

1 **MINUTES OF THE ORANGE CITY PLANNING COMMISSION MEETING**, held on
2 Wednesday, November 04, 2020, at 6:00 p.m. in Council Chambers, 201 N. Holly Avenue, Orange City,
3 Florida.

4
5 **1. CALL TO ORDER**

6
7 The meeting was called to order at 6:00 p.m. by Chair Laputka and roll call was taken.

8
9 **ROLL CALL:**

10
11 **PRESENT:** Chair: Tom Laputka; Commissioners: Wesley Kihlmire, Amy Campbell, Gaea Nunez,
12 Sarah Mazzie, Ted Marsolek; Staff Members: Becky Mendez, Development Services
13 Director, Kim Reading, Senior Planner, William Reischmann, City Attorney, Melani
14 Beringer, Interim City Clerk.

15
16 **ABSENT:** Vernon Stafford

17
18 **2. PLEDGE OF ALLEGIANCE**

19
20 **3. APPROVAL OF MINUTES**

21
22 None at this time.

23
24 **4. PUBLIC HEARINGS**

25
26 **A. NEW BUSINESS**

- 27
28 1. **COND-07-20-2114:** a request to amend an existing conditional use to allow
29 additional outdoor entertainment uses in conjunction with the 2.6 acre property
30 known as Dale's Ales, located at 2400 N. Volusia Ave (Parcel Number 8002-00-
31 00-0260) in the CG-1, General Commercial Restricted zoning classification.

32
33 Mr. Reischmann read the title of COND-07-20-2114 into the record. He noted for the record that this
34 item was quasi-judicial and advised that all ex-parte communication must be revealed at this time. Mr.
35 Reischmann noted for the record there were no disclosures. Mr. Reischmann stated that there were
36 several emails received in regards to the project by citizens, which were made part of the record.

37
38 Kimberly Reading, Senior Planner, provided a PowerPoint presentation (a copy of which is attached and
39 becomes a permanent part of these minutes) that described the proposed conditional use application. She
40 reported that the application submitted is to amend an existing Conditional Use for the bar known as
41 Dale's Ales to allow outdoor entertainment four days a week until 9:45pm. This is amended from their
42 original application request to allow the outdoor entertainment seven days a week. The applicant also
43 wants to continue making use of a tent that was permitted in response to the COVID-19 pandemic, and
44 to make modifications to support a larger outdoor entertainment space.

45
46 Ms. Reading provided a brief history of the property and stated that an approved March 2019 Conditional
47 Use allows the bar to operate special events through approved special event applications with outdoor
48 entertainment during four specifically recognized "seasons" within the jurisdiction. The approved

1 Conditional Use also stipulates that it shall expire if the site plan is not completed and improvements are
2 not made in good faith. There is currently no approved site plan Development Order for the subject
3 property. A noise abatement plan that is required with the applicant's site plan application has not been
4 submitted to date. There are a number of unpermitted structures on the site, including various signage
5 and an outdoor stage. Several noise complaints were received by the police department, as well as a few
6 that were emailed to the City.

7
8 Ms. Reading stated staff recommends denial of the application as it does not comply with several criteria
9 outlined within the staff report and accompanying PowerPoint presentation.

10
11 A discussion ensued regarding the noise ordinance and the effect of the project on the surrounding
12 properties with potential noise disturbances. The Commission asked for clarification of several
13 definitions for the purposes of code non-compliance, noise abatement, the scope and intent of the
14 proposed Conditional Use application, and how those would relate to Special Events on the property.

15
16 Chair Laputka stated that he would like to understand the definition of noncompliance of the stage. Fire
17 Marshal Scott stated that he has no record of the structure being permitted through the fire department or
18 the building department, as required, and that without review he cannot confirm the safety or integrity of
19 the stage.

20
21 Commissioner Nunez asked for clarification regarding the status and current timeline of the site
22 development plan. Ms. Reading stated that staff is awaiting resubmittal by the applicant in regards to
23 several unaddressed items, and are reviewed when received from the applicant. Staff neither sets a
24 timeline, nor have they been given one by the applicant for when they plan to resubmit.

25
26 Commissioner Mazzie asked if there was a way to clarify what the applicant may need in order to make
27 the property capable of supporting outdoor entertainment.

28
29 Ms. Reading stated that there is no sound plan available beyond a proposed fence and landscaping on the
30 North property line. Ms. Reading also stated that the stage that is currently on site has not been proposed
31 on the site plan, which would also be taken into consideration for a noise plan.

32
33 Commissioner Mazzie asked for clarification on how many noise complaints were reportedly
34 "unfounded". Ms. Reading identified several that were observed during approved events, but that any
35 complaints received in 2020 would not have been attributed to any special events, as none have been
36 approved due to the current COVID pandemic.

37
38 Chair Laputka asked for clarification of the Land Development Code in reference to noise, and why the
39 code is in place. Mr. Reischmann stated that the rules and restrictions on noise are found at both the local
40 quasi-judicial and state legislative levels. They are in place for public safety and to be able to
41 accommodate different uses within a certain zoning classification.

42
43 Commissioner Kihlmire asked for clarification on the frequency being proposed by the applicant to host
44 outdoor entertainment with possible noise disturbances, and stated that the applicant wished to modify
45 the conditional use, despite the fact that the applicant so far has not complied with the previous
46 conditional use requirements.

47
48 Commissioner Marsolek asked if it was the intent of the applicant to be able to forego future Special

1 Event permit applications if the Commission were to grant approval of the Conditional Use request that
2 would in turn allow the applicant to continue with more frequent noise disturbances.
3

4 Ms. Reading stated that while it is true that the applicant's conditional use application does not propose
5 the scale or parameters to which they intend to utilize the approval, scale and scope are normally
6 determined as part of the normal Special Event permit application. Ms. Reading also stated that she has
7 seen no request to forego Special Event applications, and that typically those events would be greater in
8 scope, size, and duration than the general outdoor entertainment request that the applicant is seeking.
9

10 Commissioner Mazzie asked what parameters the applicant could operate within to prevent disturbances
11 to the property's neighbors.
12

13 Ms. Reading stated that outdoor entertainment is not listed as a permitted use. Ms. Mendez stated that
14 the specific nightly events to which the applicant is making the request are wholly allowed inside of the
15 establishment, and that it is the amplification of sound outside of the establishment that requires approval.
16

17 Mr. Reischmann stated that in regards to the question of the scope of the application, that it should be
18 clearly noted that the applicant is asking to expand on their current conditional use for a more intense
19 use, but the applicant is not asking the Commission to waive the requirement of permitting for Special
20 Events.
21

22 Richard Hudson, the applicant, came forward to state that he was thankful to Mr. Reischmann for
23 clarifying his request to the Planning Commission.
24

25 Commissioner Mazzie asked Mr. Hudson to describe exactly what the use of the outside space will be,
26 and for Mr. Hudson to explain the unpermitted structures. Mr. Hudson explained that he was seeking to
27 be able to have regular weekday events such as game and comedy nights, and that he has seen much
28 support from neighboring citizens, despite the complaints that have been received. Mr. Hudson stated
29 that he can bring the unpermitted structure up to code or whatever need to be done to resolve that issue.
30 He stated that the stage was his attempt to mitigate some of the noise by directing it towards the bar as
31 opposed to out onto the rest of the property. Commissioner Mazzie asked if they had tested the noise.
32 Mr. Hudson stated that decibels have been tested both inside and around the property, and that an
33 attending associate had those numbers.
34

35 Commissioner Nunez asked why they chose Tuesday night for music. She also asked about the permit
36 situation from the past. Mr. Hudson stated they have been having a successful "Jam Night".
37 Commissioner Nunez asked if it was something that could be done on a Friday, Saturday, or Sunday. Mr.
38 Hudson stated that he was willing to make changes necessary to allow in to continue.
39

40 Mr. Reischmann stated that he noticed the staff report contained ideas for noise abatement, but that no
41 one may not know what the results will be based on the information that has been supplied so far. Mr.
42 Reischmann pondered if there could be a professional called onto the case to analyze the intent and
43 compile specific numbers in support of the project. Commissioner Kihlmire agreed with that assessment.
44 Mr. Hudson stated that he has been unsuccessful in obtaining an engineer capable of conducting a sound
45 study on his behalf.
46

47 Commissioner Kihlmire expressed his frustration at Mr. Hudson's request, given the evidence of lack of
48 compliance with the previous conditional use, as well as the unpermitted structures.

1 The applicant's attorney, Bob Foster, came forward to state that the conditional use process is not in place
2 to defeat the code, but that the code provides the process to allow citizens to request appropriate use
3 expansions that aren't specifically outlined within the code. Mr. Foster also stated that unpermitted
4 structures should not be a large issue, as they are easily rectified, that placing a commercial zoning
5 classification next to a residential area was poor planning on the City's part and has placed the applicant
6 in the tough position of trying to accommodate for it. Mr. Foster asked that the Commission consider a
7 temporary sound barrier to be in place while the applicant works on a permanent solution to the sound
8 issue.

9
10 Chair Laputka opened the public hearing.

11
12 Carl Biancardi, 2491 N. Volusia Ave., spoke to address the concern that his property may be incorrectly
13 blamed for noise complaints that originate from Mr. Hudson's property.

14
15 Bonnie Strickland, 1395 W. Taylor Rd. Deland, spoke in regards to the noise, stating that there was
16 nothing extravagant going on at Mr. Hudson's property that isn't occurring elsewhere in neighboring
17 jurisdictions.

18
19 John Roberts, 415 Jackson Deland, spoke regarding the noise issue, his concern is with being able to
20 develop that property in the future, as well as how the property will manage to ensure that the noise is
21 cut off by 9:45pm.

22
23 Clare Parsons, property owner of the property directly behind Dales Ales stated her concern over the
24 additional occupancy capacity on the property, as well as a concern that there was no proof that the
25 property would be able to comply with the noise abatement requirements.

26
27 Nancy Wheeler, whom lives in the north side of Candlelight Mobile Home Park next to Dale's Ales,
28 stated that the noise seems very low to her, and that she was in support of the project.

29
30 Chris Bradshaw, a musician that plays at the bar, stated it was not feasible to go without a sound amplifier
31 for acoustic or comedy nights, as the sound has to be able to be heard over a crowd of speaking or
32 laughing. Mr. Bradshaw also stated that he has played outside of Dale's Ales for 20 years, and has
33 received complaints at the acoustic level. He also stated his support for Mr. Hudson as a kind and
34 charitable member of the community, and that it is not fair to make a case against him for noise disruption
35 without having sent tools out to measure the specific impact to the surrounding properties.

36
37 Debra Knight, 2121 Almond St., can hear the noise from her property three streets away, and asked the
38 Commission to require Mr. Hudson to provide a true noise abatement plan, as well as obtain a decibel
39 meter to monitor the noise at the property line.

40
41 Mark Higby, 1205 N. Thorpe Ave., voiced concerns regarding the noise on the south and east. At 3/10
42 of a mile away, Mr. Higby can hear the noise, though not bad, between Mr. Hudson's property and his,
43 despite a wooded lot separating the two. Mr. Higby stated his biggest concern was the fact that he does
44 not want the property to turn into another "Iron Horse", referring to a commercial property in Ormond
45 Beach.

46
47 Mandi Ladue, 728 N. Sparkman Ave., commented that she believed the people complaining about the
48 sound are unreasonable in their complaints, and that the charitable endeavors of the property owner are

1 worth considering.
2
3 Mike Bailey has hosted the Tuesday night Jam sessions at the bar since August 2019, and stated that it is
4 easy to control the music volume and be able to comply with the requirement to turn the noise down by
5 9:45pm.
6
7 Cassa Robinson, resident of the area for 55 years and spoke, stating that typically other businesses that
8 receive complaints have the Sheriff come out and read the decibel check. She does not see why Orange
9 City could not do the same thing. She stated that she is in favor of the project.
10
11 Willy Trussle, 1491 Rockingham Lane, Deland, spoke of the charity offered by Mr. Hudson's business,
12 and that he is in favor of the bar.
13
14 Matt Knox, 2450 N. Thorpe Avenue, came forward to state that he would like to be able to work together
15 with the owners of Dales Ales and have a plan. Mr. Knox stated that he was concerned about the noise
16 levels on the requested days of Tuesday and Sunday, as he has a school-age child that he wants to be able
17 to get enough sleep on school nights.
18
19 Ken Robinson spoke, stating that he planned on building a house nearby, and that the approval of the
20 application would not be good for them.
21
22 Andy Gollette, spoke in regards to the loud outdoor music. He stated that the noise has gotten louder over
23 time. He was not supportive of Mr. Hudson's project.
24
25 Jill Darden, Orange City resident, asked that the Planning Commission come to some sort of medium.
26
27 Chair Laputka closed the public hearing.
28
29 The chair called a recess at 8:00 p.m. and reconvened at 8:06 p.m.
30
31 Commissioner Mazzie commented that she believed it would be helpful to utilize a sound decibel meter
32 on the property to monitor the noise levels.
33
34 Chair Laputka asked the applicant why he changed the requests from seven days a week down to four
35 days a week. Mr. Hudson stated that he did so as a compromise between the city and himself and asked
36 for a chance to be able to prove that it can work.
37
38 Commissioner Nunez stated that she recommends 9:45pm on Friday and Saturday, 8pm on Sunday with
39 the conditional that excessive founded violations will result in revocation of the conditional use.
40
41 Commissioner Marsolek recommended having a decibel recording displayed easily so that the music
42 can be cut down as needed.
43
44 Mr. Reischmann reminded the Commission of the specific numbers related to the decibels allowed by
45 Code.
46
47 Ms. Mendez clarified the qualifications of the property's special event approval including the expectation
48 that the property owner is allowed to exceed the noise decibel limits. She also clarified that the applicant

1 currently is allowed to operate outdoor entertainment not exceeding the noise ordinance unless it is under
2 a special event application.

3
4 A discussion ensued pertaining to the decibel levels of the outdoor entertainment.

5
6 Peter Thomas, Police Chief, came forward to state that decibels are not the only issue to consider. State
7 statutes regarding “breaching the peace” could still mean that a property could be breaking the law,
8 regardless of the measured decibel levels. Chief Thomas also stated that the reports of “founded” or
9 “unfounded” claims could not be accurately determined, as it is possible that conditions changed by the
10 time officials arrived to the scene to investigate the complaints.

11
12 A discussion ensued between the Commission regarding the time limits, noise levels, and an acceptable
13 length of time to observe the conditions accepted in the Conditional Use approval.

14
15 The Commission

16
17 **Commissioner Mazzie moved that based upon competent substantial evidence, as**
18 **presented, the Planning Commission approves COND-07-20-2114, with the**
19 **stipulations that the noise level will be no higher than 90 decibels on Friday and**
20 **Saturday until 9:45pm, and Sunday until 8:00pm, the property will comply with all**
21 **codes and ordinances including permitting, and that the applicant will return to the**
22 **Commission in six months for review, seconded by Commissioner Nunez, the motion**
23 **passed by a 5/1 roll call vote of the Planning Commission with Commissioner**
24 **Campbell voting “no”.**

25 26 **5. DISCUSSION ITEMS**

27 28 A. Food Truck Discussion #2

29
30 Ms. Mendez reviewed the draft ordinance that pertains to food trucks. She explained the Florida Statute
31 definition of mobile food trucks, along with the proposed requirements of the City to allow operation of
32 food trucks within city limits.

33
34 A discussion ensued between the Commission and Ms. Mendez regarding specific definitions in the
35 proposed ordinance, along with the safety, proposed times, number, and duration allowed for each
36 individual food truck on each individual property.

37 38 **6. STAFF/COMMISSION COMMENTS**

39
40 Commissioner Kihlmire stated that he was happy with the way the Commission handled the conditional
41 use application, and that the hearing helped him fully understand the requests and allowed him to make
42 a decision he felt comfortable with. Commissioner Kihlmire also stated his commission is due for
43 expiration, and inquired as to the process for requesting a term renewal.

44
45 Commissioner Marsolek stated that he, too, was satisfied with the process the Commission experienced
46 this evening in approving the aforementioned application. He spoke about his personal bad experience
47 with a business neighboring his personal property.

48

1 Commissioner Campbell stated that she felt the request of the applicant substantially altered the character
2 of the adjacent neighborhood, thusly the reason for her dissent.

3
4 Commissioner Nunez stated that she appreciated everyone that came to the Commission to speak, as well
5 as the flexibility and patience of all parties. Commissioner Nunez also stated that she does not want the
6 applicant to come back to the Commission with another conditional use extension, and that some of the
7 things originally spoken about in their intentions are shown in six months when it comes up for review.

8
9 Commissioner Mazzie stated that the comments of the citizens were a large determining factor in the
10 Commission’s decision, and expressed the importance of people attending the meetings to voice their
11 support or concerns.

12
13 The Commission discussed the factors that go into their decision-making, and the task of keeping the
14 balance between the applicant’s wishes and the wishes of the neighboring property owners.

15
16 Ms. Mendez stated that there would be an upcoming public workshop in regards to the proposed
17 Roundabout on Rhode Island and Leavitt Ave.

18
19 Chair Laputka asked when the next Commission Meeting will be. He stated that he believes he will not
20 be present for the next meeting.

21
22 Mr. Reischmann stated that in the absence of the Chair, the most tenured Commissioner would fill in as
23 temporary Chair.

24
25 **7. ADJOURNMENT**

26
27 There being no further business to discuss, Chair Laputka adjourned the meeting at 7:05 p.m.

28
29 **RESPECTFULLY SUBMITTED:**

30
31 _____
32 Elisa Millwater
33 Executive Assistant, Development Services

APPROVED ON

_____ 02/03/2021 _____
Date