

**CITY OF MANHATTAN BEACH
[DRAFT] PLANNING COMMISSION
MINUTES OF REGULAR MEETING
MAY 12, 2010**

The Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, was held on the 12th day of May, 2010, at the hour of 6:35 p.m., in the City Council Chambers of City Hall, at 1400 Highland Avenue, in said City.

A. ROLL CALL

Present: Andreani, Lesser, Paralusz, Seville-Jones, Chairman Fasola
Absent: None
Staff Present: Laurie Jester, Acting Director of Community Development
Eric Haaland, Associate Planner
Recording Secretary: Sarah Boeschen

B. APPROVAL OF MINUTES April 28, 2010

Commissioner Seville-Jones requested that the first sentence of paragraph 7 on page 5 of the April 28 minutes be revised to read: "Commissioner Seville-Jones indicated that the issue is that only \$300,000 is being ~~received from~~ contributed to the general fund for the year . . ."

Commissioner Lesser requested that the fourth sentence of paragraph 6 on page 5 of the minutes be revised to read: "He commented that he is able to defer the decision of prioritizing projects to the City Council, given the many conflicting policy considerations and availability of offsetting funds from other sources."

Commissioner Paralusz requested that the first sentence of paragraph 8 on page 5 of the minutes be revised to read: "Commissioner Paralusz stated that she does not feel that it is within the purview of the Commission to prioritize the projects that are included in the C.I.P."

A motion was MADE and SECONDED (Seville-Jones/Andreani) to **APPROVE** the minutes of April 28, 2010, as amended.

AYES: Andreani, Lesser, Paralusz, Seville-Jones, Chairman Fasola
NOES: None.
ABSENT: None.
ABSTAIN: None.

C. AUDIENCE PARTICIPATION

Viet Ngo, stated that he is a victim and witness of public corruption from the City. He said that the Commission must comply with the Brown Act. He commented that Michael Zislis has stated that he was paying rent to the City in the amount of \$300,000.00 per year; however, there is no indication in the City record of any rent paid by Mr. Zislis. He said that there is clear evidence that the City Council and City staff have converted the use of public property for private use by Jonathan Tolkin and Michael Zislis. He said that the Commission must honor the law and will be subject to violation of federal statute as stated in Title 18, Section 666 of the U.S. Code.

D. PUBLIC HEARINGS

04/28/10-3 Consideration of a Master Use Permit Amendment for Modifications to the Previously Approved Hours of Operation, Notification for Special Events, Restaurant Operations, and a Height Variance for a Six Foot High Noise Barrier at the Roofdeck at the Shade Hotel, Metlox Site, 1221 North Valley Drive

Chairman Fasola indicated that he has previously recused himself from consideration of the issue, and he then left the dais.

Acting Director Jester summarized the staff report. She indicated that the proposal is to increase the number of people permitted for special events at the hotel without prior notification to the City; to expand the food service; and to expand the hours of operation. She commented that a height Variance is also being proposed to allow for a noise barrier to be installed on the rooftop deck. She indicated that there previously was general support by the Commission regarding the increase in number of people permitted for special events without prior City notification and for the expansion of food service. She commented that the Commission also felt that the neighbors' concerns needed to be addressed before the hours of operation could be considered to be increased for the hotel. She indicated that the neighbors and the applicant had a meeting in November to discuss measures for noise mitigation. She indicated that a noise mitigation evaluation report was prepared in March of 2010, which has been provided to the Commissioners. She stated that the recommendations from the report include installation of a front door entry vestibule that would reduce the noise to the east on 12th and 13th Streets and south of 13th Street; installation of roll-down glass acoustic panels to enclose the terrace during nighttime hours which would help to reduce noise levels south of 12th Street; and installation of 6 foot barriers on the north, south and east sides of the rooftop deck which would slightly reduce the noise levels particularly at 1300 Ardmore. She indicated that staff, the applicant and neighbor representatives met to discuss noise mitigation and the proposal which included the noise mitigation measures was rejected by the neighbors.

Acting Director Jester indicated that currently special events with a maximum of 99 people are permitted without prior notification to the City, and the proposal is to allow special events with 125 people without prior notification. She commented that the proposal also is to allow for full food service. She said that currently the Zinc Lounge operates until 11:00 p.m., and the proposal is to operate until 11:30 p.m. on Thursday nights and until midnight on Friday and Saturday nights. She stated that the proposal is for the terrace to be open until 10:30 Sunday through Wednesday nights; 11:00 p.m. on Thursday nights; and midnight on Friday and Saturday nights. She stated that the courtyard is proposed to be permitted to remain open until midnight every day. She indicated that the rooftop deck is currently closed at 10:00 p.m. and proposed to remain open until 11:00 p.m. She commented that the project was noticed to all of the property owners within 500 feet of the site, and notice was also published in the Beach Reporter. She said that staff received a number of comments which were provided to the Commissioners that include concerns regarding noise, enforcement and the ABC (Department of Alcoholic Beverage Control) regulations.

In response to a question from Commissioner Lesser, Acting Director Jester indicated that the Commission can consider whether the impact of the noise being generated from the hotel fits the reasonable person standard. She stated that the objective standard is based on the decibel levels which are generated from the Shade.

Commissioner Lesser commented that his understanding is that the applicant has not been found to be in violation of the objective standards of the Noise Ordinance, although many residents have indicated that they believe the applicant is in violation of the subjective standards of the Ordinance.

Acting Director Jester indicated that the applicant has not been cited for violations of the Noise Ordinance, and the findings of the noise report show that they are in compliance with the objective standards of the Code.

In response to a question from Commissioner Lesser, Acting Director Jester commented that a representative of the ABC indicated that the Type 47 license was the appropriate type of permit to fit the proposal and that the Type 70 would not work for the subject application. She commented that the Type 70 license is very restrictive. She indicated that it was clarified before the vote on the proposal was originally made by the Commission in 2005 that alcohol would be served on the terrace. She commented that the occupancy levels for the hotel that were established in 2006 by the Fire Department have always remained the same.

Commissioner Lesser asked whether there is sufficient space to build the vestibule that is proposed given the close proximity of the front door to the driveway.

Acting Manager Jester indicated that it has been determined that there would be sufficient space to allow for the vestibule.

In response to a question from Commissioner Lesser, Acting Director Jester commented that many Use Permits specify different permitted hours of operation for different nights of the week. She commented that Exhibit A included with the staff report has specific recommendations for closing, when the last drinks are to be served, and when the music is to be turned off.

In response to a question from Vice-Chairman Paralusz, Acting Director Jester indicated that it would be difficult to issue a citation for violation of the subjective standard of the Noise Ordinance.

Officer Bryan Klatt stated that the police reports regarding noise complaints from the neighboring residents are referred to the City Attorney's office rather than a citation being issued at the time if there is doubt that the noise is emanating from the hotel.

In response to a question from Commissioner Lesser, Officer Klatt indicated that a wall separating the bar area from the lobby would reduce the noise that emanates from the front door. He indicated that a retractable wall would not make a difference in making a determination as to whether alcohol is being served at the bar after permitted hours.

Vice-Chairman Paralusz opened the public hearing.

Public Testimony

Michael Zislis, the applicant, said that he has worked diligently with the neighbors. He stated that the Commissioners have been provided with a document that specifies and removes ambiguity regarding the proposed closing hours of the different areas of the hotel. He indicated that he has paid for another sound study to be done and has paid for a height Variance to allow for a sound barrier on the sky deck. He said that **Mr. Hubbard** sent a survey to 30 residents in March, and one resident replied. He commented that a shorter second survey was then sent out which did not specify the mitigation measures that are being proposed and only asked whether there was support for the request for extra hours. He indicated that he and staff were not able to see any of the replies for the second survey. He pointed out that the noise study that was conducted by the City's noise consultant states that the noise generated from the hotel does not exceed the objective standard of the Noise Ordinance. He commented that he also does not feel

that the hotel exceeds the subjective noise standard. He stated that they have not received any citations for violating the Noise Ordinance or for violating any liquor laws. He also pointed out that Sashi Sushi operates until midnight and Petros operates until 1:00 a.m. He said that the language of the Master Use Permit allows operating hours of the hotel until midnight. He commented that they have agreed to not provide any live entertainment in the courtyard area. He said that the sound barriers proposed for the skydeck would help to mitigate the noise impacts to Hubbards' home. He pointed out that the complaints regarding noise at the hotel are not a result of noise from the Zinc Lounge but rather from special events. He indicated that they have proposed measures that will help to mitigate the noise. He commented that the original plans showed the hotel with a lobby and a 50 foot bar as it was built.

In response to a question from Commissioner Andreani, **Mr. Zislis** indicated that he would prefer not to have a solid wall separating the lounge area and the lobby area. He said that he would not want to change the look of the hotel when there are other methods for mitigating the noise.

John Strain, applicant's Attorney, pointed out that the hotel is in the Metlox Development, which is located in the downtown commercial district. He indicated that the Master Use Permit was approved in 2002 by the City Council. He said that any determination and evaluation of the hotel must consider that the original intent was to have a broad range of businesses and services within the Metlox development. He indicated that providing the services of a four-star hotel includes providing rooms, a lounge area, food service, and facilities for special events.

Mr. Strain said that the noise study has determined that the hotel has not been in violation of the objective standard of the Noise Ordinance. He commented that some of the factors in the Code that are considered regarding whether the subjective standard has been violated include the nature and zoning of the area in which the noise emanates and whether the noise is produced by a commercial or non-commercial entity. He said that the context and the purpose of the establishment where noise is being generated is important in considering violations of the subjective noise standard, as well whether the noise is generated on a weeknight or weekend. He commented that they do not believe that the current Master Use Permit restricts the operating hours for the hotel to 11:00 p.m. on every night of the week. He commented that **Mr. Zislis** had indicated during the 2005 hearing that the intended closing hours were 11:00 p.m. nightly, and condition L of the 2005 permit indicates that the intended operating hours are until 11:00 p.m. nightly. He stated that the 2002 Master Use Permit for the Metlox development established general hours for the plaza of 11:00 p.m. during the week and midnight on Friday and Saturday nights which applied to all of the businesses. He indicated that it was vague as to whether those hours applied to the hotel. He said that he does not feel that the hotel which most strongly serves visitors to the community should be subject to a more restrictive standard.

Mr. Strain pointed out that most of the noise complaints have not been related to the Zinc Lounge. He commented that many of the complaints relate to the operation of taxis and parking in the Veterans Parkway, which are issues of City enforcement. He said that many of the noise complaints from the hotel relate to special events such as weddings, which are a very important part of the services provided by the hotel.

In response to questions from Commissioner Lesser, **Don Behrens**, representing Behrens and Associates, indicated that there was a wedding occurring at the hotel during the period that they were monitoring the noise. He indicated that there are no additional sound mitigation measures proposed for the courtyard area other than limiting the hours. He stated that there was a determination by the Building Department that the sound attenuation objective was being met by the materials that were used to enclose the front of the hotel, which is the reason that the

wall was originally not required to be put in place between the lobby area and the lounge. He said that a dividing wall would still leave a large part of the lobby area and lounge area without any sound mitigation, and there could be an issue of noise escaping when the front door is open. He said that a glass vestibule at the front door would contain the noise from the lobby area as well as from the lounge and the front desk.

In response to a question from Commissioner Seville-Jones, **Mr. Behrens** indicated that the study determined that height of the proposed noise barrier along the skydeck would not be very effective in mitigating noise.

In response to a question from Commissioner Seville-Jones, **Tom Corbishley**, representing Behrens and Associates, stated that there could possibly be more use of the terrace area during evening hours if it were enclosed, which could increase noise levels.

Stephanie Hubbard, a resident of the 1300 block of Ardmore, said that she would not object to an extension of hours if the rules were being enforced and if noise were not coming from the hotel. She indicated that there was concern expressed when the hotel was originally proposed about drawing in visitors from other areas for the sole purpose of visiting the hotel. She showed a surveillance video from the hotel that demonstrates that alcohol is being served after the permitted hours. She said that they want clear standards in place for alcohol service and closing to allow for the police to enforce the rules.

Brent Taylor, a resident of the 500 block of 12th Street, said that he would be in favor of extending the hours provided that the subjective standard of the Noise Ordinance is met. He commented that the Type 70 license is more restrictive than the Type 47 license, which would be more appropriate for the hotel. He said that a 30 minute time span is necessary between the time that the last drinks are served and the time that the bar is closed. He showed a video of the Police Department responding to a noise disturbance call at the hotel after the permitted operating hours.

Debbie Taylor, a resident of the 500 block of 12th Street, said that the hotel violated the noise regulations with their Oktoberfest party. She showed a video of Lieutenant Dye documenting the noise of the Oktoberfest party from 13th Street and Valley at 8:05 p.m. after the event was required to end. She commented that allowing extended hours would result in patrons drinking at the hotel until later hours.

Gary Osterhout, a resident of the 500 block of 31st Street, stated that he was previously a member of the steering Committee of the Residents Against Rezoning (RAR) that helped guide opposition to Measure 2000A on the June 2000 ballot which would have rezoned the subject property as non-commercial. He stated that with the support of City Hall, they assured voters that the purchase of the Metlox property was intended to control development and that any lodging component would be low impact and would provide a unique element to encourage patronage of the other downtown businesses. He said that a group of residents who live adjacent to the Metlox development formed Residents for a Smalltown Downtown which led an earlier effort in 1999 to oppose a large development on the site that included a hotel with meeting and restaurant facilities. He commented that Residents for a Smalltown Downtown eventually joined the RAR in opposing the ballot measure to zone the property as non-commercial because of the assurances that any development would be low impact. He said that his opinion is that there would not be a Metlox Plaza today if the Residents for a Smalltown Downtown had supported the measure. He pointed out that the neighbors could have stopped commercial development entirely if they had voted to pass Measure 2000A but instead decided to trust the City's representations that any development would be low impact.

Mr. Osterhout said that the Metlox Plaza developer continued assurances of a low impact lodging component throughout the subsequent approval phases. He said that the Metlox Plaza developer, the hotel developer, and City Hall all bought off on the business plan economics of a small scale lodging component even without food service or a full liquor license. He commented that the economic advantage of the hotel was to have close proximity to the downtown area, and it was to be supported by the surrounding businesses and liquor licenses. He indicated that the Commission has analyzed the noise study objective standards perhaps too closely to those that apply to a regular commercial enterprise. He stated that there is a clear difference in the standards that apply to the Metlox Plaza and Shade Hotel, as they were developed only after extensive public participation, are built on City-owned land, and were allowed to be developed only after extensive assurances provided to the citizens and residents of the City. He stated that the subjective, qualitative standards would seem to be the most important for the Commission to consider, and it is unarguable that current impacts significantly exceed those that were originally contemplated. He indicated that unless the applicant can prove that the concerns of the neighbors are totally unreasonable in respect to the initial intent for a lodging component, the fact that there are a significant number of residents complaining of noise disturbances from the hotel should be sufficient for the Commissioners to back the requests of the neighbors. He said that the hotel has received incremental concessions from the City beyond the original representations, often because the City is not performing oversight and the neighborhood protections that were expected and promised. He commented that the residents should not suffer as a result of their original trust in the City. He said that consideration should be given regarding the extent that the residents trust the City in allowing any future project.

Don McPherson, a resident of the 1000 block of 1st Street, indicated that the Use Permit requires a wall between the Zinc Lounge and the lobby, and staff's statement is incorrect that the hotel can meet the STC standard without such a wall. He said that there was no discussion in the 2005 meeting regarding approval of serving alcohol on the terrace, and there was a short discussion by staff indicating to the Commission that there would not be alcohol service on the terrace. He said that alcohol service on the terrace was not discussed again until staff put a requirement into the Resolution before the Commissioners voted. He said that the Officer Klatt stated that a wall separating the lounge and lobby areas would not help in issuing citations; however, the staff report indicates that enforcement of closing hours is difficult because of the large common area. He said that a wall separating the lounge area would allow the police to enforce the closing hour for the lounge. He commented that there was also an e-mail in October of 2009 that indicates that the Police Department could not enforce the 11:00 p.m. closing hour because the terrace and the lobby share a common space and the operates 24 hours. He said that **Mr. Zislis** has indicated that enclosing the bar with a wall would not mitigate noise when the front doors are open, which does not make sense.

Mr. McPherson commented that the sound report states that the amplified music from the wedding that was occurring when they were conducting their study was barely audible; however, it has been shown that amplified music from the hotel is clearly audible from the adjacent area. He commented that the only explanation is that the volume of the music was lowered when the measurements were taken. He said that the Commission has the ability to require additional mitigation measures to counter any additional impacts that result from allowing extended hours of operation until midnight on weekends. He said that the acoustical engineer indicated that a vestibule at the front would be more effective in reducing noise than a wall that extends the entire length of the lounge area, which does not seem logical. He commented that the maximum occupancy of the terrace would be the same regardless of whether or not it is enclosed.

Nate Hubbard, a resident of the 1300 block of Ardmore Avenue, indicated that he originally requested that staff act as a mediator in the negotiations between the adjacent residents and the applicant; however, staff determined that the applicant would lead the negotiations. He said that they submitted a draft Use Permit as a starting point for the negotiations in December of 2009, and they testified at the February joint meeting of the City Council and Commission as to having received no comments from staff or the applicant regarding their proposed Use Permit. He said that a meeting was conducted by the applicant in November of 2009 which included discussion of proposed noise mitigation measures, and they submitted their draft Use Permit in December as a response to that meeting. He stated that the applicant conducted a second meeting on March 23, 2010, in which more details were provided regarding the proposed sound mitigation measures; however, the applicant also added a request to allow for 15 registered guests to remain in the bar until 1:00 a.m. every night. He said that he then conducted a poll of the adjacent neighbors and received 16 replies rejecting the applicant's proposal. He stated that he e-mailed the results to the City which listed the major areas of contention including installing a folding wall between the lounge and the lobby, full enclosure of the terrace, noise mitigation for the courtyard, and allowing no entertainment on the skydeck.

Mr. Hubbard indicated that he has sent the Commission a list of four conditions that the residents would require in exchange for allowing extended hours of the lounge until midnight on Friday and Saturday nights. He indicated that the conditions include installation of a folding sound-absorbing wall between the Zinc Lounge and the lobby; full enclosure of the terrace, including sound absorbing drapes and ceiling fixtures; no live entertainment and no sound system being permitted on the skydeck; and establishing the occupancies that were originally set by the City's Fire Department in 2008. He said that they are requesting that the Resolution include a draft annual entertainment permit that is consistent with their proposed Use Permit as modified by the Commission. He indicated that they have negotiated in good faith but have received no comments regarding their desires and concerns. He commented that they believe they have complied with the direction of the Commission at the October 2009 meeting to work with the applicant.

In response to a question from Commissioner Lesser, **Mr. Hubbard** indicated that they feel it is very important that the applicant install a wall between the Zinc Lounge and the lobby area, which was a requirement when the hotel was first approved.

In response to a question from Commissioner Seville-Jones, **Mr. Hubbard** indicated that the wall would make it easier for the Police Department to determine whether the bar is closed as required. He indicated that staff and the Police Department had previously indicated to him that they are not able to enforce the closing hours because of the difficulty in determining which patrons are registered guests of the hotel and which are only visiting the bar.

Viet Ngo said that he has pursued the matter for ten years and has contacted the FBI, the District Attorney, and Chief of Police Rod Uyeda to resolve the issue. He stated that City Council Resolution 5770 was granted to Jonathan Tolkin and Metlox LLC to receive \$14 million of City money to be used for the Metlox project. He said that Jonathan Tolkin formed Metlox LLC to receive the profits from the City money, and the residents of the City are in debt for the bond for \$13 million. He indicated that the residents of the City will have to continue to pay the bond into future generations in the amount of \$860,000 per year while Jonathan Tolkin continues to make a profit on the lease. He commented that the City Council, Commission and staff are involved in the conspiracy and racketeering enterprise. He indicated that Master Use Permit and the Planning Commission Resolution of May 25, 2005, do not permit the bar at the Shade Hotel. He indicated that there is no agreement of the City Council for Michael Zislis to have the hotel and the Zinc Lounge. He cited United States v. Matthew Iammiello as similar to the case involving the Metlox development. He said that this case will be pursued by the FBI,

and the Commission does not have the authority to allow the ongoing converting of public funds for personal use by Mr. Zislis and Jonathan Tolkin. He stated that anyone who has undergone suffering as a result of noise violations can make a citizens arrest.

William Victor, a Manhattan Beach resident, stated that the original intent was for a bed and breakfast operation as part of the Metlox development. He indicated that the top deck was not intended to be used. He said that he can hear noise and voices from his property on 9th Street and Ocean Drive, and he does not feel extending the hours would be a benefit to the community. He indicated that he feels the noise report is skewed and does not present a balanced view. He commented that he is not aware of any other hotels which have had as negative of an impact on the adjacent neighborhood as the Shade. He said that the applicant must realize that he has to live with the community. He indicated that the adjacent residents purchased their properties before the hotel was built. He said that the community will continue to stay together if the people in it are treated properly. He stated that the sound engineers need to make a fair and unbiased evaluation of the noise generated at the hotel.

Scott Murch, a resident of the 500 block of 12th Street, said that he would like for the hotel to abide by its current permitted hours and for the proposed noise mitigation measures to be implemented before he could support any extension of hours. He said that the project was originally presented as a bed and breakfast and now has moved closer to becoming a full scale nightclub. He commented that a wall between the Zinc lounge and the lobby would reduce noise and would provide for enforcement of the permitted hours of operation. He said that extending the hours without implementing mitigation measures would result in greater impacts to the neighbors. He commented that many of the residents are very busy with their work and families and have not had the opportunity to attend all of the meetings. He said that the bedrooms of his home face onto 12th Street, and the noise coming from the hotel and the Metlox development wakes up his wife and daughter.

Gerry O'Connor, a Manhattan Beach resident, said that Residents Against Rezoning (RAR) was formed in 2000 as a result of the initiative to rezone the Metlox property from commercial. He said that Residents for a Smalltown Downtown was adamant at the time with keeping the property as a park or having very low impact development. He said that the initiative was defeated only with the support of the City and Residents of a Smalltown Downtown. He indicated that he now feels the assurances that he made as a founder and steering committee member are being called into question because of the events that occurred with the development of the Metlox development and the hotel. He stated that the Commission was misled by staff in 2005 regarding the options for the alcohol use permits that were available to the applicant. He said that his understanding now is that there is a Type 70 alcohol permit that met the original intent of the hotel operation. He stated that he believes that the Commission was misled into approving the wrong liquor license. He commented, however, that the hotel now has the entitlement for the Type 47 license.

Mr. O'Connor said that **Mr. Zislis** is a great community supporter and businessman in the City, yet there are questions regarding the hotel serving alcohol after hours and regarding violations of the Noise Ordinance. He commented that the Commission cannot consider adding hours of operation for the hotel without the existing concerns of the neighbors first being resolved. He suggested having a period of enforcement in order to verify that the applicant is meeting all of the conditions and then allowing him to return to the Commission with hard evidence to support his request for the additional hours. He pointed out that there was additional scrutiny for approval of the hotel than for the other businesses in the Metlox development because it has the greatest threat of disrupting the adjacent residential areas.

Milo Bacic, a resident of the 400 block of 10th Place, indicated that they do take extreme measures to be conscious of the adjacent neighbors. He commented that he ensures that the valet service is moved from the entrance of the hotel at 10:00 p.m. He said that their valet service now does not provide parking for patrons of other businesses in the Metlox development. He commented that they direct taxi drivers to move down the block to Morningside Drive. He indicated that patrons are directed to exit from the south side of the hotel after 9:00 p.m. on Friday and Saturday nights. He commented that most of the noise disturbance calls to the Police Department are not a result of the hotel. He said that they are trying to mitigate noise concerns. He pointed out that he lives behind Vons market, which has noise from truck deliveries at 4:00 a.m. He indicated that there are many benefits to living in the downtown area.

Nancy Gilambardo, a resident of the 1100 block of Ardmore Avenue, said that the residents would like for the sound emanating from the hotel to be mitigated. She said that she would not want the hours to be increased considering the problems that currently exist.

Mr. Zislis pointed out that most of the residents near the hotel who spoke support additional hours with mitigation measures. He said that the night on which the video was taken showing patrons in the hotel after hours was during the AVP tournament, which was a very busy weekend in the downtown area. He commented that they thought that they were permitted to operate until midnight, which is how they operated until two years ago. He stated that he is not requesting to be permitted to have 15 guests in the lounge area until 1:00 a.m. He said that the occupancy is the same as when the hotel opened. He commented that the sound wall between the lounge and the lobby was to contain the noise from bands playing for weddings. He said that they have agreed not to have any live entertainment on the skydeck or courtyard areas other than for the Oktoberfest event. He commented that there is no amplified music on the skydeck, and only background music is played. He commented that he is certain that **Mr. Victor** is not able to hear noise emanating from the hotel at his residence on 9th Street and The Strand. He said that the approval of the hours would be conditioned on the mitigation measures being put in place.

Vice Chairperson Paralusz closed the public hearing.

Commission Discussion

Acting Director Jester stated that Behrens and Associates is under contract with the City and is not contracted by the applicant. She indicated that they are very well qualified and well respected acoustical consultants, and have done many studies all over the world. She commented that she has not heard the police indicate that they are unable to enforce the closing hours but rather that it is difficult to enforce the hours because the hotel is a 24-hour operation. She stated that it was indicated by a representative of the ABC that the Type 47 license was appropriate for the applicant's proposal. She commented that it was clear from at the 2005 Planning Commission meeting prior to the Commissions vote that alcohol would be served on the terrace but not in the Metlox Plaza.

Commissioner Andreani commented that the hotel truly has become a bar with a hotel rather than a hotel that includes a bar. She stated that the hotel was approved with the intent of drawing overnight guests to Manhattan Beach to patronize other establishments in the downtown area. She stated that the Metlox Plaza and the hotel were approved to be in keeping with the desire to maintain a small town atmosphere. She commented that the Type 47 alcohol license does contribute to the problem. She commented that the alcohol license being in keeping with the applicants' proposal is different from the license being in keeping with the intent of the City Council and residents. She said that she believes that Behrens and Associates

has done a good job of providing the noise data; however, she is swayed by the recording that was played to the Commissioners and the testimony of the neighbors. She indicated that she would consider some change to the operating hours for the hotel only after mitigation measures have been implemented and tested. She commented that she has concerns with people possibly becoming stuck in the area between the doors of the vestibule when there are large crowds. She indicated that her preference would be for the accordion wall to be installed between the Zinc Lounge and the lobby rather than a vestibule being installed. She said that a wall would reduce noise and help facilitate enforcement.

Commissioner Andreani stated that she would want ingress and egress for the hotel to be limited to the west entrance after 9:00 p.m. or 10:00 p.m. She said that she feels that partial enclosure of the terrace area seems reasonable. She indicated that the rooftop deck has been marketed by the hotel and has been used much more than was originally envisioned. She said that enclosing the skydeck would seem to defeat the purpose of having an outdoor area. She commented that she would prefer that the skydeck be limited to registered guests. She suggested that alcohol service and music stop at 9:00 and that the deck close at 10:00 p.m. if it is planned to be used for other functions rather than only by registered guests. She commented that although the hotel operates 24-hours, the bar should not be permitted to operate at all hours. She indicated that she would support the proposal for an increase for special events from 99 people to 125 people without prior notification to the City. She said that she does feel that special events need to be clearly defined. She said that clarification should be provided as to whether special events are organized by the hotel or whether they are arranged by an outside party. She pointed out that lunch service is currently offered to guests. She indicated that registered hotel guests should be differentiated from guests who are not staying overnight at the hotel. She indicated that she is in favor of food service. She said that closing should be defined as providing no additional food service, alcohol service, music, or entertainment. She stated that the last call for drinks should occur 30 minutes before the required closing time.

Commissioner Seville-Jones commented that she feels **Mr. Zislis** is working to meet the concerns of the neighbors. She stated, however, that she has previously expressed doubts as to whether she feels the application can be approved. She indicated that she feels there is a serious risk of additional noise and other collateral consequences from increasing the hours of operation by an additional hour. She indicated that the noise is currently disturbing a fair number of the neighbors, and she feels that the hotel is in violation of the subjective standard of the Noise Ordinance. She commented that she does recognize that noise is also being generated by the other businesses in the Metlox development; however, the hotel is a contributing factor. She said that although the hotel is in a commercial district, it is closest to the adjacent residential neighbors and does not front directly onto the town square. She said that the fact that citations have not been issued does not mean that there is not an issue regarding noise. She commented that the development was originally planned to be limited and to have a low impact. She commented that concern was raised at the City Council meeting regarding allowing full alcohol service rather than just beer and wine. She stated that she feels the neighbors have the right to challenge additional hours that further promote a use that is inconsistent with the original commitment regarding the hotel that was made in 2005.

Commissioner Seville-Jones indicated that the noise study shows that the noise from the skydeck cannot be effectively mitigated using barrier extensions to the walls. She said that she does not feel the findings for a Variance to allow the noise barrier can be met because she does not feel there are special circumstances that justify granting the Variance. She said that she also cannot make the finding that installing the barriers would not result in substantial detriment to the public good. She pointed out that the General Plan specifies a height limit of 30 feet in the downtown commercial area. She stated that she also would like for the deck to have a more limited use. She indicated that she has a concern that enclosing the terrace would

make it a more attractive area for people to gather in the evenings, and the noise study indicated that consideration should be given to how the use of the terrace area would change if it were enclosed. She commented that she is concerned that enclosing the terrace would bring more people and more noise to the neighborhood and would create a greater impact than it would resolve. She indicated that installing a wall between the Zinc Lounge and the lobby seems like it would help with enforcement. She said that having a contained area where alcohol is served would allow for that space to be closed down after a certain hour. She commented that she agrees with the comments of Commissioner Andreani regarding special events, food service and closing being more clearly defined. She said that she does not feel the findings can be made to allow the Variance for the sound barrier on the skydeck. She stated that she also does not like the potential impact of enclosing the terrace. She indicated that she feels more sound mitigation is necessary than simply changing the entrance to the hotel.

Commissioner Lesser that he does feel that Shade provides a valuable service to the community. He indicated that he recognizes that the residents have lost trust in the applicant and in the City with the approval of an establishment that has gone beyond what was originally intended and with the lack of enforcement of the subjective noise standard. He said that the problem is that it is difficult for officers to issue citations under the subjective standard. He indicated that the applicant has vested rights for use of the property. He indicated that the Council voted to approve the hotel, and it is operating within the entitlements that currently exist on the property. He pointed out that the property is also located within a commercial zone, although it does border a residential zone. He stated that the applicant is offering to make improvements to the open south terrace and the east entrance to address the concerns of the neighbors. He commented that the proposed mitigation measures would be expensive for the applicant. He indicated that he is hoping to find ways to encourage the applicant to make the improvements to provide relief to the neighbors. He stated, however, that the neighbors have not expressed support for the mitigation measures that have been presented.

Commissioner Lesser indicated that the applicant has rights as to which mitigation measures he is willing to accept or reject. He indicated that he has heard the applicant indicate that he does not want the acoustical wall separating the Zinc Lounge from the lobby based on the current use of the lounge area. He said that the acoustical engineer also has indicated that the vestibule at the front entrance would be as effective in mitigating noise from the neighbors as a wall separating the lounge and lobby areas. He said that he would be receptive to allowing an extension of hours if a vestibule is installed at the front entrance and a retractable wall is installed for the terrace. He said that based on the findings of the sound report, he feels the existing operating hours for the skydeck should be maintained. He indicated that he does support expansion of food service for the hotel and allowing an increase in the number of people permitted for special events to 125 without prior notification to the City. He said that the use of the terrace is a current entitlement and enclosing the terrace would help to mitigate noise to the neighbors.

Vice-Chairperson Paralusz thanked everyone who has sent in comments and attended the meetings for their participation and their patience. She also thanked the other Commissioners for working through the process and being open to hearing the applicant and the neighbors. She indicated that there was an expectation in 2000 on the part of many of the neighbors that the hotel would be a smaller bed and breakfast. She commented, however, that the hotel now has been built, and the current entitlements cannot be taken back. She stated that **Mr. O'Connor's** comments regarding the approval in 2005 still should be considered in determining how to proceed with this current application. She indicated that she must take into consideration the comments of the neighbors that the subjective part of the Noise Ordinance has been violated. She said that the fact that there have been a number of complaints from the neighbors is important to consider. She indicated, however, that the applicant also has rights

for the use of his property under the Use Permit. She indicated that she would support installing the vestibule at the front entrance and installing a retractable wall for the terrace. She commented that the occupancy of the terrace would remain at 47 whether or not it is enclosed. She said that she does feel Commissioner Seville-Jones has a legitimate concern that enclosing the terrace could potentially increase the number of people who utilize it. She indicated, however, that she is swayed by the noise report which indicates that enclosing the terrace would significantly reduce the noise. She said that the Resolution would have to address any potential change in the use of the terrace if it were enclosed.

Vice-Chairperson Paralusz indicated that she would support allowing an increase in the number of people to 125 for special events without prior notification to the City. She stated that she also would support the proposal for expanding food service. She said that she does not feel the issue would be before the Commission if the applicant did have the ability to operate until midnight. She stated that she supports the suggestion of Commissioner Andreani that the additional operating hours only being granted after the mitigation measures have been installed and that there be a period of monitoring.

Commissioner Lesser commented that he is concerned that there is not more agreement by the neighbors for the mitigation measures that have been proposed. He commented that he is concerned that the neighbors would not be satisfied even if the mitigation measures are put in place without the extension of hours.

Commissioner Paralusz said that she would not be in favor of extending the permitted operating hours for the skydeck and would not be in favor of granting the Variance for the sound barrier.

Commissioner Seville-Jones indicated that she is in favor of a wall between the Zinc Lounge and lobby rather than a vestibule because she feels it may be better in reducing noise. She said that she is not convinced that a vestibule would mitigate the noise issues. She commented that increasing the hours the Shade would attract a larger number of people and would result in more potential for noise impacts. She said that she is not in favor of enclosing the patio which would basically create a new room. She said that she is not sure that enclosing the patio would help to mitigate noise if the top portion is left open.

In response to a question from Commissioner Seville-Jones, Commissioner Lesser and Vice-Chair Paralusz said that they would be in support of fully enclosing the terrace with moveable partitions.

Acting Director Jester stated that the terrace is clearly an outside area and not an enclosed indoor space.

Commissioner Seville-Jones indicated that her understanding is that the intent of the Metlox development was to have the central town square where people could sit outside.

Acting Director Jester pointed out that the wall would be retractable so that the patio would remain open during the day and would be enclosed during nighttime hours. She said that a wall surrounding the terrace would help for sound mitigation. She stated, however, that the wall would create more of an enclosed space, than the current open terrace. She said that the wall would be glass and would be open during the day until 9:00 p.m. She indicated that the wall would not result in the patio becoming a conditioned indoor space.

Vice-Chairperson Paralusz pointed out that the terrace is currently closed off with curtains during the nighttime hours. She said that the wall would have the benefit of adding sound mitigation.

Commissioner Seville-Jones commented that she feels closing the patio would set a dangerous precedent for other businesses in the Metlox development.

Commissioner Andreani suggested possibly establishing different operating hours for the terrace since it is defined as a separate space.

Commissioner Lesser commented that his frustration is that there is not more consensus with the neighbors regarding the proposed mitigation measures. He said that he does not want to push for approval of mitigation measures that are not supported by the residents. He indicated that he is looking for methods of decreasing the noise impacts to the neighbors.

Commissioner Seville-Jones suggested the possibility of bringing in a mediator to help negotiate the issues between the applicant and the neighbors.

Commissioner Paralusz said that she also is doubtful that further discussions between the applicant and neighbors would be helpful. She said that she does not feel a mediator in this situation would be very successful since there are several residents who may have different views and interests.

Mr. Zislis requested that a five minute break be taken to allow him to consult with **Mr. Hubbard**.

At 10:00 a five minute break was taken.

Mr. Zislis said that he has received support from **Mr. Hubbard** to allow the extended hours as proposed with construction of a vestibule at the east entrance; with full enclosure of the terrace after 9:00 p.m.; with the queue being moved to the rear door on the west side of the hotel on Friday and Saturday nights; with a wall being built between the courtyard and lounge; and with the hours listed in the Exhibit A to the staff report. He said that he would eliminate any extended hours for the skydeck.

Acting Director Jester said that her understanding is that **Mr. Zislis** and **Mr. Hubbard** have agreed to the hours of operation as specified in Exhibit A to the staff report.

Mr. Zislis said that he feels that he and **Mr. Hubbard** can finalize the language of a Resolution with staff.

Mr. Hubbard indicated that he would want to include a condition that the extended hours would not be permitted until the mitigation measures are implemented and shown to be working.

Acting Director Jester said that there would need to be monitoring by the noise consultant.

Mr. Hubbard indicated that they would agree to the standards as specified in Exhibit A. He clarified, however, that the request for up to 15 registered guests to be permitted in the Zinc lounge until 1:00 a.m. has been withdrawn. He said that they would agree to full enclosure of the terrace at 9:00 p.m. on Friday and Saturday nights and installation of the vestibule. He said that they would also want the entrance to be moved to the west side of the hotel after 9:00 p.m. on Friday and Saturday nights.

Mr. Zislis said that he and **Mr. Hubbard** can meet with staff to finalize the wording of the conditions.

Mr. Hubbard said that he would present the proposal again as has been modified to the neighbors and would like to have the opportunity to review the conditions with staff.

Acting Director Jester indicated that her understanding is that there is agreement between **Mr. Hubbard** and **Mr. Zislis** for the current hours of operation for the skydeck to remain in effect; for the terrace be fully enclosed including the upper 8 feet with the moveable walls to enclose the terrace at 9:00 p.m.; for the vestibule as proposed be installed at the front entrance; for the queue to be moved to the rear west side of the hotel on Friday and Saturday nights at 9:00 p.m.; and for a wall to be installed between the courtyard and the Zinc Lounge to create a hallway for the entry/exit queue. She said that her understanding is that there is also agreement that the extension of hours would not be permitted until the mitigation measures are put in place and are shown to be working in accordance with the objective noise standard in cooperation with the noise consultant. She said that her understanding is also that there is agreement to allow the hours as stated in Exhibit A, although Holiday hours will need to be discussed further, with the elimination of the proposal to allow 15 registered hotel guests to remain in the Zinc Lounge until 1:00 a.m. She said that her understanding also is that there is agreement in support for allowing expanded food service and for allowing up to 125 guests for special events without prior notification to the City.

In response to a question from Commissioner Lesser, Commissioner Seville-Jones said that she still does have a concern regarding the implications of enclosing the terrace. She commented, however, that she may be able to come to agreement in supporting the enclosure of the terrace as part of an overall approach in reaching an agreement between the applicant and the residents.

Commissioner Lesser said that he is hopeful that more neighbors will have an opportunity to review the revised proposal so that it will not appear that the issue was decided late at night without full public participation. He said that he is in favor of the applicant and **Mr. Hubbard** working with staff to prepare a Resolution, as the parties appear to be close to an agreement.

Vice-Chairperson Paralusz reopened the public hearing and stated that the item will be continued to June 9, 2010.

E. DIRECTORS ITEMS

None.

F. PLANNING COMMISSION ITEMS

None.

G. TENTATIVE AGENDA May 26, 2010

H. ADJOURNMENT

The meeting was adjourned at 10:25 p.m. to Wednesday, May 26, 2010, in the City Council Chambers, City Hall, 1400 Highland Avenue

SARAH BOESCHEN

Recording Secretary

ATTEST:

LAURIE JESTER
Acting Community Development Director