

**MINUTES OF THE REGULAR MEETING OF THE
SAN MARCOS PLANNING AND ZONING COMMISSION
COUNCIL CHAMBERS, CITY HALL
June 12, 2012**

1. Present

Commissioners:

Bill Taylor, Chair
Curtis Seebeck, Vice Chair
Bucky Couch (left at 7:19)
Carter Morris
Chris Wood
Kenneth Ehlers
Randy Bryan

City Staff:

Kristy Stark, Development Services Assistant Director
Roxanne Nemcik, Assistant City Attorney
Francis Serna, Recording Secretary
John Foreman, Planning Manager
John Stanley, Planner
Alison Brake, Planner

2. Call to Order and a Quorum is Present.

With a quorum present, the Regular Meeting of the San Marcos Planning & Zoning Commission was called to order by Chair Taylor at 6:04 p.m. on Tuesday June 12, 2012, in the Council Chambers, City Hall, City of San Marcos, 630 E. Hopkins, San Marcos, Texas 78666.

3. Chairperson's Opening Remarks.

Chair Taylor welcomed audience and viewers.

Chair Taylor announced that Rooftop on the Square item was proposed.

4. NOTE: *The Planning & Zoning Commission may adjourn into Executive Session to consider any item listed on this agenda if a matter is raised that is appropriate for Executive Session discussion. An announcement will be made of the basis for the Executive Session discussion. The Planning and Zoning Commission may also publicly discuss any item listed on the agenda for Executive Session.*

5. 30 Minute Citizen Comment Period

Diane Wassenich provided written comments.

Peter Baen 401 Blanco River Ranch Blvd, San Marcos Texas speaking regarding Zelick's and Crystal River Inn. Mr. Baen explained that he met the Dillon's twenty five years ago and that their relationship has flourished and has enjoyed both personal and business relationship with the Dillon's. Mr. Baen added that in the last two years he has been acquainted with Dos Gatos, the Katz brothers and have enjoyed the business at 336 W. Hopkins. He said a year ago, it seemed like a good idea and the plan was approved by the Planning and Zoning Commission. He explained following the opening of Zelick's the two business owners met to discuss being a good neighbor. Mr. Baen explained the growth of the community has brought many visitors and businesses to San Marcos to compete for the lodging and the catering needs. He said there have been other historic businesses that have struggled with noise. He told the Commission that they are not being asked to attempt to address who is right but what is right in their minds.

Public Hearing:

Item 8 was moved before Item 7.

8. PDD-11-03(a) (Blanco Vista) Hold a public hearing and discuss text amendment to the existing Blanco Vista PDD overlay district for approximately 432.5 acre part of the William Ward Survey No. 3, and the J.W. William Survey and part of the Blanco Vista Subdivision (except Blanco Vista Phase 1-2, Sections 1,2 and Infrastructure and Blanco Vista Tract I Section A and School Tract, Blanco Vita, Tract C, Section A, and Trail Ridge Pass Church Subdivision), located at the intersection of Blanco Vista Boulevard and Trail Ridge Pass.

Ed Theriot, ETR Development Consulting, 5385 Hwy. 183, Lockhart Texas said he would like to thank staff for their cooperation and assistance in the processing of their request. He explained that the request will be applying to the undeveloped portions of Blanco Vista. Mr. Theriot introduced Chad Matthiesen and Walter Elias, with Brookfield Residential. He added that they are available to answer questions.

Chair Taylor opened the public hearing. There were no citizen comments and the public hearing was closed.

7. CUP-12-18 (Zelick's) Hold a public hearing and consider a request by Seth Katz on behalf of Zelick's Inc. for renewal of an existing Conditional Use Permit to allow the continued sale of mixed beverages for on-premise consumption at 336. W. Hopkins.

Chair Taylor opened the public hearing.

Jane Hughson, 1600 N. LBJ Drive speaking in reference to CUP-12-18 and stated that she is not speaking in favor or against. She added for purpose of discussion it does not matter how cute the Zelick's building may be but is irrelevant to this discussion. She pointed out that she is not suggesting that Zelick's be shut down. Ms. Hughson commented that those who want change must justify the change. She told the Commission that they are the people appointed to represent the citizens of San Marcos. Ms. Hughson thanked Commissioner Seebeck and others who gave consideration to the business established prior to the one requesting the change. She felt that it should be the business owners who caused the change be responsible for mitigate and not the property owners who were there first. Ms. Hughson advised the Commission that they must look at it from both sides, but suggested that the long term business should be given greater consideration. She asked the Commission to do what is reasonable. She suggested that the Commission review the initial submittal presented from the Katz brothers. She added that they should be held to their original promises of a garden bar. Ms. Hughson explained that loud music after 10:00 p.m. in a residential area is unacceptable no matter how densely populated or how busy the roadway. She asked the Commission to put conditions on the permit to reduce or eliminate the noise during late hours. In addition, Ms. Hughson stated that regardless of the outcome tonight that they renew the permit for six months to ensure that whatever is decided tonight goes into effect and stays into effect. She pointed out that at the December 13th meeting Chris Jones suggested that the Commission send a recommendation regarding this top to City Council. Ms. Hughson asked if the recommendation has been done.

Ryan Perkins, 727 W. Hopkins stated that last year his family along with the Katz' brothers were awarded a landmark award from the Heritage Association for his home and the Zelick's building. He pointed out that the Katz' were given an award from the City of San Marcos for their exceptional contribution to the enhancement of the San Marcos business Historic District and downtown communities. Mr. Perkins stated as young entrepreneurs and business leaders, the Katz' are in a class of professionals with character and integrity that essential to the fabric of our community. He added that we should all take great pride in recognizing them and for enhancing the San Marcos business environment. Mr. Perkins stated he was present in favor of Zelick's bar. He asked the Commission to grant Zelick's a three year renewal.

Zack Halfin, 905 Dartmouth Street stated that he moved to San Marcos in 2003. He explained that from what he can remember the downtown was an eyesore with many empty buildings. He said in the last nine years he has seen an expansion of downtown. Mr. Halfin said that Zelick's is a prime example what our city needs. Mr. Halfin spoke in support of the request. He added that they have complied with city codes. He felt that they do not add more noise in that side of town than what is already there. Mr. Halfin stated he would like the Commission to grant Zelick's a three year CUP.

Kevin Katz, 1205 Pin Oak Drive, Dickinson Texas, father of Seth and Chase Katz stated that he owns the property and the sons rent from him. He explained that his sons have worked hard to plan, open and run the business. Mr. Katz felt that as soon as they opened the bar, Cathy Dillon made it her mission to get as much support to build a case against Zelick's. He continued to say that she solicited as many people as possible, went to City Hall, called the police about the noise and made as many accusations as possible which were not true. Mr. Katz added that she did not attempt to mitigate the sound. He mentioned that after complaining for a whole year, she finally a week prior to the meeting installed plexi glass on the windows. He pointed out that the installation of plexi glass reduced the noise by 20 decibels. Mr. Katz stated that Cathy's obsession threatens his kid's survival in the future. He said it is not reasonable and fair. He pointed out that the bar has never been cited for noise above the sign level. Mr. Katz said that they should be given the chance for the business to succeed. He added that they respect the Dillon's and do what they can do help the situation and will continue to be good neighbors. Mr. Katz asked for approval of the renewal.

Melissa Katz, 1205 Pin Oak, Dickinson Texas, an Optometrist and Chase and Seth's mom. She spoke to the Commission about them being good neighbors. She explained that early on they decided to not have amplified music which is not a City requirement. Ms. Katz commented that soon after opening there were issues with the clanking of games. She stated that within twenty four hours they muffled the sound at the request of the Dillon's. She explained that they consulted Acoustic Solutions for a solution about the noise. The recommendation was to install a 20' fence which is not permitted by City. In addition, they have asked the bikers not to rev their engines. Ms. Katz said they have gone into mediation where they spent the whole day with a lawyer at their expense trying to work out a solution. She said she hopes that the Commission will give them the CUP that they deserve.

Seth Katz, 244 Camaro Way said he was presenting facts to the Commission. He pointed out that Zelick's has never been cited for a noise ordinance, they have had one full year to examine their business cycle, TABC has never cited Zelick's, Zelick's employees many people, and Zelick's pays a lot of taxes. Mr. Katz added that Zelick's is growing and needs to be able to feel secure that they can continue to grow. He mentioned that they want to be a good but also recognized that times change, city's change, and society changes. He felt that they need to move forward. He pointed out that this is not a personal issue. Zelick's has met all the requirements of a responsible business. He encouraged the Board to do the right thing and approve the CUP for Zelick's.

Benjamin Ackerman, 622 Dartmouth Street said he moved to San Marcos 1½ months ago from Las Vegas, Nevada. He explained that he moved to San Marcos because what he saw the community being and the opportunity by Seth and Chase Katz. Mr. Ackerman said he has seen how people embrace Zelick's. He explained that Zelick's has invested almost \$750,000.000 to be in business in San Marcos. He stated they are committed to staying in San Marcos long term. He pointed out that they employ about 20 people which several own homes in the City. Mr. Ackerman mentioned that they are in a planning stage to add a building that will buffer the sound. He explained that it would be difficult to proceed with a one year conditional use permit. He said they need three years to make it happen. Mr. Ackerman asked the Commission to be fair to them and the community.

David Sergi, 904 Burlison, Attorney representing the Katz's said they came very close to coming to an agreement. He commended the Katz' for what they have done in investing in the community. Mr. Sergi said he believes in the young men and in what they are doing. He said he sees the value in what they are doing. Mr. Sergi said he does not agree with staff's recommendation because he feels that they are entitled to a three year CUP. He added the Mike and Cathy are his neighbors, he likes them and are his friends. He said the Katz's are trying to do the right thing but at the end of the day this is about a community that is changing. Mr. Sergi said that the location is the right place for Zelick's. He asked the commission to give them what they have asked for because they have met just about every condition that was asked of them and they have gone above and beyond.

least no noise on Friday's. Mr. Dillon pointed out that 28 years ago when they bought 326 W. Hopkins, it was a dump and the whole street was a slump. He said he is delighted to say it has improved significantly. Mr. Dillon stated they are a very proud member of the community He added that in the past 28 years they have not had complaints like they have received over the last year.

Brenda Smith, 323 W. Hopkins, pointed out that she has driven by other outdoor bars between 1 and 2 a.m. and she could not hear noise from the street. Ms. Smith said she has looked at staff report and doesn't understand why the church doesn't fall within the 200' buffer. She said the game restrictions is good start, no outdoor music, if indoor music from inside is allowed to be heard outside it is a problem. Ms. Smith said she has spoken to the Katz brothers and advised them of the problem. She said they responded with they have to make money what does she want them to do. She added that she was given their number, but when she calls they do not answer. Ms. Smith said the microphone issue has not been brought up. She requested that the microphone be taken up at 10:00 p.m. She said she would appreciate their consideration.

Camille Phillips read from the City's website which was recently adopted by City Council stating we envision San Marcos as a community with balance and diverse land uses in protection for our historical cultural and natural resources. She pointed out that protection for the historical cultural would include Crystal River Inn which was built more than a century ago. She urged the Commission to protect Crystal River Inn. Ms. Phillips read an advertisement from Zelick's website which she felt was inappropriate. She hoped that the Commission would only approve a one year CUP to address the sound issues. Ms. Phillips pointed out that people should not only live, work and play but they also have to sleep, work and play.

Jennifer Morrison, 229 Craddock Avenue said she would like to speak on fairness. She felt that everyone has made good points. Ms. Morrison said she has an issue with people saying that the noise from Zelick's is the sole reason that it is affecting the Crystal River Inn. She added that she is an avid hotel user and check their reviews. Upon research for Crystal River Inn the noise about motorcycles and music is mentioned in addition to complaints about Crystal River Inn. Ms. Morrison felt that it is not fair to say one thing has caused the complaints and all the negative online reviews. She said it is not fair to deny a business the right to grow when they have worked so hard to build their business.

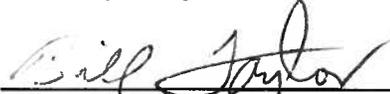
Cathy Dillon, 100 Burleson Street, and Co-owner of Crystal River Inn said she is not asking for the Commission to not renew the permit. She said they love the bar and the things it has brought to the town. She said they are asking for a little common courtesy which is reasonable people's ability to sleep after midnight. Ms. Dillon pointed out that she has checked on police records for both Crystal River Inn and Zelick's. She explained that Zelick's had 45 calls, 5 which were from her. The Crystal River Inn had a couple of calls in which they take down their weddings at 11:30 p.m. MS. Dillon said common courtesy is all they are asking and the reason that the mitigation fell apart is because it was sprung on them at the last 11 hours. She said they have felt all along that they are the problem. She explained that they double paned their windows and made a difference of 20 decibels. Ms. Dillon said the things they want to see is they park the motorcycles only on North Street, music audible at no more than 45 decibels at their property line, genuine silence after 2:00 a.m., no games after midnight and possible only a two month CUP to give them to see if things change.

Lisa Campbell, 5000 Cedar Springs Trial, Amarillo Texas said she and her husband stayed at the Crystal River Inn at the end of March early April and had a wonderful time with the exception of the noise level that came from Zelick's. She explained that they could not hear each other because of the noise from the pipes on the motorcycles. Ms. Campbell said she understands biker bars because they have a Harley and go to them frequently. She added that they visit Bed & Breakfast venues all over the country and have never seen a bar next to a Bed & Breakfast. Ms. Campbell said she went online and found the original Planning and Zoning Commission meeting video when the business was presented. She explained that the business was proposed to be some type of a garden bar and there is a misinterpretation of the bar. She added that she does not understand why that has never come up. Ms. Campbell said they were kept up until 2 or 3 a.m. for 2 nights. She said she is all for entrepreneurial business but misrepresentation has not come up tonight.

Ramon Rivera, 800 N. LBJ Apt. 513, referred to an article in the University Star that stated everyone is welcomed at Zelick's. He felt that there is some prejudice about motorcycles and the noise they make.

9. Adjourn.

Chair Taylor adjourned the Planning and Zoning Commission at 8:55 p.m. on Tuesday, June 12, 2012.



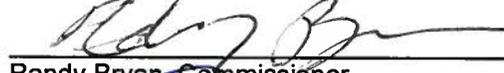
Bill Taylor, Chair



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Bucky Couch, Commissioner

ATTEST:



Francis Serna, Recording Secretary