

**MINUTES OF THE REGULAR MEETING OF THE FULLERTON PLANNING COMMISSION**

**COUNCIL CHAMBERS – CITY HALL**

**WEDNESDAY**

**FEBRUARY 27, 2008**

**7:00 P.M.**

- CALL TO ORDER:** The meeting was called to order by Chairman Bailey at 7:09 p.m.
- PRESENT:** Chairman Bailey, Commissioners Musante, Savage, Chaffee, Richmond, and Whitaker
- ABSENT:** Commissioner Francis
- STAFF PRESENT:** Community Development Director Godlewski, Acting Chief Planner Eastman, Assistant City Attorney Barlow, Captain Greg Mayes, Director of Engineering Hoppe, Senior Planner Allen, Associate Planner Kusch, Senior Planner St. Paul, Community Preservation Supervisor Warren, Community Preservation Officer Keasling, and Clerical Assistant Flores
- FLAG SALUTE:** Commissioner Savage
- MINUTES:** MOTION made by Commissioner Musante, SECONDED by Commissioner Richmond, and CARRIED 6-0, that the Minutes of the Regular Meeting of February 13, 2008 be AMENDED to reflect that Commissioner Chaffee was present.

**PUBLIC COMMENTS**

None.

The following items were heard out of order.

**OTHER ITEMS**

“USGBC Presentation – Sustainability 101”. A presentation by Bruce Hostetter, Advocacy Chair, Orange County Chapter of the United States Green Building Council, regarding fundamental sustainability issues policies and opportunities.

Mr. Hostetter referenced an Orange County Map which shows some of the Cities in Orange County that have adopted green building policies which primarily apply to construction and development within the cities. Mr. Hostetter explained the green building fundamental sustainability issues policies and opportunities.

Acting Chief Planner Eastman clarified that this was a presentation only and no decision needed to be made.

Vice Chairman Musante asked how cities normally get green building programs started. Mr. Hostetter stated that there is usually someone saying we can't ignore this and they bring it the attention of the Planning Commission and the City Council, and can get started at any level.

Vice Chairman Musante asked if the end result would be the change in building codes for new construction. Mr. Hostetter stated that it depends on the City's scope of the programs. He stated that typically the focus is on the built environment, like LEED for homes, LEED for new construction, and "Build It Green". Mr. Hostetter stated that most cities will adopt an existing model to guide them. He explained that there are usually separate standards for residential versus non residential, and a separate standard for civic buildings and municipal construction versus private.

Vice Chairman Musante stated that it looks like something a forward looking city like Fullerton should get involved with. He stated that some of the Commission Members have delight, and hopefully something will happen shortly.

Commissioner Chaffee asked what some of the incentives were for going green with buildings. Mr. Hostetter stated that a builder might expect expedited plan check, or reduced plan check fees. He stated that some of the incentives are financial and some are related to things that can facilitate the builders. Commissioner Chaffee stated that a common complaint about going green is that it costs too much and asked if there was good cost data that can be presented. Mr. Hostetter stated that he has been looking for a study that shows how it improves employee productivity. He stated that the USGBC have done the case studies and looked at the costs and they break them down area by area. Mr. Hostetter explained the four different levels of LEED buildings; certified, silver, gold and platinum.

## **PUBLIC HEARINGS**

**PRJ07-00240 – PM2007-236. APPLICANT AND PROPERTY OWNER: JEFF WEINER.** A request to subdivide an existing 1.23-acre site into two parcels on property located at 1423 Richman Knoll (approximately 395 to 435 feet northeast of the terminus of Richman Knoll) (R-1-20 zone) (Categorically exempt under Section 15315 of CEQA Guidelines) (Continued from January 9, 2008) (JEA).

Acting Chief Planner Eastman stated that the request was a tentative parcel map to subdivide one property into two lots. He referenced an aerial photograph and explained the orientation of the property and proposed subdivision. The property is zoned R-1-20 and is approximately 1.24 acres. Acting Chief Planner Eastman stated that parcel 1 at the front would be 20,000 sq feet and the rear lot would be approximately 34,000 sq feet. Continuing, he stated that the General Plan designation for the property is low density residential. He explained the item was continued in December to the January 9, 2008 meeting due to public request and the holidays, but prior to that meeting the applicant requested that staff continue the item to the second meeting in February. Acting Chief Planner Eastman explained that in 2004 there was a neighborhood rezone study that was started in order to consider the "downzoning" of properties in the area. However the City had not moved forward with that study. Acting Chief Planner Eastman stated that there have been some concerns about creating flag lots and clarified that there is nothing in the Code that prohibits the creation of a flag lot. He further explained that there is an old railroad spur, which cuts across the back of the property, and there is a 30 foot easement that currently is provided to the City for sewer maintenance purposes. There is also a 10 foot public utility easement, and a 10 foot wide public trail easement that transitions over the rear of the property. Acting Chief Planner Eastman explained that the Subdivision Map Act has certain criteria for reviewing and approving a subdivision and whether or not it is consistent with the subdivision map act, zoning of the area, environmental documentation, environmental issues in the area, and the City's General Plan. Staff has reviewed the project and feels that it meets the zoning criteria, but have conditioned the project to incorporate Redevelopment

Design Review Committee (RDRC) review of the architecture should it be approved. Acting Chief Planner Eastman stated that the project is exempt from the California Environmental Quality Act (CEQA) and explained the Land Use Element and Resource Management Element of the General Plan. Acting Chief Planner Eastman stated that the placement of a home on the lot behind the front lot creates a configuration that encroaches on the yard of the home in the front, and creates a different development pattern than what exists today. He explained the recommended conditions in the staff report. He stated that Richmond Knoll was designated a rural street in the General Plan and the Elm trees on the street are an important characteristic. Conditions have been recommended to preserve Elm trees, which are proposed to be removed to accommodate the new access drive. He stated that the zoning code requires a minimum lot size of 20,000 sq. feet, and the applicant has proposed a 20,000 sq. foot front lot. That would create a larger lot in the back, which exceeds the  $\frac{3}{4}$  acre minimum size necessary for equestrian use. Acting Chief Planner Eastman explained that a deed restriction will be recorded indicating that the properties are an area of an equestrian/rural lifestyle. Staff recommended that the Planning Commission deny the proposed subdivision based on the findings in the staff report; specifically that it is not consistent with the General Plan.

Commissioner Savage asked if the Commission's options were to deny the project or approve it based on the conditions that were outlined in the staff report. Acting Chief Planner Eastman clarified that staff's recommendation was to deny the project. He clarified that the conditions are recommended by staff to bring the subdivision into closer conformity with the General Plan criteria, should the Planning Commission approve the project.

Chairman Bailey asked if it was City policy for a development to obtain RDRC approval. Acting Chief Planner Eastman stated that it was generally not a criteria or a requirement in a single family zone, but the General Plan identifies that projects, which are potentially inconsistent with the neighborhood may require RDRC review and approval.

Chairman Bailey asked if the installation of fire sprinklers and a public fire hydrant was a typical condition. Acting Chief Planner Eastman stated that in a flag lot situation it is a standard condition. He explained that the Fire Department requests a public or private fire hydrant within all sides of a building, based on a 150 foot fire hose. The Fire Department also requires sprinklers to be installed in a building if it would be difficult for a fire apparatus to enter down a driveway.

Chairman Bailey stated that he met with the property owner and walked the property. He noticed there was fencing right up next to the trail and asked why a 60 foot setback was needed. Acting Chief Planner Eastman stated that staff's concern had to do with the placement of buildings and structures closer to the trail that are not equestrian in nature. Chairman Bailey asked if staff was concerned with a wall or back of a house right up next to the property line that looked like an alley instead of a horse trail. Acting Chief Planner Eastman said yes, and stated that there are 40 feet of easements, and a structure cannot be built to the property line. He stated that staff was trying to preserve a sense of rural open space in the back of the lot, and staff felt the additional setback was necessary.

Commissioner Richmond asked if any other lots had been subdivided in the area. Acting Chief Planner Eastman responded that there have been none recently (at least the last 5 years), and stated that there are lots that have been subdivided west of Euclid. Commissioner Richmond asked how long the area had been considered rural. Acting Chief Planner Eastman stated that Richmond Knoll was designated a rural street in the 1996 General Plan, but the zoning on the property was put in place when the homes were built. Commissioner Richmond stated he was wondering what the City Council had in mind when they made Richmond Knoll a rural area.

Acting Chief Planner Eastman stated that the intent was to preserve the rural character, the policy of which is identified in the General Plan.

Commissioner Chaffee referenced the aerial photograph and stated that there could be a large number potential lot subdivisions. He asked if there was policy that governed the possibility of future subdivision. Acting Chief Planner Eastman stated that there is no policy as it relates to subdivisions, but the General Plan is a policy document used to determine if a subdivision is appropriate. The General Plan does not identify flag lots or subdivisions in general as being a problem.

Chairman Bailey referenced the aerial photograph and asked if the two smaller houses on the northwest corner were subdivided, and Acting Chief Planner Eastman believed that they were not. Chairman Bailey referenced the aerial photograph, pointed out another lot and asked if that lot was subdivided. Acting Chief Planner Eastman explained that originally there was an abandoned rail line that went through the back of the subject lot, which is now the trail. He explained that the same thing occurred on the north side of Richman Knoll when Bastanchury was built and an existing rail line was moved to the north side of Bastanchury so what is shown on the parcel maps appears to be the old rail right of way.

Public hearing opened.

For the record Committee Member Savage stated that he met with Mr. Wiener and walked the property.

William B. Tate, with the law firm of Bryan Cave LLP, stated that he was representing Jeff Weiner in this particular matter. He stated that that the Subdivision Map Act, zoning criteria, and California Environmental Quality Act (CEQA) have all been met. Therefore he did not understand why there were issues. Mr. Tate stated that the question is compatibility or agreement with the General Plan. Mr. Tate believed that the criteria in LU2 of the staff report were general and no specific items were given as to why the subdivision would change the rural character of the property. Mr. Tate also believed that subdividing the property in a lot of this size would not change the rural character of the property. He stated that any issues with the horse alley, which runs behind the property can be dealt with by imposing a variety of conditions on the property. Mr. Tate stated that the development was consistent with the character of the neighborhood and if the issue was the size of the lot he believed he could stand on Mr. Weiner's lot and throw a baseball and hit the corner of the cul-de-sac where there are three very small lots or turn around and throw the baseball the opposite direction and hit the house on the adjacent street. Mr. Tate stated that the only question that should be before the Commission was whether or not the criteria to subdivide the property are met. He stated that all other issues like the encroachment of the elm trees or the 60 foot easement could be resolved. Mr. Tate stated that Mr. Weiner had satisfied all the criteria, and it was wrong to jump through a lot of hoops to deny the subdivision because people do not want another home in the neighborhood. He stated that it was important for the Commission to protect the individual and protect certain rights to develop a piece of property in accordance with the laws that currently exist. Mr. Tate stated that he would like to hear staff acknowledge that the real issue is the subdivision because the conditions that staff put in place can be dealt with in a variety of ways. Mr. Tate stated that staff acknowledged that this development pretty much meets the criteria, and the criteria that staff was really talking about was the rural character of the property.

The following people spoke in opposition of the request:

John Geiger, 1419 Richman Knoll

Bob Jensen, 1411 Richman Knoll  
Nancy Spencer, 1339 Richman Knoll  
Jim Czach, Jr., 1437 Richman Knoll  
Alan Borsari, 620 Green Acre Dr.  
Lee Snodgrass, 1447 Richman Knoll

Their comments were:

- History and subdivision of project is well known
- Home owners are against the lot split
- Richman Knoll is a ridge line and rural street
- Applicant was marketing the house as two separate lots
- The residents love the equestrian neighborhood
- Most people on street have the ability to do a lot split and do not want to
- This project is not consistent with the General Plan
- Staff report clearly captured the neighbors concerns
- Would like to keep the character of the neighborhood
- Believed that the subdivision was not neighborly
- "Good fences make good neighbors"
- The City should protect the character of that neighborhood by denying the subdivision request
- The unique neighborhood can lose its character by subdividing
- Neighborhood has a great cultural heritage
- Love the rural life style and uniqueness of the elm trees
- Richman Knoll is a valuable part of Fullerton
- Anyone is welcome to the neighborhood, neighbors are just opposed to subdivision
- No need to conform to the Historical precedent of the area
- Richman Knoll is the perfect place to live
- Subdivision will have a negative impact on the people who live in the area
- Subdivision will ruin an oasis of large homes

In rebuttal, Mr. Tate noted that a resident suggested maintaining an oasis of large houses. He believed that children would be able to play on a 20,000 foot lot without destroying the rural character of this property. Mr. Tate stated that existing Richman Knoll residents without animals who spoke are precisely the type of people who should be interested in the subdivision, because it would be consistent with them. He believed that the property owners should not be worried about the area attracting someone that does not like horses. Mr. Tate asked the Commission to resist giving power to people who would like to act as if their neighborhood was a private club, but rather to support people who otherwise want to abide by the laws and ordinances of the City that meet the conditions to subdivide. Mr. Tate stated that he had not heard a specific concern on how the subdivision of the property into two lots would ruin the rural character of the property or cause harm.

Commissioner Savage asked Mr. Tate if the character of the neighborhood would change if all the lots on the street were subdivided. Mr. Tate responded that he did not think so, and stated that all the lots could not be subdivided because they are not large enough. Mr. Tate believed that the lots were substantial and the zoning in place responds to the rural nature of the area. He believed that his client was proposing a subdivision that is in keeping with the neighborhood. Mr. Tate stated that something can always be defined so narrowly that nothing fits into it, and asked how close the neighborhood should be defined. Mr. Tate referenced the aerial photo and

stated that he could throw his baseball down the street to the flag lot on the corner. He stated that what was proposed was subdividing into two large lots consistent with zoning. Mr. Tate asked the Commission to be consistent, because they have previously approved similar lot splits. He believed that the project submitted was consistent with the expectations, laws and ordinances that are set forth by the City.

In rebuttal, Mr. Geiger clarified the misconception of the three lots at the end of the street, and stated that the property was one home that occupies all three "lots". He stated that if Mr. Tate could throw a baseball to those flag lots he would be "Sandy Koufax", because a baseball cannot be thrown to any of the flag lots.

Commissioner Whitaker stated that he walked the neighborhood, and in his opinion there was a beautiful driveway that did not meet the definition of rural. He believed that the driveway was out of place when trying to maintain the rural character of the neighborhood. Mr. Geiger explained that most of the homes in that area have a driveway that traverse past the residence and go on to the back portion of the property. Commissioner Whitaker referenced the aerial photo pointed out the driveway, and asked Mr. Geiger if he believed the driveway was rural in character. Mr. Geiger stated that the property owner had recently done the additions, and believed the driveway was consistent with the rural nature of the neighborhood. Commissioner Whitaker stated that although it was a nice driveway, it did not meet his definition of rural.

Lee Snodgrass, 1447 Richman Knoll, stated that the house being referred to had a beautiful driveway that fit the neighborhood nicely because every house has a different personality. He believed that if the area got crowded, people would begin complaining about a lot of things, so the neighbors did not want to subdivide and build more houses. Mr. Snodgrass stated that the property owners could all make a lot of money by subdividing their properties, but they would rather enjoy it. He stated that he would hate to see a developer who is not going to live there make a lot of money and walk away not concerned with what the other people in the neighborhood are left to deal with.

Public hearing closed.

The Commission took a five minute break.

Vice Chairman Musante stated that the Zoning Ordinance and General Plan call for the City to respect and maintain the character of existing residential neighborhoods and encourage the establishment of unique identity in new neighborhoods. Vice Chairman Musante stated that there are streets in the City that are amenable to a lot split and the Planning Commission has approved some of those. He believed that the unique character of the neighborhood would change with the subdivision, and believed it would set a precedent for the rural street. Vice Chairman Musante supported staff's recommendation to deny the request.

Commissioner Richmond stated that he walked the beautiful neighborhood in the morning. He concurred with staff and stated that he would be denying the request.

Commissioner Whitaker stated he agreed with the neighbors that the street was unique and beautiful. He stated that in staff's analysis, based on zoning the property can be subdivided. Commissioner Whitaker stated that the rear property would remain a horse property. He stated that the nature of progress is that things change. Commissioner Whitaker stated that the property owners were putting something into concrete should they be desirous of a lot split down the road, and he had a problem with that because property owners change over time. He stated that if the development of the new property in the back is done according to restrictions

and requirements that are placed by this Planning Commission and/or City Departments the rear property will fit in a way that is not damaging to the neighbors. Commissioner Whitaker stated that he understood that it is not desirable to the neighbors to have that property change, but they do not own the property. He did not understand how creating a desirable new living space on the back part of that property damages the neighbors in such a way that this Commission should prevent that from occurring. Commissioner Whitaker was in support of the request.

Commissioner Savage stated that Richman Knoll was a beautiful neighborhood with beautiful homes, and believed that the elm trees on the street were magnificent. Commissioner Savage stated that the houses are too far from each other and he could not have thrown a baseball that could break a window in any direction. He believed that the General Plan was considered to be the Bible of the Planning Commission and one of the things it prohibits is changing the character of a neighborhood. Commissioner Savage believed that the character of the neighborhood would change if the lot was split, and believed the subdivision would set a precedent. He recommended denial based on the findings and commended staff on a very detailed report. Commissioner Savage stated that he has approved subdivisions on Valencia Mesa, but felt this was a different neighborhood character, and that those subdivisions were appropriate.

Commissioner Chaffee stated that the decision was difficult because many of the rules have been complied with, but was concerned about losing the rural lifestyle if additional lots were subdivided. Commissioner Chaffee believed that the lack of communication between the applicant and the neighborhood was unfortunate. He stated that he supported staffs recommendation to deny the request, because there was a potential here to do additional splits that would change the character of the neighborhood. Commissioner Chaffee stated that he would like to see standards established for guidance as to how to handle a situation like this.

Chairman Bailey stated that he agreed with Commissioner Whitaker. He believed that property rights cut both directions. He stated it was a challenge when purchasing property thinking you can legally do one thing with it, but you can't when the community gets involved. Chairman Bailey stated that he would not be supporting staffs recommendation for denial.

The title of RESOLUTION PC-08-06 APPROVING a Resolution of the Planning Commission of the City of Fullerton denying a request to subdivide an existing 1.23-acre site into two parcels on property located at 1423 Richman Knoll, was read and further reading waived. MOTION by Commissioner Savage, SECONDED by Commissioner Musante, and CARRIED 4-2, with Chairman Bailey and Commissioner Whitaker voting against the motion, that said Resolution be ADOPTED AS WRITTEN.

Acting Chief Planner Eastman explained the 10-day appeal process.

**PRJ06-00006 – ZON06-00001. APPLICANT: HISHAN ABDALLA; PROPERTY OWNER: LEONARD LINDBORG.** A request to consider revocation or modification of an existing Conditional Use Permit to operate a hookah lounge on property located at 1335-1337 East Chapman Avenue (northeast corner of Chapman and Victoria Avenues) (C-2 zone) (Categorically exempt under Section 15301 of CEQA Guidelines) (HAL) Commissioner Savage recused himself from the item because he owns property within the 500 foot range of the project.

Senior Planner Allen gave a brief overview of the project. The request was to modify a Conditional Use Permit (CUP) to operate a Hookah Lounge. Senior Planner Allen gave the background of the Hookah pipe and provided the Commission with photos. She explained that in March of 2006 the Planning Commission approved the Hookah Lounge and explained the conditions and requirements. Senior Planner Allen explained that the CUP contains 3 conditions which are the basis for bringing the item back before the Commission for consideration of modification or revocation. Senior Planner Allen stated that staff identified violations of all three of the conditions and explained the violations. Senior Planner Allen stated that since December 2006 to December 2007 various City Departments and staff have been dealing with an ongoing issue of CUP, Building Code, and Fire Code non-compliance. In December 2007 staff sent the business owner a notice of intent to initiate revocation proceedings. On January 22, 2008 City Departments conducted various inspections and confirmed that both the filtration systems and the hood for the heating of coals were installed, and all Fire Code violations were corrected. On January 23, 2008 staff presented the Commission with the history of the operations of the Hookah establishment and requested that the Commission set a date to revoke or consider modification of the CUP. Senior Planner Allen explained that there are several findings for revocation. First is that the CUP contain certain conditions that are not being complied with on a certain date or within a period of time, and failure to comply with conditions was done knowingly and intentionally or with reckless disregard of the requirements for compliance, or if not knowingly or intentionally or with reckless disregard that the failure was not corrected by the date of the hearing. Senior Planner Allen stated that staff had two options for the Commission. The first option is for the Commissions to pursue revocation, and staff would request revocation proceedings to occur at a later date, to allow the business owner his due process for such a proceeding. The second option is that the Planning Commission takes measures to ensure compliance with the conditions of approval, which would include certain modifications to the conditions. Senior Planner Allen explained that the modifications are based on the complaints that have been received, the disturbance calls, as well as the communication with several property owners. Staff believed that the modifications would be required to address the issues. The first recommended modification pertained to the valet to require the valet Friday and Saturday night only. Additionally, condition number 4 would be modified to require that the "owner operators" park in the off-site lot to free up spaces on site. Condition 7 would be modified so the CUP contains the hours of operation. Senior Planner Allen stated that there was currently a provision for no loitering on the front or rear of the building and staff would recommend that signs be added in the parking lot to establish the prohibition for patrons to re-enter the building once they leave. Staff recommends modifications to Conditions 11 and 19 requiring regular maintenance and cleaning of the filtration units and ventilation hood. Senior Planner Allen stated that staff recommends modification of condition 15 to include the preparation of a safety and security plan. A modification to condition 22 would require emergency plans and procedures.

Chairman Bailey asked if the applicant would have to come into compliance with the recommended conditions prior to conducting future business. Senior Planner Allen stated that the modifications to the conditions were recommended by staff so the applicant can continue to operate. Senior Planner Allen clarified that all the conditions would go into effect immediately, and applicant would have 30 days from approval to get the safety and security plan developed.

Senior Planner Allen stated that staff's recommendation was to approve the resolution with the modifications so the business can be found not to be a deterrent to the public health safety and welfare. She stated that if the Commission would like to proceed with a revocation process, staff would request the proceedings be scheduled for a later date.

Vice Chairman Musante asked what would happen if the conditions were approved and the applicant violates them again. Senior Planner Allen stated that a six month standard condition has been added to the CUP so the business would be reviewed at six months, and if there are 3 or more verifiable complaints it would come back before the Commission.

Commissioner Chaffee asked how smoking in the workplace was resolved. Senior Planner Allen stated that staff was looking for the business owner to review the provisions and determine how they could comply. She stated she had been provided with an agreement that would make employees partial owners of the business. The agreement has not yet been reviewed by the City Attorney's Office. Commissioner Chaffee asked how many employees were not owners at the present time, and Senior Planner Allen stated that the applicant would need to answer that question.

Public hearing opened.

Nadia Abdalla, Hookah Lounge Owner, stated that the business was in compliance with the CUP, except for the valet parking. Ms. Abdalla stated that there have not been any complaints about parking. She informed the Commission that her business has offered neighboring businesses parking signs, however they declined. Ms. Abdalla clarified that as of January 25, 2008 they have 6 co-owners that were originally employees.

Chairman Bailey asked Ms. Abdalla if she had purchased the business before the violations. Ms. Abdalla responded yes, and stated that her husband and her were the second owners. Chairman Bailey asked when she bought the business, and Ms. Abdalla stated that they took over the business in December 06.

Commissioner Chaffee asked Ms. Abdalla what type of ownership she had, and Ms. Abdalla stated it was a partnership.

Commissioner Chaffee asked if the co-owners share the profits of the business. Ms. Abdalla stated that she gave Senior Planner Allen a copy of the document signed by the co-owners. Commissioner Chaffee asked what would happen if one of the employees leaves the business, and Ms. Abdalla stated that their ownership would terminate. Commissioner Chaffee asked if a new employee would become a co-owner and Ms. Abdalla stated that they would. The City Attorney expressed concern with this concept, but had not had the benefit of reviewing the applicant's ownership agreement.

Vice Chairman Musante stated that a complaint received by staff was that the business is open beyond closing hours. Ms. Abdalla stated that her husband or her have never operated the business beyond 2a.m., and clarified that when they leave all other employees leave as well. Vice Chairman Musante stated that there have been reports of people loitering in the parking lot until 5 a.m. Ms. Abdalla stated that the business has no control over what happens in the parking lot after they leave. She explained that the parking lot is cleaned and cleared out every night prior to them going home. Ms. Abdalla stated that there is an Albertos Restaurant open 24-hours and the loitering could be caused by the restaurant. Vice Chairman Musante stated that a modified condition will be that the security guard must make sure the parking lot is vacant when the business is closed.

Vice Chairman Musante stated that there could be "no loitering" signage placed in the parking lot, and Ms. Abdalla responded that they could do that. Acting Chief Planner Eastman clarified that placing a condition on the property regarding signage without the property owner's consent may be of concern.

Commissioner Chaffee asked Ms. Abdalla to expand on her valet parking concerns. Ms. Abdalla stated that the liability insurance would cost them thousands of dollars. She stated that staff recommended valet parking on Fridays and Saturdays and she believed that could be possible. Ms. Abdalla stated that they did not have any parking complaints because they do not start to get busy until 9 p.m. and most businesses are already closed. Commissioner Chaffee asked Ms. Abdalla if she was okay with the valet requirement if its limited to Friday and Saturday, and Ms. Abdalla stated that would be fine.

Chairman Bailey requested clarification on when the business was purchased from the previous owner. Acting Chief Planner Eastman clarified his understanding that there were violations at the time the business ownership was transferring. He stated that staff has been actively pursuing compliance with this applicant for a year. Acting Chief Planner Eastman stated that the current owners have been cited for non-compliance with their CUP, and explained that they recently came into compliance in several areas. Chairman Bailey asked why the conditions were violated for over a year. Ms. Abdalla stated that when they bought the business the previous owner did not explain clearly all the conditions that were in place. Chairman Bailey asked Ms. Abdalla if she saw a copy of the CUP when purchasing the business, and she responded yes. Chairman Bailey asked Ms. Abdalla if she believed all the conditions were suggestions. Ms. Abdalla believed that many of the conditions were being followed, and later found out they did not meet code. Chairman Bailey stated that many of the complaints were about noise, parking and burning of the coals, and asked Ms. Abdalla if she was not aware of those conditions. Ms. Abdalla stated the business has not had any noise complaints lately.

Chairman Bailey asked if the business had live entertainment, and Ms. Abdalla responded no. Chairman Bailey asked if staff had a list of the violations, and Senior Planner Allen responded yes. She clarified that the complaint was on live entertainment and a cover charge, but they are not prohibited from live entertainment, only charging a cover fee. Chairman Bailey stated that he was looking at the CUP and it stated no live entertainment. Acting Chief Planner Eastman stated that staff received a complaint in terms of live entertainment, and code enforcement could respond to those specific issues in terms of their investigations. He stated that there was a current condition for no live entertainment. Chairman Bailey asked Ms. Abdalla what she did not understand about the condition that states no live entertainment, and she responded that the business did not have live entertainment. Senior Planner Allen clarified that in the staff report from the prior approval, which Chairman Bailey and Acting Chief Planner Eastman were looking at; staff had recommended no live entertainment as a condition. She stated that in Resolution PC-06-06, the condition was removed by the Planning Commission on the final approval. She stated that condition 14 only prohibited no admittance fee coverage charges.

Chairman Bailey asked about the exterior door being left open. Ms. Abdalla stated that the exterior door was left open before they had the hood system to let out the smells, and they now meet that condition. Chairman Bailey asked Ms. Abdalla why they violated the conditions until the City got them to come into compliance. Ms. Abdalla stated that they were moving slowly because money was an issue.

Vice Chairman Musante asked Ms. Abdalla if she realized the seriousness of what was happening, and stated that the business could be closed down. He stated that this was a second chance and they may not be in operation if they come in six months from now. Ms. Abdalla stated that she understood. Acting Chief Planner Eastman clarified that this was not a six month approval; rather, the City would re-inspect in six months.

Tommy Reminisky, had the following comments:

- This issue has been a continuing problem since the establishment opened
- Even with the filtration system installed there are smells that come out when the back door is opened especially during the summer
- The noise and activities from the business disturb the quiet nature of his condominium complex
- Concerned about the health issues of the burning tobacco and the charcoal debris in the alley
- Nightmare as far as pollution that gets into the condominium air conditioning units and patios
- Concerned about noise associated with valet parking

Commissioner Chaffee stated that Mr. Reminsky would have a basis for making a complaint because condition 9 says that exterior doors shall not remain opened.

Michael Kelton, 3822 San Miguel Drive, had the following comments:

- Hours should be extended until 2 a.m. on Thursdays to help the business
- Patrons should be allowed to re-enter the building to avoid loitering because cigarette smoking is not allowed inside the business
- No problem with overcrowding in the parking lot, and valet is not needed

Commissioner Chaffee asked Mr. Kelton if he was a customer, and Mr. Kelton responded yes. Commissioner Chaffee asked if entering and exiting the business was a condition. Senior Planner Allen stated that it was condition number 8. Commissioner Chaffee asked about the smoking going on outside, and Mr. Kelton stated that a smoking post can be put in so people can put out there cigarette butts, but to not allow re-entry causes loitering. Commissioner Chaffee believed that nuisance smoke spreads to the neighborhood that way.

Chairman Bailey asked Mr. Kelton if he was a college student, and Mr. Kelton responded yes. Chairman Bailey asked Mr. Kelton if he believed the people who live in the condominium complex were college students, and Mr. Kelton believed they were not. Chairman Bailey stated that many of those people probably have to get up early on Friday morning and do not want to hear people at 2 a.m. Mr. Kelton stated that there are no condominium units abutting the alley directly. Mr. Kelton believed that the garages and the alley were a sound barrier.

Commissioner Whitaker asked Mr. Kelton if he could describe the ash and the coals that have been reported. Mr. Kelton stated that Mr. Abdalla has been working to figure everything out, and to his understanding everything has been approved by the City.

Tim Sporman, 511 N Hart Pl, had the following comments:

- Mr. Sporman read a letter provided to staff and the Commission
- Mr. Sporman stated that he was originally in favor of the Hookah Lounge because there would be security in the back alley and in front, however they are not ever present
- Stated that he has complained to the City and people who he assumed were the owners
- People are parking in front of his house and that causes a disturbance
- People are loitering in the alley
- Asked what the neighbors are supposed to do about complaints
- Have experienced symptoms of allergies, headaches and nausea

- Would not like to see the operation of the business for another six months
- If it does happen he would like to see a recommendation that the business owners talk to the residents
- Should not have to pick up the trash from that business

Commissioner Chaffee asked Mr. Sporman if it was Tobacco he smelled and Mr. Sporman responded that it was the Hookah. Commissioner Chaffee stated that there was a proposed provision where he could file a written complaint with Community Preservation, Police Department or Fire Department. Mr. Sporman stated that he usually complains to the owner first, but in this case he was not aware that there were new owners. Acting Chief Planner Eastman stated that a written complaint to the Community Preservation Division gives a basis for document. Chairman Bailey asked if an email would be sufficient and Acting Chief Planner responded yes.

Hishan Abdalla, Hookah Lounge Owner, stated that when City staff went to his business at 11 p.m. he promised that the doors would remain closed at all times and they have. Mr. Abdalla stated that it was easier for him and his staff to walk into the business from the back door. Mr. Abdalla stated that there was a corner where people gather and smoke cigarettes. He stated that cigarettes have a bad smell and Hookah is a flavored tobacco that does not smell. He stated that he had just been smoking outside City Hall and it is not filtered. Mr. Abdalla stated that he could not control people smoking outside. He stated that he cannot make people go to their cars and keep them from loitering. Mr. Abdalla stated that there are times when his staff stays after hours to clean the facility and socialize with the lights off. Mr. Abdalla invited the Committee to come to the Twilight Hookah Lounge during operating hours to smell the Hookah and experience it.

Commissioner Chaffee stated that there was a comment made about trash coming into the neighborhood, and asked if any attempt was made to pick up trash around the neighborhood. Mr. Abdalla stated that the parking lot is cleaned every night. Commissioner Chaffee clarified that the complaint was that the trash extended into the neighborhood. Mr. Abdalla stated that the trash can also be from the other businesses. Commissioner Chaffee asked if there was a cover charge, and Mr. Abdalla responded no. Mr. Abdalla stated that he advertised a cover charge for Halloween for not wearing a costume, but he did not charge anyone.

Vice Chairman Musante suggested that Mr. Abdalla should put together a short note for the neighbors with his contact information on it for any concerns they might have. Mr. Musante stated that Mr. Abdalla should introduce himself to the neighbors. Chairman Bailey stated that the Commission has found that most residents would like to be able to get a hold of the business owners if they have any concerns instead of going to the police. Chairman Bailey stated that Mr. Abdalla should follow Vice Chairman Musante's suggestions.

Jeremy Johnson, 2535 Lincoln Ave, Anaheim, stated that he recently came into partnership with Mr. Abdalla and started working at the Hookah Lounge. He stated that he was mainly in the kitchen and he makes sure the doors are closed all night. Mr. Johnson stated that no coals are ever lit in the alley.

Chairman Bailey left the room at 10:09 p.m.

Mike Lewis, 432 Melody Ln, Placentia, stated that he has been going to the Hookah Lounge for a year. He stated that many of the complaints were during the summer months when the back door was opened. He stated that the business was up to code and has not seen the back door

opened. Mr. Lewis stated that he had driven by the business and there was no trash or coals. Mr. Lewis stated that everyone is carded by the security guard at the door and no one under the age of 18 is allowed into the facility.

Chairman Bailey returned to the room at 10:10 p.m.

Adrian Archuleta, 1853 Farmstead Ave, Hacienda Heights, stated that he was the security guard for Twilight Hookah Lounge. He stated that there have not been any minors entering into the Lounge since he has been doing security. He stated that the backdoor is not opened during business hours and there is no trash behind Twilight Hookah.

Commissioner Chaffee asked what the capacity was on Friday or Saturday, and Mr. Archuleta stated that he was not sure. Commissioner Chaffee asked Mr. Archuleta if he allowed people to re-enter the Hookah Lounge and Mr. Archuleta stated that he did allow people to re-enter because he did not know it was not allowed. Commissioner Chaffee asked if a cover charge was collected and Mr. Archuleta responded no.

Chairman Bailey asked how occupancy was monitored. Mr. Archuleta stated that when the couches are filled up the waitresses let him know.

Michael Brandt, Victoria Gardens resident, had the following comments:

- He could smell the smoke during the summer and winter months
- All the conditions were met only after pressure from the City
- Occupancy is by eyesight, not by a count
- Business Owners that are not aware of the legal ramifications of a CUP
- Resident risk because of Santa Ana winds and ashes in the alley
- The City is wasting time because this is a perpetual cycle of events
- The owner operators are negligent with their business and are negligent to the neighborhood

Chairman Bailey asked Mr. Brandt if he had contact with the business owner, and Mr. Brandt stated that he had not, but his mom had complained to City employees.

Commissioner Chaffee asked Mr. Brandt when he last observed the door open, and Mr. Brandt responded about 3 months ago.

Mr. Abdalla stated that it was a door that is opened for people to walk in and out of. He clarified that the business occupancy was for 124 people. He stated that his couches fit 98 people and he could not be at full occupancy.

Roxanne Brandt, Victoria Gardens Resident, had the following comments:

- Concerned about the impact of the business on the air quality of the area
- The business generates a foul odor that is extremely pungent
- Cannot open windows or doors due to the foul air
- The nature of the dust in her home is now black
- Spoke to the owner and expressed her concerns about the back door being left opened, and Mr. Abdalla told her that he told his employees to keep the door closed and has put a sign to keep the door closed
- There is a vent adjacent to the backdoor that is filthy

- Have seen the ashes on the alley ground

Chairman Bailey stated that the owner mentioned that he has cleaned the area and asked Ms. Brandt if she had noticed any violations recently. Ms. Brandt stated that she has not seen the door opened recently, but the odor is there all the time.

Commissioner Chaffee asked when the pictures presented were taken, and Ms. Brandt responded last summer. She stated that it has become intolerable breathing the air.

Joyce Edwards, 605 S Aly St, Anaheim, stated that the ashes are grey and not black. She stated that all the ashes are kept in a bucket in the kitchen area. Ms. Edwards stated that people addressing the Commission were talking about last summer. She stated that the hood and the ventilation system have come in recently and there should not be a problem in the summer time. Ms. Edwards stated that there is an air curtain on the front door so smoke doesn't go out the front door and the backdoor is not opened while the business is in operation. She stated that people are always carded and the business cannot be at maximum occupancy because of the couches.

Commissioner Chaffee asked how the bucket of ashes was disposed. Ms. Edwards stated that the bucket did not leave the building. Commissioner Chaffee asked if the bucket was ever emptied. Ms. Edwards stated that she did not know.

Commissioner Bailey asked Ms. Edwards if she was a co-owner and Ms. Edwards responded yes. Commissioner Bailey asked how being a co-owner worked. Ms. Edwards stated that she signed documentation to become a co-owner. Acting Chief Planner stated that clarity needed to be provided on the topic. He stated that the applicant was required by state law to comply with the state's "no smoke work place" law. Acting Chief Planner Eastman stated that the City Attorney will review the documentation provided that purportedly makes the employees co-owners.

Jeremy Johnson stated that when he disposes the ashes he puts water in the bucket to make sure all the coals are out and disposes them in the dumpster. Commissioner Chaffee asked if the ashes are put in a bag so when they are in the dumpster they do not blow every where, and Mr. Johnson responded yes.

Public hearing closed.

Vice Chairman Musante asked if smoking was not allowed in any business establishment and Acting Chief Planner Eastman stated that he was referring to the California smoke-free workplace law, but in this case the applicants business is the smoking of Hookah. Clarity that the applicant complies with the state's law has yet to be determined. Vice Chairman Musante asked if staff believed that valet parking was needed on Fridays and Saturdays. Senior Planner Allen stated that the site does not have enough parking to support the off site parking requirement, so valet is a requirement as a mitigation measure. Vice Chairman Musante asked about the pungent odor always there, and asked what the filtration system does. Senior Planner Allen explained the filtration system that was installed. Acting Chief Planner stated that a recommended condition of approval has been included to require filters be maintained and inspected on a regular basis.

Commissioner Chaffee stated that he was not in favor of increasing the hours on Thursday. He stated that restricting people from re-entering the facility could not be enforceable.

Commissioner Chaffee stated that he was not opposed to cover charges. He supported staffs recommended conditions and suggested adding an alarm that goes off if the door stays opened.

Commissioner Whitaker stated that he was opposed to the condition on restricting re-entry into the business. He stated that he had not given the cover charge much thought, and asked for the history of why it's not allowed. Acting Chief Planner Eastman stated that staff's concern was that it would turn into a night club and staff wanted to avoid that situation.

Commissioner Richmond agreed with Commissioner Chaffee.

Vice Chairman Musante supported staff's recommendations.

For the record Acting Chief Planner Eastman stated that he was the City employee the applicant referred to who went by the site. He had informed the applicant that should he go by the site and the door is opened, the applicant will be cited by the Community Preservation Department.

Vice Chairman Musante recommended that the owner go door-to-door and let the neighbors know that he wants to be a good neighbor.

Chairman Bailey stated that he was on the Commission when the Hookah Lounge was approved. He stated that he had reservations of how close it was to residents, the smell, and the noise. Chairman Bailey stated that regardless of who sold the business and who bought it the conditions were not met and would like to see it set for a revocation hearing. He stated that the business owner was given more than enough opportunities. Chairman Bailey believed the other Commissioners would vote his way so he suggested that people should be allowed to re-enter. Chairman Bailey stated that he did not want to change the cover charge condition.

Commissioner Whitaker stated that with the installation of the filtration system a lot of things have changed for the better, and for that reason he would not like to set it for revocation.

The title of RESOLUTION PC-08-07 APPROVING a resolution of the Planning Commission of the City of Fullerton modifying a Conditional Use Permit for the operation of a Hookah Lounge on property located at 1335 and 1337 East Chapman Avenue, was read and further reading waived. MOTION by Commissioner Chaffee, SECONDED by Commissioner Whitaker, and carried 5-0, with Commissioner Savage abstaining, that said Resolution be ADOPTED AS AMENDED with modifications regarding condition 8.

Acting Chief Planner Eastman explained the 10-day appeal process.

Chairman Bailey stated that it was past 10:30 p.m. Acting Chief Planner Eastman clarified that there was a time limit on items being introduced at a meeting. He explained that after 10:30 p.m. the Commission is not to hear additional items on the agenda unless they take a vote to hear the additional items.

Commissioner Savage returned to the room. After a brief discussion the Commission decided to hear the two remaining items on the agenda.

**PRJ07-00548 – ZON07-00120. APPLICANT: RICHARD FLORES; PROPERTY OWNER: WILLIAM E. DANNEMEYER.** A request for a Conditional Use Permit to operate a fitness center/health club on property located at 1109 E. Commonwealth Avenue (north side of East

Commonwealth Avenue, approximately 500 feet west of Raymond Avenue) (C-1 zone) (Categorically exempt under Section 15301 of CEQA Guidelines) (AKU)

Associate Planner Kusch stated that the request was for a CUP to operate a health club, an aerial map was referenced, and the request explained. Associate Planner Kusch stated that the Municipal Code allows for a health club with issuance of a CUP. He explained that in the case of a health club attention is paid to the adequacy of on-site parking and potential impacts to surrounding areas. Staff was concerned with the compatibility of the health club operation as it relates to overflow parking. The amount of parking proposed for the use is not specified in the Municipal Code, and staff surveyed other cities to establish a reference point. The parking survey found that parking for health club facilities would range from 36 parking spaces to 247 spaces. The parking survey demonstrates the difficulty in determining the appropriate number of parking spaces for this type of use. Associate Planner Kusch referenced the site plan and stated that there are 5 parking spaces that encroach onto an adjacent property that the property owner also owns. Staff recommends that an agreement be recorded between the two properties to ensure that the parking remains for the duration of the health club land use. Staff noted that there was a trash bin located on the western side of the property which affects the backup area for the two parking spaces on the west side of the property. Staff recommended that the trash bin be relocated to the parking space adjacent to the existing office building, and adjacent to the west property line. Associate Planner Kusch explained that prior to 5:30 p.m. there would be 22 parking spaces available for the health club and during the evening, there would be 43 parking spaces available on evenings and weekends. Staff recommended limiting the occupancy of the health club to 43 people based on the available parking. Acting Chief Planner Eastman stated that the applicant was proposing evening classes, and staff was concerned with parking congestion and overflow parking during the period between the classes. Staff recommended a schedule that would include a 30 minute break between the classes. Associate Planner Kusch explained the proposed floor plan, and stated that there was also a proposed boxing ring. Staff was concerned about adequate parking being provided for boxing matches or tournaments, and recommended a parking management plan for special events. Staff recommended that the Planning Commission adopt the findings contained in the staff report and approve the CUP subject to the recommended conditions of approval, and briefly went over the conditions in the staff report.

Public hearing opened.

Richard Flores, 519 E Rose, stated that he was the applicant and did research on prior approved CUP's for health clubs in the city. Mr. Flores stated that the LA Boxing CUP was similar to what he was requesting, and they do not have a break between their classes. Mr. Flores believed that LA Boxing did not have adequate parking, and stated that he had 3 times more parking than what they had. Mr. Flores believed that the 15 minute break that he was proposing was adequate. Mr. Flores stated that Chairman Bailey and Commissioner Savage were on the Commission when the LA Boxing CUP was issued, and requested that his location be treated with the same consistency. He stated that he had a lot more equipment than warm-up boxing bags, and LA Boxing has twice as many bags with only 17 parking spaces.

Chairman Bailey asked Mr. Flores what he was referring to when he mentioned Commissioner Savage and himself. Mr. Flores stated he was referring to the CUP that was approved for LA Boxing, located on Harbor Boulevard at Union Avenue.

Commissioner Savage stated that he was not clear why he was referenced. Mr. Flores stated that Commissioner Savage was on the Commission when LA Boxing received CUP approval to

become a health club, and he explained his understanding of the CUP. Commissioner Savage stated that he did not remember the details of the LA Boxing CUP.

Acting Chief Planner Eastman clarified that the issue was before the Commission because it is a health club and not just a boxing facility. LA Boxing was originally proposed as a boxing training facility, and staff had to take additional considerations because workout equipment was brought in. Acting Chief Planner Eastman stated that he did not have a recollection if it was a CUP, as staff did not research the specifics concerning LA Boxing because it is an entirely different site. Acting Chief Planner Eastman stated that the Commission should look at the merit of the proposed facility before them today, not a different facility at a different location.

Chairman Bailey believed that it was a CUP. Acting Chief Planner Eastman stated that because of the sports equipment there was a complaint that was filed and as a result the Planning Commission reviewed the application for consideration. He explained that there are limitations on the equipment that can be used. He stated that LA Boxing was primarily a boxing facility. Acting Chief Planner Eastman stated this item was brought before the Commission as a health facility, and they have more exercising equipment, as well as boxing.

Mr. Flores stated that he was told the reason for getting a CUP was because once a business becomes a health club if someone else takes over the business they can make changes. Mr. Flores stated that he has a lot more equipment, but there are less boxing warm-up bags.

Chairman Bailey asked how many people would be in the facility at once. Mr. Flores stated that he does not do membership drives. He referenced photographs taken by staff and stated that there are not many people in the gym at any given time. Mr. Flores stated that he has recruited special staff to teach the classes. Chairman Bailey asked what the maximum amount of people in the facility was at any one given time. Mr. Flores stated that there is not a waiting period for the workout equipment, but the boxing classes have become popular, so the 16 boxing bags get filled up. Mr. Flores stated that the most he has seen in the facility are 10-12 people. He believed that the maximum amount of people would be 60-including children taking classes with their parents.

Chairman Bailey asked Mr. Flores if he was concerned with parking moving out into the streets and the local area. Mr. Flores responded no, and explained the parking situation when his previous facility was on Harbor Boulevard. He believed that the parking situation at his current location was larger and stated that people are going to park where they want to. Mr. Flores stated that if parking becomes an issue he will post signs.

Vice Chairman Musante stated that condition 6 called for a parking management plan for special events over 43 people, and asked Mr. Flores if he had a problem with the condition. Mr. Flores believed the condition should not be necessary because he has adequate parking. Vice Chairman Musante stated that 100 people can show up to an event and asked where they were going to park. Mr. Flores stated that whatever fair number the Commission decided on would be fine. Vice Chairman Musante asked Mr. Flores if his problem was with the number 43. Mr. Flores stated that 75 would be fair.

Commissioner Chaffee stated that condition 4 limits the occupancy to 22 people prior to 5:30 p.m. and asked if that was a problem. Mr. Flores responded that would not be a problem.

Bill Dannemeyer, property owner, stated that he was familiar with the 15 recommended conditions of approval. He stated that he did not have objection to 11 of the 15 conditions. Mr. Dannemeyer stated that 7 of the conditions should be altered to begin "within 30 days after

occupancy” versus “prior to occupancy”. Mr. Dannemeyer stated that he disagreed with condition 4 because there are 43 parking spaces and the office businesses are gone by 4:30p.m. He stated that a maximum occupancy between 55 and 75 should be permitted after 5:30p.m. Mr. Dannemeyer stated that most people at the gym do not stand around and talk after their workout so condition 5 should be modified to allow a 15 minute break between classes. He referenced a map that he handed to the commissioners and stated that for the last 20 years the trash container has been at its current location. He stated that the trash container was 3 ½ feet wide and there is a 2 foot planting area that he will be paved so the trash container will only encroach 1 ½ feet into the parking backup area. Mr. Dannemeyer stated that he also disagreed with condition 9 regarding reconstructing the driveway approaches. Mr. Dannemeyer stated that staff told him that he had to comply with what ADA required. He stated that City staff stated that if the cost of compliance of ADA is greater then 10% of the total improvements, then the public improvements do not apply. Mr. Dannemeyer stated that Senior Civil Engineer Voronel explained that because of the projected project cost, condition number nine would not apply.

Public hearing closed.

Vice Chairman Musante stated that he is familiar with the health facility that his wife and he go to, and they always go together. He stated one and a half people per parking space will allow a maximum of 65 people to use the facility at a time.

Commissioner Savage stated that the applicant was not willing to accept the CUP as written by staff. He stated that the Commission could approve the CUP as written or try to reword it, but it would take time, so he suggested continuing the item to a date certain. Chairman Bailey agreed with Commissioner Savage, and asked staff if they met with the applicant and came up with the conditions together and mutually agree to them. Associate Planner Kusch stated that staff came up with the conditions, and stated that the issue was compatibility of the proposed land use. Staff was concerned about the availability of parking and the only way to control that was through occupancy limitations based on the number of parking spaces.

Commissioner Whitaker stated that the presumption was one person in the facility to one parking space, because 60-65 people in the facility seem like a practical number. Associate Planner Kusch stated that typically parking is based on square footage, and stated that the property was already under parked, based on the current Municipal Code. Commissioner Whitaker asked if there would be a minor change in slope regarding the driveway, because of the ADA requirements. Director of Engineering Hoppe clarified that staff did not know what the full value of the tenant improvement were when the staff report was written. He stated that there is an existing adopted City Council policy that limits the total public improvements that the City can require with tenant improvements limited to 10 percent of the value of the improvements. Commissioner Whitaker asked if the conditions can be modified to include “within 30 days” versus “prior to occupancy”. Community Development Director Godlewski stated that within 30 days was a reasonable request since the applicant has already occupied the building.

Commissioner Whitaker stated that the conditions could be resolved quickly. Vice Chairman Musante agreed with Commissioner Whitaker and stated that staff’s recommended conditions were reasonable.

Commissioner Savage stated that he did not have a problem with changing “prior to occupancy” to “within 30 days”. He asked what condition 4 was and Chairman Bailey explained that it was changing total occupancy from 43 to 65 people resulting in a 1.5 person per parking space ratio

rather than a 1 to 1 ratio. Commissioner Savage stated that other than a special event nobody goes to the gym with someone, and stated that there were going to be parking issues. Commissioner Savage stated that the ADA requirements were a great idea that turned "sour". Commissioner Savage asked about condition 6, and Vice Chairman Musante stated that conditions 4 and 6 relate to 1 ½ occupants for the facility per parking space. Acting Chief Planner Eastman stated that condition 6 identifies the need for a parking plan and identifies the need to provide an estimated attendance. Commissioner Savage asked what condition seven was and Acting Chief Planner Eastman stated that it had to do with the trash enclosure.

Chairman Bailey explained that Mr. Dannemeyer suggested that seven of the conditions be modified to say "within 30 days of occupancy" versus "prior to occupancy". Chairman Bailey stated that the Commission could vote on the application with changes, as is, or continue the item until the staff and the applicant can get together. Vice Chairman Musante stated that a motion can be made to include modifying the conditions to include "within 30 days", and allow for a maximum occupancy of 65 people in the evening.

Commissioner Chaffee asked why staff recommended moving the trash enclosure. Acting Chief Planner Eastman explained that the trash bin was located in an area that makes it difficult to access the two parking spaces at the west end of the property. Commissioner Chaffee asked if the applicant had to build a trash enclosure and Acting Chief Planner Eastman stated that the trash bin would just have to be moved.

Chairman Bailey believed that it might be best for the applicant, the City and the Commission to continue the item so the applicant and the City can agree on the conditions.

Commissioner Savage agreed with Chairman Bailey, and believed that it was not a good idea to eliminate landscaping in order to move the trash bin back. Commissioner Savage stated that he would like to continue the item, but stated that he would like to hear the applicant's thoughts on continuing the item.

MOTION by Commissioner Chaffee, seconded by Vice Chairman Musante to re-open the public hearing.

Public hearing re-opened.

Mr. Dannemeyer stated that the applicant requested that the Commission vote on the item tonight. He stated that he did not receive the staff report until Monday, and he has made an effort to accommodate the recommended conditions, and requested that the Commission come to a decision.

Public hearing closed.

Assistant City Attorney Barlow stated that she could provide guidance on what the changes to the recommended conditions should be. She stated that for the conditions that say "prior to occupancy" which are conditions 2, 3, 5, 7, 8, 9 and 10 will all be changed to "within 30 days after occupancy". Assistant City Attorney Barlow stated that conditions 4 and 6 will be modified to reflect a total occupancy of 65. Condition 5 would require a change as requested by the applicant to 15 minutes instead of 30 minutes. If the Commission wishes that the trash bin not be moved condition 7 will be as is.

MOTION by Commissioner Chaffee, SECONDED by Vice Chairman Musante, subject to the conditions recommended by staff except that the conditions be modified as follows:

- Conditions that say “prior to occupancy” be replaced with “within 30 days”
- Condition 4 & 6 be changed to 65 people versus 43
- Condition 7 be modified to say that the trash enclosure be moved to a location acceptable to the Director of Community Development
- Condition 9 remain, but may be inapplicable because of the cost consideration

MOTION by Commissioner Chaffee, SECONDED by Commissioner Musante, to AMEND his motion that the 30 minute break between classes be a minimum of 15 minutes.

Commissioner Savage stated that he was okay with the modified conditions, but was not willing to change the occupancy. He stated that he would be voting against the application as proposed. Chairman Bailey agreed with Commissioner Savage.

Commissioner Whitaker stated that he believed the applicant’s counter proposal was reasonable. He stated that he had problems with the 15-30 minute break between classes. Commissioner Whitaker believed that it would end up being an operation problem for the applicant.

Commissioner Savage stated that staff was not readily willing to say that it’s okay to go from an occupancy of 43 to 65 or from 1 to 1 ½ people per car for special events.

Chairman Bailey stated that there was a motion and a second on the floor.

The title of RESOLUTION PC-08-08 APPROVING a Resolution of the Planning Commission of the City of Fullerton granting a Conditional Use Permit to operate a fitness center/health club on property located at 1109 East Commonwealth Avenue, was read and further reading waived. MOTION by Commissioner Chaffee, SECONDED by Commissioner Musante, and carried 4-2, that said Resolution be ADOPTED AS AMENDED.

**PRJ07-00468 – LRP07-00012. APPLICANT: CITY OF FULLERTON.** A Zoning Amendment to modify Title 15 of the Fullerton Municipal Code to establish regulations and permit requirements, and to make changes to definitions associated with said businesses with on-site alcohol consumption in the C-3 zone (Central Business District Commercial). An Initial Study and Negative Declaration (IS/ND) has been prepared for the project, pursuant to the California Environmental Quality Act (CEQA) and was available for review and written comment, from January 21 through February 22, 2008 (JEA).

Commissioner Chaffee stated that he had been advised by counsel that he needed to recuse himself because he leases space in the area of concern. Chairman Bailey stated that he would also be recusing himself because he has a lease inside the C-3 zone that is being governed by the new rules, and handed the meeting over to Vice Chairman Musante.

Acting Chief Planner Eastman stated that the request was to review a draft ordinance pertaining to downtown establishments with on-site alcohol consumption. He explained that there are two ordinances, and the Commission would be making a recommendation to the City Council. The draft ordinances apply to the C-3 zone, although the revised definitions will apply City wide. Acting Chief Planner Eastman stated that the City and the General Plan encourage restaurants and entertainment in downtown, but there has been an increase in problems pertaining to alcohol. Acting Chief Planner Eastman stated that staff presented a report to Council on May 15, 2007 identifying the problems, and Council directed staff to take action to resolve the

problems. The City has hired additional police officers to help with the downtown issues, and staff was directed to adopt new regulations for alcohol facilities downtown.

In June/July 2007, the City Council adopted a moratorium which prohibited new, or expansion of existing alcohol facilities in downtown. The moratorium was continued in January, and is currently in place, but will terminate at the time the ordinances are adopted. Acting Chief Planner Eastman explained that staff formed a Downtown Working Group comprised of different members of City Departments, and formulated draft regulations. Acting Chief Planner Eastman stated that there were three community meetings, and staff has revised the regulations on several occasions. Since January, City staff had increased coordination with the Alcohol and Beverage Control. Staff talked to ABC about concerns that restaurant operators had related to the adoption of the ordinance, and how it would affect their license. Additionally, the City had conversations with a lighting expert, and the expert indicated that what is proposed in the ordinance was appropriate. Acting Chief Planner Eastman explained that, should the ordinance be approved at the City Council meeting on March 4<sup>th</sup>, there would be a second reading on March 18<sup>th</sup>, and the ordinance will become effective 30 days later.

Acting Chief Planner Eastman further explained the regulatory requirements in the C-3 zone, and the Administrative Restaurant Use Permit (ARUP). The regulatory ordinance affects three different sections of the code, including definitions, permitted uses, and special use provisions. He explained how the ARUP would apply to different restaurants based on size or activities. Acting Chief Planner Eastman explained the 13 subsections related to the special regulations, and also discussed noise standards. He stated that staff recommends that the Planning Commission recommend to the City Council an adoption of the initial study and negative declaration, consider the revisions to the regulatory ordinance pertaining to noise, and recommend approval of both ordinances to the City Council.

Commissioner Savage asked if the noise element that had not been included in the ordinance had been discussed with the stakeholders. Acting Chief Planner Eastman responded no, and stated that was one of the reasons it had not been included in the revised ordinance. Commissioner Savage asked if a great deal could be resolved without the noise element, and Acting Chief Planner Eastman responded that if an operator is required to provide a statement of no impact, it would place the burden of compliance on the operator, not staff.

Commissioner Richmond concurred with Commissioner Savage. Commissioner Whitaker stated that he would prefer to hear from the public before asking the questions he had.

Vice Chairman Musante stated that staff had done an extraordinary job in putting the ordinance together to get it right. He stated that he heard the situation downtown is intolerable, and costs the City a lot of money to take care of this situation. Vice Chairman Musante believed that existing establishments were causing the problems, and not the establishments wanting to come into the City. He stated that the Planning Commission could suspend or revoke a Conditional Use Permit if the business proves to be a nuisance and asked if all the existing restaurants would be required to have a CUP. Acting Chief Planner Eastman stated that many of the existing facilities downtown are not "legal" establishments. He clarified that the current code does not require a restaurant to have a CUP if their income is primarily from the sale of food. However, Acting Chief Planner Eastman explained that many of the restaurants have dancing, and a CUP is required for a dance floor. Any facility that needs a CUP will come before the Commission to allow dancing, and staff would apply the proposed ordinance standard conditions to those applications.

Vice Chairman Musante asked if a CUP would be needed for a successful operator that has a thriving restaurant business until 10:30 p.m. and then becomes a night club. Acting Chief Planner Eastman stated that there was discussion at previous community meetings that, in reality, an establishment is either one or the other. Few establishments are thriving restaurants during the evening and thriving nightclubs during late night. For existing "legal" businesses, if they are considered a nuisance based on the criteria identified in the code, then they will be brought before the Commission, after which time they will have to go through the ARUP process and the standard conditions would apply.

Vice Chairman Musante asked if noise was addressed in the ordinance, and Acting Chief Planner Eastman clarified that it was, and it would apply to any facility that has to go through the ARUP or CUP process.

Commissioner Whitaker referenced page 30, item 4 of the draft ordinance and stated that it talks about violations of the City's noise ordinance, and asked if violations can be acted on fairly quickly. Assistant City Attorney Barlow stated that a revision is included that violations may either lead to an administrative citation, which would essentially be a criminal infraction violation with a fine, or could potentially lead to action on the permit itself.

Commissioner Whitaker referenced page 20, item 5 and read the provisions of private security personnel and asked the thinking behind that item. Acting Chief Planner Eastman responded that it was to provide a public safety presence, and to create a sense of order.

Commissioner Whitaker referenced page 25, item 5 regarding the enclosure areas being six feet in height, seeming "jail like." Acting Chief Planner Eastman clarified that staff was talking about the intensive activities (bars, nightclubs, etc.) not restaurant. He stated that the issue has to do with passing things over the fencing or between the openings. Commissioner Whitaker stated that it says non-view obscuring, and Acting Chief Planner Eastman stated that staff did not want a solid wall, because the Police Department would like to have visibility into that space. Commissioner Whitaker asked if it could be a chain link fence, lattice, plexi-glass or glass, and Acting Chief Planner Eastman stated that it would probably be plexi-glass, although wrought iron, (steel tube) fencing could work.

Commissioner Whitaker referenced page 24, item 2 regarding music or entertainment not being permitted on the patio. Acting Chief Planner Eastman stated that the downtown operators were generally in agreement with that requirement, and believed that staff had made some great changes by restricting amplified music outside.

Commissioner Whitaker referenced page 32, item E regarding treble fines on holidays and asked what the intent of that was. Acting Chief Planner Eastman stated that the intent was to provide a stronger ability to cite violators. Commissioner Whitaker asked if there was hope that the City will not have to staff up so heavily with law enforcement officers if there is compliance. Acting Chief Planner Eastman deferred to the Police Department for staffing needs, but stated that he would anticipate that the Police Department would probably still staff up for those days. He stated that the idea was to make sure that the operators do their part on staffing. Commissioner Whitaker stated that staff has done a good job of pulling together a lot of complex items, and people will have fun with the lumens and the illumination requirements. Acting Chief Planner Eastman stated that a lighting consultant was present, and he has identified that the ordinance was written to achieve the intent that staff was trying to accomplish. Acting Chief Planner Eastman stated that the sidewalks have been marked outside with foot-candle measurements to provide examples of light levels.

Vice Chairman Musante stated that the noise problem is not being addressed directly. He asked if staff could put something together that would give staff the hammer to correct what is going on downtown. Acting Chief Planner Eastman stated that staff believed the language that has been included would provide authority, but staff could review the ordinance before it goes to Council to see if more can be done. Vice Chairman Musante stated that his concern was leverage, and would like to see the City have the leverage to act. Assistant City Attorney Barlow stated that the draft ordinance is satisfactory to staff at this point, and staff is looking at potentially amending the City's noise ordinance.

Vice Chairman Musante stated there have been a lot of people complaining about noise in the area, and Acting Chief Planner Eastman stated that the issues with noise primarily have to do with outdoor activities on patios. He believed that this could be addressed with the proposed ordinance.

Commissioner Savage agreed with the staff report that the policing of the parking should be done by the Police Department. He asked how the queuing situation on the public sidewalk was different. Acting Chief Planner Eastman stated that the people that are queuing are patrons of the businesses and there is a direct relationship to the operation and the clients. The intent of the bouncers is to regulate their patrons and their lines. Acting Chief Planner Eastman stated that the primary issue was to mandate that operators manage their facility and make an effort to address their customer problems. Acting Chief Planner Eastman explained that business can come before the Commission, as part of the CUP request, and propose a deviation from the maximum queuing of 25 people.

Vice Chairman Musante requested that something be done by the City Council relative to the noise issue being addressed in this ordinance that would give staff the leverage to move quickly in the case of noise problems. The Commission agreed with Vice Chairman Musante.

Public hearing opened.

Michael Carras, 600 W Santa Ana Blvd, #202, Santa Ana, had the following concerns:

- The length of this proposed ordinance bothered him
- A nuisance provision already exists
- The CUP and ARUP process will be cumbersome and expensive for staff
- Concern with the redefinition of restaurant to bars, and how bar is defined
- The focus should be on conduct and not definition
- If a restaurant serves more than 50% alcohol that's an ABC issue
- The City website advertises the downtown restaurant district as a restaurant district and proposed, the City rename the downtown, the bar district, as a result of the change in definitions
- People are putting hundreds of thousands and millions of dollars into restaurants
- Focus on the issue of regulating conduct, not trying to define establishments
- Page 11, Section 3.1.1 concerned about no grace period for the CUP process
- Page 13 Section 3.1.3 concerned about the finding requirements for granting CUPs for bars
- Page 18, Subsection 6, 10-11 concerned about the three provisions which apply to restaurants
- Concerned about businesses having to maintain different accounting standards
- Page 21, Subsections 6 & 13, concerned about standardized security uniforms
- Concerned about noise conditions in the ordinance

- Concerned about problems in the parking lot with queuing

Cameron Irons, Vanguard Commercial Real Estate thanked staff and the Planning Commission for their work, and stated that he supported the draft ordinance.

J. Andrew Morrison, 225 Jacaranda Pl. stated that he appreciated the amount of work that went into the ordinance, but believed that the moratorium should not be lifted. He believed the moratorium was controlling the number of ABC licenses in place, and stopping further bars from opening in downtown Fullerton. Mr. Morrison stated that the Business Improvement District has made no progress. Mr. Morrison believed that staff worked hard in putting together the ordinance but did not address the costs associated with the clean up. Mr. Morrison believed that the only way to control the businesses downtown is to keep the moratorium in place.

Acting Chief Planner Eastman stated that the City was limited in terms of how long the moratorium can be in place.

Vice Chairman Musante asked if there were cities in California that limit the number of liquor establishments based on number of occupants in the City. Acting Chief Planner Eastman responded that he was not familiar with any cities that limit establishments based on population. He explained that the Alcoholic Beverage Controls criteria is based on census tract, which relates back to determining over concentration, based on geography/population.

Commissioner Richmond stated that he was ready to send the draft ordinance to City Council and concurred with staff's four recommendations.

Commissioner Savage stated that he went on a ride-a-long with the police and believed that the scope of the problem was truly unbelievable. Every bar or restaurant he went into was at maximum occupancy. Commissioner Savage was in support of the ordinance.

Commissioner Whitaker stated that there was perhaps a blurring of the lines between restaurants, bars and night clubs, but there seems to be some progress on that. Commissioner Whitaker was concerned with Mr. Carras' comment about the document being simple and an understandable set of rules that people are expected to live by. He believed that part of being able to self police is keeping things as short and simple as possible. Commissioner Whitaker stated that at this point something needs to go before the City Council and he was willing to move forward. Commissioner Whitaker stated that he would like to work on simplifying and streamlining some aspects of it, and making sure that we have something that is more enforceable because it's more understandable. Commissioner Whitaker was willing to support the document, but had some of the same concerns along the lines that Mr. Carras was speaking of. He stated that he has not personally assessed the problem so he did not know how severe the problem is. Commissioner Whitaker stated that staff has done a good job for the good of everyone in Fullerton.

Vice Chairman Musante stated that he was in support because staff did not seem reluctant to use the hammer.

Commissioner Savage asked if all the security personnel for the restaurants will wear the same uniform. Acting Chief Planner Eastman stated that staff has identified that they need to maintain a shirt or a jacket that identifies them as being in the downtown area and the facility they represent.

Assistant City Attorney Barlow stated that she talked to Captain Mayes about security and would be happy to streamline this provision to simply say that all security personnel shall wear a uniform of some kind specifying that they are security personnel and identifying the name of the business that they work for.

Commissioner Savage stated that he did not have a problem with security, but Mr. Carras drew a picture of everyone with the same uniform throughout downtown. Assistant City Attorney Barlow stated that the language could be tightened if it was of concern. Acting Chief Planner Eastman clarified that a number of Mr. Carras's comments were not accurate in terms of the premise by which he presented them, and would be happy to meet with Mr. Carras for clarity. For example, Acting Chief Planner Eastman clarified that staff added provisions to the ordinance relating to timing and implementation for existing businesses.

Vice Chairman Musante stated that everyone appreciates staffs efforts in putting together the ordinance.

Commissioner Savage asked what had to be done about Recommendation "B" and Acting Chief Planner Eastman stated that staff has asked whether or not the Commission would recommend the additional language in the staff report relating to noise.

Acting Chief Planner clarified that there were four items for the Commission to consider. Assistant City Attorney Barlow stated that the motion should be to recommend all of the items including the proposed language for item B.

The title of Resolution No. PC-08-09 RECOMMENDING approval of an amendment to Title 15 of the Fullerton Municipal Code to establish regulations and permit requirements for businesses with on-site alcohol consumption in the C-3 zone and to add and revise definitions pertaining to such uses; and the title of Resolution No. PC-08-10 RECOMMENDING to the City Council approval of an amendment to Title 15 of the Fullerton Municipal Code establishing a new Administrative Restaurant Use Permit (ARUP) for businesses with alcohol consumption in the C-3 zone was read and further reading waived. MOTION by Commissioner Savage, SECONDED by Commissioner Richmond, and carried 4-0, that said Resolutions be ADOPTED AS AMENDED, with modifications regarding noise and security uniforms.

### **COMMISSION STAFF COMMUNICATION**

Acting Chief Planner Eastman informed the Commission that there was irrigation being put in for the landscape wall for the University Heights project. Commissioner Savage reiterated that the Commission should do a ride-a-long with the police. Commissioner Whitaker stated that he appreciated the willingness of staff and the Commission to get through this docket.

### **REVIEW OF COUNCIL ACTIONS**

Acting Chief Planner Eastman gave a brief overview of recent City Council actions.

### **AGENDA FORECAST**

The next regularly scheduled Planning Commission meeting will be March 26, 2008 at 7:00 p.m.  
The March 12 meeting has been cancelled.

**ADJOURNMENT**

There being no further business the meeting was adjourned at 12:59 a.m.

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Susana Flores  
Clerical Assistant