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CITY OF OXNARD
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January 10, 2012

Oxnard City Clerk
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Oxnard, CA 93030
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Mr. Douglas Spondello
Planning Department
City of Oxnard
214 South "C" Street
Oxnard, CA 93030
doug.spondello@ci.oxnard.ca.us

Re: PZ 11-510-07 (Special Use Permit/Alcohol for Off-Site Consumption at
508 East Date Street – 4 Way Meat Market) – APPLICANT'S OPPOSITION TO
APPEALS

To the City Council and the City of Oxnard:

Applicant in the above matter respectfully opposes any and all appeals herein including, but not limited to, that of Jeff Chancer and that of Carmen Ramirez which seek to overturn Planning Commission Resolution 2011-44, adopted December 15, 2011; granting a Special Use Permit to applicant to allow for the CONDITIONAL sale of beer and wine only for off-site consumption only at 4 Way Meat Market, 508 East Date Street, Oxnard, California.

Preliminarily, applicant unequivocally accepts and will scrupulously abide by each, every and all of the conditions imposed in this matter by the Planning Commission by way of its Resolution 2011-44. Applicant respectfully submits that those conditions more than adequately mitigate any even perceived impact from applicant's limited operations upon the community and/or upon any sensitive uses therein. Applicant further

respectfully submits that a balancing of the interests involved in this matter mandate that the Resolution No. 2011-44 be affirmed. That Resolution affords applicant a reasonable opportunity to achieve economic viability and, at the same time, protects the interests of the community in its peace and welfare. Without the Resolution No. 2011-44 CONDITIONAL grant of that LIMITED authority; applicant would be prejudicially denied a reasonable opportunity to achieve the same economic viability which has been repeatedly granted to large chain stores in Oxnard. Applicant, a small family owned business which has operated in Oxnard without adverse consequences for years and which is vitally committed to the improvement of the community should be afforded its reasonable chance at success in the capitalist system it so strenuously supports.

With regard to the "issues" raised by the appeals herein, applicant responds as follows:

1. UNDUE CONCENTRATION OF ALCOHOL OUTLETS

As the Planning Commission was advised in its public hearing, pursuant to California Business and Professions Code §23958.4, the California State Department of Alcoholic Beverage Control has conducted an independent analysis of the area in which applicant seeks a conditional off-sale license for beer and wine. The ABC has concluded that premised upon its legislatively mandated formula/ratio; five off-sale licenses are allowed in the area but only four now exist. The ABC-245 form is part of the record below but is also attached as Exhibit "A".

Applicant would constitute the sole community serving specialized market to offer beer and wine as a customer convenience in the community.

Of the three ABC licensed locations within 350 feet, one is a restaurant with an on-sale license (Fiesta Mexican Grill); one is a bar with an on-sale license (Snooky's) and one is a full liquor store offering a full range of alcoholic beverage for off-sale consumption (Fiesta Liquor). None of these three has the same type of license as is being sought by applicant.

As was confirmed by Senior Alcohol Compliance Officer Cliff Waer, in the Oxnard Police Department Report to Planner Spondello dated October 10, 2011; there really is no undue concentration because the types of the businesses listed above and their clientele are arguably very different. Fiesta Liquor operates with alcohol sales as the focal point of their business while 4 Way Market would offer such as an incidental convenience. 4 Way's customers primarily shop for products other than alcohol. The Police Department thus opined that the theoretical risks associated with having two off-site alcohol outlets in proximity are outweighed by the benefit and convenience to the neighborhood who would prefer to avoid shopping in a liquor store.

Both the Police Department and the Planning Commission decided that any technical undue concentration was well and substantially rebutted in this matter. They further found that the fact that applicant is a successful meat market already suggests that the business will not need to rely on excessive sales of alcohol to remain profitable and offering that product as a convenience to their customers would not aggravate police and community issues so long as the permit was properly conditioned as it has been in this matter.

2. PROXIMITY TO ELEMENTARY SCHOOL

As was also determined by the Planning Commission and the Oxnard Police Department in its report of October 10, 2011, the applicant site has some proximity to an elementary school. That mere proximity, without any specifically demonstrable evidence of a likelihood of a specific adverse impact on that school, was not deemed sufficient to deny this application and it legally cannot be deemed a basis alone for denial. In fact, as opined in the aforesaid Police Department Report, elementary school aged children are not necessarily the most at risk category of youth with regard to an alcohol outlet. The ages of typical students at an elementary school range from approximately 5 to 11. That age group is not likely to attempt to steal or purchase alcohol and employees of the location would easily preclude such.

Indeed, Oxnard has experience with the proximity of alcohol outlets to high schools where there are students substantially more at risk. That experience demonstrates that there has been no adverse upon those high schools by those existing alcohol outlets. In fact, conditions imposed in those matters have been absolutely effective in preventing any such adverse impacts.

In this matter, the same observation applies with regard to the conditions imposed.

By way of example and not limitation, Condition No. 28 precludes the presence of amusement machines or video games in the premises; Condition No. 31 requires signage indicating no sales will be made to anyone under 21 years of age; Condition No. 33 limits the hours of sale and Condition No. 45 absolutely precludes the sale of flavored beverages in order to preclude any attraction to minors.

3. CRIME

The Planning Resolution and the Oxnard Police Department Report both concluded that this is not an issue sufficient to deny this application. The current crime rate in the area is down nearly 33% from the 2007 totals. The area is not generally considered to be a policing problem. The numbers and types of police calls for services

Oxnard City Clerk
Mr. Douglas Spondello, Planning Department
January 10, 2012
Page 4

were predominantly petty and alcohol has not been listed as a contributing factor to any misconduct in the relevant area at a rate inconsistent with citywide averages.

Finally, applicant suggests extreme caution by the City when potentially relying upon its Resolution 11-896 which does not appear to have been codified in any valid zoning ordinance. Additionally, it is expressly premised upon 34-147 of the Oxnard Code which no longer exists at all. Additionally, that Resolution expressly provides that it is premised upon the experience and input of the Oxnard Police Department and the Oxnard Police Department in this matter has demonstrated that it does not oppose this application.

Finally, the undue concentration elements of that Resolution must be reviewed with great caution in light of the statewide legislative mandate of the Department of Alcoholic Beverage Control referred to above and the fact that applicant's license is indeed not of the "same type" of those licenses within 350 feet of applicant's site.

Applicant most respectfully submits that the Resolution and decision of the Planning Commission should be sustained.

Very truly yours,



JOSHUA KAPLAN

JK:RSK

cc: Salvador Ayala
salayala@hotmail.com

JOHN RAYLOR
310-478-1921

Department of Alcoholic Beverage Control

INFORMATION AND INSTRUCTIONS -

SECTION 23958.4 B&P

Instructions This form is to be used for all applications for original issuance or premises transfer of licenses.

- Part 1 is to be completed by an ABC employee, given to applicant with pre-application package, with copy retained in holding file or applicant's district file.
- Part 2 is to be completed by the applicant, and returned to ABC.
- Part 3 is to be completed by the local governing body or its designated subordinate officer or body, and returned to ABC.

PART 1 - TO BE COMPLETED BY ABC

1. APPLICANT'S NAME

2. PREMISES ADDRESS (Street number and name, city, zip code)

508 E Date Street Oxnard CA 93033

3. LICENSE TYPE

20

4. TYPE OF BUSINESS

- | | | | |
|---|--|--|--|
| <input type="checkbox"/> Full Service Restaurant | <input type="checkbox"/> Hofbrau/Cafeteria | <input type="checkbox"/> Cocktail Lounge | <input type="checkbox"/> Private Club |
| <input type="checkbox"/> Deli or Specialty Restaurant | <input type="checkbox"/> Comedy Club | <input type="checkbox"/> Night Club | <input type="checkbox"/> Veterans Club |
| <input type="checkbox"/> Cafe/Coffee Shop | <input type="checkbox"/> Brew Pub | <input type="checkbox"/> Tavern: Beer | <input type="checkbox"/> Fraternal Club |
| <input type="checkbox"/> Bed & Breakfast: | <input type="checkbox"/> Theater | <input type="checkbox"/> Tavern: Beer & Wine | <input type="checkbox"/> Wine Tasting Room |
| <input type="checkbox"/> Wine only | <input type="checkbox"/> All | | |

- | | | | |
|---|--|--|--|
| <input type="checkbox"/> Supermarket | <input type="checkbox"/> Membership Store | <input type="checkbox"/> Service Station | <input type="checkbox"/> Swap Meet/Flea Market |
| <input type="checkbox"/> Liquor Store | <input type="checkbox"/> Department Store | <input type="checkbox"/> Convenience Market | <input type="checkbox"/> Drive-In Dairy |
| <input type="checkbox"/> Drug/Variety Store | <input type="checkbox"/> Florist/Gift Shop | <input type="checkbox"/> Convenience Market w/Gasoline | |
| <input type="checkbox"/> Other - describe: | | | |

5. COUNTY POPULATION

6. TOTAL NUMBER OF LICENSES IN COUNTY

On-Sale Off-Sale

7. RATIO OF LICENSES TO POPULATION IN COUNTY

On-Sale Off-Sale

8. CENSUS TRACT NUMBER

39-00

9. NO. OF LICENSES ALLOWED IN CENSUS TRACT

On-Sale Off-Sale

10. NO. OF LICENSES EXISTING IN CENSUS TRACT

On-Sale Off-Sale

11. IS THE ABOVE CENSUS TRACT OVERCONCENTRATED WITH LICENSES? (i.e., does the ratio of licenses to population in the census tract exceed the ratio of licenses to population for the entire county?)

- Yes, the number of existing licenses exceeds the number allowed
- No, the number of existing licenses is lower than the number allowed

12. DOES LAW ENFORCEMENT AGENCY MAINTAIN CRIME STATISTICS?

- Yes (Go to Item #13)
- No (Go to Item #20)

13. CRIME REPORTING DISTRICT NUMBER

14. TOTAL NUMBER OF REPORTING DISTRICTS

15. TOTAL NUMBER OF OFFENSES IN ALL REPORTING DISTRICTS

16. AVERAGE NO. OF OFFENSES PER DISTRICT

17. 120% OF AVERAGE NUMBER OF OFFENSES

18. TOTAL NUMBER OF OFFENSES IN REPORTING DISTRICT

19. IS THE PREMISES LOCATED IN A HIGH CRIME REPORTING DISTRICT? (i.e., has a 20% greater number of reported crimes than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency)

- Yes, the total number of offenses in the reporting district equals or exceeds the total number in item #17
- No, the total number of offenses in the reporting district is lower than the total number in item #17

20. CHECK THE BOX THAT APPLIES (check only one box)

- a. If "No" is checked in both item #11 and item #19, Section 23958.4 B&P does not apply to this application, and no additional information will be needed on this issue. Advise the applicant to bring this completed form to ABC when filing the application.
- b. If "Yes" is checked in either item #11 or item #19, and the applicant is applying for a non-retail license, a retail bona fide public eating place license, a retail license issued for a hotel, motel or other lodging establishment as defined in Section 25503.16(b) B&P, or a retail license issued in conjunction with a beer manufacturer's license, or winegrower's license, advise the applicant to complete Section 2 and bring the completed form to ABC when filing the application or as soon as possible thereafter.
- c. If "Yes" is checked in either item #11 or item #19, and the applicant is applying for an off-sale beer and wine license, an off-sale general license, an on-sale beer license, an on-sale beer and wine (public premises) license, or an on-sale general (public premises) license, advise the applicant to take this form to the local governing body, or its designated subordinate officer or body to have them complete Section 3. The completed form will need to be provided to ABC in order to process the application.

Governing Body/Designated Subordinate Name:

FOR DEPARTMENT USE ONLY

PREPARED BY (Name of Department Employee)