



THE CITY OF SAN DIEGO

REPORT TO THE PLANNING COMMISSION

DATE ISSUED: January 17, 2013 REPORT NO. PC-13-013

ATTENTION: Planning Commission, Agenda of January 24, 2013

SUBJECT: ANTHEM CHURCH SUPPLY
PROJECT NUMBER 274997. PROCESS 3

REFERENCE: Report to the Hearing Officer, Report No. HO 11-098.

OWNER/
APPLICANT: Mr. Mark Heying, Owner/Mr. Peter Shenan, Applicant

SUMMARY

Issue(s): Should the Planning Commission approve or deny an appeal of the Hearing Officer decision to deny a Conditional Use Permit to allow for the operation of an alcoholic beverage outlet (as defined in the Municipal Code) at 8534 Commerce Avenue within the Mira Mesa Community Planning area?

Staff Recommendation – Deny the appeal and Deny Conditional Use Permit No. 966179.

Community Planning Group Recommendation - The Mira Mesa Community Planning Board voted, on September 17, 2012, 12:0:1 to recommend approval of the proposed project.

Other Recommendations - The San Diego Police Department recommended approval of the Conditional Use Permit, subject to conditions.

Environmental Review - The project has been determined to be exempt from CEQA pursuant to Section 15270. Section 15270 is intended to allow an initial screening of projects on the merits for quick disapprovals prior to the initiation of the CEQA process where the agency can determine that the project cannot be approved. The environmental exemption determination for this project was made on October 29, 2012 and the opportunity to appeal that determination ended November 13, 2012.

Fiscal Impact Statement - No fiscal impact. All costs associated with the processing of the application are recovered through a deposit account funded by the applicant.

Code Enforcement Impact - None with this action.

Housing Impact Statement - None with this action.

BACKGROUND

The subject property located at 8534 Commerce Avenue (Attachment 1) is designated Light Industrial by the Mira Mesa Community Plan (Plan), is located within the Miramar Subarea (Attachment 2), and is zoned IL-2-1, a Light Industrial zone that allows a mix of light industrial and office uses with limited commercial. The Mira Mesa Community Plan also identifies the site as Prime Industrial Lands, and the site is developed with several industrial buildings, parking spaces, landscaping and other site improvements such as lighting and signage (Attachment 3).

Anthem Church Supply currently occupies the site and is a business that provides a wide variety of liturgical goods and church products including but not limited to books, candles, communion wafers, sacristy items, statues, alter linens, and incense.

The current application for a Conditional Use Permit is based on Anthem Church Supply's desire to obtain a Type 20 liquor license in order to sell wine at this location. San Diego Municipal Code Section 141.0502 defines an "Alcoholic Beverage Outlet" as an establishment for which a Type 20 Beer and Wine, or a Type 21 General Liquor License has been obtained, or for which an application has been submitted. Therefore, absent any additional clarification from the applicant, City staff has reviewed this project as a proposed alcoholic beverage outlet.

The permit application process and rapport between the applicant and City staff has been challenging. For several months during the permit application completeness review the applicant challenged the City's decision to deem the application incomplete. The applicant initially refused to submit floor plans and mentioned legal action if the City failed to relent. Staff from both the Development Services Department and the City Attorney's Office responded that floor plans were a primary component of the City's minimum permit submittal requirements based on the San Diego Municipal Code. After months of equivocation and negotiation the applicant did submit the required floor plans and the permit application was ultimately deemed complete.

In addition, during the completeness check time frame, City staff informed the applicant that alcohol sales were not a permitted use in the IL-2-1 zone, and that staff would not be able to support such a request. The applicant acknowledged this fact and elected to move forward with the permit application process.

After the first review cycle City staff identified a number of outstanding issues, most of which were associated with a general lack of information provided on the plans. The plans failed to provide basic information including but not limited to the following: Plans did not provide a detailed description of the proposed use; Plans did not indicate if the facility is open to the public for purchase and off-site consumption of alcohol; Floor plans were not labeled or dimensioned; and land uses and tenants on premises were not identified.

Given the difficulties associated with acquiring information from the applicant, and the fact that staff could not support the request, staff offered and the applicant accepted the option of proceeding directly to a public hearing with a staff recommendation for denial.

On December 5, 2012 the Hearing Officer heard a presentation from staff for the proposed project and took public testimony from the owner, Mr. Mark Heying, and his attorney, Mr. Peter Shenan. After deliberation, the Hearing Officer denied the Conditional Use Permit No. 966179. On December 10, 2012 the applicant, Mr. Peter Shenan, filed an appeal of the Hearing Officer decision to the Planning Commission (Attachment 4).

DISCUSSION

The appeal filed on behalf of the owner by his attorney (Mr. Shenan) cites the grounds for appeal as Factual Error and Findings Not Supported. Mr. Shenan's letter attached to the appeal application (Attachment 4) includes a lengthy analysis, interpretation, and opinion regarding the San Diego Municipal Code (SDMC) requirements pertaining to alcoholic beverage outlets. Mr. Shenan believes that SDMC section 141.0502(c) entitles his client to obtain a Conditional Use Permit to operate an alcoholic beverage outlet. Section 141.0502(c) applies to properties where alcoholic beverage outlets are allowed through a Conditional Use Permit.

City Staff Response to Appeal

The SDMC unambiguously indicates that alcoholic beverage outlets are not a permitted use within the IL-2-1 Zone (Attachment 5).

The SDMC includes a formal definitive process to determine allowable uses in each zone. That process utilizes a "Use Regulations Table". The Use Regulations Table indicates through symbols whether or not a use is allowed in a zone. The symbols utilized and their definitions are as follows:

<u>Symbol</u>	<u>Description</u>
"P"	Use is permitted.
"L"	Use is permitted with limitations.
"N"	Use may be permitted with Neighborhood Use Permit.
"C"	Use may be permitted with a Conditional Use Permit.
"—"	Use is not permitted.

SDMC Section 141.0502 states that alcoholic beverage outlets are permitted as a limited use only in the zones indicated with an "L" in the Use Regulations Table. The subject property is located in the IL-2-1 Zone, and the Use Regulations Table for Industrial Zones (Attachment 5) clearly indicates that alcoholic beverage outlets are not a permitted use.

Mr. Shenan argues that SDMC Section 141.0502(c) allows his client to seek approval through a Conditional Use Permit. In this case SDMC section 141.0502(c) is irrelevant because it only applies in those cases where the Use Regulations Table indicates the symbol "C", where such uses may be allowed through a Conditional Use Permit. In this case the Use Regulations Table indicates the symbol "—", which indicates that alcoholic beverage outlets are not a permitted use in the IL-2-1 Zone.

Environmental Determination

The environmental exemption pursuant to CEQA Section 15270 does not allow the Planning Commission to approve the project. If the Planning Commission wishes to approve the project, the application would need to be returned to staff for further environmental review and a final environmental determination. Once the environmental determination is final, the project would then be re-noticed and another public hearing held before a final decision could be rendered.

Conclusion

During the initial permit application process City staff informed the applicant the proposed use is not permitted in the zone, and advised the applicant to withdraw the application. The applicant considered staff's advice and chose to move forward with the request. The permit review process failed to reveal additional information that would assist in allowing this use to operate, and staff could not substantiate appropriate permit findings to support the project. Therefore, staff recommends the Planning Commission deny the appeal and uphold the decision of the Hearing Officer to deny the Conditional Use Permit.

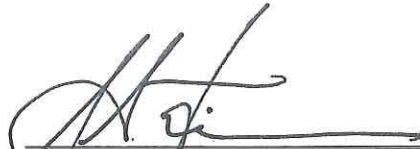
ALTERNATIVES

1. Approve the appeal and return the application to staff in order to complete the CEQA process and prepare the application for approval.

Respectfully submitted,



Mike Westlake
Assistant Deputy Director
Development Services Department



John S. Fisher
Development Project Manager
Development Services Department

BROUGHTON:JSF

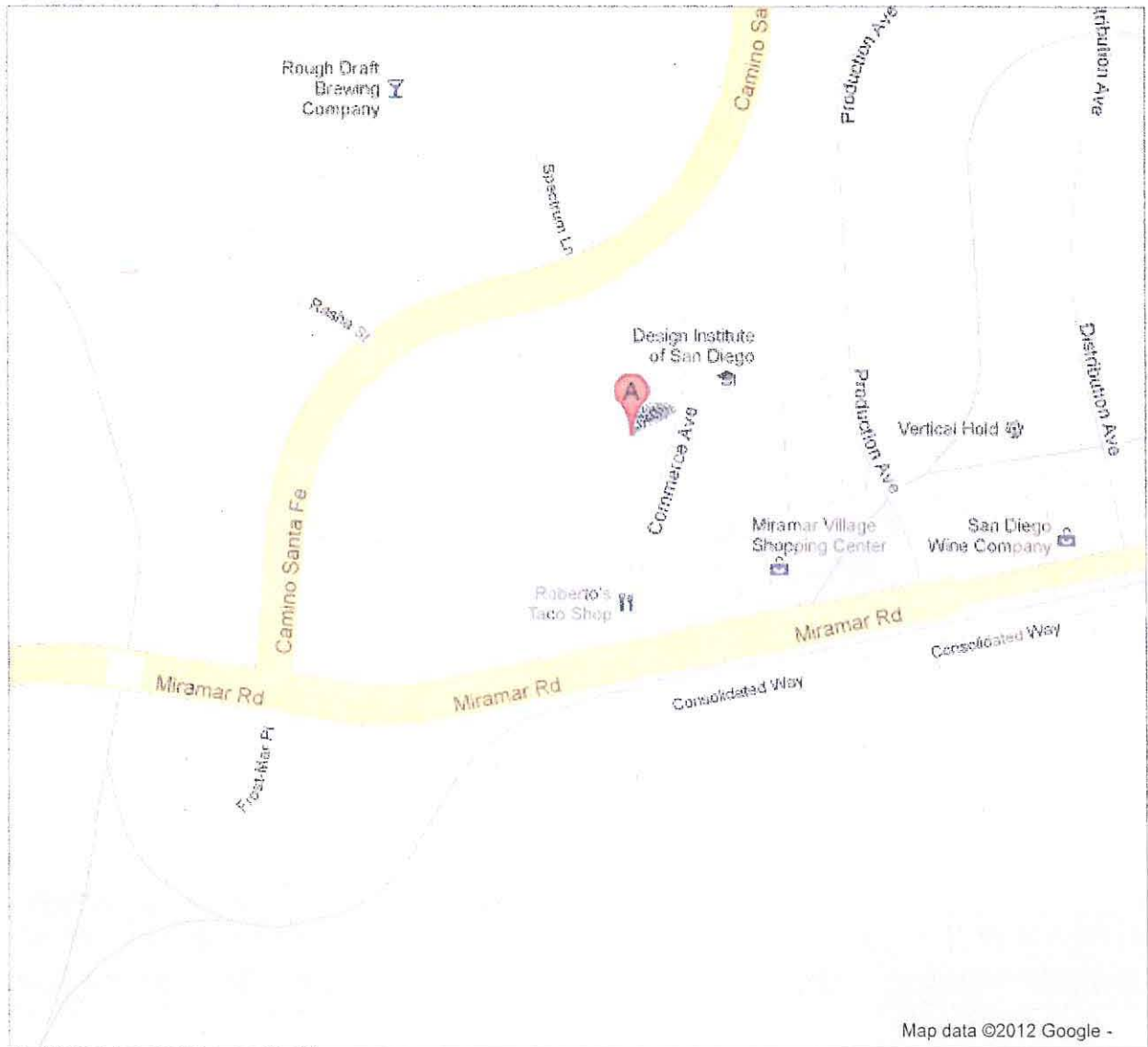
Attachments:

1. Project Location Map
2. Mira Mesa Community Plan Land Use Map
3. Aerial Photograph
4. Appeal Application
5. SDMC Section 131.0622, Table 131-06B
6. Draft Permit Resolution with Findings
7. Environmental determination

8. Project Plans
9. SDPD Recommendation
10. Mira Mesa Community Planning Group recommendation

ATTACHMENT 1

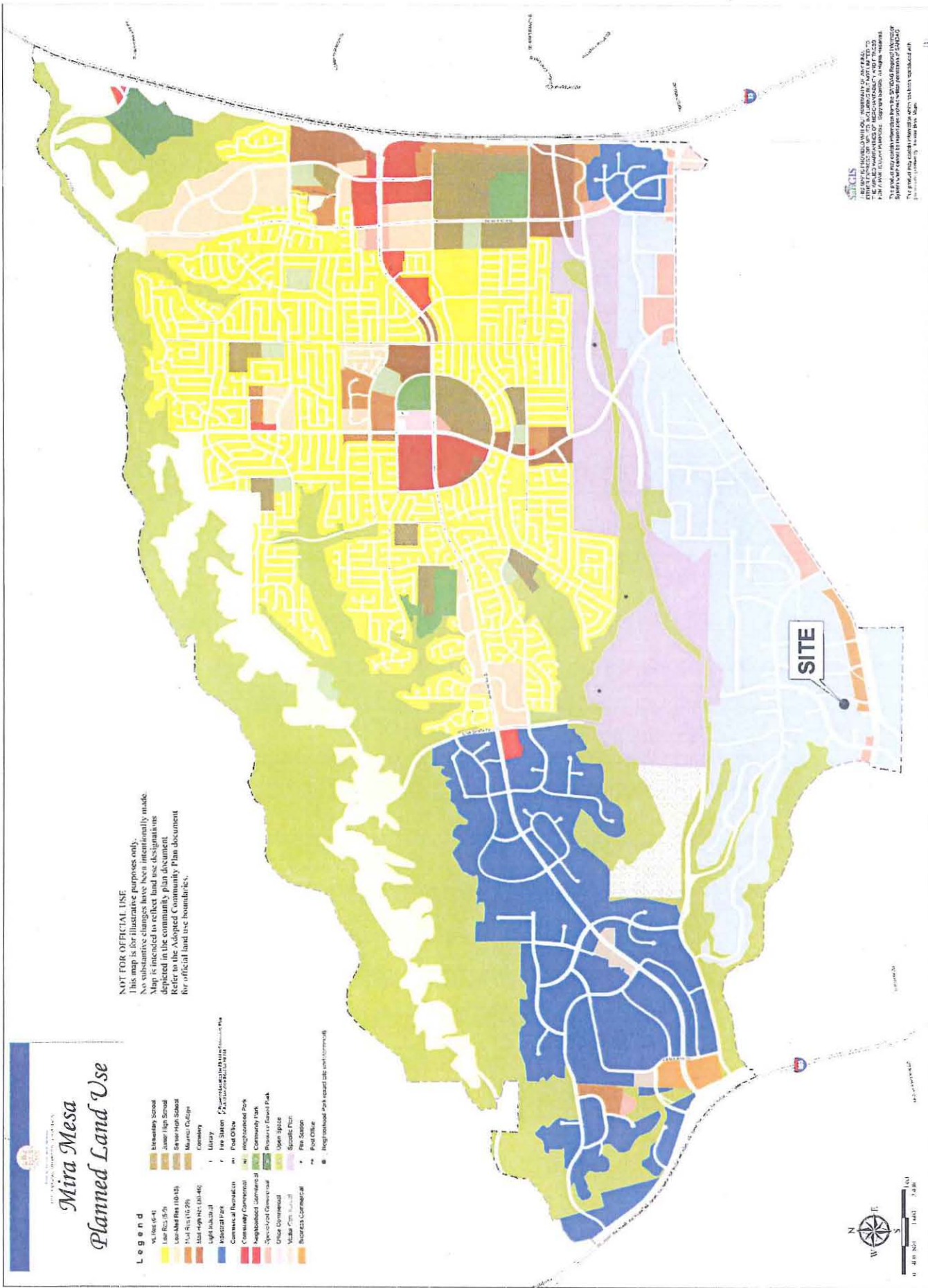
To see all the details that are visible on the screen, use the "Print" link next to the map.



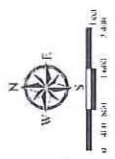
Mira Mesa Planned Land Use

- Legend**
- Elementary School
 - Junior High School
 - Senior High School
 - Other High School
 - Music College
 - Community
 - Library
 - Fire Station
 - Police Station
 - Post Office
 - Neighborhood Park
 - Community Park
 - Regional Elwood Park
 - Open Space
 - Specific Plan
 - Fire Station
 - Post Office
 - Neighborhood Park
- Community Use**
- Community Residential
 - Neighborhood Commercial
 - Specialized Commercial
 - Office Commercial
 - Medium Density Residential
 - Business Commercial

NOT FOR OFFICIAL USE
 This map is for illustrative purposes only. No substantive changes have been intentionally made. All changes in this map are for illustrative purposes only. Refer to the Adopted Community Plan document for official land use boundaries.



NOTES
 1. This map is for illustrative purposes only. No substantive changes have been intentionally made. All changes in this map are for illustrative purposes only. Refer to the Adopted Community Plan document for official land use boundaries.
 2. The project is subject to the approval of the City Council and the Board of Public Works.
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 5. The project is subject to the approval of the City Council and the Board of Public Works.



ATTACHMENT 3

To see all the details that are visible on the screen, use the "Print" link next to the map.



DEC 10 REC'D 2012



City of San Diego
Development Services
1222 First Ave. 3rd Floor
San Diego, CA 92101
(619) 446-5210

Development Permit/ Environmental Determination Appeal Application

FORM
DS-3031
OCTOBER 2012

See information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

1. Type of Appeal:

- Process Two Decision - Appeal to Planning Commission
- Process Three Decision - Appeal to Planning Commission
- Process Four Decision - Appeal to City Council
- Environmental Determination - Appeal to City Council
- Appeal of a Hearing Officer Decision to revoke a permit

2. Appellant Please check one Applicant Officially recognized Planning Committee "Interested Person" (Per M.C. Sec. 113.0103)

Name: Anthem Church Supply E-mail Address: www.anthemchurchsupply.com
 Address: 8534 Commerce Ave. City: San Diego State: Ca Zip Code: 92121 Telephone: (800) 882-8234

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

4. Project Information

Permit/Environmental Determination & Permit/Document No.:	Date of Decision/Determination:	City Project Manager:
Project No. 274997	December 5, 2012	John S. Fisher

Decision (describe the permit/approval decision):
Denial of Anthem Church Supply application for the Conditional Use Permit to allow wine sales (Type 20 Beer and Wine License) in an existing building located at 8534 Commerce Ave. within the IL-2-1 zone of the Mira Mesa Community Plan in District 5.

5. Grounds for Appeal (Please check all that apply)

- Factual Error
- Conflict with other matters
- Findings Not Supported
- New Information
- City-wide Significance (Process Four decisions only)

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

(See Attached "Applicant's Brief of Anthem Church Supply Project Number 274997 Hearing Date: December 5, 2012).

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature:  Date: 12 10 2012

President Anthem Church Supply, Inc.

Note: Faxed appeals are not accepted. Appeal fees are non-refundable.

MARK HEYING

THE LAW OFFICES OF
PETER SHENAS
ATTORNEY AT LAW

**APPLICANT'S BRIEF
OF ANTHEM CHURCH SUPPLY
PROJECT NUMBER 274997
HEARING DATE: DECEMBER 5, 2012**

**I.
BACKGROUND**

This matter involves the application by Anthem Church Supply, Inc., hereinafter, "Applicant", for a Conditional Use Permit to allow it to sell sacramental wine from its office/warehouse facility at 8534 Commerce Avenue. Applicant is in the business of selling church supplies to churches locally and nationally. Such church supplies include, alter bread, alter wine, alter linens, bulletins and envelopes, calendars, charcoal and incense, candles, books, and church furniture and furnishings. The wine that Applicant seeks to sell is a sacramental wine, specially constituted for sacramental purposes, which it sells to its churches by the case. Applicant seeks to sell such wine from its premises at 8534 Commerce Avenue.

Approximately ninety-five percent (95%) of the sacramental wine is shipped from the Applicant's premises. Only the remaining five percent (5%) is picked up at the premises by church personnel. The sacramental wine is sold in no less than case quantities.

Applicant has been selling sacramental wine to church organizations for approximately seventeen (17) years. The present zoning problem has arisen because the Anthem location at 8534 Commerce Ave. is new. Applicant moved into its new location on September 10, 2012. It was previously located in a portion of San Diego County zoned in such a way as to permit the sale of such wine.

Applicant is a family owned business, owned by the Heying family. Mark Heying is present here today to respond to any questions the hearing officer may have. A decision in this proceeding that would result in a prohibition of sales of the sacramental wine from applicant's premises would impose a severe financial burden on applicant, in that sacramental wine sales constitute approximately 10% of gross sales.

II.

**APPLICANT IS ENTITLED TO A CONDITIONAL USE PERMIT PURSUANT
TO SECTION 141.0502 OF THE MUNICIPAL CODE**

Applicant is entitled to a Conditional Use Permit pursuant to Section 141.0502 of the Municipal Code. Section 141.0502 of the Municipal Code, titled "Alcoholic Beverage Outlets" provides, in pertinent part as follows:

"Any establishment for which a Type 20 Beer and Wine License or a Type 21 General Liquor License has been obtained from, or for which an application has been submitted to, the California Department of Beverage Control for permission to sell alcoholic beverages for off-site consumption shall be regulated as an alcoholic beverage outlet subject to this section.

Alcoholic beverage outlets are permitted as a limited use in the zones indicated with an "L" in the Use Regulation Tables in Chapter 13, Article 1 (Base Zones) subject to the regulations in Section 141.0502(b). Proposals for alcoholic beverage outlets that do not comply with the regulations in Section 141.0502(b) may be permitted with a Conditional Use Permit decided in accordance with Process Three subject to the regulations in Section 141.0502(c)." (Municipal Code, section 141.0502(c)). (Emphasis supplied)

In fact, (a) Applicant does possess a Type 20 license from the Department of Alcoholic Beverage Control, and therefore qualifies as an alcoholic beverage outlet pursuant to section 141.0502; and, (2) does not comply with the regulations in Section 141.0502(b), thereby allowing a conditional use permit to be granted in accordance with "Process Three, subject to the regulations in Section 141.0502(c)." (Municipal Code, section 141.0502(c))

III.

PROCESS THREE MERELY PROVIDES FOR THE PROCESS FROM APPLICATION TO APPEAL

Process Three is defined in Section 112.0501 by a diagram showing the process from application for the conditional use permit to appeal, as follows:

1. Application/Plans Submitted
2. Staff Level Review
3. Hearing Officer Hearing
4. Appeal Filed to P.C.
5. Appeal hearing by P.C.

IV.

APPLICANT IS SUBJECT TO THE REGULATIONS CONTAINED IN SECTION 141.0502(c) AND COMPLIES THEREWITH

Section 141.0502(c) provides, as follows:

"Proposes alcoholic beverage outlets that do not comply with the regulations in Section 141.0502(b) may be permitted with a Conditional Use Permit decided in accordance with Process Three subject to the following regulations:...."

Since Applicant does not comply with 141.0502(b) it is subject to the regulations of Section 141.0502(c). In fact Applicant satisfies all of the conditions contained therein. There has been no contention by the City to the contrary. On April 26, 2011 the San Diego Police Department approved Applicants' application for Public Convenience or Necessity, subject only to whether a Conditional Use Permit is required.

V.

THE CITY'S CONTENTIONS ARE WITHOUT MERIT

1. The City has totally ignored Municipal Code, section 141.0502(c).
2. The City's contention that it did not receive adequate information is without merit. The City was provided with all information it requested, including plans containing all of the information requested.
3. The City, in its Report to Hearing Officer, states that, "The permit application process and rapport between the applicant and the City staff has been challenging." (Pg. 2, third paragraph). Applicant agrees. It is true that applicant challenged the City's decision to deem the application incomplete. Applicant and the City of San Diego disagreed as to the submittals required by the San Diego Municipal Code. Applicant still disagrees with the interpretation of the pertinent sections of the Municipal Code held by the City at that time. However, after having spent thousands of dollars attempting to persuade the City that its position regarding submittal requirements was not in accordance with the requirements of the Municipal Code, Applicant finally relented and complied with the City's demands. While, applicant understands that the friction between the City and Applicant during the application process is not relevant to the decision in this matter, since the subject was raised by the City, Applicant feels compelled to provide a more complete and fair description of the communications between Applicant and the City. The following is such a description:

A Chronology of Events:

On July 11, 2011 Peter Shenan, hereinafter, "Shenan", attorney for applicant, was advised that it would be necessary for him to provide the City with a Site Plan and a Floor Plan. Shenan disagreed and asked for a face to face meeting with someone at the City to discuss the issue. Mr. Cook, of the City, suggested, and Shenan agreed, to have a second opinion on the matter. Cook forwarded Shenan's e-mail to a second person for an opinion and informed Shenan that he would be hearing from a Mr. Vega, the Supervising Plan Review Specialist. Shenan subsequently called Mr. Vega as instructed, and was informed by him that he was not the right person to talk to; that Shenan should contact a Ms Goosens. Accordingly, Shenan sent an e-mail to Ms Goosens, who immediately referred him to Mr. Chris Larsen.

Shenas met with Chris Larsen and explained his contention that a Site Plan and Floor Plan was not required by the Code, and asked Mr. Larsen to inform him as to his right to file an application for a conditional use permit, in spite of the fact that he had been told orally that his application does not qualify for filing. After the meeting Mr. Larsen replied by simply citing San Diego Municipal Code Section 131.0622. Shenas made an additional inquiry of Mr. Larsen but received no response to his e-mail message.

Out of frustration Shenas sent a letter to City Attorney Jan Goldsmith, requesting assistance relating to the City's refusal to process his application for a Conditional Use Permit as required by the Code. He received a response from Shannon Thomas, Deputy City Attorney referring him to Government Code section 65920, et seq., to the City's submittal requirements, and asking him for further details. Shenas complied by then sending Ms Thomas an 18 page letter responding to the request for details. On October 11, 2011 Ms Thomas sent a letter to Shenas in which she contended that the Development Plan Package does, in fact, require a floor plan per subsections 10.4.1 through 10.4.6. Shenas then called her and asked her what record would exist that he had attempted to file with the City, but had been rejected? She responded that he could submit an "incomplete application" with the City, and that, if he had trouble doing so, he should contact Mike Westlake of the City.

On January 9, 2012 Shenas attempted to file what he considered to be the required documents with the Development Services Department. They were rejected. He then called Mike Westlake, as he had been previously advised to do by Ms Thomas, who recommended that Shenas e-mail the documents to him. Shenas did so, and was subsequently informed that his package was incomplete in that he had not complied with the requirements of Vol. 1, Chapter I, Section 4 (the Site Plan and Floor Plan requirement). He then called Mr. Westlake and left a message requesting an appointment to present his package. Mr. Westlake called back and left a message requesting that Shenas just go ahead and submit his package as he had done previously. On May 12, 2012 the City finally accepted the Conditional Use Permit Package, and Shenas paid the filing fee. At this point in time Shenas expected that his application would be denied, but that he would be in a position to appeal.

Shenas received a \$2,000 billing from the City. On May 2, 2012 he placed a call to Mr. Fisher regarding this charge, and also inquired as to the status of his application for a Conditional Use Permit, which he had submitted on March 12, 2012. Mr. Fisher responded that he had no record of the required documents having been submitted. Shenas responded by e-mail that he had submitted the documents on March 12. Mr. Fisher responded that Mr. Cook had e-mailed Shenas the "Completeness Check Report" on March 13, 2012, in which Cook had informed Shenas that he had not made a full submittal. Shenas responded with a two page letter by e-mail to Mr. Fisher in which he provided a detailed history of what had happened and asked for a response to several detailed questions. Mr. Fisher informed him that such a response would cost him between \$304.44 to \$608.88. Shenas responded that he was willing to pay. On May 8, 2012 Mr. Fisher responded by a letter in which he addressed the questions presented by Shenas.

On May 22, 2012, out of frustration, and an unwillingness to impose additional legal expense on his client, Shen as e-mailed Mr. Fisher, stating that, while he did not agree with the appropriateness of the deficiencies explained by the City in Mr. Fisher's letter of May 8, 2012, he would proceed to cure them; which he did by providing the requested site plan and floor plan on August 14, 2012

On August 30, 2012 Shen as was informed by Mr. Fisher that his application was deemed complete on August 16, 2012. On September 6, 2012 he was further informed by Mr. Fisher that the review had been completed. On September 21, 2012 Shen as received an Initial Assessment letter from Mr. Fisher indicating that he will be recommending denial of the application.

Dated: _____

Peter Shen as, Esq.

Enclosures:

- Photographs of Anthem Church Supply premises.
- Anthem Church Supply catalog

§131.0622 Use Regulations Table for Industrial Zones

The uses allowed in the industrial zones are shown in Table 131-06B.

Legend for Table 131-06B

Symbol in Table 131-06B	Description of Symbol
P	Use or use category is permitted. Regulations pertaining to a specific use may be referenced.
L	Use is permitted with limitations, which may include location limitations or the requirement for a use or <i>development permit</i> . Regulations are located in Chapter 14, Article 1 (Separately Regulated Use Regulations).
N	Neighborhood Use Permit Required. Regulations are located in Chapter 14, Article 1 (Separately Regulated Use Regulations).
C	Conditional Use Permit Required. Regulations are located in Chapter 14, Article 1 (Separately Regulated Use Regulations).
-	Use or use category is not permitted.

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones							
	1st & 2nd >	IP-		IL-			IH-		IS-
	3rd >>	1-	2-	1-	2-	3-	1-	2-	1-
	4th >>>	1	1	1	1	1	1	1	1
<i>Wireless communication facility in the public right-of-way with subterranean equipment adjacent to a non-residential use</i>		L	L	L	L	L	L	L	L
<i>Wireless communication facility in the public right-of-way with subterranean equipment adjacent to a residential use</i>		N	N	N	N	N	N	N	N
<i>Wireless communication facility in the public right-of-way with above ground equipment</i>		C	C	C	C	C	C	C	C
<i>Wireless communication facility outside the public right-of-way</i>		L	L	L	L	L	L	L	L
Retail Sales									
Building Supplies & Equipment		-	-	P ^(6, 15)	P ⁽¹⁵⁾	P ⁽¹⁵⁾	-	P ^(6, 15)	P ⁽¹⁵⁾
Food, Beverages and Groceries		-	-	-	-	P ⁽¹⁵⁾	-	-	-
Consumer Goods, Furniture, Appliances, Equipment		-	-	-	P ^(2, 15)	P ⁽¹⁵⁾	-	-	P ^(3, 15)
Pets & Pet Supplies		-	-	-	-	P ⁽¹⁵⁾	-	-	-
Sundries, Pharmaceuticals, & Convenience Sales		-	P ^(5, 15)	P ^(5, 15)	P ^(5, 15)	P ⁽¹⁵⁾	P ^(5, 15)	P ^(5, 15)	P ^(4, 15)
Wearing Apparel & Accessories		-	-	-	P ^(3, 15)	P ^(3, 15)	-	-	P ^(3, 15)
Separately Regulated Retail Sales Uses									
Agriculture Related Supplies & Equipment		-	-	-	P	P	P	P	P
Alcoholic Beverage Outlets		-	-	-	-	L	-	-	-
Farmers' Markets									
Weekly Farmers' Markets		-	-	-	-	L	-	-	-
Daily Farmers' Market Stands		-	-	-	-	L	-	-	-
Plant Nurseries		-	-	-	-	P	-	P	P

PLANNING COMMISSION RESOLUTION NO. PC-
DENYING CONDITIONAL USE PERMIT NO. 966179
ANTHEM CHURCH SUPPLY PROJECT NO. 274997

WHEREAS, JEROME DONALD HEYING, Trustee of the Jerome and Martha Heying Family Trust dated November 20, 1987, Owner/Permittee, filed an appeal of the Hearing Officer decision of December 5, 2012 where the Hearing Officer denied an application with the City of San Diego for a Conditional Use Permit for an alcohol beverage outlet in an existing building (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 966179), on portions of a 2.85 acre site;

WHEREAS, the project site is located at 8534 Commerce Avenue in the IL-2-1 Zone within the Mira Mesa Community Plan;

WHEREAS, the project site is legally described as Lot 60 of G-W Planned Industrial Development Unity No 6, according to Map thereof No. 9095, filed January 26, 1979;

WHEREAS, on December 5, 2012, the Hearing Officer of the City of San Diego considered Conditional Use Permit No. 966179 pursuant to the Land Development Code of the City of San Diego and denied the Conditional Use Permit No. 966179;

WHEREAS, on October 29, 2012, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et. seq.) under CEQA Guideline Section 15270, and there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code Section 112.0520;

WHEREAS, on XXX, 2013, the Planning Commission of the City of San Diego considered an appeal of the Hearing Officer decision of December 5, 2012, and upheld the decision of the Hearing Officer to deny Conditional Use Permit No. 966179;

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of San Diego as follows:

That the Planning Commission denies the appeal of the Hearing Officer decision of December 5, 2012 and denies Conditional Use Permit No. 966179 and adopts the following written Findings, dated XXX, 2013.

FINDINGS:

Findings for Conditional Use Permit – Section §126.0305

(a) The proposed development will not adversely affect the applicable land use plan. The Anthem Church Supply submitted an application for a Conditional Use Permit for an alcohol beverage outlet in an existing building. The project site is designated Light Industrial by the Mira Mesa Community Plan, is within the Miramar Subarea, and is zoned IL-2-1. The Mira Mesa Community Plan Policy 2 of the Industrial Element, page 84, states "the City shall restrict the development of freestanding commercial

uses in industrially designated areas.” In accordance with Proposal 1 of the Industrial Element of the Mira Mesa Community Plan, page 85, states the “Light Industrial” designation is intended for manufacturing, storage, warehousing, distribution and similar uses. Specialized commercial uses such as building materials stores, auto centers and discount stores would also be consistent with this designation. Subarea Proposal 2(b) of the Mira Mesa Community Plan, page 86, states “retail uses that generate additional traffic impacts at peak hours should be limited to existing M-1A or commercially zoned areas.” In that the M-1A zone was a zone designator prior to January 2000, the current zoning regulations identify the former M-1A Zone as the IL-3-1 Zone.

The proposed Conditional Use Permit, if approved, would result in the establishment of an Alcohol Beverage Outlet, contrary to the regulations of the San Diego Municipal Code Section 141.0502 which state an alcohol beverage outlet is permitted as a limited use only in the zones indicated with an “L” in the Use Regulations Tables. Alcohol beverage outlets are not permitted in the IL-2-1 Zone even with a Conditional Use Permit. Furthermore, an Alcohol Beverage Outlet represents an intensification of use compared to the existing and allowed uses which are limited to commercial/light industrial/office use, of the IL-2-1 Zone, and an intensification of use could generate an increased number of vehicle trips during peak hours. Therefore, approving the proposed Conditional Use Permit application would be inconsistent with the policies of the Mira Mesa Community Plan and the San Diego Municipal Code regulations and will adversely affect the applicable land use plan.

(b) The proposed development will not be detrimental to the public health, safety, and welfare. The Anthem Church Supply is an application for a Conditional Use Permit for an alcohol beverage outlet in an existing building. The proposed Conditional Use Permit to allow the sale of wine, a Type 20 Alcohol Beverage Control license, for the Anthem Church Supply is inconsistent with the land use policies of the Mira Mesa Community Plan and does not comply with the San Diego Municipal Code. Depending on how the wine is dispensed the proposed project could be detrimental to the public welfare. Further CEQA analysis would be required to determine whether or not significant environmental impacts would be generated.

(c) The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code. The project proposes an application for a Conditional Use Permit for an alcohol beverage outlet in an existing building. The San Diego Municipal Code regulations of the IL-2-1 Zone, Section 131.0622, indicate an Alcohol Beverage Outlet is not a permitted use in the IL-2-1 zone even with a Conditional Use Permit. Therefore the proposed development will not comply with the regulations of the Land Development Code, including any allowable deviations pursuant to the Land Development Code.

(d) The proposed use is appropriate at the proposed location. The Anthem Church Supply submitted an application for a Conditional Use Permit for an alcohol beverage outlet in an existing building. The project site is located at 8534 Commerce Avenue in the IL-2-1 Zone within the Mira Mesa Community Plan, is designated Light Industrial, and is within the Miramar Subarea. The Mira Mesa Community Plan Policy 2 of the Industrial Element, page 84, states “the City shall restrict the development of freestanding commercial uses in industrially designated areas.” In accordance with Proposal 1 of the Industrial Element, page 85, the “Light Industrial” designation is intended for manufacturing, storage, warehousing, distribution and similar uses. Specialized commercial uses such as building materials stores, auto centers and discount stores would also be consistent with this designation. Subarea Proposal 2(b), page 86, states “retail uses that generate additional traffic impacts at peak hours should be limited to existing M-1A or

commercially zoned areas.” In that the M-1A zone was a zone designator prior to January 2000, the current zoning regulations identify the former M-1A Zone as the IL-3-1 Zone.

The proposed Conditional Use Permit, if approved, would result in the establishment of an Alcohol Beverage Outlet, contrary to the regulations of the San Diego Municipal Code Section 141.0502 which state an alcohol beverage outlet is permitted as a limited use in the zones indicated with an “L” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) and the Use Regulations Tables in Chapter 13, Article 1 indicate alcohol beverage outlets are not permitted in the IL-2-1 Zone even with a Conditional Use Permit. Furthermore, an Alcohol Beverage Outlet represents an intensification of use compared to the existing and allowed uses which are limited to commercial/light industrial/office use, of the IL-2-1 Zone. An intensification of use could generate an increased number of vehicle trips during peak hours for the site which is not zoned IL-3-1, formerly M-1A Zone, or a commercially zoned area. Further CEQA analysis would be required to determine whether or not significant environmental impacts would be generated. Therefore, approving the proposed Conditional Use Permit application would be inconsistent with the policies of the Mira Mesa Community Plan and the San Diego Municipal Code regulations and will adversely affect the applicable land use plan. Approving the proposed Conditional Use Permit application would be inconsistent with the policies of the Mira Mesa Community Plan and would not comply with the regulations of the Land Development Code. Therefore, the proposed use is not an appropriate use at the proposed location.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, the appeal of the Hearing Officer decision of December 5, 2012 is hereby DENIED and Conditional Use Permit No. 966179 is hereby DENIED by the Planning Commission to the referenced Owner/Permittee.

John S. Fisher
Development Project Manager
Development Services

Adopted on: XXC, 2013

Job Order No. 24002551



THE CITY OF SAN DIEGO

Date of Notice: October 29, 2012

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION

DEVELOPMENT SERVICES DEPARTMENT

Internal Order No. 24002551

PROJECT NAME/NUMBER: Anthem Church Supply/Project No. 274997

COMMUNITY PLAN AREA: Mira Mesa Community Plan Area

COUNCIL DISTRICT: 5

LOCATION: 8534 Commerce Avenue, San Diego, CA 92121

PROJECT DESCRIPTION: DENIAL OF CONDITIONAL USE PERMIT for alcohol sales in an existing building located in the IL-2-1 Zone within the Mira Mesa Community Plan area, Prime Industrial Lands, Airport Influence Area, and FAA Part 77 Overlay Zone. The applicant is proposing a Type 21 liquor license, which authorizes the sale of beer, wine, and distilled spirits for consumption off the premises where sold (minors are allowed on the premises) at an existing building.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego City Hearing Officer (Process 3).

ENVIRONMENTAL DETERMINATION: Statutorily exempt from CEQA pursuant to CEQA State Guidelines, Section 15270 (Projects Which are Disapproved).

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Development Services Staff.

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION: The project has been determined to be exempt from CEQA pursuant to Section 15270. Section 15270 is intended to allow an initial screening of projects on the merits for quick disapprovals prior to the initiation of the CEQA process where the agency can determine that the project cannot be approved.

The property is designated as Light Industrial in the Mira Mesa Community Plan, and located within the Miramar Subarea. The community plan (Subarea Proposal 2(b)) states that "retail uses that generate additional traffic impacts at peak hours should be limited to existing M-1A [now IL-3-1] or commercially zoned areas". The proposed liquor license (Type 21), should it be approved, would result in the establishment on the site being defined as an Alcohol Beverage Outlet, in accordance with San Diego Municipal Code (SDMC) Section 141.0502, which is an intensification of use when compared to the existing allowed use (limited commercial/light industrial/office use) and would be expected to result in an increase in the number of trips generated during peak hours, in conflict with

the community plan policy. Additionally, per SDMC Section 131.0622, Alcohol Beverage Outlets are not permitted in the IL-2-1 zone even with a Conditional Use Permit. Due to the fact that the use is not allowed in the zone and that the proposed use would be an intensification of use that could result in additional trip generation, the project is exempt from CEQA as a project that is recommended to be denied.

CITY CONTACT: John Fisher, Development Project Manager
MAILING ADDRESS: 1222 First Avenue, MS 501, San Diego, CA 92101-4153
PHONE NUMBER: (619) 446-5231

On October 29, 2012, the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City of San Diego City Council. If you have any questions about this determination, contact the Project Manager listed above.

Applications to appeal CEQA determination made by staff (including the City Manager) to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of this Notice. The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.

REVISION	DATE
7-12-12	04

ANTHEM CHURCH SUFFY
 6534 COMMERCE AVENUE
 SAN DIEGO CA, 92121

DATE: 7/26/12
 DRAWN: G.K.
 CHECKED: J.M.
 SHEET: 1
 OF: 3



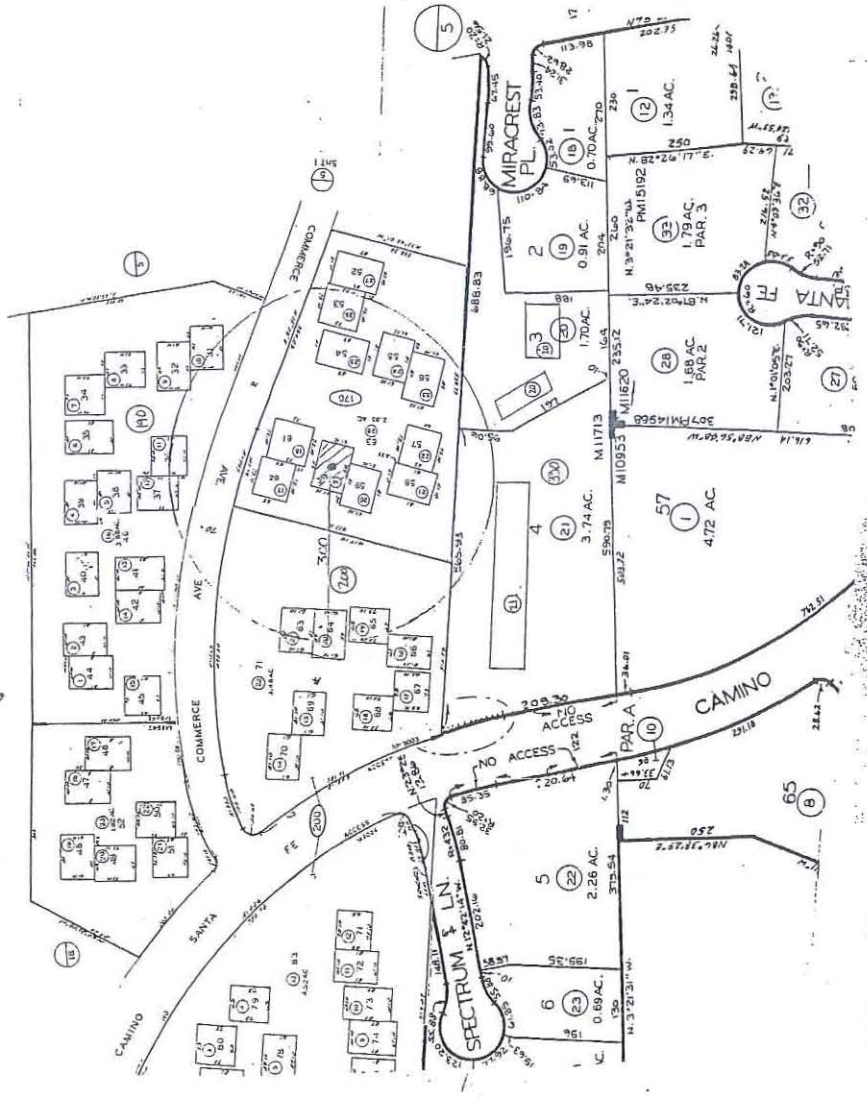
OWNER: ANTHEM CHURCH SUFFY
 6534 COMMERCE AVE. SAN DIEGO CA 92121

OWNER:
 LEASED FOR STEVEN & FRANK HEVING (OWNER NOT RECD)
 6534 COMMERCE AVE. SAN DIEGO CA 92121

BUILDING #: 10-1100
ZONE: TL2
TYPE: P
DEVELOPER: SIRE PROTECTION
DRAWN BY: KELLY DRAFTING SERVICE / KAMP
 1505 AMPLI WAYS ST. ESCONDIDO CA 95005
 EMAIL: KELLY.DRAFTING@CABLE.COM. PH: 762.272.7214

JOB SCOPE
 THIS IMPROVEMENT HAS BEEN TOTALLY
 COMPLETED AND NO FURTHER
 CONSTRUCTION IS CONTINGENT.
 THE OWNER IS APPLYING FOR A
 CONDITIONAL USE PERMIT.

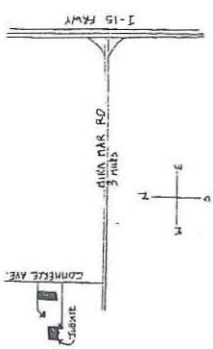
OPERATION HOURS:
 8:30 AM TO 4:30 PM, 71-F
SUBMITTANCE:
 THIS SITE IS WITHIN THE JURISDICTION
 OF THE AIRBORNE PHOTOGRAPHY
 AND FAA PART 77



REVISIONS BY	DATE
7-12-12	GA

ARTHUR CHURCH SURVEY
 5234 COMMERCE AVENUE
 SAN DIEGO CA. 92121

DATE PERMIT
 DRAWN BY
 CHECKED BY
 SCALE
 SHEET NO. 3

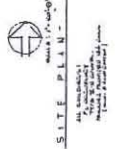
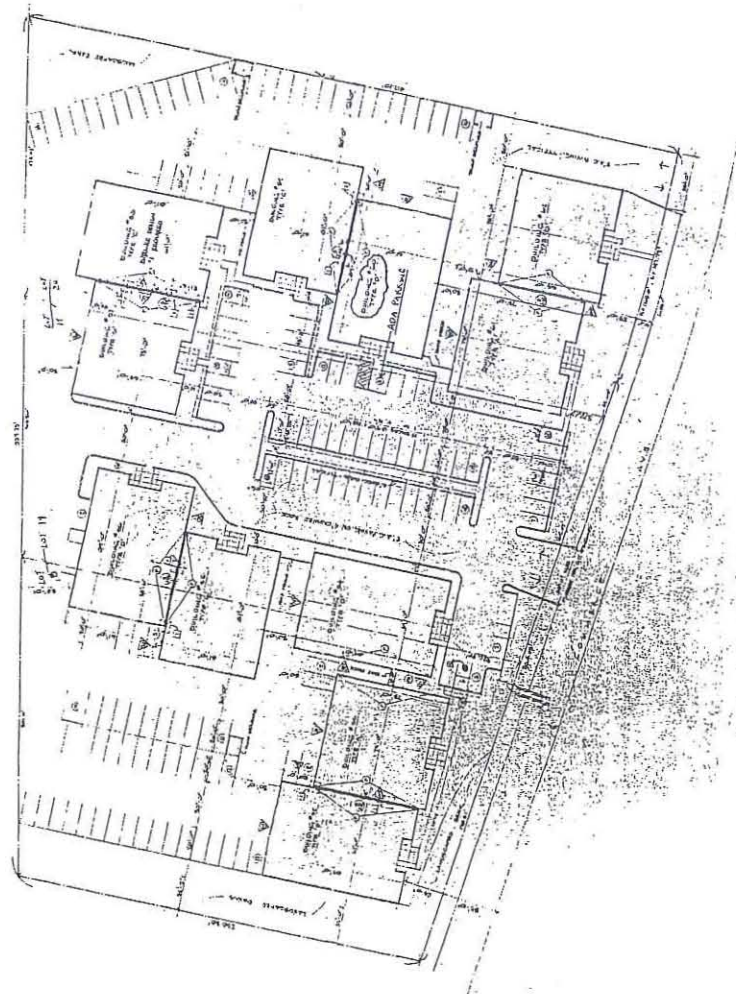


PROPERTY: ANTHONY KUNISER, SUFFY
 8023 COMMERCE AVE SAN DIEGO CA 92121
 OWNER:
 LEASED TO: TIM & MIKE HEYING (P) 100000
 8234 COMMERCE AVE SAN DIEGO CA 92121
 APN: 333-70-1100
 BUILDING # 300
 ZONE: TL21
 TYPE: D
 DRAWN BY: KELLY BOETTCHER SERVICE MARKS
 1502 SOUTH OLYMPIA ST. ESCONDIDO CA 92025
 EMAIL: KELLY@MARKINGSERVICES.COM. PH: 760-731-7216

TOP SCOPE
 THIS INTERFERENT HAS BEEN TOTALLY
 CONSTRUCTED AND NO FURTHER
 CONSTRUCTION IS CONTINGUATED.
 THE OWNER IS APPLYING FOR A
 CONDITIONAL USE PERMIT.

OPERATION HOURS:
 8:30 AM TO 4:30 PM M-F

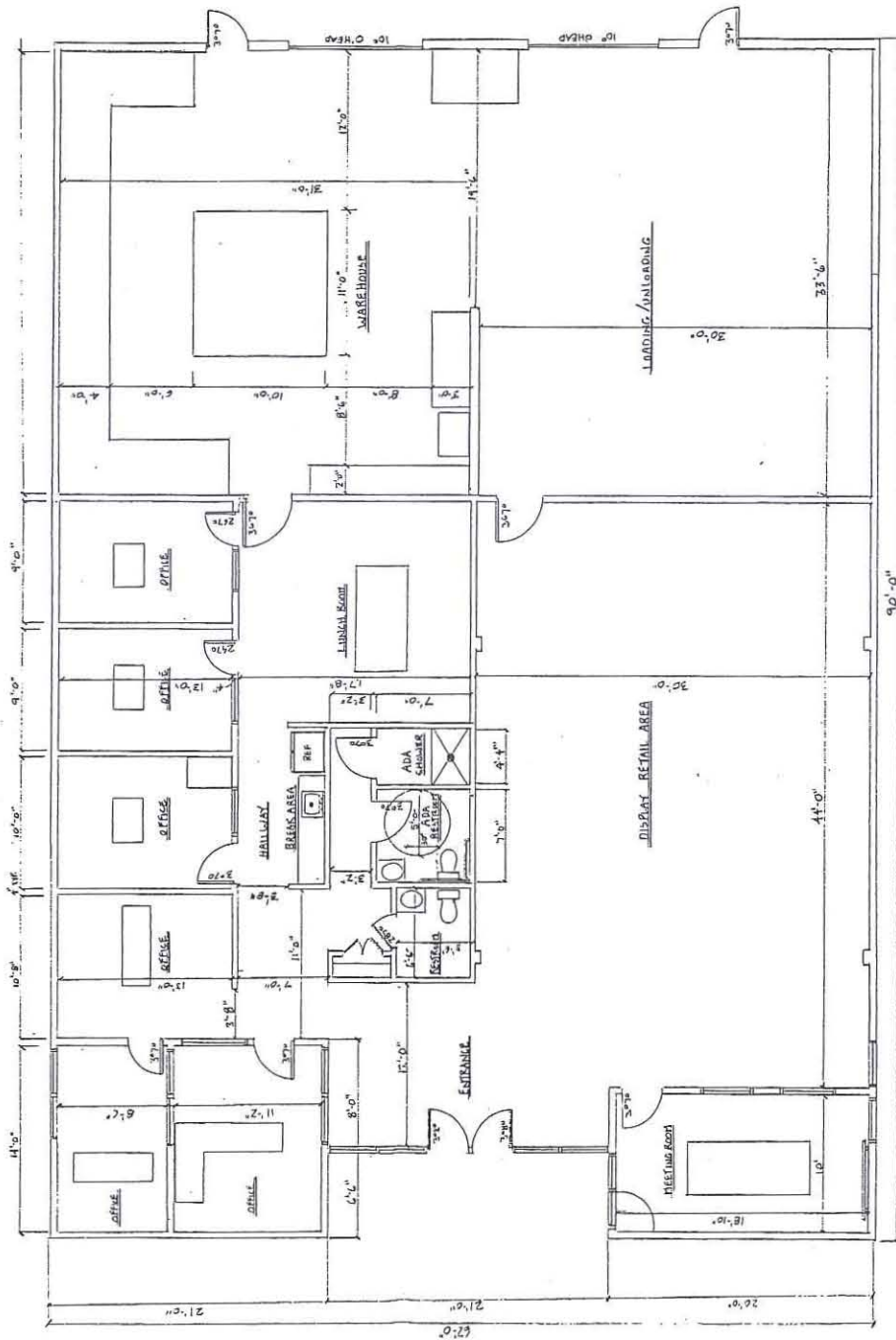
STATEMENT:
 THIS SITE IS WITHIN PRIME AGRICULTURAL
 LANDS, THE AERIAL TRIANGLE AREA,
 AND FAA PART 77



DATE: 7-12-12
 DRAWN BY: KELLY BOETTCHER
 CHECKED BY: [Signature]
 SCALE: AS SHOWN
 SHEET NO. 3

REVISIONS	BY

Date: 1/26/12
 Scale: 1/4"
 Drawn: C.K.
 Checked: J.S.
 Title: ARCHIT.
 Sheet: 3
 of 3



FLOOR PLAN (SEE EAST) 1/4" = 1'-0"

**SAN DIEGO POLICE DEPARTMENT
CONDITIONAL USE PERMIT RECOMMENDATION**

PREMISE ADDRESS: 8534 Commerce Ave, San Diego

TYPE OF BUSINESS: Anthem Church Supply

FEDERAL CENSUS TRACT: 83.5

NUMBER OF ALCOHOL LICENSES ALLOWED: 5

NUMBER OF ALCOHOL LICENSES EXISTING: 16

CRIME RATE IN THIS CENSUS TRACT: 143.4 %
(Note: Considered High Crime If Exceeds 120% of City-wide Average)

THREE OR MORE REPORTED CRIMES AT THIS PREMISE WITHIN PAST YEAR YES NO

IS THE PREMISE WITHIN 600 FEET OF INCOMPATIBLE FACILITY YES NO

IS THE PREMISE WITHIN 100 FEET OF RESIDENTIALLY ZONED PROPERTY YES NO

ABC LICENSE REVOKED AT THIS PREMISE WITHIN PAST YEAR YES NO

HAS APPLICANT BEEN CONVICTED OF ANY FELONY YES NO

WILL THIS BUSINESS BE DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY,
AND WELFARE OF THE COMMUNITY AND CITY YES NO

COMMENTS/OTHER FACTORS CONSIDERED:

SUGGESTED CONDITIONS:

1. Sales of alcoholic beverages shall be permitted only between the hours of 8:00 AM and 12:00 Midnight each day of the week.
2. Wine shall not be sold in bottles or containers smaller than 750 ml and wine coolers or beer coolers must be sold in manufacturer pre-packaged multi-unit quantities.
3. No wine shall be sold with an alcoholic content greater than 15% by volume except for "Dinner Wines" which have been aged two years or more.
4. Beer, malt beverages or wine cooler products, regardless of container size, must be sold in manufacturer pre-packaged multi-unit quantities.
5. The petitioner(s) shall post and maintain a professional quality sign facing the premises parking lot(s) that reads as the following: NO LOITERING, NO LITTERING, NO DRINKING OF ALCOHOLIC BEVERAGES. VIOLATORS ARE SUBJECT TO ARREST. The sign shall be at least two feet square with two inch block lettering. The sign shall be in English and Spanish.
6. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the licensee(s) shall be removed or painted over within 48 hours of being applied.

7. There shall be no amusement machines or video game devices on the premises at any time.

SAN DIEGO POLICE DEPARTMENT RECOMMENDATION:

APPROVE X

DENY _____

Tom [Signature]

Name of SDPD Vice Sergeant (Print)

619-531-2349

Telephone Number

[Signature]

Signature of SDPD Vice Sergeant

8/30/12

Date of Review

Mira Mesa Community Planning Group
Monthly Meeting Minutes
7220 Trade Street, San Diego CA 92101

7pm: Call to Order – In Attendance: Bari Vaz; Mike Linton; Bruce Brown; Craig Radke; Joe Punsalan; Matt Woods; Phil Lisotta; Eileen Magno; John Horst; Joe Frichtel; Ted Brengel; Bob Mixon, Pat O'Donohoe.

1. Adopt Draft Agenda

- a. 3 (a) is deferred to the October meeting. 3 (b), (c) and (d) are moved up accordingly to (a), (b) and (c) respectively.
- b. 7 (g) is being added to reports concerning Multiple Species Conservation Program.
- c. Motion to adopt draft agenda with these changes was made/seconded by Ted Brengel/John Horst. Motion carried 10/0/0.

2. Approval Of Minutes

- a. An opportunity to request changes to the September meeting was made available by the Chair. No changes were requested and the September minutes were declared approved by unanimous consent.

3. New Business

- a. Anthem Church Supply: CUP request for wine sales. Peter Shenan presented the business' application to sell sacramental wine at their new location, 8534 Commerce Avenue nearby Miramar Rd. Mr. Shenan discussed the sale of sacramental wine products to churches. The request will be for an indefinite CUP term. Motion to recommend approval was made/seconded by Ted Brengel/Bob Mixon. The motion carried 12/0/1. (Phil Lisotta and Joe Punsalan joined the meeting at this point.)
- b. CPC/CIP Budget Development Process. Pat O'Donohoe discussed the manner in which the Planning Commission is considering revising the Capital Improvement Project development process. Pat presented overview of the process of creating an annual budget for CIPs and a process for soliciting Community Planning Group participation. Recommendations are needed by November, thus review in a public meeting would need to happen in the October meeting. Discussions centered on the difference between getting projects lined up for the Mira Mesa FBA as opposed to trying to line up city general fund CIPs, where competition for use of general funds comes from other areas of the city.

- c. Formation of FBA Committee. Bruce Brown will chair the FBA Subcommittee, to consist of Jeff Stevens, John Horst, Joe Frichtel, Bob Mixon, Mike Linton & Bari Vaz.

4. Staff Reports

- a. MCAS Miramar: Change of Command, new CO is COL John Farnam and may be able to attend the January (1/22) meeting.
- b. I-15 Corridor: No information from CalTrans. Phil Lisotta had met with CalTrans on the 805/Carroll Canyon Rd project and indicated that completion should be Fall 2013.
- c. Council District 5: John Ly – No major items in the past month. Temporary eminent domain is being extended by two years to allow for continuation of Carroll Canyon Rd/805 development staging area.
- d. Office of Nathan Fletcher: No information.
- e. Office of Duncan Hunter: No information.
- f. Office of Brian Bilbray: No information.
- g. Office of Christine Kehoe: No information.
- h. Office of Pam Slater-Price: No information.
- i. Office of Ron Roberts: No information.

5. Old Business

- a. Salk Elementary Update: No information received from SDUSD. Nothing new to report from Fred Tayco for Brian Bilbray.

6. Public Comment and Announcements

- a. Non Agenda Comment: Alan Acevedo spoke for Dave Roberts running for County Board of Supervisors.
- b. Announcements:
 - i. Phil Lisotta: Traffic improvements for Qualcomm mitigation has been contracted out. Construction will start in 3-4 months and will be done in the evening/Sundays to avoid impact to Mira Mesa Blvd.

ii. Joe Frichtel:

1. Expressed thanks for the Planning Group's support in providing its letter to Park & Rec. The feedback has contributed to a needed change in personnel.
2. Dedicated Parkland came before Community Parks I. Governor Brown will sign the bill on 8/22. The canyon lands the CPG identified will be changed to "dedicated" and it will thus require a vote of the City residents for any sale of this land.
3. 9/27: The City will be having a CEQA training and orientation for Planning Group members.

iii. Pam Stevens: Announcing for Mira Mesa Theater Group's new showing: "The Importance of Being Earnest" at Wangenheim Middle School last three weekends of October. The Mira Mesa Theater Group will be combining with the school's drama department for the production.

7. Reports

- a. Report of Chair:
- b. Transportation Subcommittee: No information.
- c. Stone Creek Subcommittee: No information.
- d. AT&T House of Ice Subcommittee: No information.
- e. CPC: Pat O'Donohoe - Reported on August meeting in addition to CIP issue. Announced 9/20 training session for Planning Group members. Next meeting (Tuesday 9/25) will cover housing element updates. Carl DeMaio and Bob Filner will answer questions, but only those related to CPGs.
- f. Los Penasquitos Canyon Citizen's Advisory Committee: Pam Stevens. Announced Thursday 9/20 meeting at the Ranch House.
- g. Multi-Species Conservation Plan - Vernal Pool Habitat Conservation group's last meeting occurred on August 30. The group detailed their plan for monitoring the San Diego Fairy Shrimp habitat over a 36 year period at an estimated cost of \$31.5M (about a \$1M a year).

Adjournment: Motion to adjourn made/seconded by Ted Brengel/Joe Frichtel. Motion carried unanimously.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Horst", written in a cursive style.

John Horst
Secretary, Mira Mesa Community Planning Group