

**MINUTES OF PLANNING COMMISSION MEETING
OF THE CITY OF LOS ALAMITOS**

REGULAR MEETING – June 24, 2015

1. CALL TO ORDER

The Planning Commission met in Regular Session at 7:04 PM, Wednesday, June 24, 2015, in the Council Chambers, 3191 Katella Avenue; Vice-Chair Cuiilty presiding.

2. ROLL CALL

Present: Commissioners: Vice-Chair Mary Anne Cuiilty
Will Daniel
Art DeBolt
Wendy Grose
Gary Loe
Victor Sofelkanik

Absent: Chair John Riley

Staff: Community Development Director Steven Mendoza
Associate Planner Tom Oliver
Assistant City Attorney Lisa Kranitz
Dawn Sallade, Department Secretary

3. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Vice-Chair Cuiilty.

4. ORAL COMMUNICATION

Vice-Chair Cuiilty opened the meeting for Oral Communication for items not on the agenda.

There being no persons wishing to speak, Vice-Chair Cuiilty closed Oral Communication.

5. APPROVAL OF MINUTES

A. Approve the Minutes of the Regular Meeting of May 27, 2015.

Motion/Second: Grose/DeBolt.

Unanimously Carried: The Planning Commission approved the minutes of the Regular meeting of May 27, 2015.

6. CONSENT CALENDAR

None.

7. PUBLIC HEARINGS

A. Appeal of Director's Decision

Unpermitted Expansion of Crossfit at 10893/10895 Portal Drive in the Planned Light Industrial (P-M) Zone, APN 241-241-19.

David Rael-Brook, owner of a Crossfit at 10893 Portal Drive expanded his legal non-conforming use without seeking approval. The Department Director instructed the Owner to revert to the original footprint. The Owner has appealed the Director's decision seeking permission to expand his legal non-conforming use to the space next door at 10895 Portal Drive in the Planned Light Industrial (P-M) Zone (Applicant: David Rael-Brook, Beyond Ordinary Fitness DBA Crossfit).

Commissioner Grose declared a conflict of interest as she has an interest in real estate within 500 feet of the property (on Noel Street) and excused herself from the Chamber.

Community Development/Public Works Director Steven Mendoza summarized the Staff report, referring to the information contained therein, and indicated he's prepared to answer questions from the Planning Commission.

Vice-Chair Cuiilty asked if the Commission had any questions or comments prior to opening the Public Hearing.

There being none, Vice-Chair Cuiilty opened the item for public comment.

David Rael-Brook, introduced himself as the applicant and said he brought his business partner to speak on the matter.

Bernie Cowens, one of the original owners of Beyond Ordinary Fitness Group LLC who partnered with Tanya Pinto, indicated when Mr. Rael-Brook purchased the business, he purchased Ms. Pinto's interest in the business. Mr. Collins said he is still an owner in the business itself. He added that at no time did they, as owners of the business, attempt to get past any sort of Code Enforcement or anything like that. As they opened the business and they looked at property before signing any leases, they came to the City and applied for a permit and a business license. They opened the business and later it was determined that the business was non-conforming. Staff did give them the right to operate the business in a non-conforming fashion and during that time, a letter was sent to the business; it was sent to Ms. Pinto but was not sent to them. He did not know of any conditions. He understood that they had permission to operate at that location and when the opportunity came to expand, he didn't know that there was a condition that they stay in that spot. He said as soon as they opened the business for operation, he became less involved due to personal reasons. The wall that was taken down was taken down by the management company and not by them.

David Rael-Brook, appellant/owner, thanked the Commission for allowing him to come before them. He said he only wants to do what is right. He said he's spent the last three years working on this business and building it up to

what it is today. We're here tonight because of a violation of code and zoning; a mistake that they made and their management company made. To be honest, he said he never knew about the legalities of business ownership until now and he is learning as he's going. He asks that the Commission put aside the letter of the law in this situation and think about the spirit of the law. He said he's lived in Los Alamitos his entire life and was educated here as well. He said he and his family have been upstanding community members for over 36 years. In July of 2013 when Ms. Pinto decided she wanted out of the business, she asked if he would like to buy her out. He purchased her 50% ownership and no one mentioned any zoning issues or any other issues with the City. Earlier when he was a coach there, he said he does remember there being an issue with the City at the very beginning when they first opened their doors but he thought it was resolved. He said he heard Ms. Pinto constantly asking her neighbor, Aaron, who represents a printing company when he was going to move out so she could expand into his unit. Mr. Rael-Brook said when he bought the business, he bought it with the intention of expanding into Aaron's space when he left.

Mr. Rael-Brook continued by saying he's not a politician or a lawyer and when he went to business school, they never taught them about zoning or permits. He indicated he runs the day to day operations of the business; Mr. Cowens does not. Their clients are made up of Los Alamitos resident's, students, police officers and residents in surrounding communities and they come to the gym because they love and support what they do at the gym. He said they teach people to make a life style change, to reclaim their fitness and to lead a healthy life style so their kids will learn to do the same. He said they just don't take people's money in exchange for a membership and hope to never see them again. He said their gym community is just that—a community. Putting the wall back up is going to ask them to vacate their new space and will make it very difficult for them to run their classes and programs. They have sponsored Race-on-the-Base as well as participating in the race. They work with home schooled children providing training for their P.E. credits, with high school athletes teaching them how to lift properly so that they don't injure themselves when they train at the school facility. They have worked with local Boy Scouts to get their merit badges, and they offer free workouts for members of the military who are on short orders here at the Joint Forces Training Center. They have done fund raisers every year for breast cancer awareness for which they have raised thousands of dollars. They have donated to other countless charities locally and worldwide whether it was financially or with membership training alone. He said they have contributed to businesses in Los Alamitos and they encourage participation in community events. He said they bring business to Los Alamitos and pay taxes which include sales tax to the City. The sale of products offered in their gym isn't enough to warrant being in a commercial space which was one of the options given to them by City Staff.

Mr. Rael-Brook indicated he's cooperated with City Staff since first receiving the notice of violation. At the time, they laid out the options such as moving into a commercial space and he explained to them that this doesn't work for him as the vast majority of more than 10,000 Crossfit affiliates worldwide are in warehouses similar to his and not in retail spaces. Retail space rent is too expensive for him to run his business but more than that, it's worse for the exercise that they perform. Their type of business is loud and by its very nature would cause a nuisance for any retail neighbor. Crossfit gyms belong in warehouses where similar noises and loads are moved. If the Commission asks him to have their wall put back up, this will create an environment where it would be uncomfortable for his clients and it would also make it next to impossible for him to work with all of the youth athletes. He said his gym is a haven for young adults and allows them to do positive activities. The bottom line is they expanded their space for the comfort and safety of their clients; they are not trying to be a large mega gym that takes over the complex or would have a negative impact on the City. They expanded without knowing the proper procedures. They were not trying to pull a fast one on the City and they have been cooperative ever since they received the notice of violation. He said he is pleading with the Commission as one of the owners and leaders of the gym and as a long standing and upstanding member of the City to allow them to keep the gym as it stands. He said he has lost countless hours of sleep over this issue since first receiving this violation. He is learning as he goes and he is asking the Commission for help. He pleaded to don't ask him to take his business elsewhere, to another city or to another space within the City. It wouldn't be right for him to be any closer to any other gym; he doesn't want to cause problems for what they do. It's not in his business model to expand any further than what they have already nor do they want to. For that matter, they couldn't expand because they are the last unit in the building. They have the support of their neighbors especially their direct ones, Aquatic Explorations who wrote a letter to support them, 360 Motor Sports, Imperial Barber Shop who also supplied a letter. He said he hopes that the Commissioners all agree and side with Crossfit Los Alamitos. He asked the Commission to please not think of this as a mistake but rather that the Commission is doing what's right and what is best for the community. He said they have operated for three years in that location and in their expanded location since September without any negative impact. He asked that the Commission allow them to stay and to continue to be a positive influence and contribute to the City of Los Alamitos.

People speaking in opposition:

- Seth Eayer
- Barbara Lands
- Bryce Turner

Opposition's Comments:

- Ignorance of the law does not exempt one from the law;

- CUP appeal that has already been denied by Staff;
- Not fair that other businesses have tried to go into a warehouse location but was denied due to zoning and Code; currently paying a premium retail space rent and would be paying much less if not for being denied entrance into a warehouse space;

People who spoke in favor:

- Major Julian Kemper
- Richard Yukihiro
- Jessica Meffer
- Angela Driseoll
- Justin Castagna
- Mike Biddle
- Josh Wilson
- Nahar Desai
- Dan English
- Judy Klabough
- Misty Yukihiro
- Mark Booth
- Luke Rodriguez
- Thomas Lindsey

Comments by those speaking in favor:

- Gym provides so much to the community—Soldiers, high school athletes, etc.;
- Without expansion, the gym would be too small for all of the members that are already attending the gym;
- Student athletes said Crossfit has given them a place to go after football practice to learn how to lift correctly and avoid injuries; also, the coaches at Crossfit are more than just coaches to the athletes, they are good role models;
- Other Crossfit gyms are good but Crossfit Los Alamitos is the best as they thoughtfully absorb customer feedback to improve individual's experience; they do not value quantity over quality;
- They are not driven by profit but by the people they serve;
- The owners and coaches take an active interest in their clients;
- Spend their profits on coaches, programs, amenities that the members can enjoy;
- Owner is very passionate about his goals and his business;
- Understands the non-conforming use issue but also understands that non-conforming uses are granted all the time on an individual basis;
- Doesn't feel that tearing down a non-bearing wall is not that large of an issue and actually doesn't have a large negative impact;
- More of a positive impact as the gym is bringing more people into the City;

- More room in the gym brings a safer environment;
- Built a community with the young people, older adults, etc.;
- Most activities take place inside the building and don't impact the neighbors;
- They are a model business as well as being an asset to the community and the City of Los Alamitos is lucky to have them;
- They are a member of the Chamber of Commerce;
- Building codes are not in place to penalize people but the intent is to promote safety of business;
- A warehouse is a much better location for this type of business than a retail space due to noise;

There being no additional speakers, Vice-Chair Cuiilty closed the item for public comment and brought it back to the Commission for their comments and action.

Commission Loe indicated that there have recently been some changes to zoning for these businesses and asked Staff for their input.

Mr. Mendoza explained that the Planning Commission saw a need to create an area where fitness businesses, dance and gymnastic studios could go and with the new General Plan, they made that feasible in an industrial area off of Reagan. The General Plan supports that. The General Plan has been approved but the zoning changes have not been completed on that although they have been started and should be completed hopefully within the middle of the year. The Commission has been very cognizant of the need of recreation and fitness places to serve our community and they wouldn't have developed that if they did not think there was this kind of need.

Responding to Commission Daniel's question, Assistant City Attorney Lisa Kranitz indicated that Staff didn't take this issue lightly when it came up and a long time was spent analyzing the code and what options there were. Fortunately, while there are provisions that allow the Commission to do a conditional use permit to expand a non-conforming use, one of the findings that the Commission has to make for a CUP is that it's consistent with the General Plan. With the City Council's adoption of the General Plan, this was not the industrial area that was designated for recreational uses; it was the area up by Reagan Street so it would be hard to make that General Plan consistency finding for a CUP which is a requirement.

Commissioner Daniel asked what options does the applicant have if the Commission goes with Staff's findings. Does the applicant have any other options?

Mr. Mendoza replied that the decision that is made tonight certainly could be appealed to the City Council only after the decision is rendered tonight. The City Council would then be facing the same decision.

Commissioner DeBolt asked the Assistant City Attorney about the chronology of the actions that led to being here tonight and, in particular, December 20, 2012 where it said, "The City Attorney determined that they were a legal non-conforming use and allowed to stay with no ability to expand". He said he made a request of Staff for some documentation regarding this agenda item and the Commission received the documentation which included the letter to Tonya Pinto which states no mention of the City Attorney; it was just simply that the Planning Staff determined that it was a legal, non-conforming use. Associate Planner Tom Oliver provided a little more explanation which was that the City Attorney and the City Manager at that time had made this decision. His question to the Ms. Kranitz was does she and the City Manager have that authority or did the prior City Manager and City Attorney have the authority to determine that a property was a legal non-conforming use without benefit of going through the Planning Commission or anywhere else.

Ms. Kranitz answered that without looking at the whole Charter and the General Plan; generally it probably should have come back before the Planning Commission.

Commissioner Daniel indicated that this obviously is a very tough decision and he understands both sides. Obviously, the owner has a very compassionate and well run business; the rules weren't followed though. This is a real challenge tonight.

Ms. Kranitz explained that as far as the options tonight are concerned, she said she does think that the Planning Commission could, if they were inclined, uphold the Community Development Director's determination but provide a lengthy time period to rectify the non-conformity to either take it back or find a new location so it doesn't have to be done right away and perhaps give him whatever time the Commission deems appropriate.

Commissioner DeBolt said he has thought a lot about this and thinks that the genesis was a mistake by Staff originally. Mistakes happen but then that mistake was then compounded by the unilateral decision by the prior City Attorney and City Manager to just grant a legal non-conforming use. Then they sent a letter to Ms. Pinto without getting a receipt from the post office that she signed proving she received it. The Commission now has to decide whether we further compound it by approving an expansion that didn't go through the process. He said he feels that doing this would dig the hole deeper and deeper. Had they gone through a CUP process, there would have been input from the neighbors and other issues that were vetted and then there would be a decision and it would be legalized. He said he's

thinking of tabling this action to give the applicant the opportunity to come in and actually submit to the process of a CUP for the site. With respect to his existing square footage prior to the expansion, he said he doesn't know if the Commission could do that but one thing's for sure, it would be a public meeting where everybody could attend again as well as all the land owners and businesses within 500 feet being notified as well. So, the applicant will submit to the process and this now becomes "legal". The rub is the City is in the process of a zone change, a General Plan change, and we have designated, at least in the PM zone, up near the post office, has an area that would allow indoor recreational uses. There has also been another Crossfit that the City has allowed in the existing PM zone prior to this one with a similar situation and we were able to make sufficient findings that we could put them into that zone. He said the Commission is getting more and more requests for these types of businesses which are simply indicative of the changing market. Nobody on the Commission is trying to be non-business friendly but they do have to comply with regulations and with the process and as a Commission, he believes they do have quite a bit of latitude. He continued by saying the Commission takes the information that Staff provides, seriously looks at it and then render a decision that hopefully balances this. He said he empathizes with the applicant but at the same time, he sees the mess that we're in now. He spoke about how Staff didn't follow procedure that we now make everybody adhere here and he agrees that there has got to be a middle ground. We have ample precedent that we have looked favorably to these businesses in the PM zone and he thinks that we are also engaged in or have discussed refining even currently our PM zone to make sure we have a further delineation of the PM zone where we have our grittier or dirtier industrial uses.

Commissioner Loe commented that this decision is not necessarily about this use or this business as they all think this is a great business and the people are great with this business but we have to make sure that we come back and make it a planning decision and not a decision based on how well we like the business. After listening to the testimony and discussion on how we got here, he said he would definitely be in favor of giving the applicant X-number years or an extensive amount of time to either come back with a CUP, meaning allowing them to continue in business for so many years or them coming back for a CUP or some sort of process like that. He said the City is rezoning and we are allowing these businesses to expand in our City, in our PM zone, allowing this business to continue to some length of time so somewhere down the road we can potentially ship this business into another zone or come back with a CUP.

Commissioner Daniel asked the applicant when his current lease is up.

Mr. Rael-Brook answered in two years which would be August of 2017.

In response to Commissioner DeBolt's question, Ms. Kranitz explained that there is no problem with the applicant being a legal non-conforming use to the space that was approved in 2012 by the previous City Attorney and previous City Manager. That is not the issue. Staff had no concerns with that so there is no need for the applicant to go through the CUP process to legalize that space because it is already a legal space. The Commission could certainly give the owner a period of time, uphold the decision of the Community Development Director but provide that he doesn't have to return it until some date to the original time. The benefit of that over tabling it is it does then give him the ability to appeal to the City Council. By tabling it, it is just sitting there and they cannot move forward if they want to take this to the next level.

Commissioner DeBolt commented that at least we have had discussions regarding refining our uses in the PM zone. If we were to follow what the City Attorney said with respect to upholding the appeal but basically stay the requirement that they put back the wall and stay that until August, 2017 which is the expiration of the lease, and in that time frame, if we continue on the path that we're continuing, then we may have sufficient revision in the PM uses such that we can allow these uses. We have, in his opinion, an outdated zoning uses as the City has grown up and we need to be addressing those. He then asked if there is a way to do a CUP to correct that. He said he knows this is only about the extension but he's trying to make the leap to legitimize the process.

Ms. Kranitz explained with regard to the CUP, she doesn't want to pre-judge anything before the application is filed. Take this for instance, we did not think it would qualify for a CUP but Commissioner DeBolt's right, we haven't gone through the zoning and the zone changes and what we're going to put in each zone and what's going to be consistent with the new General Plan.

Commissioner DeBolt then said that speaking for himself, we have sufficient precedence for what we've done to shoe horn these uses into that zone and we've done it.

Assistant City Attorney Kranitz pointed out that the General Plan adopted for Planned Industrial, (the General Plan designation for this property is Planned Industrial and not Limited Industrial). Planned Industrial specifically says commercial recreation uses are not permitted; it's a flat out prohibition making a General Plan consistency finding different from what we've done in the past.

Vice-Chair Cuiilty commented that it seems to her that the best thing would be to uphold Mr. Mendoza's decision, give the applicant until the end of his lease which is August, 2017 and then they can move or rezoning for the property is complete.

Assistant City Attorney Kranitz indicated that that would require a General Plan amendment to change that.

Commissioner Daniel said he likes the idea of following Mr. Mendoza's recommendation and he also likes the idea of extending the time for the applicant but he is not so keen on August because there is a price that they should pay for not following the rules and not knowing the rules. You run a business, you should know those things. But, again, the City allowed them to go into that position so it's not really their fault. He said he's on board to giving the applicant some time but doesn't think he'd give him the full two years; he might give them 18 months and let them sweat a little bit but the thing is to probably let them go to an area; by then, it doesn't look like this area is going to be one but maybe there will be an area where they can get similar costs and not have to go to the retail side. He said we need to do all we can to find some middle ground and have everybody win. He said he just doesn't think we can allow them to stay there but at the same time, we shouldn't kick them out next month; we owe them more than that. He said he would probably look at a year to 18 months.

Ms. Kranitz indicated they can appeal to the City Council or someone else who is interested can appeal tonight's decision to the City Council.

Commissioner Daniel inquired if the applicant went to the City Council and appealed, and the City Council said that they made the mistake, we're not giving you 18 months, and we want you out of there. Can they do that?

Ms. Kranitz said yes they can.

Vice-Chair Cuiilty asked if there was a motion.

Commissioner Solfelkanik noted all of the positive comments that have been spoken tonight on the applicant's behalf and explained to him that any decision that is made is based on use and not him personally.

Commissioner DeBolt brought up Section 17.64.050(e) of the Code because he thinks it falls right in with what they're talking about. It says that, "No extension to occupy a greater area of land except as otherwise provided in this Chapter, uses of land or structures existing at the time of the adoption of this ordinance or amendments to this title, may be continued although the particular use or structure does not conform to the regulation specified by the zoning code for the zoning district in which this particular structure is located or uses made provided, however, no non-conforming structure or use may be extended to occupy a greater area of land upon which the structure is located..."; not the space occupied but the structure that is located which is the building. In other words, they're not adding square footage to the building. He continued reading, "...which the structure is located then is owned by the property owner at the time of the adoption of the ordinance."

This man leases a space within a structure which is larger than he is occupying; he expands the use. He's not going outside the four walls of the structure; he removed a demising wall (which all that is is a boundary, it's not a structure), so this is not a structural component that was removed. The way he reads that section of the Code is that it says he can expand; he's allowed to do that.

Vice-Chair Cuiilty pointed out except that the owners were notified by Staff that they couldn't.

Ms. Kranitz explained that she can't tell how many times that she, Mr. Mendoza and the City Attorney have agonized over this chapter of the Code and she said the City of Los Alamitos is not the only city that's having trouble with non-conforming use chapters as land uses change. The non-conforming use chapter was really designed for when you were an allowed use, a permitted use or a conditionally permitted use in a zone and then the zoning changed. This was a case where a very specific condition was put onto what happened here and said, "Ok, we messed up. We're going to let you stay but you may not expand this business". It's not something that was actually ever really a non-conforming use as was pointed out. It was deemed a legal non-conforming use by the prior City Manager and City Attorney.

Commissioner DeBolt pointed out that when they went in originally, it was an illegal use that either should have been shut down or they should have come in for a CUP. That didn't happen and unfortunately we're left with the aftermath of that.

Motion: DeBolt

Motion to uphold the appeal and allow the expansion pursuant to Section E of the Code.

Mr. Mendoza pointed out that Commissioner DeBolt is looking towards a resolution written one day that could be supported by something that's in the Code. The Commission is looking for findings and Commissioner DeBolt is finding some leeway in making those findings in the future. Commissioner DeBolt is finding some ambiguities that can be found in favor of the applicant or maybe against the applicant and he's trying to share that.

Re-Stated Motion: DeBolt

Motion to uphold the appeal and permit the expansion based upon a reading of restrictions on non-conforming uses and structures in Section 17.64.050(e) of the Code.

Commissioner DeBolt commented that after this, let the chips fall to a higher power should it be so appealed and if somebody wants to spend money on a lawyer in appeal fees, etc., to come and try to persuade the City Council to overturn the Commission's decision.

Ms. Kranitz suggested that when the Code sections are brought back eventually, the Commission can clarify what they really want to do with this.

Motion: DeBolt

Motion to uphold the appeal and allow the expansion pursuant to Code Section 17.64.050(e).

Commissioner Loe seconded the motion.

Commissioner Daniel thought that the section of the Code that Commissioner DeBolt is referring to should come back to the Commission with some clarification from Staff and the City Attorney to insure that section is being read and interpreted correctly.

Mr. Mendoza indicated that that is for these five Commissioners present to determine. If they agree on a direction, there's been a motion and a second to that motion and if there are substitute motions, that is completely acceptable.

In response to Commissioner DeBolt's question, Ms. Kranitz indicated that the interpretation is not unreasonable or absurd; we read the Code section and we believe what the intent to be but it's not black and white.

Commissioner Loe pointed out that if there was a time duration we could put on it, something like ten years meaning they would have to come back within a certain amount of time to correct the issue.

Commissioner DeBolt pointed out it's a matter of interpretation and he feels there's sufficient information here to provide for an expansion. This is exactly what the Code talks about; expansion of a non-conforming use; however, it doesn't say specifically how it became legal non-conforming but it's able to be expanded provided they don't go outside the four walls of the structure.

Commissioner Solfelkanik said he read Section 17.76.020 and he felt that section, which is a definition section, might clarify Commissioner DeBolt's point.

Commissioner DeBolt read from Section 17.76.020 the following, "A non-conforming use means the use of a structure either conforming or non-conforming or land that was legally established and maintained before the adoption of the Zoning Code and that does not conform to the current Code provisions governing allowable land uses for the zoning district we're in where the use is located".

Ms. Kranitz commented that this interpretation is one that is reasonable.

Commissioner DeBolt called for the question.

Vice-Chair CUILTY asked for the motion to be read back.

Department Secretary Sallade read the motion as: "A motion to uphold the appeal and allow the expansion pursuant to Code Section 17.64.050(e).

Ayes: Commissioners DeBolt and Loe.

Nays: Vice-Chair CUILTY, Commissioners Solfelkanik, Daniel.

The motion didn't pass with a vote of 3-2.

Vice-Chair CUILTY asked if there was another motion.

Commissioner Daniel asked if whether or not the Commission wanted to get an interpretation of the Code from City Staff or do we want to approve this with a time frame.

Ms. Kranitz said she felt that she didn't know if more time was needed. She said she knows how it was read, what we all thought the intent was and re-reading it again, either interpretation could be deemed reasonable; we're not going to be able to give a definite definition. She said she felt this is just one of those things within the Commission's jurisdiction and certainly one of the sections of the Code that needs to be brought back for discussion and clarification so that we don't run into these types of problems again.

Commissioner Loe indicated he would like to approve the appeal.

Commissioner Solfelkanik indicated he understands the strict reading of the Code; however, there are other issues that have shown that there was a decision made by the prior City Attorney and City Manager and there were conditions on that decision. The conditions were violated so he said he can't ignore that. He said he would entertain a motion to allow them to remain for a prescribed amount of time in order to transfer their business to a location where they are permitted or whatever course of action they choose.

Vice-Chair CUILTY pointed out that they can also appeal to the City Council if they choose after a decision has been made.

Motion: Daniel.

A motion to deny the appeal until August 31, 2017 or when the lease expires whichever is earlier.

Ms. Kranitz suggested the motion be worded as follows: A motion to deny the appeal but give them until August 31, 2017 or when the lease expires whichever is earlier to terminate the expanded use.

Commissioner Daniel agreed with Ms. Kranitz's corrected wording for his motion.

Commissioner Loe said he would like to give them something like five to ten years. He would like to give them enough time for when the General Plan settles in, the zoning settles in, the zoning changes, etc.

Commissioner Daniel asked why he would want to do that.

Commissioner Loe explained that they were approved to be there and they are there; they are operating. He said he felt that was a compromise that they have to fix this at some point down the line. There is enough evidence to support; enough in the Code to support a greater extension of time.

Commissioner Daniel felt that the logical time is when the lease is up; anything short of that is very hard on them. Anything longer than that, they're going to re-sign a lease and be in the same situation they're in now. We're giving them two years to find another place to operate and a lot can change in two years; they can appeal this. They can do a CUP. They have a lot of options that they aren't going to have if we just close the door on them. At the same time, we're not just saying, "Hey, we're just going to ignore what the rules are; ignore what you've done and just let you be in there and who cares about all the other businesses".

Commissioner DeBolt seconded the motion.

Vice-Chair Cuiilty called for the question.

Commissioner Solfelkanik asked to have the motion restated.

Department Secretary Sallade read the motion as: A motion to deny the appeal but give them until August 31, 2017 or when the lease expires whichever is earlier to terminate the expanded use.

Vice-Chair Cuiilty again called for the question.

Ayes: 4

Nays: 1 (Loe was the dissenting vote.)

Motion passes.

Ms. Kranitz explained that Staff will send a letter to the appellant with the decision which will trigger the time frame for appeals.

Commissioner Grose returned to the Chamber.

A break was called at 9:02 PM and reconvened at 9:15 PM with all Commissioners present.

B. Development Application for a Marriott Fairfield Inn Hotel and Drive-Thru Starbucks, Which Requires a Site Plan Review, a Conditional Use Permit for Hotel Operation, Height, Drive-Thru and Shared Parking for a Parcel at 10650 Los Alamitos Boulevard, APN 242-243-03 (Applicant: Kevin Coleman – Net Development Co.).

This is a consideration of a Marriott Fairfield Inn Hotel and Drive-Thru Starbucks at 10650 Los Alamitos Boulevard (APN 242-243-03) on a 2.3 acre vacant parcel in the General Commercial (C-G) Zoning District. The project requires a Site Plan Review, and a Conditional Use Permit covering drive-thru operations, hotel operations, parking and height. (Applicant: Kevin Coleman – Net Development Co.).

Community Development Director Steven Mendoza summarized the Staff report, referring to the information contained therein, gave a PowerPoint presentation and indicated he's prepared to answer questions from the Planning Commission.

Chair Riley opened the Public Hearing.

Mr. Kevin Coleman, Applicant, states that he'll allow others to speak first.

Judy Klabough, Green Street Interiors, said she has been in that location for 38 years and parking is impacted and jammed. She asked the Commission not to make any allowances on parking and not to cut down on anything because they are so jammed already. She said she has issues with the contractors and workers on this project parking on the street and elsewhere and taking up spaces that will impact her business. This is a good project for the City but the parking will be impacted.

Stan Blackwell, 60 Minute Spectacles, has been at his location one year. He said he loves this project and it will be good for the City but the traffic will be a nightmare especially with the high school students going to Starbucks. The Starbucks restaurant will impact the traffic greatly.

Kevin Coleman, Applicant, indicated that the points that were just brought up were valid and he takes them very seriously. He said what they do with their properties now and has done for the past 20 years is they develop their parking lots, sub-structures and everything that is underground first before going vertical. The reason they do this is this allows them to not put any dirt and mess on the streets; it gives their employees a place to park as they are working on the site and it makes their cranes and operational site much safer for their employees. To the issue of traffic, before they even spoke to the City about the plan, he researched the neighborhood. He knows all the owners

around there and they've all informed him that Briggeman is just an accident waiting to happen. It's a narrow street and under width. There are trucks and trailers lined up trying to go into the businesses. He has already voiced this concern with Staff before they even started showing Staff plans for the project. They are widening the street which is part of the conditions. They will widen Briggeman by ten feet. They are undergrounding all the utilities on that street. As far as the traffic impacts, they have the traffic reports; it's been done and they've indicated the traffic requirements. The flow factors on the hotel are entirely different than their normal retail stores so those issues are addressed. With regard to the conditions of approval, he said he agrees with all conditions of approval with the exception of Number 9 which speaks to the equivalent of Starbucks and just getting clarity that it would fall back to Staff or the Planning Director to make the comparison. Then on Number 18, "The identical color". They design and develop real estate all the time and to have two buildings with the exact same colors would be a little off in his opinion so they would like it to be harmonious but would like to have the word "identical" stricken just so that all the colors, etc. harmonize but they are not identical color. Other than those issues, he felt that Staff has done a wonderful job.

Commissioner Solfelkanik indicated he has a long list of concerns which can be addressed later; they are:

- Blighted but valuable property to the City;
- Entrance and exit on Serpentine;
- Light on Serpentine?
- Why one hearing for two projects;
- #7 – codified?
- CUP – determine before approval?
- #33 & #38 – Why aren't they being submitted to the Planning Commission?
- As far as the hierarchy of Marriott, where does Fairfield fall within that range? Would like to have something a little higher on the list.

Commissioner Solfelkanik asked Staff if there is a way we can require the Applicant to use, when available, City vendors.

Commissioner DeBolt indicated he wants some clarification as to whether the Starbucks is a restaurant or a drive through.

Mr. Coleman explained it is a restaurant internal walk in. It is currently the Starbucks model that allows them to have the drive through window; you can walk into the store and sit; and also, you can sit outside as well.

Commissioner DeBolt said he sees a drive through as a real traffic generator which impacts ingress and egress and that is going to be peak traffic. During the school year from 7:00 AM until 8:30 AM it will be gridlock.

Commissioner Daniel indicated there will be an impact to traffic if anything goes in there such as an In-N-Out, etc.

Commissioner DeBolt said he would like to know that if the Commission is considering a Marriott property and a Starbucks and then when we get ready to give approval, find out that Marriott and Starbucks is gone and now something else is coming in, he would like to know that now. Are they approving a Starbucks and a Marriott property? It's being presented as a quality project and he wants to make sure that the City gets what we bargained for.

Commissioner Daniel felt that that is a very good point. Also, he said what we don't want is just a Starbucks and the hotel never gets built.

Ms. Kranitz explained that Staff has included Conditions 8 and 9 to try to tie those down. Staff has put in that it has to be a 3-Diamond Triple A hotel; that language can be tied down tighter in Condition 8 if wanted as to what it has to include. The idea of it being a Starbucks or another business, the Commission could put, "As determined by the Community Development Director", or it can come back to the Planning Commission if warranted for their determination.

Commissioner DeBolt said he would definitely want it to come back to the Commission.

Ms. Kranitz indicated that there were also conditions that the drive through Starbucks building permit is not issued until the building foundation has passed inspection for the hotel so that we know they're committed to building that hotel before the Starbucks goes in.

Commissioner DeBolt asked if this property is going to be subdivided so the restaurant property can be sold separately and apart from the hotel.

Community Development Director Mendoza said he believes that the applicant is interested in doing that. He has not filed the application for a parcel map or a lot line adjustment yet but Staff has made sure he demonstrated how each lot, if ever subdivided, could meet parking or not meet its own parking requirements. A parcel map is subject to the Planning Commission's review; a lot line adjustment is a City Engineering function.

In response to Commissioner DeBolt's question, Ms. Kranitz explained that the Conditions of Approval are always recorded. She said Staff has also put in a requirement that if there was a lot split or if these are multiple lots, then there has to be recordation of shared parking.

Mr. Mendoza explained that Staff is not recommending any changes to the parking situation in regards to this application because Staff doesn't think the applicant can dictate the City's parking standards on public property.

A long discussion ensued regarding the possibilities for parking.

Mr. Coleman mentioned that on the actual letter of intent from Marriott, their corporate rules don't allow them to physically get their license yet until they own the real estate.

Commissioner DeBolt then asked if this is going to be managed by Marriott or is it going to be managed by Mr. Coleman's company.

Mr. Coleman said that Marriott will not manage it but it will be managed by RIM Management which is one of the largest hotel managers in the U.S.

Commissioner DeBolt said after he had looked at the renderings of the hotel, he said he doesn't like the architecture of the building. He said it looked like something out of the 1970's and is too contemporary for that location and for Los Alamitos. He said he stayed in a Fairfield Inn in Temecula and it had more of a Mission-type look and had some character and he felt it would fit better in Los Alamitos.

Commissioner Daniel asked why they considered the Fairfield Inn and not a level higher.

Mr. Coleman said that actually Marriott has probably 12 or 14 levels all the way up to \$2,000 a night rooms. When they look at the property, they look at the demand generators for the surrounding area, the users, and the people that will actually frequent it. It's a re-branded, mid-range hotel and the colors and styles are what are in the market currently.

Commissioner DeBolt indicated that the people that live in Los Alamitos will have to look at the hotel every day and he doesn't like it. One more thing, Staff notes that the parking spaces are penciled in at 19x9 but he really can't tell; he said he would like to see, rather than a condition, he would like to see a drawing before they were to approve this project, that actually shows if there are sufficient spaces.

Commissioner Sofelkanik said that obviously there are a number of issues with this project but he would like to bring up the concerns he has with some of the conditions and everybody else can do that as well. Perhaps then it can be continued to another date as it is getting late. The conditions he has concerns on are is Condition #7 – He would like to know from the Assistant City Attorney if there is a definition to that as he would like to make sure they have something to enforce to ensure it doesn't become an extended stay

hotel. Condition #9 – The equivalent of Starbucks: He would like any decision that revolves around that condition to come back to the Commission.

Mr. Mendoza asked for clarification on Condition #9 and asked if it's a Starbucks, Coffee Bean or Peat's, is it okay with Commissioner Sofelkanik if he makes the decision or if it becomes something other than those three, would he like it to come back to the Commission for review.

Commissioner Solfelkanik said that would be okay with him. With regard to Condition #33, he would like the on-site lighting plan to come before the Commission.

Mr. Mendoza indicated that the applicant can just add it to the packet for the Commission's consideration if the Commission continues this item tonight.

Commissioner DeBolt commented that regarding Condition #30 – The wording is, "The parking lot shall be illuminated from dusk until the termination of business every operating day" and he said that that needs to be a little bit more specific. He asks what dusk is. He felt that this condition needs to be refined.

Ms. Kranitz then read the definition of "dusk"; it is: "The darker part of twilight, especially at night".

Commissioner DeBolt said leaving dusk in is good.

Commissioner Solfelkanik brought up Condition #38 and said the Commission usually reviews signage.

Mr. Mendoza responded that the Commission does review signage if they apply for a sign plan review when it doesn't meet Code.

Commissioner Solfelkanik said he is good with that Condition then. With regard to Condition #50M – It appears from the renderings that there is not going to be a light installed at Serpentine and he thinks that that may be an issue.

Mr. Mendoza commented that he doesn't think two signals can be that close together.

Commissioner Sofelkanik said maybe not but people are going to use Serpentine to access this project.

Mr. Coleman commented that to save the Commission time, he cannot afford this project at this rate with all the changes to the Conditions tonight. He said he did not think he was coming here tonight to literally be told how to design a building and how to develop real estate and it just seems like this is

something that the Commission doesn't want in their City and if that's the case, he can leave.

Following discussion, the Commission at that point went through the Conditions that could perhaps be eliminated to try to make the project more feasible.

Commissioner Grose said she does like the project and asked the applicant how long it would take to actually build the project.

Mr. Coleman indicated it would take about one year to complete.

Motion/Second: Cuiilty/Daniel

Unanimously Carried: A motion to continue the Public Hearing to the next regular Planning Commission meeting on July 22, 2015.

C. Modification of Watersafe Swim School Conditional Use Permit (CUP) 14-07M, Site Plan Review (SPR) 14-02M which is an Outdoor Commercial Recreation Facility at 3686 Cerritos Avenue in the Planned Light Industrial (P-M) Zone and Approval of CEQA Addendum Therefore.

During construction, the Planning Division found changes to the site plan that were not approved by the Commission. This report outlines the changes and asks the Commission to consider those modifications to a previously approved swim school at 3686 Cerritos Avenue in the Planned Light Industrial (P-M) Zone or alternatively, deny the modification (Applicant: Ginny Ferguson – Watersafe Swim School).

Community Development Director Steven Mendoza summarized the Staff report, referring to the information contained therein, and indicated he's prepared to answer questions from the Planning Commission.

Vice-Chair Cuiilty opened the Public Hearing.

Nathan Najerian, Director of Water Safe Swim School, indicated he will be in charge of the day to day operation of the school. He said that in October of 2014, the Commission approved the CUP to create a new community oriented swim school on Cerritos Avenue and they have currently spent \$1.5 million dollars to create the facility so far. It is evident that they still do not have the full support of some City staff because of the delays that have happened and the Stop Work Order that was created in spite of the fact that most of these changes have been found insignificant. The consequence of being present tonight is that Staff has delayed their project and they estimate that the delay has cost their business an additional \$31,982 in construction and consultant costs alone. Since most of the students that they get sign up in the summer, and half the summer is gone already, they cannot even begin to estimate the amount of income that they've lost for the remainder of the

year. More importantly for the City of Los Alamitos, the delay in the opening of the school has caused them to miss the majority of the summer swimming season and that is when they really wanted to get the kids safe. They've had to lay off some of the local residents that they had already begun to hire and train because of these delays.

Don Lee, Architect, said he made a mistake on their drawings. It was a drafting error. Both pools were labeled incorrectly at 4 feet deep. Pool #2 should have read, "4 to 7 feet deep" when they made the original submittal. He said he planned to make this correction during the as-builts as normally is done but the City then Red Tagged Pool #2 when they saw the deeper depth. He said the building permit for Pool #2 was secured and approved by the City and it did show 4 to 7 feet deep and they had the permit to do the pool before they began construction. He said what he finds somewhat dismaying is that usually adjustments like this are very often made and just handled administratively. During the plan check process and during construction, they have worked diligently and conscientiously with the City Planning and Building Departments, the Orange County Fire Authority, and the Orange County Health Department to successfully resolve many difficult issues regarding landscape areas, parking requirements, fire truck access, occupancy definitions, occupancy loads, fire separations, health issues and ADA requirements. All of these things they've resolved as they've worked through the process. The owners have done a lot to improve the appearance and the quality of the project. They've also added four more parking spaces than was originally required along with several other improvements.

Ginny Ferguson, Founder and Owner, spoke about the U.S. Swimming Rules and Regulations for holding swim meets. She said a number of the concerns that the City staff has raised has come down to the mistaken belief that there will be formal swim competitions at the site. She said that there cannot be any competitions at her facility because to be authorized for a swimming event, there has to be at least 8 regulation lanes and 10 is preferred. Her pools have only 4 lanes. She provided several more reasons why competitions cannot be held at her facility and this information is per U.S. Swimming and Regulations.

Richard Davis, certified as a Meet Official by U.S.A. Swimming. He said he officiates NCAA, high school, Special Olympics, etc. Mr. Davis indicated he is here to support this swim school. One of the things that is his responsibility as a Meet Referee is to make sure that the pool is certified which means they have to have an engineer come out and certify the pool and once it's on record, it's put on a list with U.S.A. Swimming. This will allow these pools to have sanctioned swim meets. He indicated that Ms. Ferguson's pool is not capable of doing that. He said he could see possibly an inter-squad type of meet where she might have lessons for her students and have them have a practice meet but it's nowhere close to having it be sanctioned.

Mel Malkoff, Project Planner for the swim school said basically this was a lack of communication between Building and Planning. He said the deep water was shown on the building permit; it's been there in the original CUP when they talked about life saving training, lifeguard training and scuba. Scuba training cannot be done in a shallow pool. He said that Staff could have just asked them instead of stopping the project; they could have sat down and at the same time, the concurrent processing of their business license has now been held up as well. Besides these delays, he said he believes the fees they were charged are out of line and proceeded to outline these charges. He also indicated that Staff has now proposed four new conditions beyond the approved CUP; numbers 52, 53, 54 and 55. He said he will ask for four things; they are:

- Delete the four new conditions;
- They have been told there is a 20-day appeal period after this hearing before they can resume construction. Frankly, the ones to appeal this project were the City Staff. He is asking the Commission to waive that 20-day period and let them resume work and direct Staff to process their business license.
- Asking that all the fees to be waived and returned to the client.
- Direct Staff to cooperate with the school and treat them as a welcome business and employer into the City of Los Alamitos.

Commissioner DeBolt said as the Commission is aware, he had requested copies of information prior to this meeting which was furnished by Staff and he appreciates that. He indicated he has been nearly beside himself and have been all day regarding this issue. He then asked Associate Planner Oliver if prior to posting the Stop Work Order, was there any communication with the applicant regarding the discrepancy between the pool depths and what's on the plan.

Associate Planner Oliver said no.

Commissioner DeBolt asked not even a courtesy call?

Mr. Oliver said he called them five minutes after stopping the job but not before.

Commissioner DeBolt then asked if there was a Notice of Correction issued regarding the pool depth discrepancy between what was being done.

Mr. Oliver indicated that that was on the Stop Work Order.

Commissioner DeBolt then asked if Mr. Oliver had provided a Notice of Correction.

Mr. Oliver explained that he is not the Building Inspector and that is usually a Building Department function and not a Planning Department function.

Commissioner DeBolt asked Mr. Oliver if he is authorized to issue a Stop Work Order.

Mr. Oliver said that that was a good question.

Commissioner DeBolt said that on the Stop Work Order, Mr. Oliver had noted it was a violation of the CUP and asked why the violation procedure that is outlined in Paragraph 4 of the CUP not followed?

Mr. Oliver explained that when he went to the property, he really enjoyed how well it was looking. He walked past the pool and saw that it was 7 feet deep, not 4 feet deep. He thought that was strange. He went back to the office because they were getting ready to plaster the inside of the swimming pool and he looked at the plans and it said 7 feet deep. It was supposed to be on the second set of plans they didn't submit to the Planning Department. He said he didn't think that's what was approved in the CUP, so he went back and looked at the CUP and he saw that it was supposed to be only 4 feet deep. He said he then went immediately and put a Stop Work Order so they didn't spend all the money the next day plastering the pool; five minutes later, he called them.

Commissioner DeBolt said the question is why didn't you follow the procedure that is named in the CUP?

Mr. Oliver explained that he wanted to save them money before they plastered the pool the next day.

Commissioner DeBolt asked if the Stop Work Order was issued on April 9th, why wasn't the Commission notified either by email or at least by the April 22nd Commission meeting of the Stop Work.

Mr. Oliver indicated he wasn't sure.

Vice-Chair Cuijty asked if the Planning Commission is usually notified if there's a Stop Work Order as it hasn't happened since she's been on the Commission so she's just curious.

Mr. Oliver said no.

Commissioner Grose asked if these fees are typical.

Mr. Mendoza explained that these are established fees. What the Planning Commission approved was two 4 foot pools. Staff took a very conservative view of this and said this is for the Commission to determine as they are the

last body who looked at it and they should know this. Also, the Commission should know what the environmental impacts of this are and give them enough information so that they can determine that a 7 foot pool doesn't have any more additional impacts than a 4 foot pool. He said he literally stayed arms length from this to not be accused of these kinds of things and this is what came out of it. The original application was for two 4 foot pools and that was what was approved by the Commission. If any Commissioner thought they were approving a 7 foot pool, he said he would be very interested in hearing it.

Commissioner Grose asked on page 3 of the modification request, the applicant wants to delete the competition events?

Mr. Mendoza explained that Staff's concern is that with a change, this could turn into something that the Planning Commission didn't approve. If the Commission remembers, during the public hearing last year, it was all about training youth to make sure that they survive, thrive, and were pool safe. So Staff wanted to make sure that it stayed with that same theme and didn't morph into something that the Planning Commission didn't approve. So now the Commission has a chance to look at these conditions as these are Staff's concerns and they can certainly be tweaked. Staff is just pointing out to the Commission that this has the potential of turning into a special event center.

Commissioner Daniel said that Commissioner DeBolt has made some very good points but the Commission has very adamantly explained to Staff that they want to know about this kind of stuff so these kinds of changes is the kind of stuff that the Commission has requested to bring before them. Commissioner DeBolt's points are still well taken but what they have done is what they've asked them to do with any projects like this because there are some issues here that, the way that it's written, he wasn't aware that this was their intent to begin with. So many things on the list have changed the concept which the Commission originally agreed to.

Commissioner Grose commented that with regard to Condition 52, she said she thinks the concerns that maybe the applicant didn't see is that these are basically buffers for the City and gave the scenario that perhaps five years from now the property is sold and somebody tries to change what the Commission wanted. Earlier today there was a problem with a business that altered the meaning of what it was originally supposed to be by knocking out a wall. The Commission is trying to protect ourselves so nobody in the future comes to the Commission after this business is sold and the City is protected as it was spelled out what we believe the intent of this pool is and was. So, she said she tends to agree with Condition 52 and with the seating arrangements.

Commissioner DeBolt said he would like to go back to comments from Mr. Mendoza and “keeping himself at arm’s length”. He asked Mr. Mendoza if he had no input with Mr. Oliver on the Stop Work Order or anything like that.

Mr. Mendoza said he certainly did. He said he believes he was present that day that Mr. Oliver went out and placed the Stop Work Order. He said he told Mr. Oliver to check the Commission approved plans first before going out to inspect.

Commissioner DeBolt asked that in the general conditions that were on the CUP, Mr. Mendoza is given the latitude to, and he began to read, “If there are any changes proposed regarding the location, alteration of the plans as amended, a request for amendment must be submitted to the Community Development Director. If the Community Development Director determines that the proposed change or changes are consistent with the provisions and spirit and intent of this approval action”... He said and the action would have been the same with proposed action unless you make that finding that it goes to the Planning Commission.

In response to Commissioner DeBolt’s question, Mr. Mendoza said by the applicant filing the application for the modification, that’s how it came to his desk for review. That’s the modification. The applicant filed the applications; he rendered his decision that it shall go to the Planning Commission based on the depth of the pool and felt it was significant enough that the Planning Commission hadn’t originally considered a 7 foot deep pool; that he said that this was going to the Commission. He read the condition out loud:

“1. If any changes are proposed regarding the location or alteration of the plans plotted and dated 5-10-15, a request for the amendment of this approval must be submitted to the Community Development Department.”

Mr. Mendoza said that’s the applications he filed. He filed to modify or amend those approvals. That’s where the costs came in.

Mr. Malkoff said that’s not why he filed.

Mr. Mendoza reiterated that he filed because he changed the project.

Mr. Malkoff said no; he came into Staff after being called by his client that they had a Stop Work Order and he had some discussions with Mr. Oliver and he was told that they were going to have to file for a modification. They’re doing scuba diving and teaching instructors which requires a deep pool. Their architect made a mistake but it was covered in the building permit; the permit says 4 to 7 feet and it’s on the plans. He said when a project is being done, whether it’s a hotel or any other, you come in at the planning stage; they did that last fall and they had a certain level of specificity and their architect did some tree lay outs. After that they got even more

specific and they hired a landscape architect who did all the detailed work. In any normal project that he's done over the last few decades, if there are little changes along the way, you do them as as-builts; talk to Staff and building inspection. The only reason he said he filed was because he was told in the Deemed Complete letter and before that, in discussion, this is a major change; it's not. He wasn't even asked to get a geology letter. When somebody builds a pool in this town, do you get a geology report if it's 4 feet versus 7?

Mr. Mendoza indicated Staff makes them get a geology report for anything over half an acre because of the liquefaction and the water table in our town.

Mr. Malkoff said the point is he thought they could get the Stop Work withdrawn because the building plans correctly show the deep pool; they've always had a teaching pool where scuba and diving are taught. They were pretty clear in their understanding of what they were building and what they presented to the Commission last fall but he was told by Mr. Oliver that they needed to go ahead and make application and then Staff would render a decision. Then they had to spend \$7450 just for the privilege of waiting another month. In the Deemed Complete letter, it says that they asked to go to the Planning Commission; they didn't. They wanted Mr. Mendoza and Mr. Oliver and whoever else that were needed to go over and figure out what the problem was in the Stop Work and get back to work.

Mr. Mendoza explained that the problem was it didn't match with what the Planning Commission approved.

Commissioner DeBolt commented that there are two issues; in the Staff report on page 2, it reads, "If the Community Development Director has been given the latitude by the Commission to approve changes that comply with the provision of the spirit and intent of the Commission's prior approval..." and then the very last sentence, "The Director feels that the changes are substantial enough to require Planning Commission review". He said on the next page there are approximately fifteen changes and with the exception of the last one, 1.4.1 – Swimming Pool Plans, he asks what is substantial about the other ones that required the Commission's approval.

Mr. Mendoza answered that the depth of the pool was the reason that Staff put the Stop Work Order on it. He continued that Staff didn't know of all the other changes until they submitted the site plan that noted a couple of dozen changes that the Planning Commission hadn't reviewed. He said the argument of whether it's a minor modification or a major modification is certainly up in the air.

Commissioner Loe pointed out that Staff gets criticized if they don't bring something to the Commission and now they're getting criticized if they do bring something to the Commission and things are subjective and subject to

people's interpretation and so forth. Sometimes the Commission gets on Staff for all of a sudden we have a project that looks totally different than what the Commission approved and then we get on Staff for not stepping in and doing something about it.

Commissioner DeBolt said he is of the opinion that the presentation that was made to the Commission, every item with the exception of the bleachers, that is called out in the four added conditions was a part of the original presentation that the Commission approved.

Commissioner Daniel felt that the bottom line is we have a list of his changes as requested by the applicant. The judgment on how it got to the Commission tonight wasn't right; we apologize but that doesn't matter anymore. The Commission needs to look at this and get the swim school back to work if we agree with this modification. He then asked about Conditions 52 through 55 and it was the consensus of the Commission to delete all four conditions as the applicant requested.

Commissioner DeBolt said the final issue is the refund of fees.

Commissioner Daniel asked how much money we are talking about.

Mr. Oliver indicated that \$5000 of the fees was a deposit for the CEQA consultant and they get most of that back. Then there is the regular fee for the two modifications (for tonight) which is \$2000.

Mr. Malkoff indicated that the only issue with their site plan was a dispute between going from Planning to Building regarding the depth of the pool so he thought they would have only had to pay the site plan amendment and not both. The Fire Marshall review of the Site Plan had already been done before the Stop Work Order so he doesn't know why they had to pay for that again.

Mr. Oliver said what Mr. Malkoff is asking about as far as he can tell is the two \$1000 modification checks and the \$400 for the Orange County Fire Authority which will all go back to them.

Mr. Malkoff indicated they don't mind paying \$1000 for the site plan modification but the CUP modification was not changed at all. Plus, they don't want to wait another 20 days to resume construction.

Vice-Chair Culty asked if the Commission has the authority to waive the 20 day appeal period.

Mr. Malkoff questioned who would appeal this; plus, he's already given the City an At Risk letter.

Ms. Kranitz indicated that since the applicant has supplied the City with an At Risk letter saying that they're willing to take the risk and not hold the City responsible for any costs incurred should the decision be overturned is sufficient and he can continue with the project.

Responding to Commission DeBolt's question, Ms. Kranitz indicated that the Stop Work Order will not be in effect since we have an At Risk letter from the applicant.

Motion/Second: DeBolt/Grose

Unanimously Carried: A motion that we approve the modification with the exception and without any additional conditions added; that the City refund to the applicant \$1000 for the CUP; that the applicant provide an At Risk letter in lieu of the Stop Work Order; and, that they be allowed to proceed with construction.

D. Massage Ordinance Amendment.

Consideration of an Ordinance amending Chapter 17 of the Los Alamitos Municipal Code relating to Massage Establishments. (Citywide) (City Initiated) (ZOA 15-02).

Vice-Chair Cuiilty opened the public hearing and asked if anybody would like to speak on this matter.

Motion/Second: Cuiilty/Grose

Unanimously Carried: A motion that we continue this item to the August 26, 2015 regular Planning Commission meeting.

8. ITEMS FROM THE COMMUNITY DEVELOPMENT DIRECTOR

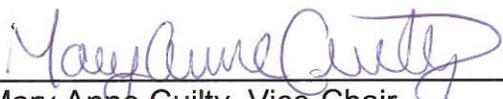
None.

9. COMMISSIONER REPORTS

None.

10. ADJOURNMENT

The Planning Commission adjourned at 11:21 PM.



Mary Anne Cuiilty, Vice-Chair

ATTEST:



Steven Mendoza, Secretary