

**REGULAR MEETING OF THE CITY OF
COSTA MESA PLANNING COMMISSION**

July 24, 2006

The Planning Commission of the City of Costa Mesa, California, met in regular session at 6:30 p.m., July 24, 2006 at City Hall, 77 Fair Drive, Costa Mesa, California. The meeting was called to order by Chairman Bill Perkins, followed by the Pledge of Allegiance to the Flag.

ROLL CALL:

Commissioners Present:

Chairman Bill Perkins
Vice Chair Donn Hall
Eleanor Egan
James Fisler
Bruce Garlich

Also Present: R. Michael Robinson, Secretary
Costa Mesa Planning Commission
Ernesto Munoz, City Engineer
Wendy Shih, Associate Planner

MINUTES:

The minutes for the meeting of June 26, 2006 were accepted as corrected; the minutes for the meeting of July 10, 2006 were continued the meeting of August 14, 2006.

PUBLIC COMMENTS:

None.

**PLANNING COMMISSION
COMMENTS/SUGGESTIONS:**

Commissioner Fisler said his friend's son, Sergeant Craig Isham who was previously on a tour of duty in Iraq, was home for about a year when he and his wife Amy welcomed their newborn, John Riley Isham into the family. Commissioner Fisler said to update the community, friends, and listening audience since the December 12, 2005 meeting, Craig will be taking his second tour of duty over seas and leaves today. On behalf of everyone who has been following this story, he wished the Isham family all the best and said they know our prayers are with them. He thanked everyone in the 25th Infantry Division and all those who have sacrificed so much for their country.

The Chair wished his wife a "Happy Anniversary." He also relayed a story about an Israeli friend and hoped that we would all stop and think about what we are grateful for in these times and be encouraged to do that often.

PUBLIC HEARINGS:

PLANNING APPLICATION
PA-06-34

Conoco Phillips/Tait & Assoc.

The Chair opened the public hearing for consideration of Planning Application PA-06-24 for Greg Fick of Tait and Associates, Inc., authorized agent for Conoco Phillips, to amend conditions of approval of an existing conditional use permit (PA-99-49) to allow concurrent sales of beer and wine (single servings) with gasoline, and to allow exterior advertisement for alcoholic beverages, located at 3067 Bristol Street, in a C1 zone. Environmental determination: exempt.

Associate Planner Wendy Shih reviewed the information in the staff report and made a presentation. She said staff was recommending denial by adoption of Planning Commission resolution.

In response to a question from Commissioner Garlich concerning the absence of Police Department correspondence in the staff report, Ms. Shih stated they had no objections via an e-mail response and verbal communication.

Commissioner Garlich stated that page 3 of the staff report notes that these standard conditions were adopted in 1997 and were recognized in 2002 under Ordinance 01-30 amending the zoning code and asked if the Commission has the authority to act on this request. Planning Commission Secretary R. Michael Robinson explained that they are embodied in an ordinance by reference only in Section 13-200.72 which states that the City Council may adopt development operational standards for liquor stores, convenience stores, and mini-markets that may be applied on a

case-by-case basis. The final review authority may use these standards to impose conditions of approval on the use to insure findings contained in Chapter III, Planning Applications—CUP Findings.

There was discussion between Commissioner Egan and Ms. Shih confirming that statistics show the crime rate in that census tract is 20% above the City-wide average crime rate.

There was discussion between the Chair and Ms. Shih regarding excess ABC licenses within an area of undue concentration and where crime exceeds 20 percent of the City-wide average crime rate.

Vice Chair Hall discussed other areas that would also exceed the county-wide ratio such as South Coast Plaza. He also confirmed with staff that condition of approval #18 says that you can buy a 6-pack of beer.

Mike MacFarland, authorized agent with Tait and Associates, 701 North Park Center Drive, Santa Ana, agreed to the conditions of approval and thanked staff for all their efforts. Mr. MacFarland discussed several points to convince the Commission to approve their request: (1) They have been at this location for 6 years and have proven themselves to be a reliable and respected business in the community. (2) Continual and numerous requests from customers prompted this request. (3) No ABC violations or police calls for major issues have been reported or on file with CMPD.

Mr. MacFarland asked, “how does the crime rate and concentration of alcohol licenses compare with other large census tracts in a commercial area?” Ms. Shih said the information exists, but she did not have it available at this meeting. The Chair requested an estimate of the number of census tracts that tend to run in over concentration of ABC licenses. Ms. Shih felt that it could be approximately 50%. Mr. Robinson added that the graphic, which was displayed on the screen showing the High Crime Areas, denotes that high crime areas are primarily in commercial uses, but it also shows an area east of Newport Boulevard as primarily residential, but has an over concentration in that tract; Harbor Boulevard has a high concentration of the eastside of the street; and the west side of the street does not.

Continuing his presentation, Mr. MacFarland stated that: security issues have been recognized and taken care of; there are no incidents of loitering; and they keep their alcohol training program updated.

Mr. MacFarland said his last issue is that staff references single sales as promoting drinking problems and drinking and driving and wanted to know how staff came to this conclusion. Ms. Shih explained that it is staff’s opinion that having single sales would encourage drinking and driving, whether or not it is sold with gasoline. Further, she said it is staff’s opinion, that because of the higher traffic count coming in and out, it has a higher potential for drinking and driving. Mr. MacFarland said that when single sales were offered to the other liquor store (Mesa Verde), staff’s comments were that they were stopping by and then drinking their single purchase on their way to the golf course. In response to a question from Commissioner Garlich concerning the exterior advertising and the preference between that and the single sales, Mr. MacFarland said he believed the client would much rather have the single sales. Commissioner Garlich and Commissioner Egan agreed on their recollection of the “golf course” connection.

Conoco Phillips representative Susan Clark, in response to questions by the Chair concerning employee training, detailed a list of training procedures and rules used in the class for all new employees.

Commissioner Egan said to her, it seems extremely unlikely that someone will buy a single can to take home and refrigerate until later. She asked if Conoco takes the position that if a person who drives up and buys a single can of beer in preference to a six-pack, is not buying it for immediate consumption. Ms. Clark said she could not say that, but in the same respect, if she buys a six-pack, it doesn’t stop her from taking it

home, but she can also open a can right there inside of her car as well; she believed that either way, it's not going to stop someone from drinking and driving. She said that's their choice when they walk in. Commissioner Egan said there is no question about that, the question is what are we encouraging? There is no question that when a single container is purchased, it's for immediate consumption.

Mr. MacFarland wished to make a final comment that in 2000 when the site was redesigned, in order to obtain their CUP for liquor sales, Conoco did reduce the amount of liquor licenses available by two in that census tract by closing down another store they owned and purchasing another existing license within that tract. He said his point was to make the Commission aware that Conoco is a responsible establishment.

No one else wished to speak and the Chair closed the public hearing.

Vice Chair Hall commented that people are going to drink irresponsibly (drink and drive), no matter how you limit their availability of liquor. He said he would rather see someone buy a single can if they are going to drink and drive, which they shouldn't, and go off with one can rather than buy a six-pack and drive-drinking one can of beer after another; arguments can be made on both sides of this issue. He felt for government to start controlling the behavior of the citizens of this country is absurd. He felt that with the way things are going, there is a good probability that these beverages will be sold in packages of two. He felt the social control of the citizens of this country is ridiculous, and reminded everyone that was tried with prohibition. In closing, he said if people can't buy at this location, they'll find another location that does.

MOTION:
PA-06-34
Vote was not called
(See motion below)

A motion was made by Vice Chair Hall, seconded by Commissioner Fisler to approve Planning Application PA-06-34, finding that limitations on people's freedom is not going to stop them from doing something improper, subject to the conditions of approval as listed on page 8.

Commissioner Fisler commented that he did not agree with the statement for not selling singles is because it encourages drinking. For example, if he is bringing refreshments to another house for a dinner where someone wants Dr. Pepper, another person wants a beer, another milk, etc., he would prefer not to have to buy six-packs, so in this case, he would find another store where single containers are sold; he may want gas at the same time and it would be convenient to have that availability. He said this is not an additional off-site license so he will support the motion because he believes it is a responsible business, and further, the Police Department had no objections.

SUBSTITUTE MOTION
PA-06-34
Denied

A substitute motion was made by Chair Perkins, seconded by Commissioner Egan and carried 3-2 (Hall and Fisler voted no) to deny Planning Application PA-06-34, by adoption of Planning Commission Resolution PC-06-54 based on information and analysis in the Planning Division staff report, and findings contained in exhibit "A."

The Chair said he sees a movement to make allowances where it was not done before. He felt that single container sales encouraged drinking and driving.

Commissioner Garlich said he believes that Conoco runs a tight ship and has a good record and commended them and thanked them. However, he did agree with Commissioner Egan and could not imagine that anybody who buys a single container of an alcoholic beverage buys it to take it home and use it later. He said he also felt that Vice Chair Hall and Commissioner Fisler also had valid comments and this has been a debate going on for a long time. Nine years ago this City chose to err on the side of caution, and the only exception was under special circumstances where there was a business that was reopening in a competitive environment, and he believed it was the rationale of the Council to allow that to occur. It is the only time it has occurred.

The Vice Chair asked if any of the surrounding cities have an ordinance that prohibits the sale of single container alcoholic beverages. Staff did

not know.

The Chair explained the appeal process.

REPORT OF THE DEVELOPMENT SVS. DEPARTMENT:

Mr. Robinson announced two upcoming meetings for the Planning Commission: (1) A mandatory training session scheduled for August 8, 2006 in Conference Room 1A at 6:30 p.m. for approximately 2 hours; and (2) A Community Workshop on the North Costa Mesa high-rise residential towers by staff, is tentatively scheduled for Monday, August 7th (or Wednesday, August 9th) at 6:30 p.m. in the Council Chambers.

REPORT OF THE CITY ATTORNEY'S OFFICE:

None.

ADJOURNMENT:

There being no further business, Chairman Perkins adjourned the meeting at 8:53 p.m. to the training session of Monday, August 8, 2006.

Submitted by:

R. MICHAEL ROBINSON, SECRETARY
COSTA MESA PLANNING COMMISSION