

**CITY OF DANA POINT
PLANNING COMMISSION
REGULAR MEETING MINUTES**

March 26, 2012
6:00 – 7:42 p.m.

City Hall Offices
Council Chamber (#210)
33282 Golden Lantern
Dana Point, CA 92629

CALL TO ORDER – Chairwoman O'Connor called the meeting to order.

PLEDGE OF ALLEGIANCE – Patrick Munoz, City Attorney led the Pledge of Allegiance.

ROLL CALL

Commissioners Present: Commissioner Liz Claus, Vice-Chairman Norman Denton, Commissioner Gary Newkirk, Chairwoman April O'Connor, and Commissioner Tarquin Preziosi

Staff Present: Kyle Butterwick (Director), John Tilton (City Architect/Planning Manager), Patrick Munoz (City Attorney), Lt. Lynn Koehmstedt (Police Services), and Denise Jacobo (Planning Secretary)

ITEM 1: Reorganization of the Planning Commission.

- a) Select nominations and vote for Chairman to serve until the last meeting of March, 2013.
 - Commissioner Claus nominated Norman Denton to serve as Chairman; no other nominations were received.

ACTION: **Motion made (Claus) and seconded (Preziosi) to elect Norman Denton to serve as Chairman of the Planning Commission. Motion carried 5-0. (AYES: Claus, Denton, Newkirk, O'Connor, Preziosi NOES: None ABSENT: None ABSTAIN: None)**

Therefore, Norman Denton was appointed to serve as Chairman.

- b) Select nominations and vote for Vice-Chairman to serve until the last meeting of March, 2013.
 - Chairman Denton nominated Gary Newkirk to serve as Vice-Chairman; no other nominations were received.

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ACTION: Motion made (Denton) and seconded (Preziosi) to elect Gary Newkirk to serve as Vice-Chairman of the Planning Commission. Motion carried 5-0. (AYES: Claus, Denton, Newkirk, O'Connor, Preziosi NOES: None ABSENT: None ABSTAIN: None)

Therefore, Gary Newkirk was appointed to serve as Vice-Chairman.

c) Recognition of outgoing Chairwoman April O'Connor.

Kyle Butterwick (Director) presented an engraved gavel to Commissioner O'Connor and commended her for her outstanding leadership and service as Chairwoman of the Planning Commission over the past year.

Commissioner O'Connor stated her appreciation and opportunity to make a difference in the community. She noted her involvement as a Planning Commissioner and encouraged residents to also get involved in City municipal government leadership by applying for the Planning Commission.

Chairman Denton assumed the responsibilities of the Chair.

A. APPROVAL OF MINUTES

ITEM 2: Minutes of the regular Planning Commission Meeting of March 12, 2012.

ACTION: Motion made (Claus) and seconded (O'Connor) to approve the Minutes of the regular Planning Commission Meeting of March 12, 2012. Motion carried 5-0. (AYES: Claus, Denton, Newkirk, O'Connor, Preziosi NOES: None ABSENT: None ABSTAIN: None)

B. PUBLIC COMMENTS

There were no Public Comments.

C. CONSENT CALENDAR

There were no items on the Consent Calendar.

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D. PUBLIC HEARINGS

ITEM 3: Planning Commission review and consideration to amend/modify the conditions of approval for Hennessey's Tavern and The Fish Bucket located at 34111 and 34091 La Plaza. [CDP95-04/CUP95-03/CUP95-03(I) and CDP97-03/CUP97-05]

Applicant/Owner: Paul Hennessey
Location(s): 34111 and 34091 La Plaza

Request: To review proposed amendments to permits for Hennessey's and The Fish Bucket.

Environmental: This project is categorically exempt (Class 1 - Section 15301 – Existing Facilities) from the provisions of the California Environmental Quality Act (CEQA) because it consists of no expansion of use beyond that existing.

Recommendation: That the Planning Commission review the existing conditions of approval and adopt the attached Draft Resolutions (Action Documents 1 and 2) amending conditions of approval for Hennessey's Tavern and The Fish Bucket restaurants.

Kyle Butterwick (Director) provided an overview of the staff report and introduced Patrick Munoz (City Attorney) seated in attendance this evening to answer any questions. He noted the added conditions of approval for the two restaurants included hours of operations and implementing a security plan. He added that this is not the first time that the City has come back and looked at the parameters for a bar/restaurant in Dana Point. The City has the ability in the municipal code to reevaluate and reconsider conditions of approval for any type of operation that has received a discretionary entitlement by the Planning Commission or the City Council. They also have the ability to come back and refine and conceivably loosen up some of these conditions of approval.

Patrick Munoz (City Attorney) noted the concern the City's Police Services has with activities happening after 10:00 p.m. and the conditions for review this evening are really geared toward trying to address specific problems that the City is experiencing. Meetings with Mr. Hennessey has shown his serious desire to work with the City in trying to address the problems that he recognizes exist. He pointed out statistics provided in the report which address serious issues. He addressed a few recommended conditions of approval; constructing a wall between Hennessey's Tavern and the Fish Bucket patio properties; also, the staggering of closing hours to slow-down the progression of people leaving. He

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recommended a new condition which was not included in the staff report, but is required by State law:

“That no member of wait staff, no bartender, no manager would be compensated with a bonus or commission based on the sale of alcoholic beverages.”

Lynn Koehmsteadt (Chief of Police Services) responded to Planning Commissioner inquiries addressing call for service issues; police staffing at Hennessey's from 10:00 p.m. to 2:00 a.m. which far outweigh other establishments; and issues of quality of life for neighboring citizens/residents.

Patrick Munoz (City Attorney) also responded to Planning Commissioners inquiries related to the statistics reports, such as the amount of calls for Hennessey's, the size of the restaurant(s)/bar(s); the number of crimes against persons as reflected by the Chief of Police Services reports.

Lynn Koehmsteadt (Chief of Police Services) stated that they are not concerned about Hennessey's and Fish Buckets level of complaints but on the violence, the level of professionalism from their security staff, and concerns with customers driving under the influence.

Kyle Butterwick (Director) replied to an inquiry about the proposed wall barrier, and stated that it has not been designed yet but that it should be substantial to physically segregate the two restaurants. He also addressed loud noise and disturbances of deejay music from the Fish Bucket.

Patrick Munoz (City Attorney) replied to an inquiry and confirmed that the Department of Alcoholic Beverage Control (ABC) district office is involved and did share their concerns with ensuring conformance.

Chairman Denton opened the Public Hearing.

Kimberly Williams (Dana Point) stated that she and her husband are the owners of Kenny's Music business and worked with Hennessey's to promote the “Young Peoples Jam” once a month on Wednesdays, which has been very successful. She noted the presence of security staff at all times, has seen management limit alcohol consumption, and taxi cabs in front of the restaurant which made her feel more comfortable. She pointed out that, with the state of the economy a hardship, she would like to see Hennessey's move forward without too much impact on their business or add to the empty storefronts in Dana Point.

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Commissioner O'Connor asked Mr. Hennessey to approach the podium to respond to questions and/or concerns.

Paul Hennessey (Owner) referred to the police report statistics in comparison with other establishments and expressed skepticism with the data's reported numbers. He noted that a number of other La Plaza businesses were contributing to the calls to police because of his involvement in working with the police in clearing up disturbances (e.g. homelessness, vagrants in the park, 24-hour gas station, tattoo parlor, and grocery store). He stated that it was their goal to bring the police statistics down to zero and he is agreeable with the modified conditions.

In response to Commissioner O'Connor's inquiry about the installation of metal detectors, Mr. Hennessey clarified that it would be only if the disturbances continue. He stated that the business has been impacted when he voluntarily eliminated the DJ entertainment. He addressed Chairman Denton's inquiry about the survey statistics and felt that many calls originate from other La Plaza businesses because his business address gets unrelated mail including violation notices assigned to neighboring businesses.

Chairman Denton closed the Public Hearing.

Vice-Chairman Newkirk stated that Hennessey's and the Fish Bucket are important establishments in the City, and live music is the key to thriving community's inner growth to the Town Center plan. He was comfortable with the music's broad reach of a segmented audience creating a safe environment. He stated that with the changes suggested both establishments can become role models and felt comfortable with the amendments and looks forward to meeting in a short time to release some of the limitations to allow the business to grow.

Commissioner Claus stated that she agreed with Vice-Chairman Newkirk. She felt a spirit of cooperation between the parties and noted that it is a move in the right direction.

Commissioner O'Connor expressed her concern with the accuracy of the police statistics. She felt that they were not applicable because of the higher occupancy rates of Hennessey's and Fish Bucket combined, when compared to the smaller venues (Coconuts, etc.). She was concerned about hurting a business by reducing their revenue. She was opposed to Condition #8 from both resolutions that require metal detectors as it would be an imposition on the individual rights of a business.

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Commissioner Preziosi felt that the statistics were compelling and pointed out that there was no testimony about any of the other establishments in the City contributing alcohol related incidents, and no testimony controverting the incidents. He reassured Mr. Hennessey that this Planning Commission would entertain his motion upon seeing the reduced amount of crime and complaints. He suggested adding onto Condition #11 “fully loaded salaries”, should the City have to implement an action for cost of recovery, there would be no dispute or argument that the City is entitled to the fully loaded salaries of the emergency responders. He reviewed Condition #8 and discussed its validity as an effective trigger and noted that it would only take effect if certain conditions were not met.

Chairman Denton stated that he agreed with his fellow Commissioners to keep successful businesses in Dana Point, and their importance to succeed in a safe way. These statistics are disturbing as are police vehicles sitting in the parking lot securing La Plaza instead of patrolling the neighborhoods. The City is fortunate to not allow cutbacks on public safety measures, so to have a business eat up an enormous amount of resources is bothersome. He would be in favor of the proposed changes, in favor of the City Attorney’s additional condition, and would like to see metal detectors put in place if the business does not get better. He urged his fellow Planning Commissioners to take this matter seriously and pass it.

Commissioner O'Connor added that, just because there are not enough police force staff, the burden should not be put onto a successful business in our community. She was opposed to adding “fully loaded salaries” for policing in Condition #11. She is very much in favor of small businesses in Dana Point and felt bothered that the City is reducing this businesses’ hours. She agreed that there is a problem there and something needs to be done but this is not the way to go about it. She would not be in favor of the resolutions.

Commissioner Preziosi clarified adding to Condition #11 “as well as the salaries...” to “as well as the **fully loaded** salaries...”.

ACTION: **Motion made (Newkirk) and seconded (Preziosi) to adopt Resolution No. 12-03-26-05 amending the Conditions of Approval related to Coastal Development Permit CDP95-04 for Hennessey’s Tavern at 34111 La Plaza including the additional condition(s) that the City Attorney, and Commissioner Preziosi added. Motion carried 4-1. (AYES: Claus, Denton, Newkirk, Preziosi NOES: O’Connor ABSENT: None ABSTAIN: None)**

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ACTION: Motion made (Claus) and seconded (Newkirk) to adopt Resolution No. 12-03-26-06 amending the Conditions of Approval related to Coastal Development Permit CDP97-03 for The Fish Bucket at 34091 La Plaza including the amendments by the City Attorney, and Commissioner Preziosi. Motion carried 4-1. (AYES: Claus, Denton, Newkirk, Preziosi NOES: O'Connor ABSENT: None ABSTAIN: None)

E. NEW BUSINESS

There was no New Business.

F. STAFF REPORTS

Kyle Butterwick (Director) congratulated Lt. Lynn Koehmstedt as the City's newly appointed Chief of Police Services. Mr. Butterwick also congratulated Chairman Denton and Vice-Chairman Newkirk in their new roles.

G. COMMISSIONER COMMENTS

Commissioner Preziosi thanked Commissioner O'Connor, and congratulated Chairman Denton and Vice-Chairman Newkirk on their re-appointments to the Commission.

Commissioner O'Connor congratulated Chairman Denton and Vice-Chairman Newkirk on their re-appointments. She stated that she had attended the SOCSA (South Orange County School of Arts) with Dana Hills High School at the Foundation 9th Annual Opera Gala on March 25, 2012, and also acknowledged Dana Point's involvement to support the importance of arts in the community.

Commissioner Claus thanked former Chairwoman O'Connor, and congratulated Chairman Denton and Vice-Chairman Newkirk on their re-appointments.

Vice-Chairman Newkirk thanked former Chairwoman O'Connor for a year well-served and appreciated her leadership, and congratulated Chairman Denton to his familiar seat. He stated that his appointment as Vice-Chair is a privilege and is looking forward to working with everyone in the coming year.

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Chairman Denton acknowledged having a wonderful year and complimented the past Chairwoman for a job well done. He agreed with Vice-Chairman Newkirk's comments and stated that being on the Planning Commission is a fulfilling opportunity to make an impact with a sense of pride to see the City's beauty. He thanked all those in attendance for coming to the meeting.

H. ADJOURNMENT

Chairman Denton announced that the *next* meeting of the Planning Commission will be held on Monday, April 9, 2012, beginning at 6:00 p.m. (or as soon thereafter) in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.

The meeting adjourned at 7:42 p.m.

Norman Denton, Chairman
Planning Commission