sale, Beer and Wine, Public Eating Place) License. The site is in the BCSP-BCC (Brookhurst Chapman Specific Plan-Brookhurst Chapman Commercial) zone.

Staff report was read and recommended that the Planning Commissioners consider all matters pertaining to CUP-252-08, regarding both a Resolution of Approval and a Resolution of Denial, and take the appropriate action.

Commissioner Brietigam asked Staff for the number of ABC licenses in the area. Staff replied that there are currently ten licenses and only five are allowed; and that the CUP runs with the land.

Commissioner Bankson asked Staff if there are any under saturated areas in Garden Grove with regard to ABC licenses. Staff replied yes, for both on-sale and off-sale licenses; and that people that want ABC licenses are encouraged to call the Police Department for an opinion.

Vice Chair Pak asked Staff to clarify if any of the under saturated areas are in prominent business districts.

Staff replied that the west end of Garden Grove, specifically the Valley View/Lampson and Valley View/Chapman area are possibly not over the limit, however, the central part of the City is over concentrated; that we want to be business friendly, however, this location has a serious problem with alcohol licenses; that the Police Department tries to work with the business owners but there is a responsibility to the outside community.

Commissioner Brietigam asked Staff if there is a correlation with crime and alcohol in the central part of the City.

Staff replied that alcohol does create more crime; that suffering businesses turn to alcohol to keep afloat; that it takes 1 to 2 officers thirty minutes to an hour to address issues; that for this project the hours of operation close at 11:00 p.m.; and that if the owner follows the CUP, there should be no violations.

Chair Pierce opened the public hearing to receive testimony in favor of or in opposition to the request.

Mr. Mark One, the applicant's representative, approached the Commission and handed out a pamphlet describing 'hot pot' cooking and stated that the setting is casual but elegant feast for family and friends to enjoy; that the hours of operation are 11:30 a.m. to 9:30 p.m.; that and ABC license for beer and wine is important to the cuisine; that other restaurants failed because of lack of beer and wine; that there is a concern with the CUP that the next owner may not be responsible; that Mr. Lee has operated a restaurant in Bakersfield for over 20 years; that Mr. Chau, the restaurant manager, was the manager of the Empress Pavilion in Chinatown; that money has been lost on this project for the last ten months; and that he has five other Chinese restaurants located in Westminster, Huntington Beach, Riverside, Redlands, and Anaheim.

Commissioner Beard asked Mr. One if he knew the area was already over concentrated with licenses.

Mr. One replied no; that the previous owner did not apply for a license; and that he does not have alcohol in his other five restaurants as they are fast food.

Chair Pierce asked Mr. One if he had read and agreed with the Conditions of Approval. Mr. One replied yes.

Mr. John Petsas approached the Commission and stated that he is now aware of the over concentration in the area; that there is only one ABC violation in the census tract since 1994; that the restaurant is family style, being well lit in a nice center, and the public can feel safe and patronize other shops; that there are vacancies, however, the restaurant may attract new businesses; and that the 'hot pot' cooking style has been around a long time.

Mr. Ross Melodia, of the management company, approached the Commission and stated that he has offices in the center; that a lot of money was spent refurbishing the center to be a family center; that he supports the tenant and agrees with the Conditions of Approval; that vacancies cause the problems; that the owners have brought in their own security company; that graffiti is nearly non-existent; that it is in the best interest of the City for the project to succeed; and that the Conditions of Approval could be added as an addendum to the lease for eviction purposes.

Staff commented that this project was originally presented on November 20th, 2008 and Staff was instructed to bring back a Resolution of Approval; that if approved, Staff recommends the restaurant close at

9:30 p.m.; and that the incorporation of the Resolution of Denial needs to be stricken from the staff report.

Commissioner Kirkham asked Staff if alcohol would be allowed on the patio?

Staff replied that a Condition could be added that alcohol must be served indoors only and not on the patio.

Commissioner Kirkham asked if there is an entrance to the patio from the parking lot.

Mr. One replied yes, however, that could be changed.

There being no further comments, the public portion of the hearing was closed.

Vice Chair Pak asked Staff to clarify the difference between approving Chili's ABC license and recommending denial of this project's license.

Staff replied that there are currently three licenses to the north, when there were only two in the south end of the parking lot; that Chili's is in a separate census tract; that the licenses were over the limit, however, Planning Commission approved the Chili's based on public necessity.

Commissioner Brietigam commented that he commended the property management company as the location is very much improved; that Asian restaurants can be successful without alcohol; that removing licenses is time consuming and an expensive proposition; that this management company could move on; and that the Planning Commission needs to be responsible to the community.

Vice Chair Pak also commended the property manager and stated that vacancies are worse than the problems because of derelicts and graffiti; that investing in Garden Grove would improve the area; that there is enough security; and that ABC licenses should be granted on a case by case basis.

Chair Pierce asked Staff if all ABC license go through the Planning Commission?

Staff replied no, that the application could go through the Zoning Administrator, and both could be appealed to City Council.

Commissioner Bankson commented that the restaurant would probably be a good family venue, however, the City needs to look out for its citizens; and that he could not approve it especially because of over saturation.

Commissioner Beard commented that there is a reason there are license limits as CUP's run with the land; that he agrees the Planning Commission has an obligation to follow the Staff and Police Department's recommendation; and that he could not support the project.

Commissioner Brietigam moved to approve the Resolution of Denial for Conditional Use Permit No. CUP-252-08, seconded by Commissioner

Kirkham, pursuant to the facts and reasons contained in Resolution No. 5659. The motion received the following vote:

AYES:	COMMISSIONERS:	BANKSON, BEARD, BRIETIGAM, KIRKHAM
NOES:	COMMISSIONERS:	PAK, PIERCE
ABSENT:	COMMISSIONERS:	NGUYEN

CONTINUED

PUBLIC HEARING: CONDITIONAL USE PERMIT NO. CUP-239-08
APPLICANT: TRONG DUONG
LOCATION: SOUTH SIDE OF WESTMINSTER AVENUE BETWEEN FLOWER STREET AND
HOPE STREET AT 10212 WESTMINSTER AVENUE
DATE: JANUARY 15, 2009

REQUEST: Conditional Use Permit approval to operate an existing restaurant, Ngoc Hue Restaurant, with an original Alcoholic Beverage Control Type "41" (On-Sale, Beer and Wine) License. The site is in the C-1 (Neighborhood Commercial) zone.

Staff report was read and recommended that the Planning Commissioners consider all matters pertaining to CUP-239-08, regarding both a Resolution of Approval and a Resolution of Denial, and take the appropriate action. A letter for continuance was noted, however, Staff recommended proceeding with the item.

Commissioner Brietigam asked staff for the number of ABC licenses in the area.

Staff replied that there are 17 licenses with only ten allowed.

Vice Chair Pak asked Staff to clarify if the property owner had guards on the property. Staff replied that the guards are likely the landlord's own policing efforts.

Commissioner Beard asked if the CUP runs with the land onto the next owner. Staff replied yes.

Commissioner Kirkham noted that another ABC License exists next door to the project.

Chair Pierce opened the public hearing to receive testimony in favor of or in opposition to the request.

Mr. Dennis DeSnoo approached the Commission and apologized for the lateness of the request for continuance; and that the applicant and witnesses are not present.

There being no further comments, the public portion of the hearing was closed.

Staff stated that security guards are not the save-all for businesses; that the City hopes the operator would be good; that the original denial recommendation was due to 17 licenses in the area; that the crimes are a major drain on the Police Department; that Staff was directed to come

back with a resolution of approval; and that it cannot be guaranteed that the next operator would be a good one.

Staff added that previously, four Commissioners voted for approval, with three voting no; that the applicant's intent was for a full Commission; that if the denial was approved, the item could be appealed to City Council; that technically, the CUP was approved by a 4-3 vote and that currently, the resolution is to be considered.

Commissioner Brietigam commented that there is typically one or more Planning Commissioners absent from the meeting and that he would not support the continuance.

Commissioner Kirkham asked Staff if the City Council could overturn the decision. Staff replied yes, and that now, there are Conditions of Approval to consider.

Chair Pierce asked the Planning Commission if there was a motion for the project.

Commissioner Beard asked Staff if votes could be changed. Staff replied yes; that if the recommendation is for approval, the incorporation of the staff report needs to be stricken.

Commissioner Beard commented that, in light of new information of the Staff and Police recommendations from the previous item, he wanted to vote against the recommendations and move for denial.

Commissioner Brietigam seconded the motion.

Staff added that if the project was approved, a provision was included as part of the Conditions of Approval that the CUP would be reviewed six months from the date of approval and three years thereafter. It was also noted that in light of a potential 3-3 vote, thereby denying the case, the Commission could move to continue to a date with a full Commission.

Commissioner Beard commented that there is too much over concentration and that he would vote for a resolution of denial.

Commissioner Kirkham noted that there was a motion and a second for denial.

Staff explained that there could be discussion with a motion on the table; however, alternative motions could not be entertained until the current motion was acted on.

Vice Chair Pak commented that the December 4th discussion is in the Minutes; that the owner has four businesses in Garden Grove; and that it is unfair to not give the applicant an opportunity to rebut.

Commissioner Bankson commented that testimony was heard at the December 4th meeting.

Commissioner Beard offered to re-voice his motion; however, he asked Staff that if he withdrew his motion and the second was withdrawn, could

the Planning Commission then act on Vice Chair Pak's motion? Staff replied yes.

Commissioner Beard withdrew his motion to approve the denial; however, Commissioner Brietigam did not withdraw his second.

Commissioner Beard then moved to approve the Resolution of Denial for Conditional Use Permit No. CUP-239-08, seconded by Commissioner Brietigam, pursuant to the facts and reasons contained in Resolution No. 5645. The motion received the following vote:

AYES:	COMMISSIONERS:	BANKSON, BEARD, BRIETIGAM, KIRKHAM
NOES:	COMMISSIONERS:	PAK, PIERCE
ABSENT:	COMMISSIONERS:	NGUYEN

MATTERS FROM
COMMISSIONERS:

Commissioner Bankson asked Staff if the Advanced Beauty School was extending their patio roof? Staff replied that they would look into the matter.

Commissioner Beard extended his thanks to City Staff for their hard work and dedication.

Commissioner Brietigam agreed and thanked Staff and fellow Commissioners for the outstanding work and with regard to the beautification of Lampson Avenue, he challenged the City to consider the landscaping on the corridor from Seal Beach.

Commissioner Kirkham also thanked everyone for helping to make a smooth transition for him; that he could always rely on Staff; that this was a good group; and that The CAN restaurant would continue to need monitoring.

Vice Chair Pak commented that ten high school students from Anyang, Korea, Garden Grove's sister city, were in the Garden Grove and would be visiting Disneyland, Garden Grove High School, a karaoke venue, and would have a beach party barbeque across from the power plant; that ten Garden Grove students have been selected to go to Korea; that this is the 20th year of the student exchanges; and that he thanked Staff for their support.

Commissioner Bankson echoed the support and thanked Staff and noted that disagreements were always honest, civil, and friendly and that he enjoyed his time on the Planning Commission.

Chair Pierce commented that The CAN case was the most difficult so far.

MATTERS
FROM STAFF:

Staff commended the Planning Commission for their work on The CAN as the issue was a difficult one. Staff also noted that two Planning Commissioners have already sent in their applications and Commissioners are encouraged to submit their applications for consideration; that Mayor Bill Dalton would decide the Planning Commission panel. And that the

Commissioners remain in their positions until such time as Council takes action to replace them.

Commissioner Brietigam commented that it would be good to get an electronic reply for applications submitted on-line.

ADJOURNMENT: Chair Pierce moved to adjourn the meeting at 10:45 p.m., seconded by Commissioner Brietigam. The motion received the following vote:

AYES:	COMMISSIONERS:	BANKSON, BEARD, BRIETIGAM, KIRKHAM, PAK, PIERCE
NOES:	COMMISSIONERS:	NONE
ABSENT:	COMMISSIONERS:	NGUYEN

JUDITH MOORE
Recording Secretary