

**CITY OF DANA POINT
PLANNING COMMISSION
REGULAR MEETING MINUTES**

January 27, 2014
6:00 – 7:55 p.m.

City Hall Offices
Council Chamber (#210)
33282 Golden Lantern
Dana Point, CA 92629

CALL TO ORDER – Chairman Newkirk called the meeting to order.

PLEDGE OF ALLEGIANCE – Commissioner O'Connor led the Pledge of Allegiance.

ROLL CALL

Commissioners Present: Vice-Chairwoman Liz Claus, Commissioner Denton, Chairman Gary Newkirk, Commissioner April O'Connor, and Commissioner Susan Whittaker

Staff Present: Ursula Luna-Reynosa (Director), John Tilton (City Architect/Planning Manager), Evan Langan (Associate Planner), Jennifer Farrell (Deputy City Attorney), and Denise Jacobo (Planning Secretary)

A. APPROVAL OF MINUTES

ITEM 1: Minutes of the regular Planning Commission Meeting of January 13, 2014.

ACTION: Motion made (Denton) and seconded (Claus) to approve the Minutes of the regular Planning Commission Meeting of January 13, 2014.
Motion carried 5-0. (AYES: Claus, Denton, Newkirk, O'Connor, Whittaker
NOES: None ABSENT: None ABSTAIN: None)

B. PUBLIC COMMENTS

There were no Public Comments.

C. CONSENT CALENDAR

There were no items on the Consent Calendar.

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D. OLD BUSINESS

ITEM 2: Minor Site Development Permit SDP13-0022(M) to allow the construction of a retaining wall exceeding 72 inches in height within a rear-yard, a freestanding wall, pilasters and rolling vehicular entry-gate exceeding 42 inches in height within a front-yard at 32591 Caribbean Drive. *(Public Hearing was closed January 13, 2014 and item was continued)*

Jennifer Farrell (Deputy City Attorney) clarified that the Public Hearing was closed with respect to the CDP issue but not with respect to the SDP(M) being reviewed this evening.

Applicant: Stan Schrofer and Associates (Architect)
Property Owners: Mr. and Mrs. Lawrence O'Neill
Location: 32591 Caribbean Drive

Recommendation: That the Planning Commission adopt the attached Draft Resolution approving Minor Site Development Permit SDP13-0022(M).

Environmental: Pursuant to the California Environmental Quality Act (CEQA), the project is Categorically Exempt per Section 15303 (e) (Class 3 – New Construction or Conversion of Small Structures) in that the project consists of the construction of accessory or appurtenant structures.

Request: Approval of a Minor Site Development Permit to allow the construction of a new retaining wall as well as a freestanding wall, pilasters and rolling vehicular entry-gate.

Evan Langan (Associate Planner) began his presentation by giving a brief overview of the CDP entitlement that was approved at the previous Planning Commission hearing, clarifying that tonight's SDP(M) component of the project was continued to allow time to gather more information regarding design, location and proposed materials.

There being no requests to speak on this item, Chairman Newkirk opened and closed the Public Hearing, and brought the matter to the Commission for discussion.

Commissioner O'Connor stated that she appreciated the applicant's and the architect's patience. She stated that with the further information presented, it can

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be seen that the wall will be compatible (with the new home), meets all required findings, and so she is satisfied with the proposal.

Commissioner Denton stated that he is willing to make a motion if there were no other comments.

ACTION: **Motion made (Denton) and seconded (O'Connor) to adopt Resolution No. 14-01-27-04 approving Minor Site Development Permit SDP13-0022(M) for proposed construction of a retaining wall exceeding 72 inches in height within a rear-yard, a freestanding wall, pilasters and rolling vehicular entry-gate exceeding 42 inches in height within a front-yard at 32591 Caribbean Drive. Motion carried 5-0. (AYES: Claus, Denton, Newkirk, O'Connor, Whittaker NOES: None ABSENT: None ABSTAIN: None)**

E. PUBLIC HEARINGS

ITEM 3: **Sign Program Permit SPP13-0004 for the Del Prado Arts Building located at 24682 Del Prado**

Applicant: Mike Reilly/Starfish Signs & Graphics
Property Owner: Vance Collins
Location: 24682 Del Prado

Recommendation: That the Planning Commission adopt the attached draft Resolution to approve Sign Program Permit SPP13-0004 located at 24682 Del Prado.

Environmental: This project is categorically exempt (Class 1 - Section 15301 – Existing Facilities) from the provisions of the California Environmental Quality Act (CEQA) because it consists of a minor alteration of an existing structure involving no expansion of use beyond existing.

Request: Approval of a Sign Program for a multi-tenant, mixed-use commercial building located at 24682 Del Prado.

John Tilton (City Architect/Planning Manager) gave the staff report in lieu of Erica Demkowicz, Senior Planner who prepared the report. Mr. Tilton answered questions from the Planning Commissioners.

Chairman Newkirk opened the Public Hearing

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Laura Reilly (Applicant – San Clemente) stated that she was available to answer any questions.

Vance Collins (Property Owner) stated that he was also available to answer any questions concerning the proposed Sign Program.

Chairman Newkirk closed the Public Hearing

Commissioner Whittaker stated that she agrees with staff and noted that it is a “handsome” Sign Program, well thought out and (would result in signage that) matches the architecture of the building. She stated that she would support approval of the project.

Commissioner Denton stated that the owners did a wonderful job with the building, adding that the sign program is “elegant.” He added that the sign program fits the new design of the building and that he would support approval of the project.

Vice-Chairwoman Claus spoke of one of the various Town Center meetings where a representative of the building spoke about remodeling it; she thanked the applicant for his efforts and described the proposed project as “magnificent.”

Commissioner O'Connor stated that the signage proposed would enhance the building, thanked the applicant for their efforts in helping to improve the Town Center and that she was prepared to make a motion.

ACTION: **Motion made (O'Connor) and seconded (Whittaker) to adopt Resolution No. 14-01-27-05 approving Sign Program Permit SPP13-0004 for a mixed use commercial building located at 24682 Del Prado. Motion carried 5-0. (AYES: Claus, Denton, Newkirk, O'Connor, Whittaker NOES: None ABSENT: None ABSTAIN: None)**

ITEM 4: **An appeal of a decision by the Director of Community Development regarding Conditional Use Permit CUP13-0004(M) for live entertainment at 24582 Del Prado.**

Applicant: Jim Khadivi
Property Owner: Huff Meridian LLC
Location: 24582 Del Prado

Recommendation: That the Planning Commission approve the attached Draft Resolution denying the appeal of the Director's decision determining that the

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proposed live entertainment at 24582 Del Prado is consistent with the City's Zoning Code, General Plan, goals and policies of the Town Center Plan.

Environmental: The proposed project qualifies as a Class 1 Exemption (Section 15301) pursuant to the applicable provisions of the California Environmental Quality Act (CEQA) in that the project consists of a minor alteration to an existing structure.

Request: An appeal of the Director's determination that proposed live entertainment at the existing Luxe Restaurant is consistent with the City's Zoning Code, General Plan, goals and policies of the Town Center Plan.

Ursula Luna-Reynosa (Director of Community Development) gave the staff report. She noted that Staff received eight letters from the public after the evening's meeting packets were prepared and that those letters have been distributed on the dais.

Chairman Newkirk opened the Public Hearing.

Renato Izquieta (Appellant - Dana Point) stated that central issue is the live entertainment noise which "permeates and impedes" on the tenant living directly above the restaurant. He stated that installation of acoustical devices and other sound reduction measures in the ceiling of the restaurant have not resolved the issue. He stated that the number of days approved for the playing of live music is excessive, and the style of singing that occurs does not meet the standard of "soft dinner music." He stated that the owner of the business has not done enough to address neighbor concerns.

Jim Khadivi (Applicant – Dana Point) stated that he was sensitive to the concerns of neighbors. He noted that since the issue arose last year, he has worked to find a resolution, notably obtaining a conditional use permit from the City. He stated that he has installed sound reduction devices, ordered further acoustic paneling to be installed in various locations nearest to areas of entertainment - and specifically underneath the unit of the concerned resident. Moreover he and Mr. Huff (property owner) have hired acoustic engineers and construction workers to fill in crevices where sound may penetrate and that these attempts to remedy the issue have resulted in incurred costs and expended resources.

Bill Huff (Property Owner – Upland) stated that he has done a lot of work to resolve (neighbor) Mr. Izquieta's concerns. He noted that sound measurements were taken in the unit above the restaurant and that it was determined the noise level is within City standards. That said, he indicated that it is difficult to comply

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with what one individual can or cannot hear. He said that he would continue to take measures to improve the environment for everybody and that he has hired David Wieland (Acoustics Engineer) to address sound concerns of neighbors. He stated that Mr. Wieland is available to answer any questions.

Cari Kalapis (Dana Point) stated that she is the tenant of the unit above the business that she does not want to hear what is happening below her unit and that music is both disruptive and disturbing. She noted that it's great that the business suite below is occupied, but that a way must be found for the two uses (residential and commercial) to coexist and; that for her, moving away is not an acceptable option. She asked who she should trust to monitor the new (sound reduction) equipment as she feels that the business has not been a good neighbor in fixing anything. She asked that the quality of sound reduction equipment first be proven effective if it is to permanently cease the problem.

Jorge Luhan (Dana Point) stated that he owns nearby Luciana's Restaurant, and is also the Chair of the Dana Point Restaurant Association. He stated that he stands strongly in favor of Luxe's application to allow live entertainment, as entertainment is a vital piece of the Town Center community and important to hotel traffic, visitors, and businesses in general. He asked that the Commission review the matter in a serious light, that if not allowed, this could set a negative precedent for other businesses attempting to establish themselves within the Town Center.

Kimberly Williams (Dana Point) stated that she is the owner of business "Kenny's Music," and that her husband, daughter, as well as employees play acoustic music at Luxe. She noted that Mr. Khadivi has only been interested in hearing dinner accompaniment music, and that they are very conscientious about monitoring their level of sound output. She stated that it is important not to lose sight that the Town Center community is business-friendly, and that if Luxe is not allowed to play music, their business would not survive. She stated that she is in support of Luxe and hopes that they continue growing their business.

Bob Theel (Dana Point) stated that Mr. Khadivi and Mr. Huff have retained his company to manage the expansion of Luxe's kitchen and restaurant areas. He discussed the efforts made by the owners during that expansion to address concerns of neighbors, adding acoustical louvers and sound blankets to cover equipment. He stated that the owners have shown as much attention and conscientiousness in implementing the conditions of approval (of their conditional use permit) as they have with their kitchen expansion.

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Cindy Monroe (Co-Owner, Dana Point) stated that she is the co-owner of Luxe, and Mr. Khadivi's wife. She noted that their goal has been to attract business to Dana Point, as opposed to having local hotels send clients to Laguna Beach. To avoid that gap, attempts have been made to keep live entertainment at Luxe while showing consideration and respect to neighboring residents. The entertainment days and hours allowed (via conditional use permit) were clarified to be between 7:00 PM and 10:00 PM, Wednesday through Saturday, with acoustical music specifically played on Wednesdays and Thursdays.

Dana Yarger (Dana Point) stated that he has an office near Luxe and that he has been active in the growth of arts and culture in Dana Point. He noted that music is an important issue, and that he hasn't heard any opposition to music being played at Luxe. He stated that the owners have been good neighbors and that he is in support of their needs.

Phil Immel (Dana Point) stated that he is present tonight to support Luxe and wishes them continued success. He discussed the concept of mixed uses in the Town Center and compared it to other successful cities, stating that entertainment must be allowed. He described the owners of Luxe as "good people," that their hours of operation are reasonable and that the zoning the City has worked on for many years can result in a good and vibrant situation.

Heather Johnson (San Clemente) introduced herself as the Executive Director of the Dana Point Chamber of Commerce. She stated that she is in favor of giving the conditional use permit to Luxe, that small businesses are the "heart and soul" of Town Center, and that the operator of Luxe is part of the "core" of businesses in Town Center. In her opinion, live entertainment will keep people in Dana Point and she strongly urges support for small business as well as approval of the application.

David Wieland (Acoustic Consultant - Irvine) answered questions from the Commission about acoustical measurement standards and sound check alarm systems.

Renato Izquieta (Appellant - Dana Point) stated that the issue that needs to be resolved is operation of a business that is (unfortunately) impeding on his property. He is concerned about the capability of alarm equipment, and suggested that the Commission determine what remedial measures have been put in place, then return to see if Luxe has done everything possible to address the situation.

Chairman Newkirk closed the Public Hearing.

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Commissioner O'Connor stated that she felt the restaurant has made an effort to mitigate noise in what is a mixed-use building and that people love the vibe that goes with living within walking distance. She stated that while she was in favor of the ability to control the sound level (SLARM), she wishes to see the appeal denied.

Vice-Chairwoman Claus stated that the owners of Luxe have been vetted very well as to City desires and that she too would be in favor of denying the appeal.

Commissioner Denton stated that the applicant has faced real challenges, including a retrofit of Town Center and, that its unfortunate sound standards were not included in the Plan. He stated that he is sympathetic to the person who lives above, while acknowledging Luxe's efforts in acquiring a sound engineer as well as adding sealant and additional muting effects. That said, the occupant in the unit above has a right to some privacy and if the (sound) meter exceeds the City's limits (and complaints continue), Luxe could lose their privilege. He stated that he is in support of the denial and would like to give the business a chance to comply.

Commissioner Whittaker stated that she would be supporting denial of the appeal because it does meet City noise standards. She noted that measures have been put in place to limit sound to 50 decibels, that a 10:00 PM cut-off is acceptable and that it would not be fair to hold a restaurant to a different standard than other businesses in the City. She stated that she is in support of the denial but that if there is problem in the future with sound monitoring, the item could come back for review.

Chairman Newkirk agreed with the other Commissioners comments in that it is an opportunity to live in a small town with vibrant entertainment. He spoke about acoustics and the perception that a few instruments are noisier than one. If properly amplified, such can be kept well below conversation level. He added that entertainment in Town Center would serve to add immensely to an aspect of culture in our society that is lacking if not disappearing. He stated that he is in agreement with the Commissioners and their positions.

ACTION: **Motion made (Denton) and seconded (O'Connor) to adopt Resolution No. 14-01-27-06 denying the appeal and upholding the Director's approval of Conditional Use Permit CUP13-0004(M). Motion carried 5-0. (AYES: Claus, Denton, Newkirk, O'Connor, Whittaker NOES: None ABSENT: None ABSTAIN: None)**

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F. NEW BUSINESS

There were no New Business items.

G. STAFF REPORTS

Ursula Luna-Reynosa (Director of Community Development) invited Brad Fowler (Director of Public Works and Engineering) to give a brief overview on the rockslide that occurred on January 10, 2014 at Coast Highway. Mr. Fowler also answered questions from the Commission.

H. COMMISSIONER COMMENTS

There were no Commissioner Comments

I. ADJOURNMENT

Chairman Newkirk announced that the *next* meeting of the Planning Commission will be held on Monday, February 10, 2014, beginning at 6:00 p.m. (or as soon thereafter) in the Dana Point Community Center located at 34052 Del Obispo Street, Dana Point, California.

The meeting adjourned at 7:55 p.m.

Gary Newkirk, Chairman
Planning Commission

THESE PROCEEDINGS WERE RECORDED AND A COPY OF THE TAPE IS ON FILE WITH THE CITY OF DANA POINT PLANNING DIVISION.