

PLANNING COMMISSION
Minutes of Regular Meeting
Westminster Council Chambers
8200 Westminster Boulevard
Westminster, CA 92683
December 4, 2006
6:30 p.m.

- Call to Order** The Planning Commission of the City of Westminster met in a regular session on Monday, December 4, 2006 called to order in the Westminster Council Chambers, at 6:30 p.m. by Chairman Turro.
- Roll Call** Commissioners present: Bertels, Chow, Turro
Commissioner absent: Cruz, Krippner
- Staff Attendance** Art Bashmakian, Planning Manager; Michael Patterson and Chris Wong, Assistant Planners; Maria Moya, Department Secretary; and Christian Bettenhausen, Deputy City Attorney
- Salute to the Flag** All persons present joined in the Salute to the Flag, conducted by Mr. Bettenhausen.
- Approval of Minutes** The minutes of the regular meeting of November 15, 2006 were approved on motion of Commissioner Bertels, seconded by Commissioner Chao, and carried 3-0-2, Commissioners Cruz and Krippner absent.
- Oral Communications** None
- Written Communications** Mr. Art Bashmakian indicated that a letter of appeal concerning Case 2006-59 from Ms. Lyn Zachemeyer was provided to the Commission. He stated that no action was necessary from the Commission as this letter will be forwarded to the City Council when it considers the case a public hearing item in their meeting scheduled in January next year.
- The Commission also received a copy of the applicant's email pertaining to Case 2006-82 which is scheduled for hearing that evening. Due to the number of issues mentioned in the email, Chairman Turro felt he needed more time to review the matter and would prefer that all the Commissioners be present to make a fair and impartial judgment. Mr. Bettenhausen advised the Commission that it could allow the applicant to summarize what is

being presented in the email; hold a public hearing and continue the item; or postpone the item for further review. Considering the presence of the applicant and the large contingency of people who arranged their schedules to attend the evening's meeting, Commissioner Chow urged the Commission to consider the item with an open mind. Mr. Bashmakian explained that if the item is continued to the December 18 meeting, it will not be readvertised. However, if the meeting is moved to a date later than December 18 (Commissioners Chow and Bertels will not be available at this date), the item will have to be readvertised.

After thoughtful consideration, the Commission decided to consider Case 2006-82 that evening.

Public Hearing A. Case 2006-82 Conditional Use Permit and Design Review.

Location: 1025 Westminster Mall (Assessor's Parcel Number 195-373-17). A request for a Conditional Use Permit and Design Review to operate a computer gaming arcade with a live disc jockey within a 7,700-square-foot tenant space adjacent to J.C. Penney's Department Store, inside the Westminster Mall and to make minor exterior architectural modifications to the existing mall building (specifically, adding a new doorway and signage to an exterior wall and altering existing landscaping to create a new pedestrian walkway).

STAFF RECOMMENDATION: That the Planning Commission approve the Conditional Use Permit and Design Review request for Case Number 2006-82 based on the findings and conditions outlined in the proposed resolution.

Mr. Michael Patterson provided a brief presentation on the background of the applicant's request to operate a computer gaming arcade with live disc jockey inside the Westminster Mall. He indicated that staff supports the request based upon staff's analysis and findings and conditions in the draft resolution.

The public hearing was opened.

Speaking in favor was an investor to the proposed project, Mr. Gary Daichendt, 2620 Riviera Drive, Laguna Beach, who thanked the Commission for continuing the public hearing. Having come from the technology business, he indicated that he is used to building big companies based on integrity. He stated that the proposed project is not an internet cafe but a safe and clean sports area type facility where young people can enjoy competitive wholesome fun games. He indicated that the facility will be well-maintained and well-lit with

high ceilings; no internet access; and the patrons will be closely monitored individually. He informed the Commission that their facility in Mission Viejo has drawn businesses within the building they are operating, and has gained the rapport of the City's school, police, and County personnel. He stated that they are receiving solicitations to open in several other properties as they plan to open more similar facilities around Orange County. He apologized to Police Chief Andy Hall for the unfavorable experience Chief Hall encountered when he visited the Howie's Mission Viejo facility. Mr. Daichendt explained that the incident was beyond his control, and he was willing to show some other positive aspects of the facility. He appealed to the Commission to consider some of staff's conditions which they considered very restrictive as those conditions could prohibit them from opening the business in the City. Mr. Daichendt stated that these issues were addressed openly and not offensively in the email that was provided to the Commission that evening.

Ms. Crystal Wadsworth of 14152 Milan Street and Executive Director of the Westminster Chamber of Commerce, stated that she checked with Simon Properties of the Westminster Mall and the Mission Viejo Acting Police Chief regarding the proposed business and all her questions were satisfactorily answered. As a parent, she was confident that this will be a safe and secured facility for children, and a good addition to the mall and the City.

Chairman Turro stated he appreciates and values Ms. Wadsworth's comments based on her good reputation in the City.

Mr. Kevin Donovan of 32 Journey, Aliso Viejo, is president of Planetwide Games and Planetwide Media that develops software application for online and console games. Being knowledgeable in development of properties, he stated that the proposed project has the factors necessary to provide a safe environment for children. Mr. Donovan stated that he does not have any financial gain on this project but it has his full support.

Mr. Mark Smith, 5730 Chandler Court, Rancho Cucamonga, of Simon Property Group stated that as they oversee nine malls in the western United States, their foremost priority is security and safety. He indicated that he brought his children to Howie's, the applicant's facility in Mission Viejo, and did not hear or see anything that concerned him at all.

Mr. John Trommald, an attorney from 17056 Marina Bay Drive, Huntington Beach, stated that he will not let his children play games

at any game center except at Howie's because it is equivalent to a movie theater that is a professional business by itself.

Mr. Frank Fried of 2544 E. Jacaranda, Orange, is the chaplain for Olive Crest Treatment Centers, a home for at-risk teens. Having worked with the youth for 20 years, he stated that he is aware of their likes and interests. As part of his task to find opportunities for the kids to participate, he found Howie's a place for kids to get involve and not get into trouble. Mr. Fried praised Howie's for its generosity of signing up Olive Crest youths free to their facility. He stated that the project will be an asset to the community.

Mr. Steve Lavering of 27971 Calle Belmonte, San Juan Capistrano, stated that he is a special education teacher in the Capistrano School District whose specific role is to find positive community experiences that will prepare his students for employment. He stated that Howie's serves as a motivator to his students who learn from the business's professional employees.

Dr. Michael Zona of Huntington Beach concurred that the proposed project will be an asset to the City. As an avid gamer himself, he stated that he and his children had been to Howie's where he observed that there is always 10-15 adults walking and checking on what is going on. There is no internet access and the patrons can only play the games available which is absent of violence, pornography, vulgar language, or swearing. He stated that he would rather have his children be supervised in a setting such as Howie's instead of a movie theater.

Mr. Paul Yankey of 27866 Trellis Way, Laguna Niguel, stated that he will be the manager of the project site. He stated that he was skeptic of the business in the beginning but after visiting the Howie's in Mission Viejo, he found that this was a community where people having fun and play together in a safe environment. He promised to run an exemplary operation and make sure people are safe in this facility.

The applicant, Mr. Howard Makler, of 27741 Crown Valley Parkway, Mission Viejo, stated that he was motivated to invest in this business due to the growth of the videogame industry and to provide a safe place for his children to play and socialize. He considered some of staff's conditions as restrictive and addressed them as follows:

Condition No. 5 – He recommended that the restriction on the hours of operation be removed to accommodate "night owl" gamers

or whenever their business demands it. He added that the city of Mission Viejo reversed a similar condition and the unrestricted hours of operation has remained the same after a year of satisfactory operation.

Condition No. 7 - He stated that the Chief of Police of Mission Viejo did not require minors to leave their facility at 10 p.m. for the following reasons: unfair to Howie's since other businesses such as the movie theaters are not required to do the same; the city is not suppose to make parental decision for a child but the parents; possible increase in police services since minors not allowed at Howie's will likely loiter around.

Condition No. 16 – He requested to use shades to eliminate the sun glare in the daytime and to raise it up during night time.

Condition No. 12 - He explained that “internet based games” is limited only to Howie's internet-access games. He requested the phrase, “or internet based games” be deleted.

Condition No. 6 – He felt this is an onerous condition since the Planning Commission can review the permit whenever the Commission deems it necessary as stated in Conditions No. 24 and 25.

Condition No. 19 – He stated that they do a lot of specials events that include third party promoters such as non-profit organization, Olive Crest Treatment Centers.

Condition No. 1 – He questioned the phrase, “... whether the same be groundless or not...”. Mr. Bettenhausen explained that these claims against the City arise only from the approval of this project and does not relate to other types of indemnity situation. Mr. Makler requested to include the word “solely” in the condition. Chairman Turro advised to take up this condition later.

Because they are in a very strict timeline, Mr. Makler requested the Commission to decide for or against the project that evening so that they can move on with whatever decision the Commission makes up.

Chairman Turro pointed out that Westminster is not Mission Viejo and the Commission will decide whatever is best for Westminster. He was very disturbed about eliminating time restrictions.

In summary, Mr. Makler concluded that Condition No 1. is acceptable; remove the time restrictions in Condition No. 5; and Condition No. 7 – Mr. Makler requested to replace “at 10 p.m.” to “after 10 p.m.” Mr. Bashmakian explained that this condition is a code requirement. Mr. Makler responded that they would have to move to Huntington Beach if this condition is not removed. Chairman Turro remarked that it was Mr. Makler’s choice and he will not take it as a threat. Mr. Makler apologized as he did not intend it to come out as a threat. Condition No. 6 – Mr. Makler requested to remove this condition. Commissioner Bertels explained that it was necessary for the Commission to meet the new business owners. Mr. Makler accepted the condition.

Mr. Daichendt stressed that the curfew at 10 p.m. applies to a public property but the facility is a private property. Mr. Bettenhausen responded that it would depend on the interpretation of code. Mr. Bashmakian further explained that the Commission could modify Condition No. 7 as long as it is consistent with the City’s laws on curfew.

Mr. Steve Lund of 17036 Bluewater Lane, Huntington Beach, stated that it is difficult to find a safe place for children to go and where parents can call to check on their children. He indicated that the community of Westminster needs a place like this.

No one spoke in opposition and the public hearing was closed.

The Commission observed a recess at 8:15 p.m. and reconvened at 8:25 p.m.

Chairman Turro inquired about the number of patrons required to remain open after 2 a.m.; how to identify teens in the facility after 2 a.m. who don’t have parents’ approval; choice of Westminster as the project location; facility rates; and food served.

Mr. Makler stated that in order to remain open after 2 a.m., they need about 25 patrons and these patrons will be individually supervised. Occasionally, Mr. Makler indicated that the facility hold customer appreciation nights or hosts church groups. In these cases, the facility locks in and closes at 5 a.m. He stated that since every patron is required to register and provide personal information, it would be easy to identify those patrons below 18 who are in the facility after 2 a.m. and without parental approval. Mr. Makler indicated that he chose the Westminster Mall location due to potential financial gains and because he lives very close to it. He informed the Commission that the rate to play is \$4 per hour and

\$15 per day. Soda, chips and heated pizza will be available to the patrons at minimum prices.

Commissioner Chow inquired about the third party promoters and security. Mr. Maker answered that they are mostly charitable and non-profit groups and large corporations that use their facility for premier event activities. He stated that the facility can accommodate 250 people and they will have 8 to 9 people to supervise on weekends and mall security on site at all times. Mr. Daichendt said that their employees are trained to handle dangerous situations. He informed Commissioner Chow that the patrons' average age is 13 years during the day, but after 9 p.m., it is 16 years; and after 1 a.m. it is 19 or 20 years.

Commissioner Chow stated that she wants a business that would bring quality of life, and her concern was Condition No. 7 which she felt could interfere with the children's education. She was willing to work with the applicant to address this concern. Mr. Daichendt responded that they will work with every issue if the Commission wants the business in Westminster. He mentioned that they want to address only Friday, Saturday nights, and Sunday hours when children are normally allowed to go out, but does not want the responsibility of asking and checking on every child who comes in the facility.

Commissioner Bertels stated that he wants the business but advised Mr. Daichendt never to use the negative approach to the project again as he did in his email, because after reading it, he was against the project right away. Commissioner Bertels told Mr. Daichendt that he set the wrong pattern when he gave the Commissioners a copy of the email.

Mr. Bashmakian reminded the Commission that a representative from the Police Department, Detective Ron Weber, is available to answer any questions.

Chairman Turro reiterated that the hours of operation should be restricted. He was concerned no one opposed the project but was quite confident there would be when City Council calls up this item in the future.

Relating to Condition No. 7, Mr. Bettenhausen suggested to eliminate the words "after 10 p.m." and provided the following wording, "No minors shall be admitted to the business or allowed to remain therein in a manner inconsistent with the City's curfew laws..." which would still leave in the school hours restriction. Mr.

Daichendt pointed out that some school districts or private schools have different school hours than the rest and it would be hard to restrict those who are out in a different school schedule if nearby schools are still in session. Mr. Bashmakian pointed out that the condition which states, "...during those week days when the public school system within the city's jurisdiction is open and classes being conducted...", provides the intent that if the school is not open, then the student would be allowed to the facility. Mr. Bettenhausen concurred. According to Mr. Bashmakian It would be up to the Commission to use the language to accommodate the different types of schedules of schools.

Chairman Turro asked Det. Weber if he anticipates any problems with the revisions of some of the conditions. Firstly, Det. Weber indicated that they were impressed by the business. With Sgt. Finley, they researched on similar type businesses, then presented Acting Chief Waller and Chief Hall their proposal that would provide the citizens the safest environment and allowing the business to operate. If the project is approved with the staff's conditions, Det. Weber stated that he does not foresee any problems. However he expressed some confusion with Condition No. 5. He explained that during a meeting with Howie's representatives, Police Department required the applicant to close their facility at midnight everyday. Howie's representatives presented their concerns to Chief Hall, and the Police Department compromised with to allow the closure of the facility at 2 a.m. Since 2 a.m. was the time indicated in their main proposal, Det. Weber stated that he was shocked to learn that all of a sudden, the applicant wants unrestricted hours. Chairman Turro concurred with Det. Weber about limiting the operating hours to 2 a.m. Mr. Bettenhausen suggested that the Commission can approve the 2 a.m. closing time and come back to midnight closing after one year when the Commission considers the project for review. Mr. Daichendt was concerned that there will be another set of Commissioners when they are required to come back after a test period to revert back closing time to 12 a.m. Mr. Daichendt stated that he cannot risk committing mistakes again before the Commission in the future considering the financial investment in the business. Chairman Turro assured him, however, that the Commission would only review the project if it causes negative impact to the community.

Mr. Bashmakian explained that Conditions No. 5 and 6 are staff recommendations and are not in the code. He added that the Commission could either modify or delete these conditions. Chairman Turro preferred to delete Condition No. 5 and Condition

No. 6, and if the project does not result in any negative impacts, it should not be brought to the Commission at all.

Mr. Makler asked if they can remain open until 5 a.m. on Fridays only. Chairman Turro reiterated that he was not in favor of opening after 2 a.m. because he was bothered that the applicant had made a deal with the Police Department and is now changing it. Related to this, Mr. Bettenhausen suggested the following wordings, "The business may remain open until 2 a.m., 7 days a week. At the end of the year, the Planning Commission will review the matter to reassess the closing time to determine whether or not the 2 a.m. closing time has resulted in excessive number of negative impacts..." Commissioner Chow persuaded the Commission to have some flexibility in the schedule to accommodate the applicant. She stated that those who frequent the facility are not troublemakers but mostly computer literate people. She stated that she likes the project and wants to keep it in the City. For clarification Mr. Weber stated 2 a.m. closing time means that the facility is also closed at 2 a.m.

Chairman Turro felt Condition No. 6 should be deleted. The other Commissioners concurred.

Concerning Condition No. 7, Mr. Bashmakian advised the Commission that it was acceptable to revise the condition as long as it is consistent with the City's ordinance. Mr. Bettenhausen suggested the condition to state, "No minors shall be admitted into the business or allowed to remain therein in a matter inconsistent with the City's curfew laws or during daytime periods when the minor's school is in session (generally between 8a.m. – 3pm) unless accompanied by a parent, legal adult or family member." He added that the applicant shall take reasonable steps to verify that minors in the premises during the period of 8 a.m and 3 p.m. meet these restrictions.

Referring to Condition No. 9, Mr. Patterson clarified that the applicant had requested that the services of the disk jockey will be limited to only Fridays instead of daily, once a month. Chairman Turro was concerned that having a disc jockey daily could turn the facility similar to a nightclub. Mr. Bashmakian informed the Commission that normally, standard and special conditions restrictions are imposed on a proposed project subject to review by the City if problems arise. If the conditions of approval are lax and lack detail, it constricts the City's ability to regulate to protect its citizens. But he added that it is up to the Commission to add or strike out conditions. Mr. Bashmakian reminded the Commission

that it would have fewer tools to enforce the issues if more conditions are stricken out. Instead of “daily”, Mr. Bettenhausen suggested to use “Fridays or Saturdays” instead and add “...such use to be allowed to a maximum of once a month...”. Commissioner Chow suggested “Fridays and Saturdays”.

Pertaining to Condition No. 12, Mr. Bettenhausen suggested deleting the phrase, “or internet based games”.

For Condition No. 19, Det. Weber indicated that this condition, for protection and possible conflicts, would alert the Police Department regarding the number of people expected. In order to compromise with the applicant, Det. Weber suggested the following phrase, “...without a Police permit if the occasion will generate 100 guests...” Mr. Bettenhausen revised to state, “Third party promoters are prohibited from operating at the location without a special events permit or if the event is expected to have more than 100 or more guests.” Det. Weber went along with Mr. Bettenhausen’s revision.

Motion

Commissioner Chow moved that the Planning Commission approve Conditional Use Permit and Design Review request for Case Number 2006-82 based on the findings and conditions outlined in the proposed resolution including the changes in the following conditions as follows: Condition No. 5, to read, “The business may remain open until 2 a.m. seven days a week. At the end of the first year the Planning Commission will review the matter to reassess the closing time to determine whether or not the closing time has resulted in excessive number of negative impacts”; delete Condition No. 6; Condition No. 7 to read. “No minors shall be admitted into the business or allowed to remain therein in a matter inconsistent with the city’s curfew laws or during daytime periods when the minor’s school is in session (generally between 8a.m. – 3pm) unless accompanied by a parent, legal adult or family member. Applicant shall take reasonable steps to verify that minors in the premises during the period of 8 a.m. and 3 p.m. meet these restrictions”; Condition No. 9 - change “daily” to “Friday or Saturday, a maximum of once a month.”; Condition No. 11 – change 3 a.m. to 2 a.m. and delete “including workers”; Condition No. 12 – delete “or internet based games”; Condition No. 16 – install shades to protect against sunlight and reduce glare but raised during night time; Condition No. 19 – to read, “Third party promoters are prohibited from operating at the location without a special events permit or if the event is expected to have more than 100 or more guests.”

Commissioner Bertels seconded and the motion carried 3-0-2
Commissioners Cruz and Krippner absent.

Commissioner Chow requested to reconsider the Commission's
action.

Motion

Commissioner Chow, seconded by Commissioner Bertels, moved
to reconsider the Commission action. The motion carried 3-0-2,
Commissioners Cruz and Krippner absent.

Commissioner Chow referred to Condition No. 5 and indicated that
she wants to keep this business in the City especially for teenagers
whom she would rather see in a secured facility such as Howie's
than loitering around. She was amenable to the applicant's request
to open the business until 5 a.m. once a week for a few months, but
would be subject to Commission's review if problems arise. Det.
Weber expressed disappointment that the applicant changed the
terms several times on what has been previously agreed upon him
and Police Department. Chairman Turro assented with Det.
Weber. Dealing with this issue further, Commissioner Chow
confirmed with the applicant that there will be no new patrons after
2 a.m. and they should be out of the premises by 5 a.m.

Motion

Commissioner Bertels moved that the Planning Commission
approve Conditional Use Permit and Design Review request for
Case Number 2006-82 based on the findings and conditions
outlined in the proposed resolution including the changes in the
following conditions mentioned in the first motion with the following
revisions as follows: Condition No. 5, to read, "Notwithstanding the
above, the applicant shall be granted the conditional privilege of
operating its facility on Fridays until 5 a.m. No new patrons will be
allowed to enter the premises after 2 a.m. and the patrons are out
by 5 a.m. Such Conditional Use Permit shall be reviewed after six
months by the Planning Commission and may revoke such
privilege at its discretion"; and Condition No. 11 to read, "...by 2
a.m. except as may be provided in Condition No. 5...".

The motion carried 2-1-0, Chairman Turro dissented,
Commissioners Cruz and Krippner absent.

**New Business A. Case 2006-67 Design Review Level 2. Location: 15171 Beach
Boulevard; on rooftop of existing Princess Motel.** Application
for a level 2 Design Review to allow the establishment and
operation of an unmanned, wireless communications facility
(Including 6 panel antennas, 1 GPS antenna, 4 radio equipment

cabinets, power and Telco box) on the rooftop of an existing 3-story motel.

STAFF RECOMMENDATION: That the Planning Commission approve the design based on the findings and conditions included in the proposed resolution

Mr. Chris Wong said that staff supports the applicant's request to allow the establishment and operation of an unmanned wireless communications based upon the project's compliance with the Municipal Code and comments received from applicable City departments.

The Commission allowed the applicant's representative, Mr. John Koos of 2923-A Saturn Street, Brea, to speak. Mr. Koos was agreeable to all of staff's conditions of approval and thanked staff for its assistance on the project. He requested that staff list the name of the wireless company as the project applicant instead of him on the signature page. Staff consented to change the signatory of the project applicant.

Commissioner Chow indicated she was comfortable with the project.

Motion On motion of Commissioner Bertels, seconded by Chairman Turro, and carried 3-0, Commissioners Cruz and Krippner absent, the Commission approved the design based on the findings and conditions included in the proposed resolution

Old Business There was no Old Business scheduled for review.

Administrative Approvals The Planning Commission received notification that the following Administrative Approval item was reviewed by the Planning Manager.

A. Case 2006-85 Administrative Adjustment.
Location: 15681 Primrose Lane

The Planning Manager approved a request to allow a 16-foot rear yard setback for an enclosed patio addition, whereas a 20-foot setback is required.

The Commission received and filed above case.

Reports and Comments:

Planning Manager Discussion of previously approved minutes (Oct 18th)

Mr. Bashmakian informed the Commission that Ms. Maria Moya has corrected the October 18 minutes, and the information is in the Commissioners' agenda packets.

**Follow up to
Commissioner's** None

City Attorney None

**Planning
Commissioner's
Comments** Chairman Turro wished everyone a Merry Christmas.

**Reporting on
AB 1234** None

Adjournment The meeting was adjourned at 10:40 p.m.

Respectfully submitted,

Maria Moya
Department Secretary