

MINUTES

REGULAR MEETING OF THE LANCASTER PLANNING COMMISSION

May 16, 2011

CALL TO ORDER

Chairman Vose called the meeting to order at 6:00 p.m.

INVOCATION

Chairman Vose did the invocation.

PLEDGE OF ALLEGIANCE

Commissioner Elihu led the Pledge of Allegiance to the flag of the United States of America.

ROLL CALL

Present: Commissioners Elihu, Hall, Harvey, Malhi, Terracciano, Vice Chairman Jacobs, and Chairman Vose.

Absent: None.

Also present were the Deputy City Attorney (Joe Adams), Planning Director (Brian Ludicke), Principal Planner (Silvia Donovan), City Engineer (Carlyle Workman), Recording Secretary (Joy Reyes), Public Safety Manager (Lee D'Errico), Los Angeles Sheriff Department (Deputy Michael Kuper), and an audience of six (6) people.

CONSENT CALENDAR

1. APPROVAL OF MINUTES

It was moved by Commissioner Malhi and seconded by Commissioner Terracciano to approve the Minutes from the Regular Meeting of April 18, 2011. Motion carried with the following vote (7-0-0-0):

AYES: Commissioners Elihu, Hall, Harvey, Malhi, Terracciano, Vice Chairman Jacobs, and Chairman Vose.

NOES: None.

ABSTAIN: None.

ABSENT: None.

CONTINUED PUBLIC HEARINGS

2. Conditional Use Permit No. 08-05 (Request for one-year extension)

Chairman Vose opened the public hearing at 6:04 p.m., to hear a request by Quartz Hill Assembly of God of Lancaster, to construct a church facility consisting of a 9,960 square-foot interim sanctuary and classroom facility (Phase I), a 7,365 square-foot sanctuary (Phase II), and a 5,000 square-foot office building (Phase III), in the Light Industrial Zone, 5.0± gross acres located on the north side of Avenue L approximately 650 feet east of Challenger Way/10th Street East.

Silvia Donovan presented the staff report, and concluded that on April 21, 2011, staff received a letter from applicant requesting to withdraw the request for an extension. Staff informed the applicant that if a decision is made to move forward at a later date, a new Conditional Use Permit application, including new fees and submittals, would be required.

There were none in the audience who wished to speak in opposition to the request. Public Hearing closed at 6:06 p.m.

It was moved by Commissioner Terracciano and seconded by Vice Chairman Jacobs to withdraw the request for an extension and expire the project. Motion carried with the following vote (7-0-0-0):

AYES: Commissioners Elihu, Hall, Harvey, Malhi, Terracciano, Vice Chairman Jacobs, and Chairman Vose.

NOES: None.

ABSTAIN: None.

ABSENT: None.

NEW PUBLIC HEARINGS

3. Revocation Hearing - Conditional Use Permit No. 08-08

Chairman Vose opened the public hearing at 6:07 p.m. to hear a request by the City of Lancaster for consideration of revocation of Conditional Use Permit No. 08-08 (Bamboo Restaurant), located at 1009-1011 West Avenue I, pursuant to Section 17.42.130.C of the Lancaster Municipal Code.

Brian Ludicke presented the staff report, including a chronology of events and explanations of supporting documents.

Commissioner Hall inquired if the City bans nightclubs, and could the applicant have applied for a nightclub conditional use permit. Brian Ludicke responded that the City does not ban nightclubs, and stated that the applicant could have applied for proper license for a nightclub. Commissioner Hall stated there is a charge for nuisance home alarms, and inquired if that was a requirement for businesses. Deputy Kuper replied that the nuisance alarm is a separate program for burglary and robbery alarms. He stated that the code being referred to in the discussion was chronic nuisance location, which is any location that generates five or more

calls to the Sheriff's Departments and determined to be "Nuisance" calls. Those calls are screened to ensure legitimacy; for example, disorderly conduct, loud noise, disturbances, etc. from a general location. All calls concerning theft or someone becoming a victim of a crime are not considered as a nuisance. He concluded that there is a fine of \$1,000 per call, after the fifth call.

Commissioner Terracciano asked staff if the applicant had ever contacted the City to find a solution to the problem, or attempt to apply for a nightclub license. Brian Ludicke stated he had not spoken directly to the applicant, but was made aware through Lee D'Errico that the applicant had inquired to what was necessary to have a nightclub approved on the site. The applicant was informed that an application for a conditional use permit amendment for a nightclub would need to be submitted. The difference with the nightclub approval is that it is considered a primary alcohol use with a separation distance requirement, and applicant would have had to request a waiver of the normal separation distance requirements, due to residential property closer than 100 feet, and possibly another primary alcohol seller (bar and liquor store) located within 1000 feet. Commissioner Terracciano inquired when the applicant was made aware of this information. Brian Ludicke responded the discussion occurred during the summer of 2010, following the City's initial contact with the applicant regarding compliance with conditions of approval.

Chairman Vose asked the City Attorney to define nuisance, according to the Lancaster Municipal Code. Joe Adams responded the State law defines nuisance to be anything that is injurious to public health, including but not limited to the illegal sale of controlled substances, anything indecent or offensive to the senses, or an obstruction to the free use of properties so as to interfere with the comfort or enjoyment of life or property. When viewing the State law and Municipal Code, there are specific things that define a public nuisance called a "nuisance per se". Most relevant to the present conditional use permit is the Alcohol Ordinance in Lancaster Municipal Code, Zoning Section 17.42.150B, which states "Any use of property contrary to the provisions of this title shall be and the same is declared to be unlawful and a public nuisance." This section refers to a nuisance per se; if that conduct occurs, the City is relieved of any further burden of establishing that a nuisance exists.

Commissioner Terracciano inquired if it was established that the dance and stage area expansion had been closed-off by the applicant. Brian Ludicke responded that the area in question had been closed-off, and the applicant indicated so in the business license application.

Applicant representative, Jody Ahrens, stated there is no dispute with some parts of the accusations, but with other parts there is an issue. He stated that in the original letter sent to applicant in 2010 from the City regarding possible violations, every alleged violation was corrected by the licensee almost immediately, and that Eugenio Gonzalez, applicant, made every effort to comply. The difficulty is that the licensee/applicant is in poor health, and his daughter has taken over the restaurant, which has created some issues because of the lack of experience. He stated that the allegations of a nuisance referred to was relating to a large number of people, which he did not feel the restaurant raises to be a public nuisance to a large segment of the population of Lancaster. He stated the list of service calls made by the Sheriff's Department were eight (8) pages, and the vast majority of the calls were self-dispatched. The deputy was driving through the parking lot of the restaurant conducting a patrol check looking for parking violations, which was not a nuisance or crime service call. Examples of occurrences read by Jody Ahrens:

- March 6, 2010 – patrol check, parking cites only, 488 petty theft, non-desirous of a report, vehicle with expired registration
- March 13, 2010 – Joshua Harper, employee of restaurant, called to report his truck was broken into and iPod stolen (victim of a crime)
- March 26, 2010 – patrol check, parking citations, tag #8 (after midnight) large crowd at location open for business, disposition – dispersed prior to Sheriff’s arrival, unable to locate, patrol check regarding recent disturbing the peace, nothing found
- May 1, 2010 – cited Ruby Roe, female black, violation of LMC 9.20.030
- May 6, 2010 – informant states suspected drug dealers walking around parking lot, informant refused to give description, stated he would contact the deputies when they arrive, clearance text - Danielle Powell, ACR (Arrested, Cited, Released)
- May 7, 2010 – Bamboo Club, no evidence of criminal activity in the area, cited vehicle regarding parking violation, patrol check, parking lot supervised closing, drove through parking lot, unable to locate, no answer on call back (someone claimed a window got smashed), no evidence of a crime, checked the area, patrol check, recent disturbing the peace, checked the location on a 510 (Racing vehicles) unable to locate vehicles in the area, Code 4 call back-up unit regarding crowd control, clearance text – things are quiet, check the area—check the area, area check criminal activity called in by a dissatisfied customer by the name of Mike Jones, no narcotics activity at location
- July 18, 2010 – arrest for disturbing the peace

In conclusion of reading the occurrence calls, Jody Ahrens also read that someone was cited for being a suspicious person. He stated that the Sheriff’s entries were patrol checks and parking tickets, and an occasional disorderly person, which does not constitute a nuisance. He compared this to a local Denny’s on a Saturday night, which could generate this type of activity. He emphasized that regarding the fliers on the Facebook page, these were not the Bamboo Restaurant’s Facebook page, nor was the telephone number or texting. The Bamboo Restaurant had nothing to do with the fliers that were dispersed by the son of Raymond Young, complainant that submitted letter about the Bamboo Restaurant. He remarked that it was interesting that the complaint letter was sent after Mr. Young was advised that he could no longer participate in any type of activities at the Bamboo Restaurant. Jody Ahrens stated the applicant admits that the initial intent was to open as a restaurant that serves beer and wine incidental to food. He stated that the problem was the applicant was not sophisticated in this type of business, and the economy “tanked” on them. He revealed that the applicant was approached by an individual (Raymond Young) who offered a way out of their struggling business, which placed the applicant in an untenable position. Raymond Young was already operating as a nightclub when the applicants became aware of what was happening. The applicant then terminated the agreement. Jody Ahrens concluded the applicant is trying to obtain a solution with the City, and would like a nice restaurant families can enjoy. The applicant is in the process of attempting to sell the business to replace with another restaurant so as not to have a vacant building. However, applicant is requesting time to accomplish the process of selling the business.

Commissioner Hall inquired if there were any lawsuits pending from Raymond Young. Jody Ahrens responded there were no lawsuits against Raymond Young, who was removed from the property, as Mr. Young has nothing to do with the business other than using Bamboo Restaurant to stage his own business. Commissioner Hall asked if there was a profit for the

applicants from the business. Jody Ahrens responded no, and stated the applicant's profit was from food; Raymond Young collected profit from door charges, which the applicant was not aware. Commissioner Hall stated that there were 12 instances where monies were collected at the door, and verified whether the owner/applicant was not aware. Jody Ahrens replied that when applicant was made aware of the door charge, Raymond Young was terminated. He stated that the applicant was in poor health and was not at the location; the applicant's daughter, Carmen Gonzalez, was on location and in charge of running the business. Commissioner Hall asked if the daughter was aware of the collection of monies at the door. Jody Ahrens stated the daughter was aware to the extent that on certain nights, it was noticed that Raymond Young was collecting money, which was not collected by Carmen Gonzalez, but could not respond to that question, because he (Jody Ahrens) was not on the premises when the collecting of monies occurred. Carmen Gonzalez only collected money from the sale of food. Commissioner Hall stated the money was collected by Johnny Matrix, and inquired if that was also Raymond Young. Jody Ahrens replied that Johnny Matrix is Raymond Young's stage name.

Vice Chairman Jacobs asked Jody Ahrens if he was familiar with the sales sheet from the Bamboo Restaurant. Jody Ahrens confirmed that it was the 2010 compliance sheet. Vice Chairman affirmed it was the correct document, and inquired if the applicant's profit was only from sale of food and not alcohol. Jody Ahrens replied that applicant received money from the sale of food, but he was not sure how the money was divided for the sale of alcohol. Vice Chairman Jacobs inquired for clarification as to who the license holder is – the individual responsible for the sale of alcoholic beverages. Jody Ahrens responded that it was Eugenio Gonzalez; however, Carmen Gonzalez is managing the restaurant.

Vice Chairman Jacobs stated that the February 2010 report from Alcoholic and Beverage Control (ABC) states a \$5.00-bottle of Newcastle was confiscated that had been purchased by a patron. To establish the charge for beer and wine, Vice Chairman Jacobs inquired if the charges were correct. Jody Ahrens responded he does not go out, therefore he did not know. Vice Chairman Jacobs stated that assuming the charges are correct, the product cost is approximately 25%, which is feasible for that type of business. He stated that the sales that were submitted ranged from 81-96% product costs, averaging out to 86% product cost. Vice Chairman Jacobs stated that would be calculated three to four times higher in cost. Jody Ahrens reiterated that he had no knowledge of the report, and only knows that the sales report was generated in February 2010. Vice Chairman Jacobs stated that if the report is correct, the sales figure that was submitted is questionable, because it appears that the alcohol sales are understated in order to accomplish the 50% limit that the ABC requires, which means the sale of alcoholic beverages should be less than 50% of total sales, and the report states 56%. Vice Chairman Jacobs stated there was no profit on the sale of alcoholic beverages being sold at 86% of the product cost; and therefore, he asked Jody Ahrens if the alcohol license was still needed. Jody Ahrens responded again that the document being viewed was generated in 2010, and the report would be correct according to how the restaurant was being operated in 2010. The present allegation refers to how the restaurant is being operated as a nightclub in 2011; therefore, the numbers would be different. Vice Chairman Jacobs stated he does not know what the Bamboo Restaurant charged for beer or wine in 2010, but the Commission can only make a decision from what has been presented in the report that shows the applicant not in conformance with the conditional use permit since the release of the report in 2010.

Chairman Vose asked Vice Chairman Jacobs if he was suggesting that the applicant was giving away the products, or the books were being "doctored". Vice Chairman Jacobs passed on the question to Jody Ahrens.

Jody Ahrens replied that he did not have an answer, and the documents were submitted in 2010, to show compliance with the request for the conditional use permit. If the documents were suspect then, he felt it was incumbent upon the City to challenge the veracity of the statements. Chairman Vose stated the City has not taken the position in favor of, in opposition of, or acceptance of the figures submitted in the report of 2010. He then asked Jody Ahrens of his professional background. Jody Ahrens replied his background is law, and he knows numbers to run a business. Chairman Vose asked him what typically should be the product cost for alcoholic beverages beer and wine. Jody Ahrens replied from his experience four-to-one (4:1), or 30% food, and 25% alcoholic beverages; he added a full restaurant does not mean a profitable restaurant. Chairman Vose stated the description given by the applicant was for a restaurant, yet the operations are that of a nightclub. Jody Ahrens restated that the allegations of a nightclub are not disputed in certain aspects.

Commissioner Terracciano asked Brian Ludicke if the profit and loss statement was prepared by ABC Experts, in response to the City's request. Brian Ludicke responded it was a compilation of sheets provided by ABC Experts, Inc., for that specific period in response to the City's inquiry of July 2010.

Commissioner Elihu inquired of the initial date the nightclub activities began to take place. Jody Ahrens responded that according to the City's documentation, the initial date was November 23, 2010, and terminated February 11, 2011. Commissioner Elihu asked if the events were for Johnny Matrix. Jody Ahrens affirmed, and stated that the applicant was in survival mode, realizing mistakes were made; previous violations were corrected, and if given the opportunity, he would like to sell the business, or bring into compliance in order to continue the business until it is sold.

Commissioner Terracciano stated for the record that the nightclub advertising dates back prior to 2009, and inquired the hours of operation for the restaurant. Jody Ahrens responded he was not aware when the facility opened as a nightclub, and did not know the hours of operation for the restaurant.

Chairman Vose verified with Jody Ahrens whether he had received the same documents from staff, and if he had the opportunity to review all the documents and exhibits, to which he affirmed. Chairman Vose clarified with Jody Ahrens if he concurred with some of the conclusions drawn by the staff, however disputed other conclusions. Jody Ahrens affirmed, and concluded that the ABC had not taken any action against the applicant's license. Chairman Vose advised Ahrens that under Section 17 of the LMC, any violation of the approved conditional use permit is an opportunity for the Commission to have a hearing, and consider revocation on one single item; Jody Ahrens responded he was aware. Chairman Vose then reviewed the conditional use permit application, and various conditions, reaffirming knowledge of the conditions from Jody Ahrens [response].

- Conditional Use Permit Application of May 1, 2008, use for a restaurant, no mention of a club, restaurant to have option of beer or wine in menu and live Mariachi entertainment for evening dining and Sunday Brunch
 - [aware of most, not sure of the Mariachi band]
- Family restaurant serving seafood and Mexican cuisine
 - [yes]
- Open seven-days-a-week for breakfast and late night dining and relaxation
 - [with the recent history not the mode of operations]

- Entitled a family restaurant in initial application
 - [true]
- The consumption of alcoholic beverages, Type 41 license (beer and wine) must be accompanied by the sale of food, and a printed menu must be offered
 - [yes]
- A full-time cook be present at all times, an operable kitchen and dining area that constitutes a permanent and identifiable portions of the business premises where meals are prepared
 - [yes, it's all there];
- Had an area that was not a part of the original application or site approval in which live entertainment was conducted, dancing and consumption of alcoholic beverages outside of the approved premises
 - [correct, and immediately closed when brought to the applicant's attention]
- Documentation stating the names of the business as the Bamboo Lounge, Bamboo Inn, and Bamboo Restaurant
 - [the Bamboo Inn and the Bamboo Club were by third-party operating outside applicant's authority or permission]
- Investigation Report by the ABC dated February 4, 2011
 - [dispute parts of the report; the investigators are not present to be examined, and there has been no enforcement action taken on the report only a citation, the report itself is not a testimony]

After extensive discussion, Chairman Vose advised Jody Ahrens that issuing a citation is an action.

Carmen Gonzalez, daughter of the applicant, addressed the Commission and stated that concerning the sale of alcohol, the price was between three to four dollars based on whatever specials that may occur during happy hour, and beer was never sold over four dollars. She declared that the business was not in compliance. The goal was to start as a restaurant, but due to her father suffering from a major stroke, it was hard to manage the restaurant as approved. She requested to be given time to sell the business. Commissioner Elihu inquired as to when her father's stroke occurred, and she responded December 25, 2008.

Commissioner Terracciano asked what the current hours of operation were, and how many days during the week. Carmen Gonzalez stated that it is open four to five (4-5) days a week, and the hours of operations were 2:00 p.m. to 12:00 a.m., and 2:00 p.m. to 1:30 a.m. on the weekend. She stated that because of her father's illness and tending to his healthcare, she could not manage the business seven-days-a-week.

There were no speakers in opposition to the request. Public hearing closed at 7:05 p.m.

Chairman Vose asked Staff should the owner decide to sell the business with the sale of alcoholic beverages, would the buyer be able to obtain a new conditional use permit. Brian Ludicke responded to the negative, stating that under the current situation the applicant has an approved conditional use permit that would remain in force on the property even if the business is sold. Unless action is taken on the conditional use permit, such as a revocation, the approved conditional use permit remains in effect with the property.

Chairman Vose requested Deputy Kuper to clarify various comments that were discussed in the report.

Deputy Kuper stated the report consists of two types of deployment, directed patrol or patrol check, and call for service. High visibility patrol checks were conducted for crowd control problems, and to prevent issues (drinking, drugs, etc.) in parking lot during the closing hours at 1:30 a.m., on weekends. If any vehicle violation codes were observed, citations would be issued; patrols were not dispatched to the Bamboo Lounge to issue citations. The 14 reports taken from September 2009 to the present, ranging from misdemeanor disorderly conduct to vandalism, four (4) vehicle burglaries, three (3) assaults, and one (1) murder. There were 12 calls for service in response to the Bamboo Lounge, using 20 units and deputies were deployed, and 20 observations by directed patrols, conducted May 11, 2010, to May 11, 2011; 20 of the patrol checks were conducted by 27 units.

Commissioner Hall asked Deputy Kuper if the restaurant parking lot area was similar to Denny's restaurant parking lot area, and also how was the area since "Johnny Matrix" moved. Deputy Kuper responded the restaurant parking area was not similar to Denny's, and the weekend activities are the same, which have been that of a nightclub for the past two years. Deputy Kuper stated that on personal visits, he observed advertising of food on portable white boards for nachos, tacos, and condiments of that nature, but there were no place settings or silverware. In the past three years that he has been involved in the investigation, he has never seen the owner/applicant at the location, and was not aware of the applicant's health problem. Deputy Kuper stated, in his opinion, he believes the owner was aware of the activities that were being conducted, and participated in the management of said activities. He stated that considering the location, and in observing and comparing the sales portion of food and alcohol, the estimation would be 10% restaurant and 90% nightclub. Also, in comparison to several businesses in the area with a Type 41 ABC license, there was one with a similar problem which is presently being investigated. Deputy Kuper stated the initial plans and proposal for the conditional use permit were good. The Sheriff Department's only concern was the live entertainment because of past experience. In conversations with Carmen Gonzalez, the restaurant business was not going well, and the possibility of the facility becoming a nightclub was being considered. He informed Carmen Gonzalez of the Type 48 license that would be required to operate the facility as a nightclub, and that under this license type, only individuals 21-years of age and over could attend. Currently, with the Type 41 license, all ages are allowed in the facility. Deputy Kuper concluded that the restaurant became a nightclub.

Commissioner Hall stated that the applicant's representative indicated that an iPod was stolen on the property, and asked Deputy Kuper if it was normal routine to patrol an area aggressively to try to prevent those types of crimes from happening. Deputy Kuper responded this routinely happens, if there is a specific problem area, whether it be a business, neighborhood, or any other area. Assignments are done daily during briefing, when extra patrols may be dispatched. Commissioner Hall asked if that was standard procedure. Deputy Kuper affirmed.

Commissioner Harvey asked Deputy Kuper if the number of service calls made to the Sheriff's Department was due to the activities while operating as a nightclub instead of a restaurant in that area. Deputy Kuper affirmed the number of service calls was higher compared to other restaurants in the area.

Chairman Vose inquired of the disposition of the ABC investigation report of February 4, 2011, involving Carmen Gonzalez in violation of operating a nightclub without a license. Deputy Kuper stated the disposition of the investigation by the ABC is pending. He added the ABC investigations are lengthy and results may not be available for one year. Chairman Vose stated that the investigation reveals Carmen Gonzalez was aware of the cover charges and nightclub activities, contrary to the report by Jody Ahrens.

Commissioner Hall asked Lee D'Errico concerning his report of January 2011, in reference to the "Johnny Matrix" fliers. Lee D'Errico stated the information was obtained from Facebook and recordings from referenced phone numbers. Staff and Sheriff Deputies had on-going discussions with Carmen Gonzalez and her husband regarding the violations, and they were aware and had knowledge of the nightclub activities. During a meeting held at City Hall, Staff went over line by line through the conditional use permit conditions and how to operate the business within those conditions.

It was moved by Commissioner Harvey and seconded by Commissioner Elihu to approve Resolution No. 11-06 revoking Conditional Use Permit No. 08-08. Motion carried with the following vote (7-0-0-0):

AYES: Commissioners Elihu, Hall, Harvey, Malhi, Terracciano, Vice Chairman Jacobs, and Chairman Vose.

NOES: None.

ABSTAIN: None.

ABSENT: None.

DIRECTOR'S ANNOUNCEMENTS

None.

COMMISSION AGENDA

None.

PUBLIC BUSINESS FROM THE FLOOR - NON-AGENDA ITEMS

None.

ADJOURNMENT

Chairman Vose declared the meeting adjourned at 7:30 p.m., to Monday, June 13, 2011, at 5:30 p.m., in the Planning Conference Room, City Hall.

JAMES D. VOSE, Chairman
Lancaster Planning Commission

ATTEST:

BRIAN S. LUDICKE, Planning Director
City of Lancaster