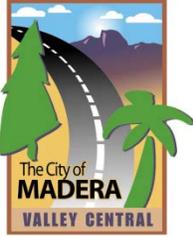


Item:	B-1
Minutes for:	09/21/16
Adopted:	08/16/17



**MINUTES OF A REGULAR MEETING
OF THE MADERA CITY COUNCIL
CITY OF MADERA, CALIFORNIA**

**September 21, 2016
6:00 p.m.**

**Council Chambers
City Hall**

CALL TO ORDER

The regular meeting for 9/21/16 was called to order by Mayor Poythress at 6:00 p.m.

ROLL CALL:

Present: Mayor Robert L. Poythress
 Mayor Pro Tem Charles F. Rigby
 Council Member Andrew J. Medellin
 Council Member Donald E. Holley
 Council Member Derek O. Robinson Sr.
 Council Member William Oliver
 Council Member Cece Foley Gallegos

Others present were City Administrator David Tooley, City Attorney Brent Richardson, City Clerk Sonia Alvarez, Director of Community Development David Merchen, Director of Financial Services Tim Przybyla, City Engineer Keith Helmuth, Public Works Operations Director David Randall, Chief of Police Steve Frazier, Director of Human Resources Wendy Silva, Director of Parks and Community Services Mary Anne Seay, Grant Administrator Ivette Iraheta, Chief Building Official Steve Woodworth, Information Services Manager Ted Uyesaka, Planning Manager Chris Boyle, Fire Battalion Chief Matt Watson, Neighborhood Preservation Supervisor Viola Rodriguez, Police Lieutenant Giachino Chiamonte, Parks Business Manager Mark Etheridge, and Grants Program Manager Jorge Rojas.

INVOCATION: Mr. Alan Shearer, St. Joachim Church

PLEDGE OF ALLEGIANCE: Mayor Poythress led in the Pledge of Allegiance.

PUBLIC COMMENT:

The first fifteen minutes of the meeting are reserved for members of the public to address the Council on items which are within the subject matter jurisdiction of the Council. Speakers shall be limited to three minutes. Speakers will be asked to identify themselves and state the subject of their comment. If the subject is an item on the Agenda, the Mayor has the option of asking the speaker to hold the comment until that item is called. Comments on items listed as a Public Hearing on the Agenda should be held until the hearing is opened. The Council is prohibited by law from taking any action on matters discussed that are not on the Agenda, and no adverse conclusions should be drawn if the Council does not respond to public comment at this time.

No comments were offered.

PRESENTATIONS Proclamation Recognizing Hispanic Heritage Month

Mayor Poythress announced that at this time they have an opportunity to recognize a very important month from September 15, 2016 – October 15, 2016. Mayor Poythress asked if anybody, other than the representatives from the organization he is going to call up here, what heritage they are celebrating. He

asked for a show of hands. He called on a Roger Evans from Evan's Feed who replied Hispanic Heritage from the audience. Mayor Poythress stated he knew he would know that.

Mayor Poythress stated that is exactly the case, they are celebrating Hispanic Heritage Month in the City. He invited Dolores Rodriguez and Rosanne Bonilla but noted that he is not sure he saw either one of them here this evening. He then invited the Director of Parks and Community Services Mary Anne Seay who is also a member of Latinas Unidas and will represent that organization. He asked Ms. Seay to tell them what Hispanic Heritage Month is all about and how can they properly celebrate this month.

Mary Anne Seay, representing the Latinas Unidas, greeted the Council in Spanish and noted that she is the Director of Parks and Community Services in Madera and together in partnership they celebrate Hispanic Heritage Month in a number of ways. One, by the City recognizing that it is Hispanic Heritage Month. Two, by partnering with their partners from Latinas Unidas and other groups to host Fiesta in the Park at County Courthouse Park on October 2, 2016 from 10:00 a.m. until 2:00 p.m. Also, this year they have partnered with Latinas Unidas and Arte Americas for kind of a cultural unpacking so to speak of Día de Los Muertos which they are going to be having art classes and dance classes, and a festive event on Friday, October 14, 2016. They encourage all to join them at Pan American Center. She advised that art classes including sugar skull making and things of that nature will take place starting at 4:30 p.m.

Mayor Poythress asked that she tell them that it is Day of the Dead.

Ms. Seay agreed and stated that Day of the Dead is a celebration to honor the dead. She asked that they forgive and added that Dolores Rodriguez was going to talk about this. She was concerned about parking when she saw it. She commented that she doesn't know a lot about it so she is actually going to attend and learn about it. She stated that there are several elements that make up a more pure and cultural celebration. She noted that Ms. Rodriguez and some of the members of the Latinas Unidas wanted to make sure that the community was celebrating the event of Día de los Muertos to the intended cultural beginnings and origins of the tradition. Ms. Seay restated that there are going to be a lot of classes, some ballet folclórico classes and a performance by their local class. Then they are going to show the movie called the Book of Life at the Pan American Park. She advised that this is all at Pan American Park on Sherwood Way on October 14, 2016 starting at 4:30 p.m. They anticipate the sun will go down around 7:30 p.m. for the movie and all of the classes and things will happen in advance of that.

Mayor Poythress commended Ms. Seay on a great job.

Ms. Seay apologized for not knowing the details.

Mayor Poythress stated this is great and she is a wonderful member and wonderful representative. Mayor Poythress presented the proclamation to Ms. Seay recognizing Hispanic Heritage Month in the City of Madera.

Ms. Seay thanked Mayor Poythress for the presentation.

Mayor Poythress called on the City Clerk for a late distribution announcement.

City Clerk Sonia Alvarez announced that pursuant to Government Code Section 54957, members of the public are advised that documents related to the following agenda item were distributed to the Council less than 72 hours before this meeting. Under Section C, Hearings, Petitions and Bids, item number C-2, subject matter is a resolution approving the Community Development Block Grant Consolidated Annual Performance and Evaluation Report, the financial summary and activity reports were distributed to the Council this evening. Ms. Alvarez advised that extra copies are available at the podium for members of the public wishing a copy.

A. WORKSHOP

There are no items for this section.

B. CONSENT CALENDAR

- B-1 Minutes – There are no minutes for consideration.
- B-2 Information Only – Warrant Disbursement Report
- B-3 Consideration of a Resolution Reappointing Bruce Norton to the City of Madera Planning Commission (Report by Chris Boyle)
- B-4 Consideration of a Resolution Appointing Christopher Huerta to the City of Madera Beautification Committee (Report by Mary Anne Seay)
- B-5 Consideration of a Resolution Rescinding Resolution No. 16-29 and Approving an Amended Application for Transportation Development Act - Local Transportation Funds for FY 2015/16 with FY 2014/15 Carryover Balances (Report by Keith Helmuth)
- B-6 Consideration of a Minute Order Approving and Accepting the City of Madera Investment Report for the Quarter Ending June 30, 2016 (Report by Tim Przybyla)
- B-7 Consideration of a Resolution Appointing Robin Ware and Brian Malady and Reappointing Loretta Castro and Linda Clark as Members of the City of Madera Transit Advisory Board (Report by Ivette Iraheta)
- B-8 Weekly Water Conservation Report September 5th thru September 11th (Report by Dave Randall)
- B-9 Consideration of a Minute Order Accepting the Delivery and Installation of the Modular Restroom at Centennial Park and Authorizing the Recording of a Notice of Completion and the Release of Retention after Recording of the Notice (Report by Mary Anne Seay)

Mayor Poythress asked if there are any items on the consent calendar that a Council Member would like to have pulled for further discussion. No requests were made and Mayor Poythress announced that he would accept a motion for action.

ON MOTION BY COUNCIL MEMBER HOLLEY AND SECONDED BY COUNCIL MEMBER ROBINSON, THE CONSENT CALENDAR WAS ADOPTED UNANIMOUSLY BY A VOTE OF 7-0.

RES. NO. 16-148 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA REAPPOINTING BRUCE NORTON TO THE CITY OF MADERA PLANNING COMMISSION

RES. NO. 16-149 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPOINTING CHRISTOPHER HUERTA TO THE CITY OF MADERA BEAUTIFICATION COMMITTEE

RES. NO. 16-150 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, RESCINDING RESOLUTION NO. 16-29 AND APPROVING AN AMENDED APPLICATION FOR TRANSPORTATION DEVELOPMENT ACT LOCAL TRANSPORTATION FUND FOR FISCAL YEAR 2015/16 WITH FISCAL YEAR 2014/15 CARRYOVER BALANCES AND AUTHORIZING THE CITY ENGINEER TO EXECUTE THE APPLICATION

RES. NO. 16-151 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPOINTING ROBIN WARE AND BRIAN MALADY AND REAPPOINTING LORETTA CASTRO AND LINDA CLARK AS MEMBERS OF THE CITY OF MADERA TRANSIT ADVISORY BOARD

C. HEARINGS, PETITIONS, BIDS, RESOLUTIONS, ORDINANCES, AND AGREEMENTS

C-1 A Public Hearing to Consider an Appeal by Merchant Men Inc., Christopher Montoya, of the July 12, 2016 Decision of the Planning Commission Revoking Conditional Use Permit 1963-23, 1989-30 and 1991-13 which Cumulatively Allow for an Athletic Fitness Club Located at 1803 Sunset Avenue

And

Consideration of a Resolution of Determination on Appeal

Planning Manager Chris Boyle stated their first item on tonight's agenda is a revocation hearing for the Thrive Fitness / Fitness Evolution located at 1803 Sunset Avenue. He noted that cumulatively there are three conditional use permits under revocation for the Council's review. They are CUP 1963-23, 1989-30 and 1991-13.

Mr. Boyle stated that the location of the item tonight is located at the northeast corner of Sunset and Orchard Avenues. He advised that the zoning has been for an extended period of time an R-3 residential zone district. He noted that would be a high density residential zone and the current General Plan Land Use designation is C, Commercial.

Mr. Boyle advised that there is also a parking lot located at Venturi and Orchard. He advised that there is a little clarification on the appellant, there is some perhaps confusion as to who the property owner is or whether it is Fitness Evolution, or whether it is a Thrive Fitness and the like. He noted that the plain point of the matter is that the appellant in this matter has been the applicant throughout the process. He has been their lead point of contact and is the appellant per the application records and that would be Christopher Montoya and Merchant Men.

Mr. Boyle provided a little history. He noted that it is kind of neat in this process, looking at the various histories of this particular area of town. He stated that the club itself has been there for a long time; since 1955. In advance of annexation, originally more of a swim club / neighborhood club of sorts that was annexed into the City in 1963. He advised that that is the first real expansion that was entertained. Their building permit file shows that the first expansion was an exercise room that probably triggered the original use permit in 1963. He restated that it was originally a swim club, annexed into the City in 1963 and subsequently, along with the rezone, into a residential zone; a small intensification that led to the original use permit.

Mr. Boyle stated that from 1963 to annexation, to 1983 with the purchase by Mr. DaSilva, there are only marginal improvements. Most of the record shows a little bit here, a little bit there. He advised that there was a miniature golf course there for a time; tennis courts installed and a lot of that occurred based on a letter that was prepared by the City in 1963 for the owner of record in March 1963 which was the time of annexation to the owner Mr. Roy Lyon. He commented that the letter stated that the R-3 zone, "would allow you to continue your club operations and fully utilize your property for potential development." Mr. Boyle advised that for 20 years, albeit without much development, that letter was kept in the record.

Mr. Boyle commented that upon the purchase of the property by Mr. DaSilva in 1983, that letter was held as evidence towards the ministerial expansion of the use over time and the City did not process conditional use permits over or amendments to the existing use permit in large part because of a 20 year old letter. He advised that the record shows that building permits were issued and the expansion of the site occurred

contingent upon this statement of a 20 year old letter that said that again, that the rezone, "would allow you to continue your club operations and fully utilize your property for potential development."

Mr. Boyle stated that in 1989, which is the next CUP of record, the new Planning Director of record Ms. Leona James called out to the property owner that that was insufficient document to support the continued ministerial allowance for expansion. With that, Mr. DaSilva made application for a conditional use permit and a variance to allow for certain improvements that were not consistent with the original five conditions for the 1963 CUP.

Mr. Boyle stated that ultimately, the first expansions were the racket ball courts that grew out towards Sunset Avenue and then ultimately, the development of a basketball court and expansions of weight rooms and daycares and the like. Cumulatively, those provided for basically the building footprint you see today.

Mr. Boyle stated that from 1963, they have 20 years of non-development or little expansion of the use followed by a new owner with a letter and ultimately, not until 1989 is a use permit required.

Mr. Boyle stated that 1991 basically functions as a review or perhaps even a small correction to the 1989 action in that the five parking stalls shown in red were counted as part of a parking count in the 1989 use permit but they really weren't there. It is more of an error and ultimately, there is a review and a correction of the parking stall count. He added that 1991 essentially functions as a review of the use and there are positive findings made by the Planning Commission in benefit of the use permit.

Mr. Boyle stated that cumulatively now, 1963 they have a use permit that allows for the club in the R-3 zone noting that is per code. In 1989, along with that expansion there was a parking lot and per the Municipal Code, a parking lot requires a use permit when constructed in a residential zone. Along with that there is an expansion that came with that and a justification for the expansion based on the additional parking spaces, and lastly, CUP 1991-13 allowed for a correction in parking to the prior CUP.

Mr. Boyle referred to the graphic noting that those are fine quality plan sets presented back in the day.

Mr. Boyle stated that in 2016, flash forward from the last entitlement now. They have an approximately 32,000 square foot structure. It is served by 76 parking stalls. He noted that the uses that are entertained on the site include the original weight rooms, the swimming pool and the like. He added that it also includes some Zumba classes, yoga, massage therapy, a dance studio on the upper floor, cardiovascular training, more contemporary apparatus and the like.

Mr. Boyle stated that the membership on the site is far beyond the parking capacity of the site per any Municipal Code and there is really a different ownership structure. He added that this use in the 1960's was more of a neighborhood club. Today it is more of a corporate club albeit that there is still a requirement for paid membership.

Mr. Boyle stated that before the Council tonight is a revocation. He noted that he would like to call out the ordinance that speaks to revocation, 10-3.1311 of the Madera Municipal Code which says that, "all use permits which have been granted as provided in this chapter may be revoked by the Commission after hearing as set forth below." "In the event the user of such permit or his or her successor in interest to the real property in favor of which the permit was granted breaches or fails to abide by any of the conditions designated in such permit or conducts any use or activity on such property contrary to the provisions of the code."

Mr. Boyle stated that there are virtually two taste tests that must be satisfied in order to entertain a revocation. He advised that the first one is that the permit must breach or fail to abide by any of the conditions designated in such permit. He advised that staff included a matrix within the staff report, kind of a condensing of the condition so that the Council can digest them easily. He added that in 1963 is it very easy to make an understanding that the original conditions of approval are very difficult to satisfy today. He

noted that the athletic club doesn't operate in the same manner that it does today. He commented that the appellant has acknowledged that in additional documentation.

Mr. Boyle stated that the second condition would be that the commercial uses be the same type of the uses that are there now. Third, that the owner and future owners of the property maintain the yards and buildings in a residential manner. He added that condition #5, which is called out in non-compliance, is that the Municipal Code requirements be met.

Mr. Boyle advised that they would go through the conditions of approval for 1989. He noted that 1989 calls out that there is compliance largely here except for condition 7 which says, "the club manager shall make every effort to make members aware of the availability of off street parking and encourage its use." He advised that one means of accomplishing this is the regular reminders in the club newsletter.

Mr. Boyle stated that lastly, conditions of the CUP for 1991, be the original conditions of the use permit 1989-30 and the variance that was adopted at that time shall remain and that the, "applicant shall continue his efforts to encourage his employees, a definitive program to accomplish that should be submitted within 30 days."

Mr. Boyle referred to Variance 1983, which is not under review tonight, calls out that a written agreement for shared parking facilities with the church at Sunset and Orchard be recorded. He stated that they are not having a revocation hearing as it relates to the variance at this time.

Mr. Boyle stated they would look at these three use permits. He noted that the first use permit granted a club in a residential zone. He advised that these are the conditions of approval that guide operation of a club in a residential zone. He added that there is no movement over time to supersede them, and there is no replacement of those conditions of approval. He stated that the conditions of approval from 1989 guide the installation of the parking field. He noted that almost primarily, they speak specifically to the installation of a parking field and the findings are in support along those lines as well within the original staff report.

Mr. Boyle referred to 1991 and stated that it again speaks to the parking field because it really is a review and a reduction in the overall parking. He noted that with that said, staff would assert that if the taste test for revocation is that all use permits may be revoked via public hearing whenever the successor in interest breaches or fails to abide by any of the conditions designated. He added that per staff's analysis 16 conditions of approval are there, nine are in compliance and that is a 56% compliance rate.

Mr. Boyle stated that the second grounds for revocation is that it conducts any use or activity on such property contrary to the provisions of this code. He advised that this use has many other businesses that operate from the site. He commented that he has been working with Galaxy Dance Academy on a relocation and securing a use permit for that activity. He noted that Fitness Evolution provides massage therapy and yoga. He advised that those individuals have come to the City and asked for building permits but, since the use permit itself doesn't speak consistent to the use, the City hasn't granted business licenses along that line. He added that there are Zumba classes. He advised that you can go to a Zumba class in about 35 minutes with "Janet" this evening.

Mr. Boyle added that along with that, they look at the floor plan for the last approved use permit in 1989. He commented that there is an approved floor plan for the site and it calls out specific uses for each of those spaces on that site. He noted that today, there are very different uses within those spaces. He commented that the appellant talks about where this is kind of like a restaurant and if you look at it from that perspective, what staff is basically saying is that you basically need a use permit if there is a change in the menu. He commented that number one, restaurants are permitted uses in commercial zones and fitness clubs require a conditional use permit that has specific conditions of approval attached to it that need to be modified from time to time. He noted that clearly, modification of this use permit, the conditions of approval that guide this operation hasn't occurred for an extended period.

Mr. Boyle stated that the floor plan is the approved uses on the site. He noted that it is kind of like saying, "I granted a Subway and I've changed the use to an In N Out drive in with double ordering lanes and queuing for 20 cars." He commented that it is still a restaurant but its operational characteristics are very much the same. He noted that the analogy of restaurant and the change of menu that is called out by the appellant has some fatal flaws in that menu is not necessarily an intensification of activities in the restaurant. He commented that expanding the restaurant or the number of seats is an intensification. Asking for alcohol sales or outdoor dining is an intensification which would then call out requirements for a use permit. He stated that the connections are not clear and subsequently the real point is that in 1989 they had a floor plan and it had permitted uses of the space and those activities are not consistent with the activities on the site today.

Mr. Boyle commented on what happens when they have a condition where the use is conducted with uses or activities contrary to the provisions of this code. He stated that is there because there is no amendment to the use permit for expansion of activities. When they have intensification of activities associated use permits, they amend them and that was one of staff's recommendations. He added that because they have subtenants like Zumba and a dance academy, those individuals don't have business licenses. He advised that the dance academy does not have a business license right now and that is not consistent with the City's code. He stated that a fundamental foundation of their business community is securing a business license. He added that there is no review of certain improvements that would have signaled staff towards requiring an amendment when they have intensifications occurring that they are not really notified of until later on down the line. He commented that there are no building permits required at the conversion of racquetball courts as well. He advised that there was a building permit required for the demising wall on the basketball court. He noted that there wasn't a callout as to any potential change of use of that space. He added that consequently, there has been no provision of additional parking as a result of the expansion of uses.

Mr. Boyle stated that the last point he'd make is that when it comes to use of property contrary to the provisions of code is that when a use permit is approved, a specific finding of all use permits is that the use permit is not detrimental to health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood. He added that that finding goes on to talk about the City overall.

Mr. Boyle stated that because of no amendment to the use permit, because of these specific issues associated with not conforming with the code, they are not able to make a finding of support along the second taste test.

Mr. Boyle stated that the Council received an application for appeal and within that appeal there are five points of contention. He commented that the first one would be, the lack of substantial evidence in the record that the property owner was in violation of the conditions of the existing use permit. He noted that property owner and operator is actually in compliance with all the past conditions with the exception of the condition from 1991 requiring the current owner agreed and did prepare condition from 1983 requiring shared parking agreement with the nearby church which is an illegal condition that cannot be imposed without the churches consent. Mr. Boyle noted that is a condition of approval from a variance and it is not under their review at this time. He stated that his contention is that the CUP from 1963 allowed for the club and is specific to the operations of the club and at no time were those conditions superseded. He stated that secondly, again, the CUP from 1989 is primarily specific to the installation of parking field and an expansion which relied upon that parking field for staff support and then, 1991, specific to the correction of the 1989 parking counts. He noted that all the conditions of approval are active which is contrary to the appellant's statements. He commented that conditions have been replaced or superseded over time and there is 56% compliance.

Mr. Boyle stated that the 1989 floor plan last approved the use of the rooms and the argument is that there is no change in footprint. He advised that there has been substantial change of use of the site and added that this is a conditional use permit.

Mr. Boyle commented that also within this section of the first condition of the appeal is the operator is actually in compliance with all the conditions. Mr. Boyle noted that is not a factual assertion per staff. The second component with the exception of the condition from 1991 requiring the submittal of a written parking plan was received. He explained that it was received after formal revocation by the condition and 25 years after it was required. He commented that lastly, he noted the condition from 1983 that although it is not part of tonight's discretionary review, this condition was agreed upon by the applicant and the agreement was entered into for a period of time. He stated that his point would be that although illegal, he is not contesting that the condition of approval is very difficult to enforce. He noted that it was a condition that was agreed upon and was carried forth for a period of time. He restated, 16 cumulative conditions, nine in compliance.

Mr. Boyle commented that the second point would be, number 2 in the appeal is the Planning Commission and staff improperly applied modern city code sections to this vested CUP in determining that the facility was out of compliance when in actuality, the permit is legally grandfathered. Mr. Boyle noted that grandfathering is not applicable to the club in that it is a conditional use, that secured use upon expansion of the use in 1963. He commented that since grandfathered uses are allowed to exist without a required permit only when grandfathered uses do not expand or intensify. He added that he would go one step further and say, when existing use permits expand or intensify they are required to secure an amendment to that use permit which was not secured.

Mr. Boyle referred to the third which, stated in the appeal process, is the lack of substantial evidence that neighborhood problems complained of are attributable to the fitness facility and not other factors. He commented that he would note that there is an assertion by the applicant, was not given proper notice of violations and a reasonable opportunity to correct them. Mr. Boyle stated that he asked Code Enforcement noting that this process originally started in their Code Enforcement Division before it was referred to him on March 8th of this year. He noted that the Code Enforcement Officer of record provided him a synopsis of his communications. He noted that they never assigned a violation number. He commented that the City's Code Enforcement Division looks to try and collaborate and proactively work out these issues as opposed to fire off citations. With that said, he noted that there were multiple meetings with Thrive owner Mr. Montoya where Mr. Martinez met with him and discussed all the various issues that were problematic both the neighborhood and with the operations on the site; provided him all the conditions of approval associated with the conditions of approval; there were four meetings there over a four month period; and then cumulatively on the third of March this year, at the request of Thrive, Mr. Montoya met with the neighbors, Councilmembers, PD (Police Department), City staff at a neighborhood meeting that was held at Jefferson Middle School in close proximity to the use.

Mr. Boyle commented that when Planning staff was assigned this issue for lack of movement on the part of the appellant and the City's Code Enforcement Division, staff sent off a letter on March 30th after meeting with Mr. Montoya on March 8th. Within that letter, it states that as little progress has been made to resolve non-compliance since their original meeting, which was on October 20th, and subsequent site visit which he performed with Mr. Montoya on November 3rd, he provided direction to Mr. Montoya to submit a complete application to amend the two use permits within 30 days. He noted that would have been April 8th. He continued reading...in order to protect the status of the CUP's and to avoid the scheduling of a revocation hearing before the Planning Commission. He noted that the letter goes on to say that failure to take the necessary actions will result in enforcement action by the City including potential revocation of the use permits which entitle your business.

Mr. Boyle stated that staff is confident that ample opportunities and notice was given to the applicant and subsequently the applicant did make application for an amendment to the existing use permit. He noted that that application remains an incomplete application where an application form, an operational statement, and a filing fee was submitted. He stated that staff has asked and continued to ask for submittals with a revised floor plan and site plan where with they might do the necessary analysis and craft conditions of approval that would allow for compatibility within the neighborhood and continued compliance.

Mr. Boyle referred to number four which states that the Planning Commission did not consider alternative or less drastic solutions other than revoking the use permit, did not consider the property owners investment-backed expectations prior to taking the use permit without just compensation for its value. Mr. Boyle commented that he would say that when it comes to the Planning Commission "did not consider alternative or less drastic solutions". He noted that no applicant request for consideration of an alternative solution until the Planning Commission revocation hearing was entertained. He added that once entertained by the appellant, the Commission did not support the alternative request and moved for revocation. He stated that again he would note that an application had been submitted earlier but it remained incomplete. Mr. Boyle referred to the issue of taking and stated that the issue of taking is not applicable to the findings for revocation.

Mr. Boyle referred to number five which states that the potential violation of due process in that some of the decision-makers may not have been unbiased prior to hearing the evidence. Mr. Boyle commented that staff has considered this statement and due process has been followed. He stated that there has been a noticed public hearing for revocation by the Planning Commission and in advance of that, a review of the use permit was performed and all noticing has been completed consistent with ordinance. Mr. Boyle stated that along the lines of unbiased, there is no evidence that any decision makers were biased as it relates to the processing of this revocation.

Mr. Boyle stated that in order for the Council to act, the ordinance states that the Council may by resolution affirm, reverse or modify in whole or in part any decision determination or requirement of the Commission. He further stated that the Council shall make the written finding of fact setting forth wherein the Commission's findings were in error.

Mr. Boyle stated he would digress for just a moment and allow for the City Attorney, Brent Richardson, to provide additional clarity.

City Attorney Brent Richardson stated he just wanted to kind of elaborate on what is before the Council tonight so that they are clear as to what their task is. He stated that the section that is on the screen before them basically outlines what the decision is tonight. They can do one of three things after holding the public hearing and considering all testimony and presentations. He advised that the first would be to affirm the decision of the Planning Commission if they feel that that is appropriate. The second option would be to reverse the decision of the Planning Commission. He advised that if they do that, there is a requirement that they make findings as to where the Planning Commission erred. He commented that the last would be to modify in whole or in part the decision. He stated that in this case since it strictly was a decision, either yes or no to decision to revoke the use permit, a modification wouldn't be something involving, as he sees it, the initial decision didn't involve developing conditions of approval or anything like that, so it is strictly a modification. As he would interpret that in this case might be either changing the effective date of any revocation if they so see fit or possibly, he believes there are three CUP's in play. They could choose to maybe revoke one and not the other, something to that effect would be what he would see as the universe of modifications in this case. He stated that they just need to keep that in mind. They do have a resolution in front of them that has those three options so at the end of the proceedings tonight then they will need to consider that. He added that as an aside, the vote on this tonight is not the normal heightened vote. In the past they have had occasions to consider appeals on denials of use permits. He noted that there is a heightened vote standard on that particular type of appeal. On this one, there is not the heightened vote standard so it is just a simple majority of the Council. He turned the discussion back over to Mr. Boyle unless the Council has questions.

Mayor Poythress stated that Mr. Richardson is the City Attorney.

Mr. Boyle stated that staff would recommend that the City Council adopt a resolution of determination, after an appeal hearing, affirming and upholding the Planning Commissions revocation of Conditional Use Permits 1963-23, 1989-30, and 1991-13. Mr. Boyle stated that completes his presentation.

Mayor Poythress asked if there are any questions of Mr. Boyle.

Council Member Holley stated he wanted to go on record and say that the meeting that was held was not at Jefferson, it was at John Adams.

Mr. Boyle and Mayor Poythress thanked Council Member Holley.

Mayor Poythress asked if there are any other questions before they open the public hearing. No questions were asked.

Mayor Poythress stated that before he opens up the public hearing, what he would like to do is open it up to hear from the attorney representing Mr. Montoya. Then also, if there is somebody in the neighborhood who would like to address the Council that would be fine also before they open to the public. He advised that for the public hearing they will limit comments to three minutes so that they can get through and hear all the comments and so forth. He added that this will be a time when there is more of an expanded opportunity. Mayor Poythress asked for name and address.

Sophie Treder with Treder Land Law, Inc. located in Santa Margarita, California stated she is here tonight representing Merchant Men Inc., the owner of the physical lot itself, and Thrive Fitness and Fitness Evolution which are the owners of the gym business that occupies the site. Ms. Treder advised that she sent the Council a letter earlier this week to cover some of the history of this property and as a response to the staff report in the hopes that they don't have to go through it point by point here tonight. She knows there are a lot of people here tonight who want to speak to the Council tonight and she thinks the Council's time is probably more valuably spent listening to them. She apologized that it was a lengthy letter but she wanted to cover as much ground in advance of the hearing as possible to leave it open for public comment tonight however, she is happy to answer any questions that the Council may have about the content of the letter.

Referring to the letter, Ms. Treder stated that the gist of it is that they do not believe that there are any violations of the currently applicable conditions of approval. The reasoning for that is set forth in detail in that letter with the possible exception again that it does appear that no parking plan was ever submitted so they have submitted one for Council's consideration to satisfy that particular condition.

Ms. Treder offered a brief response to staff's presentation. She did want to note that intensification of a use is not illegal pursuant to a valid use permit; only non-conforming uses are prohibited from intensifying their use over time. She added that particularly whereas here there are no express limitations on the size of the operation. She noted that there is nothing in the existing conditional use permits that say you are limited to "x" number of members or "x" number of people. So that intensification of use, they don't believe, actually applies here. Regarding floorplans, she noted for the record, are always conceptual. She commented that if a floorplan was binding it would be included and referenced in the conditions of approval. Instead, they are usually part of the application. She stated that all businesses with valid permits are allowed to renovate and update unless the renovation actually rises to the level of triggering a building permit and of course, they have obtained building permits for all the renovations that have occurred over the last 25 years here at least everyone that actually triggered a building permit under the code. Finally, she just wanted to note that property owners are not required to come in and apply for a conditional use permit when their existing use permit is still valid so that is why they see that prior to Mr. Montoya having legal counsel he did at first start to fill out an application for a new use permit and then he was counseled by his legal counsel not to do that until they've resolved the current use permit.

Ms. Treder stated that, more importantly, tonight she just wants to focus on solutions because they do feel very strongly that there is a solution that can be obtained here tonight and a win win for everyone. She added that the most important part, she would say, of what they submitted to the Council is the parking program. She wanted to walk through that with the Council but before they do that though, she thinks it is important for them to understand a little bit more about the on the ground reality so that they can appreciate the potential solutions.

Ms. Treder stated she hopes that by now the Council have all had a chance to visit the gym itself either get a tour from staff or just walk around on their own. She referred to the display which she noted is obviously the outside of their gym. They can see the landscaping here. She noted that this slide is important because they believe it directly counters the one allegation that they are not in compliance with the landscaping requirements even assuming the 1963 requirements are still applicable. She thinks it is also important to note that what makes this gym stand out is this is the only gym in their community with a pool and she thinks they have heard from many residents how important that feature is to them and why they use this gym as opposed to any of the other gyms that they might have the opportunity to use. She stated that there is a sense, at least there was at the Planning Commission, that nothing has been done to try to address these problems. She referred to signs that have been prominently maintained and placed by Thrive urging their members to keep the neighborhood clean, to keep it safe, to use the off street lots. She stated this helps fulfill and does fulfill that condition that every effort be made to encourage the use of off street parking which they have also done through newsletters and website. So again, they strongly dispute the allegation that they are in violation of a condition that requires them to actively encourage their members to use the off street parking.

Ms. Treder stated she has had the opportunity to visit the gym on several occasions now and to observe the parking at various times of day and she wanted to run through some photos that she took with them. She stated that this first series of photos was taken at 5:00 o'clock on a Wednesday afternoon. She noted that this is the off street parking lot at the corner of Venturi and Orchard. They can see that it is approximately 60% full at that time. She commented that gyms have their peak hours right after work and their data, and any other gym owner, will tell them that their peak hours are from 5:00 to 7:00 p.m. is when they have their most check-ins, the most people on site. She stated that is a unique feature of gyms that they have to bear in mind here. She added that just because a gym has 3,000 members or 5,000 members doesn't mean they are all visiting the gym at the same time. She further added that gym visits are very clustered at certain peak hours and then the rest of the membership is spread out. They can kind of think of it almost as a bell curve and the best part about it too is that the visits are transitory and the average gym visit lasts less than an hour and one-half and then the person is out of there and moved on to other things.

Ms. Treder described the next photo which is looking down towards the residents at the end of the parking lot who has specifically complained of certain things that they have tried to address in their parking program and she will get to that in a moment. She added that it also shows that down towards the end of the lot is where a lot of the open spaces are. She noted that of course people want to park as close as possible to the gym so they use up the other spaces first. She moved to the next photo which shows the street parking at 5:00 o'clock; this was in July which is why the sun is still so high at this point in the day. And it shows them that there is still street parking although it illustrates something she is going to get to in a moment when they talk about solutions which is that the on street parking is not necessarily being efficiently utilized. She thinks if they look at this they can tell that they could easily fill another car in there if these spaces were striped.

Ms. Treder displayed a photo showing 5:00 o'clock p.m. on a Wednesday looking down. They are currently standing in front of the parking lot with Orchard on the right and looking down Orchard. She pointed out Venturi which is the cross street and they can see that it does not appear that there is any gym parking at all taking place on the street. She stated that the car further down appears to be a residential car because if it was a gym member it would've parked probably much closer.

Ms. Treder showed a photo noting that this is standing in front of the gym with the back to the gym. She stated again 5:00 o'clock p.m. on a Wednesday and it again shows them that there is available street parking that has not been used up immediately in front of the gym and in front of the church that does not affect any residents.

Ms. Treder moved on to the next photo which is from her second visit at 3:00 o'clock p.m. on a Wednesday. She explained that this is showing that at 3:00 o'clock p.m. she counted; there were exactly six cars in the parking lot and lots of open space both on the street and the lot. She advised that there is one residence on what she is going to call the short block. That is the block of Orchard that runs between Sunset and

Venturi. She noted that there are no cars parked in front of that residence nor should there be noting that it does appear to be a red zone here that protects that mailbox. She added that there are no cars parked on the longer block or what she calls the remainder of the block in front of that residence at 3:00 o'clock on a Wednesday afternoon.

Ms. Treder commented on the next photo which is looking down Orchard the other direction showing them again that there does not appear to be any parking impact at all. Moving on to the next photo she explained that this is standing looking across Sunset with your back to the gym standing in that short parking lot at 3:00 o'clock on a Wednesday.

Ms. Treder stated, just to orient them....noting that she would put it this way that Wednesday's might not necessarily be representative of their peak hour. She asked that they let her tell them what their peak time and peak hour is. She stated that Monday's are a gyms busiest day. She thinks any gym owner will tell them that. They call it the guilt day; right, you feel guilty, you haven't worked out all weekend, you sat on the couch, you watched football, you ate poorly and fresh start to the week, ok I am going to start working out this week right after work every day. She stated that the peak hours on a Monday are between 5:00 and 7:00 p.m. as she said. So if they want to get in a sense of what the maximum impact of the gym on the neighborhood is they need to look between those hours on a Monday which they did. Their statistics show that they might have 150 people using the gym during the peak 30 minutes of that period. She asked that they again remember that some people check in at 5:00; some people check in at 6:45 and they don't monitor checkouts so they have to take the hour and one half that they are there and see how often they check in to try to narrow it down to a window, a 30 minute window when they have their maximum bodies on site actually working out. So the maximum bodies on a peak Monday, and this is probably a Monday in like January near the beginning of the year when people are starting over again. She noted that the first quarter is always the busiest.

Ms. Treder added that they have to take into account, as they did, the people who walk to the gym. She noted that there are many as she thinks they are going to hear tonight that live in the neighborhood that walk to this gym for convenience; people who bike to the gym that maybe they get their cardio in via bicycling and they come to the gym to use the weights. And then carpoolers noting that there are lots of people who come together and ride together to work out. She stated that means if they've got a peak body count, so to speak, of 150 people on site for that one 30 minute period, they should be able to accommodate 100 cars in parking. Right now they have the ability to park 108 cars on the block just in front of the gym. She referred to the display which shows the block of Orchard that only has this one residence on it and then the second one down here at the remainder of the block, and then this little strip of Sunset. The way they counted that is there are 63 spots striped in the Venturi and Orchard lot. There are eight spots in the front lot. There are four spots on Sunset right in front of the gym. There are six spots on the short block, three on each side in front of the church and then there are 14 spots on each side, on this side, and that is measuring legal parking spots. She stated that finally there are four spots in the back lot with the potential to add more; that is those five spots that were never added that they heard referenced in the staff report. She noted that there is an old patio area right there. She hopes they can see the mouse. She advised that there are nine more spots on the remainder of this block so before they ever get to Venturi down Orchard or on the other side of Sunset, they have the ability to accommodate 108 cars. She advised that is only again, they only have to accommodate those cars for a 30 minute period on their peak day, one day a week. She stated, the rest of the time again, the gym looks very representative of the photos she showed them earlier.

Ms. Treder stated that getting to that is going to require a few solutions and that is what they addressed in the parking plan. She just wants to briefly walk them through that parking plan because it is important.

Council Member Medellin asked Ms. Treder if this parking plan was presented to the Planning Commission.

Ms. Treder replied that they presented all of the details to the Planning Commission so the content is the same. She advised that they did not have it in writing the way the Council does now. What they had asked

for was a continuance of the Planning Commission hearing so that they could work with staff and work with the neighborhood to actually put the parking plan into writing but they were not granted that continuance.

Council Member Medellin then questioned that the Planning Commission has not seen the presentation the Council is hearing right now.

Ms. Treder replied that they have heard the presentation of the content of the parking plan, the elements, but they haven't seen it.

Council Member Medellin thanked Ms. Treder.

Ms. Treder displayed the parking plan.

Council Member Foley Gallegos stated that Ms. Treder said that she recruited the residents to come up with this parking plan.

Ms. Treder replied that they had asked the Planning Commission for a continuance to work with the residents and that continuance was denied so this is...they just went ahead and put what they presented to the Planning Commission down in writing for the Council. She commented that it is important to note based on that though they are still asking for a continuance to work with staff. She advised that this is a conceptual model of the parking plan and as she will get to here in a moment, they do believe they have the opportunity to add what is essentially de facto conditions to their permit tonight notwithstanding what the City Attorney had advised via the parking plan. She stated that in other words, there is a condition that requires them to have a parking plan, what is in that parking plan and then they of course have to abide by that parking plan. She stated that what is in that parking plan is open for discussion and input by both the Council and the neighbors so that is the vehicle by which they want to essentially give them the opportunity to "modify" their permit.

Ms. Treder stated that it is imperative that they understand how much of the problem is due to the gym members and the first part in doing that is the member decal stickers so everyone new and old members would be assigned a decal sticker. If they have four vehicles in their family, they will get four decal stickers so that they can easily tell that they belong to their members. And, for instance if your car breaks down, you have a rental or something, they come in that day, they can get a guest permit for that day.

Ms. Treder continued by stating that again, making members aware of the off street parking and providing incentives. She stated that their position is that they just tell members, you need to use the off street parking. She noted that legally they cannot prohibit them from parking on a public street. If they would, they could but they just can't; it is only the City who can do that. But, they are going to say, hey, if you are a member, you need to park in the off street lot; that is what it is there for. She added that employees are going to routinely patrol looking for both violations, blocking of driveways, etcetera. Then also, providing incentives for members who do use the lot such as free training, discounts on memberships, etcetera. She added that they are going to do everything they can to make the members aware of the impact on the community; this is a residential area, if you come at 5:00 in the morning to work out don't double click your key fob, see if the lights go on on your car, that will tell you if it's locked. She commented that they don't need to have the horns going off etcetera.

Ms. Treder addressed parking lot security. She stated a lot of this delves into other issues that they heard from the neighbors were a concern. She commented that having regular employee presence is important. They did hear members of the public say that they thought it was important that the members be identifiable as gym members and not potentially just somebody roaming the neighborhood with illicit purposes in mind. Ms. Treder stated that employees in gym uniforms will be assigned to regularly patrol the streets during all gym hours about once every 10 minutes, 15 minutes, similar to the way at a grocery store, you send somebody out to gather the carts every so often. That way they can also, if they document any problems with their members' behavior based on the decal stickers, they can jot down immediately that member's license plate number.

Ms. Treder stated that parking lot gates will go a long way they believe towards addressing security concerns. She noted that it sounds like one of the big problems is illegal activity taking place in this parking lot at night when the gym is closed because unlike the church, there aren't any barriers blocking entrance to the parking lot so they will immediately install those.

Ms. Treder stated that security cameras will allow them to monitor the activity in the parking lot both during business hours and outside of business hours. She added that nowadays you just get an app on your phone. At this very moment she could go to her law office and tell them if there is anybody on the porch and tell them what they are doing. She stated it is very, very easy with current technology. Ms. Treder stated that night time recordings with this type of technology are motion triggered so in other words, they can get an alert when somebody walks under your camera at two in the morning or something and see what just happened.

Ms. Treder addressed lighting retrofit as necessary. She advised that this is something they want to proceed with caution because they heard from some neighbors that they feel like it is not safe because there isn't enough lighting in the parking lot. They heard from another neighbor that they don't want light pollution and they don't want lights shining in their house at night all night so she thinks that has to be done very carefully and only with the input of the neighbors but it is something they are absolutely willing to do.

Ms. Treder stated that their next component of this, once they get beyond the actual parking lot itself and the parking program, complaint recording and enforcement. This is something that various other businesses have put in place with relative success. She stated that nowadays, again with technology, people can text or email their complaints. They can take a photo with their phone and then they can immediately follow up on that. She stated there is a protocol for complaint verification and response, and all complaints will have to be followed up to get an initial response within 24 hours and then be told what the resolution of that complaint was within five days.

Ms. Treder stated that finally, and they feel this is the most important part of the plan is community enhancement measures noting that again, curtailing the hours of operation is something they are open to because of the residential character of the neighborhood. She noted that current hours are until 11:00 p.m. and shortening that up to 10:00 p.m. would be something that they are absolutely willing to do. They have also found with other gyms that because there are so few people using the gym between 10:00 and 11:00 it doesn't actually really impact the neighborhood so much but having that presence and the business open is actually a crime deterrent in neighborhoods that are concerned about crime. She added that sometimes they want the gym open until midnight because you at least know that there are reliable people in the neighborhood. She advised that is something they want to listen to the neighborhood about and find out what their preference is.

Ms. Treder commented that some neighbors are concerned about the clang from the weights in the weight rooms and that is a very easy fix. Soundproofing takes care of that and they have written that into the plan. She noted that as they can see, this is a little bit more than a parking plan but they wanted to use it as a vehicle for addressing all of the concerns that they have heard today and making it binding on them so that everyone doesn't have any worries that they are going to have to comply with this.

Ms. Treder referred to trash cleanup and gathering. She stated that is part of the regular patrol duties of the gym members as they walk blocks in the parking lot and then also having maybe some regular events for their members who want to volunteer and get involved in the community; pruning some trees, doing some landscaping, whatever needs to be done in the area. She added that is a chance to forge a bond between the gym members and the community, and educate them about the standardized rules.

Ms. Treder referred to neighborhood watch group and noted that it does seem that there is one neighborhood watch sign up there already so the neighbors have already taken this upon themselves. She added that getting the church and gym involved in that is something that she thinks would be very important because it would allow for a structure that will allow for regular meetings between the church, the gym and

the neighbors to talk about the current issues. She stated that would keep the lines of communication open every month, and if they have officers of that group, that allows for protocol for communications.

Ms. Treder referred to long term neighborhood solutions. She stated that again, this is something that they feel is really within the purview of the City but, they wanted to get the discussion rolling and start talking about what the most appropriate solutions might be. She commented on speedbumps and traffic controls noting that one of the biggest things is that the intersection at Venturi and Orchard is not fully controlled. She noted that there are no stop signs at Orchard so nobody has to slow down as they drive off of Sunset by the gym and through the neighborhood until they get to the next block and park. She stated that is an easy fix. She added that striping the parking spaces so that there is efficient use of the on street parking that they already have and striping keeps people from parking in front of driveways and mailboxes if you stripe it correctly.

Ms. Treder commented that another more extreme example would be one-hour parking zones; green zones essentially. Another is a residential only parking program where you have to have a residential permit to park on certain blocks, on certain streets. She noted that these tend to be self-sustaining or sometimes revenue generating for cities because of the fines that can be levied for violations. She stated that in other words, they tend to pay for themselves and don't tend to cost especially if they are talking about a limited number of blocks here.

Ms. Treder stated that finally there is a community traffic and safety charrette. She commented that what was interesting to her in reviewing the file for this particular site is that, it seems like there is nothing new under the sun here. She explained that in other words, the same things that are complained of today were complained of in 1991. They can see them detailed in the staff report for the 1991 permit. She noted that neighbors had called in and complained about cars blocking their driveways or their mailboxes and the City traffic engineer, 25 years ago, had said, well, let's consider one-hour parking zones or let's consider a residential only parking zone. She commented that these are not new solutions; it is just simply that they have never had a chance to be implemented and tried and tested. They feel really strongly that they need that opportunity to have that happen here. She noted that this is a gym permit that has existed and a gym that has existed for over 60 years and a lot of their constituents rely on this gym.

Ms. Treder stated that this is going to sound like a funny analogy but when she was a kid, she and her sister went to Venice with their parents. They were about six and seven years old and she remembers the tour guide telling them that Venice was sinking at a rate of two millimeters a year. When they were getting ready to leave the city, her sister looked at her parents and goes, is that true, is Venice really sinking. Her parents said, yes it is and her sister gets in the car and goes, well, "x" off Venice and it was like ok. As they all know, you don't just "x" off Venice. You don't just say, oh well, you know, I guess the Roman Empire decided to build on a lagoon and bummer, it's going down, it's been here for a long time but we will be sad when it is gone. She then stated no, they rely on technology. To date they have these automatically inflatable dams that keep the water and the high tides from coming in; there are all kinds of things. Ms. Treder stated that is an extreme example but here they have a business that was built perhaps not in the wisest location. She noted that at the time it was built, it was a great location. She commented that City planning over time has gradually allowed the encroachment of the residences around it but there are solutions to the problem. She feels like the Planning Commission a little bit, they just kind of x'ed off the gym---oh okay, four months of complaints, oh gosh, bummer, too bad so sad.

Ms. Treder stated that the timeline here is that there were informal discussions, meetings with the neighbors that led to a number of programs and things that were implemented at the gym but there was no formal notice that the CUP (conditional use permit) was at risk; no written notice that the CUP was going to be revoked until March 30th and four short months later, despite her request for a continuance, the permit was revoked, permits that existed for almost 60 years.

Ms. Treder stated that what they are asking here tonight is that they take the time to consider the impacts of this decision and to use the revocation as their last resort. They do believe, they are very optimistic that there is a chance for a win, win here. She thinks the vehicle for doing that is the parking plan. She noted

that the CUP does require a parking plan. They believe they are in compliance with all of the other conditions, at least the ones that legally apply to them.

Ms. Treder stated that the Council can take the parking plan under submittal tonight. They can schedule to continue it out for another hearing in 12 months, in six months. She thinks the Council has a number of options at its disposal tonight and they would really encourage the Council to consider all of them and allow some of these solutions to play out because she thinks that is the best possible result not only for the gym owner but for the taxpayers of the City, the constituents who use the gym, and the residents of the community. Ms. Treder thanked the Council.

Mayor Poythress thanked Ms. Treder. He then asked if there is anybody from the neighborhood who would like to represent the neighborhood before they open up the public hearing. Mayor Poythress asked that they come up and give their name and... (There were a few comments from the audience. Not audible.)

Mayor Poythress commented that the Council is running the meeting and they haven't opened up the public hearing yet. He advised that this is the owner after the attorney. They are going to let the neighborhood representative come up then they will open up the public hearing. He noted that this has nothing to do with the sign in sheet and thanked them.

Christopher Montoya stated he is the owner of Thrive Fitness and managing shareholder of Merchant Men, Inc. who owns the property. He noted that he didn't get to talk last time. He really wanted to just say something that he thinks is important. He advised that he is born and raised in the valley. He has seen a lot of things change and a lot of things grow. He started out in the gym business when he was 18 years old. He added that 27 years later he is still in the gym business even though his mom told him to get a real job early on in his career.

Mr. Montoya stated that he worked in the Bay area for a short period of time. He was partner in some clubs. He had his first son and decided to move back to the valley. His grandparents were here and they decided to raise their children here, and they decided to invest in a club in Madera. He commented that he and his wife talked quite a bit about that. They came to the City and spoke to the City if there were any pitfalls, what was going on with the property. They got the green light and they invested almost everything they owned into it. He kept \$5,000 out. He doesn't know why but he figured that was enough to keep him alive for two months if something were to happen. He added that there has just been a lot said about them and the company but he is really proud of what they have done here in the period of time that they have been in Madera. He is proud of his staff and the impact they have had on so many lives. What he didn't know was how much he would be impacted in what they have done. They've really got a chance to walk life with people; people that walk into the club and have some ailments, things going on with them, some health issues. They've got a chance to celebrate with people. They've got a chance to cry with some of their members when they've lost their spouses. He thinks they've done something special that he would hate to see go away. He would hate to see themselves just give up and say hey, we were just another business, we were just some business on the corner that can come and go easy. He is proud of being able to watch his staff buy homes. He is proud that they can give them a paycheck to do that, to build families, to pay for their schooling, to leave noting that is probably one of the hardest things he has had to do is write those letters to tell how great the staff was as they were leaving them to go somewhere else but they were off chasing their dreams and what they wanted to do in life.

Mr. Montoya stated he just wants to make sure that the Council understands that they tried really hard to do the right thing to build something important and they have poured a lot of effort into their members and their staff. He noted that it is just hard sitting in the audience and having people say this or that about you. He just wanted to stand up and share that with the Council.

Mayor Poythress thanked Mr. Montoya.

Cynthia Hurenkamp, residing in Madera, California, thanked the Council for the opportunity tonight. She stated that that camera was pointed at her house as shown on one of those photos. She stated they

appreciate the opportunity to speak tonight. She is speaking on behalf of a number of neighbors who live next to the Thrive Fitness facility. She asked her neighbors to raise their hand so the Council knows who they are.

Ms. Hurenkamp stated that as the appellant has sought to influence the outcome of this decision tonight by bringing letters from countless members whose lives would be disrupted by the closure of Thrive Fitness, they would like to introduce themselves as those whose lives would be severely disrupted by its continuance of doing business in their neighborhood so that the Council can make a fully informed decision.

Ms. Hurenkamp stated that these other people she speaks for tonight are regular citizens of Madera just like everyone else here except Mrs. Treder and Mr. Montoya. She stated that many of them are lifelong residents and have owned their homes in the neighborhood for decades. Some of them own businesses; many are retired. She noted that "Patty" plays the organ at the church; "Roger" is a retired bus driver; "Tom" is a retired Police Officer and Code Enforcement Officer noting that he is in the hospital tonight; "Liz" is a teacher; "Reed" is retired from the school district and volunteers at the church; "Gerald, Karen and Roger" own a business in the City; and she has a homebased chef business. She stated that "Louise" has lived in her house at the corner of Venturi and Orchard since the site at Sunset was a miniature golf course; "Cindy" works at a chiropractic office; and "Steve" works at Walmart. She commented that they are just like them.

Ms. Hurenkamp stated that they keep their yards neat. They don't play loud music. They don't hold garage sales on the wrong day of the week and they have lived in utter harmony with each other since they have been here. They consider themselves good citizens and good stewards of their community. They didn't bring any expensive out of town attorneys or a long list of names on a petition tonight. They just brought themselves and a copy of the City's Municipal Code.

Ms. Hurenkamp stated that the journey to this podium tonight began a long time ago, years actually. She advised that she would like to provide just a little background to the situation that has led them here so the Council will understand why they are requesting that they uphold the Planning Commission's decision to revoke Thrive's conditional use permits effective immediately.

Ms. Hurenkamp stated that until recently, they've never had a problem with the athletic club on Sunset or the parking lot on Orchard and Venturi. She added that in fact, many of them were members of the Madera Athletic Club for quite some time when the facility was a community club and entertained much fewer members. She stated that the owners, then the DaSilva family, were model citizens to the community in all of their business endeavors and the Madera Athletic Club blended beautifully into their homes and lives but then something changed. She noted that the club was sold a couple of times and after a few years they started noticing an insidious decline in their quality of life. It happened slowly over time but noise, traffic, and crime started seeping into their community. She added that bad things started happening in the parking lot and bad people started coming in to use it. Litter left over from a lifestyle different than theirs began to appear in their yards: used condoms, drug paraphernalia, beer bottles. She noted that had never been the case but there they were sweeping them up in the mornings. She commented that individually neighbors reached out to Mr. Montoya who was running Thrive during mixed martial arts from the site with their various concerns. She noted that promises were made to tone down the noise from the weights, the classes held in the alleys and in the streets, and promises were made to fix the lights in the parking lot and clean it up. She stated that so many promises were broken over the years that they had all been pretty much worn down and had given up. They wondered why call anymore. They felt neglected and victimized and didn't know where to turn anymore.

Ms. Hurenkamp stated that last year things got so bad that they were compelled to act. She commented that crime was at an all-time high in the dark parking lot making it a literal den of iniquity: car break-ins, overnight guests, drug deals, drug use, romantic hookups, you name it. She stated that the traffic was out of control. She referred to Tom Fraser, who couldn't be here tonight and who lives kitty-corner to the parking lot and spends a lot of time in his front yard in his retirement was incensed by the assault on his home by the traffic and volume of cars. She added that it was not just that but the speeding cars tearing out of club parking lot going dangerously fast. They couldn't get to their home safely anymore because of all the cars

parked on the street. They blocked their view forcing them to pull out into the street to even see if it was clear. They are dodging dozens of jaywalkers emerging from between the cars often in the dark. She added that even driving home became tiresome; never mind living there.

Ms. Hurenkamp stated that last September they passed out a flyer to all the affected parties before them tonight. They gathered last September 22nd to discuss their concerns and what to do about them. She stated that they were just too ignorant to know that forming a neighborhood watch group may have accelerated their process. They went ahead anyway. They had about 25 people show up and they put together a three page list of concerns; not the least of which was the impending grand opening of the Sassy Cat Latin Dance Studio on September 29th in their neighborhood. She commented that the Facebook post showed 1,200 people had been invited to the 7:00 to 10:00 p.m. event on Friday in their neighborhood. They said, good heavens. There are only 76 parking places and where would all these people go. She stated that their neighborhood was being trampled into the ground with an onslaught of people. Thinking there must be some rule against some or all of this, they put together a PowerPoint presentation with photographic and video documentation of the concerns and presented it to the Neighborhood Revitalization group, or Code Enforcement as Mr. Boyle earlier mentioned. The department took their information, approached Mr. Montoya on their behalf and nothing changed.

Ms. Hurenkamp stated they were told Planning was looking into the matter. They waited for some change to occur but nothing did. They rolled into the holidays and Thrive was in full membership drive mode. She added that offers to join Thrive Sunset were on shopping carts, Facebook, signs out in the parking lot, regular mass mailings to their homes, and who knows how many others. She stated that they really wondered how this could be. She added that each and every invitation to join was just like another slap in the face after all of their concerns about the volume of parking and traffic and ingress and egress. They were still bringing more people in every month. She noted that it just seemed inconceivable.

Ms. Hurenkamp stated that the holidays and new year were dark times for them literally and figuratively. She noted that the shorter days brought longer hours of darkness and the lights in the parking lot still remained off. She stated that the place was overflowing with guests and the City was doing their work as they saw from Mr. Boyle but the membership drive continued: a new meal pick up service was announced by Thrive inviting even more people to the site. She added that Super Bowl Sunday was spent dealing with the consequences of vehicle break-ins in the parking lot. She stated that the only indication that Mr. Montoya had even heard of their complaints was that the signs were posted around the parking lot asking guests to respect their neighborhood. However, they didn't and don't do any good.

Ms. Hurenkamp stated that they thought they might get some in late February when Council Member Andy Medellin became aware of their situation. Looking for a win-win for each of them, Council Member Medellin encouraged Mr. Montoya to meet with them directly to see if they could come to some sort of agreement and work together. She advised that in good faith, they did go to that meeting. They saw a picture of that and it was hosted by Mayor Poythress. She stated that they went to John Adams on March 3rd. To their dismay, Mr. Montoya spent most of meeting as is his custom describing what a good member of the community he is and they weren't really given any time to voice their concerns.

Ms. Hurenkamp stated that the meeting did nothing to improve communications and many neighbors left frustrated. She added that days went by, another flyer arrived inviting them to join. She stated that the new banners went up and the place started calling itself Fitness Evolution; a new face. They looked them up and found out that they have an "F" rating with the Better Business Bureau. She noted that that sure didn't bode well. She referred to Good Friday which resulted in more time spent on vehicle break-ins, follow up with officers and detectives for identification purposes. They began to pin all of their hopes on the City being able to do something.

Ms. Hurenkamp stated that the City did do its job as they saw from Mr. Boyle. She added that various departments began working with Mr. Montoya to modify his license to do business, as he mentioned, to better reflect the activities occurring at the site. She stated that the 56 compliant rate became evident and Mr. Montoya needed to get that application in. She noted that unfortunately again, no follow through, was

incomplete. She stated that as a result, they had to move the process forward, seek that public hearing for revocation. She noted that got them on the agenda and they could finally get heard. They began to think that positive changes could actually be on the horizon. She commented that even though it was a non-public hearing item, several of them showed up to the Planning meeting on May 10th and what a surprise. She stated that a sudden last minute letter from Mr. Montoya's attorney in the hands of the commissioners requesting of all things more time to deal with this matter.

Ms. Hurenkamp stated that the Commission granted the extra time and Mr. Montoya was told to come back with, quoting from the Planning notes, "a nice tidy package that the neighbors are happy with and that's workable." She stated that naively, some of them actually thought that the knock on the door might come or the phone might ring. Instead they got another flyer in the mail and the parking lot lights remained off.

Ms. Hurenkamp stated they rolled into the summer feeling abused and frankly victimized. She noted that there was not even an attempt to even look as if any improvements were being made. She advised that none of them can even use front or back yards noting that club members and activities lap up to their very driveways and backdoors.

Ms. Hurenkamp stated that on May 26th they held their first neighborhood watch meeting and the police officer on site documented all of the same old concerns and they had no nice tidy package when they went in to the Planning meeting in July; just more flyers and a ton of hope that they would finally get some relief. At that meeting they met Ms. Treder, counsel for the appellant, who had just that day toured the parking lot for the first time, and they met Mr. Chopra from Fitness Evolution. She advised that Ms. Treder stated that they already had a decal program in the planning notes for its members yet the document filed for the City on September 15th proposes only a future decal program. Ms. Hurenkamp stated that when Mr. Chopra was asked, he told the Commission he hadn't been informed of any City action when he invested in the site with his Fitness Evolution business. She asked what kind of person would hide that information in doing business with others.

Ms. Hurenkamp stated that most importantly, the Commissioners were told by Ms. Treder, that they, quoting from the Planning Commission notes, "have the idea of sitting down with the neighbors and the City officials to hear all the concerns." Ms. Hurenkamp stated that when Ms. Treder had been advised that this hadn't gone very well in the past, she insisted, quoting, "there is a new driver of the bus and she is very motivated to make this work in very short order." She added that Ms. Treder also said that the decal program, the complaint hotline, along with the incentive program, would all be in place in the next 30 days. She commented that that was at the July meeting that they saw proposed tonight is a future program; would be in place in 30 days. She noted that instead, it is still just a proposal. Ms. Hurenkamp added that Ms. Treder said they were looking into security cameras but, if things that were to be implemented in 30 days are still in a proposal stage by now, what is the timeline on looking into.

Ms. Hurenkamp stated that Ms. Treder suggested that based on her pass-through walk of the parking lot that the lack of sufficient parking was self-correcting because it ceases to be convenient. Ms. Hurenkamp noted that Ms. Treder hasn't spent enough time there to see the hundreds of cars parked sneaking out like tentacles from the club down streets in all directions. And she thinks some of them may have been witness to that.

Ms. Hurenkamp stated she is getting close to the end. She apologized but noted that this year's long journey for them is difficult to summarize but she is almost done. She added that Ms. Treder agreed, at the last Planning meeting, that outreach and trust to the neighbors are the number one priority--outreach and trust. She asked that they note that there has not been one phone call, not one letter, not one olive branch since that meeting. She stated that there has been and is no communication at all to any of them from Mr. Montoya or Ms. Treder; not one. She stated that they were to be the number one priority. She restated that it is right there in the notes. Instead of the number one priority becoming the neighbors, it became the members and the employees. Instead of outreach to them, the outreach went to all the victimized members and employees of the club, furious efforts to save Sunset took place. She noted that hundreds of signatures were gathered, emails flowing from seniors who need to work out in the pool at the doctor's

recommendation, employees who won't be able to feed their family if they lose their jobs. Ms. Hurenkamp stated that they do feel sorry for these people. She added that if only Mr. Montoya would have taken care of business, if only he would have followed the rules or even tried to work to get things fixed, none of them would be here. No one would lose their swimming pool and people could lift weights to their hearts content.

Ms. Hurenkamp commented that with the latest maneuver to gather signatures, Mr. Montoya has deftly turned the City and the neighbors into the bad guys, and the club members into the victims. She asked how well does any of this bode for any future form of operation in this neighborhood and countless opportunities to work with them have passed by. She added that Mr. Montoya's behavior before and throughout this process has been shown to be detrimental to every aspect of their lives. She noted that their communication lines have completely broken down. She commented that the members have been manipulated into believing, they (neighbors) are all horrible people and they somehow have a right to a club here without any regard to the well-being of others. She added that Mr. Montoya and his counsel have proved themselves to be untruthful and any hope of going forward together in some sort of altered or minimized way isn't an option that they see as viable. She commented that this Council cannot set any conditions for the operation of this facility and in earnest believe that these new conditions will somehow be met given how the old conditions were trampled on, retired. She stated that they feel abused. They are asking the Council for protection under their Municipal Code to enjoy their lives and their homes free from any business operation which is, quoting, "detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood." She noted that as such, they implore the Council to reject the appeal before them and uphold the Planning Commission's decision, unanimous decision to revoke these conditional use permits that allow for the operation of this facility in their neighborhood. They ask that they do so effective immediately.

Ms. Hurenkamp stated that concludes her comments and noted she is available to answer any questions.

Mayor Poythress asked if there are any questions.

Council Member Medellin stated that Ms. Hurenkamp had mentioned early on in her presentation that there were promises made regarding the noise from the gym, the parking lights. He asked if that was with Mr. Montoya and when did that take place.

Ms. Hurenkamp replied that around 2012-2013 a lot of the neighbors including Louise's husband Larry. They were offended by the loud music that had started so really going back to 12/13, people just kind of calling over and individually going, hey, could you turn the music down and not really realizing that maybe the guy down around the corner was maybe saying, could you stop slamming the weights. She added that it was very specifically Mr. Montoya and Louise has told her that he has met in her family room and promised these things would be fixed.

Mayor Poythress noted that there are no other questions and thanked Ms. Hurenkamp.

Mayor Poythress opened the public hearing. He stated they are going to keep comments from each individual to a maximum of three minutes. He noted that they have a sign in sheet and the City Clerk will call people up as they signed in.

City Clerk Sonia Alvarez advised that she would call three names at a time so they can be prepared when their turn comes up. Ms. Alvarez called for Larry Lihosit, Abraham Giron, and Sanjiu Chopra.

Mayor Poythress asked that they give their name and address.

Larry Lihosit, residing in Madera, California, stated he has been at his residence about 21 years and he has been a member of Thrive Gym for over 20. He has come here to urge the Council to grant the appeal so that the gym can continue to operate. He thinks there is a copy of a letter in their packet that he wrote in which he outlined in detail why he thinks it is important. He noted that the main gist of it is real simple, noting that Ms. Hurenkamp mentioned herself, health, welfare; that is exactly what the gym is. He

commented that they have a shortage of parks. He stated that this business actually steps in and takes a portion of what the City should be supplying to them very effectively. He stated that it is the health, safety, and welfare of the community, old and young. He commented that every day and every night, for six years, he has been retired so for six years he gets to play. He goes to the gym twice a day and he goes whenever he feels like it noting that it is wonderful. He goes at 6:00 in the morning. He goes at 9:00. He goes at 6:00; whenever he feels like it. He stated that the information that was supplied to the Council in the neighbors report is misleading and exaggerated. He commented that Mr. Montoya's counsel is providing for the Council a very truthful, number one, scenario, and number two, a solution. He wants them to work together. He would like to see the City work together to keep this vibrant business going for their own safe and health/welfare. He noted that it is important. He is lucky. He is one of the lucky ones. He hasn't been in the hospital. He doesn't take medicines but he attributes that to more than 30 years of taking care of himself. He stated that the more people that do that, noting that the Mayor knows that because he is a runner as is the Mayor's wife. He asked if the Council has any questions. He doesn't want to go on and on.

Mayor Poythress stated he thinks they're good.

Mr. Lihosit thanked the Council for the opportunity to speak.

Grants Program Manager Jorge Rojas translated for Abraham Giron.

Mr. Rojas stated that this is Abraham Giron who resides in Madera, California. He is speaking for himself and his wife Sylvia. His wife had two grand mal seizures and is paralyzed. In 2012, he did not have access to Medicare or therapy. The gym was the only option he had for his wife to regain her ability to walk. It would be a great tragedy for this gym to close because persons like his wife need the facility. When his wife began to walk, she would walk for five minutes and then have to quit walking. Last Tuesday she was able to exercise for an hour. That motivates her a lot and gives her a lot of energy, and it does the same for him. He has a daughter at UC Merced studying psychology and a daughter in grade school with a straight A average, and the ability of their mother to improve reflects in their ability of their schoolwork. This is how it benefits him as well; his testimony he wants to give.

Mayor Poythress thanked Mr. Giron.

Sanjiu Chopra with Fitness Evolution stated he wants to say that all his comments are meant to be respectful. He stated that Ms. Hurenkamp mentioned, last time he came and he was a little bit caught off guard with the Commission...what he does know is that Chris Montoya is a really good guy and he has really tried to make this a good place. He added that when you think about the facts here that this has been a gym for over 60 years, a majority of these neighbors moved in after the fact that the gym was already there. He stated that after the last meeting it was really interesting because someone came up to him and said thank you and he said, what are you thanking me for; and he said, well I am glad it is you guys and not us getting our use permit getting taken away. He noted that it was the church across the street who told him how there are two churches and two schools and how they have meetings on Wednesdays and Tuesdays, and other nights where they have other events that are taking up parking but no one is saying anything to them. Mr. Chopra stated that none of that stuff is taken into account. It is just hey, let's focus on this gym that has been there for 60 years and because one room is used a different way than what they wanted to use or maybe because Madera has grown from what, 9,000 people to over 60,000 people. He noted that their town is growing. He stated that this is a place where they came in as a business real excited to do business and honestly, this kind of stuff scares people, it scares them. He asked that they imagine they walk in and there is a business grandfathered there for 60 years and all of a sudden someone says, well we just feel it didn't comply with 1991. He just wants to say for the record that they really try. They do a lot of things for the community. Mr. Chopra knows after that meeting he went and tried to talk to several members, and they heard Ms. Hurenkamp say it herself, these people. He noted that her verbiage has been these people; that their people are members that are going out to be fit are drug dealers. They are having sex in these places. They are doing other things. He noted that these are the things that were mentioned at the last Planning Commission meeting; these are the things that are being mentioned. He

added that it is not about the fact that what this gentleman said, we are taking people off of medication; we are getting people off of drugs. He advised that they employed 50 plus people in this community. He asked that they think about that. They are going to take away 50 jobs because ten people decided to live near a gym that is growing. He wants to be respectful. He stated that his comment is not to say anything negative. He just wants the Council to think about the global impact here. He asked that they think about this that Chris Montoya, as this gentleman said, met with them in March of '16. In July of '16 they revoked his conditional use permit and they are talking about these things how, imagine your conditional use permit and your livelihood is taken away and then she is talking about how they are supposed to go in and implement all these things after they are sitting here fighting for their life in front of the Council today. He wanted to remind everybody that is what they are here for. They have constantly said they want to be a part of the community; not apart from it. He knows it is a hard decision. He just wants to say they do a lot of good for the community.

Mayor Poythress thanked him.

Mayor Poythress reminded everyone that when somebody is up here speaking to please let them speak without any comments or any emotion because they want to have some dignity here and some respect for the speaker. He understands that maybe somebody on whichever side could say something that you might think is untruthful or offensive or whatever but asked that they please try to hold back. He would really appreciate it.

Ms. Alvarez called the next three names: Jon Wall, Sandy Opfergelt and Margie Klair.

Sandy Opfergelt, residing in Madera, California, said she prepared her notes not really knowing the background on the gym; only that the gym had a possibility of having its business license revoked or their doors closed. For her personally, she became a member because she had cancer. She had three surgeries. She had a month of radiation and she had 34 rounds of chemo in 15 months and she was depleted. She had no strength and no stamina. The doctor, seeing her frustration and even though she got through the treatment, asked her if she has ever heard of Silver Sneakers. She had not and Googled it. It is was at this gym. They have certified trainers and because of the pool. She knows that might not be a lot to them, but it is huge. She noted that they call it Silver Splash. It gave her a start. She didn't know where to start. She didn't even know what she could do because she felt so depleted. She commented that it is kind of like exercise for dummies. She needed a trainer. It was provided in the class, and the environment and the camaraderie of everybody supporting each other was huge. She felt welcome the first time she went. She couldn't even lift her arm higher than her shoulder and now she can go over her head. She stated that it is a blessing and it does good. She added that for a business to be punished because it is successful; if the parking lot is full that should be a good thing. She commented that they should find a way to put this together; to be a benefit and a win for the City. She noted that they can be courteous and good neighbors to the people who border this. She understands their concerns. She knows every time she walks her husband would carry a plastic bag because they would pick up litter on their street just because it is going to end up blowing in front them. She understands those concerns. After a while it becomes frustrating but she would like to think that the City would find every option possible to find a way to bridge this and to keep that business open because it is a true benefit. She stated that she had a lot of things down here and she didn't say any of them but thanked them.

Mayor Poythress thanked Ms. Opfergelt.

Margie Klair, residing in Madera California, stated her husband used to farm here since 1982 when Madera was very small. She stayed in Santa Clara because she had a good job and both her boys were in college. She came here three years ago because her husband got really sick and he passed away. She was thinking of going back until she found out about the Silver Sneaker and this gym. The last year they were in the process to sell her farm then her son took over and she got hurt. She fell from the tractor or something. She has been to so many doctors in Fresno and therapies since last year. Nothing was helping her until she started at this gym and working with a good instructor. They are very good and the pool especially. At one point she was ready to go back, sell everything but now she is settling in here. She loves the community

since her husband's dream was to farm and they will continue farming. She wishes to keep the gym. She understands what the neighborhood concern is because as her friend Sandy said, they both ride together and then they were even planning to go there in the winter time. They can walk there because they are not far from there. A lot of their friends ride their bike or they walk there but she does sympathize with the neighborhood. But as her friend Sandy said, they pick up a lot of garbage around their houses too. She wishes everything patches up and bridge together, the gym and the neighborhood.

Mayor Poythress thanked Ms. Klair.

Ms. Alvarez called the next three names: Sharon Kelly, Jeannie McAbee, and Terry Painter.

Sharon Kelly, residing in Madera County, stated she makes the trip in to Thrive or Fitness Evolution now three times a week. If they are wondering why she needs the assistance, she is a double amputee. When she first started going to Thrive, she could barely stand up straight and she certainly didn't make much progress watching. That is why she is saying there must be solutions. She stated they all have options and there must be solutions that they can find to overcome this rift. She commented that this is the first City Council meeting that she has ever attended and her first immediate impression was what a witch hunt on both sides. She is saying to the folks, get it together, keep these people who need this facility here in this community. She stated that if they revoke the use permit from this facility, she will be forced to go to Fresno and that is where she will spend her money. She would prefer to keep it here where she lives within this community. She asked that they strongly consider it and give it everything they've got to make it work.

Mayor Poythress thanked Ms. Kelly.

Terry Painter, residing in Madera, California, stated she lives two blocks off of Orchard. Each day she goes down Jefferson to Orchard then from Orchard down to the gym parking lot if she is taking her truck. If she is riding her bicycle, she parks the bike in front of the gym. She has been going there for about a year now. When she heard about the trash thing, noting that she is just getting things second hand, she couldn't believe it because she travels that. She works out five to six days a week at this location. She was just really surprised. She stated that this is a Godly thing but she found out that throwing trash is a sin. She asked that they believe her. It hits her like when you discover that something is a new sin, so she discovered trash. Even when she is recycling it is a sin if you put it in the wrong place. She really notices trash and there is no trash and there is no trash in the parking lot either when she parks there.

Ms. Painter stated that the gym located at Sunset and Orchard is an asset to the City of Madera. She added that it not only offers the usual gym equipment and experience but it has an indoor heated pool which provides excellent exercise programs for seniors and members. She noted that the heated pool offers persons with health problems, and she has been a leader somewhat in the aqua aerobics, and persons that she is working with have diabetes, fibromyalgia. She added that one individual has very severe MS (multiple sclerosis). She has worked with him personally and he commented to her after one Tuesday, the Thursday when he came back, he said he had actually improved. She noted that his condition is severe. She added emphysema which she has. During the year that she had been going there, she was getting close to where she was going to have to have oxygen but no, she lost 35 pounds and she does not have to have. Her lungs have expanded because she can even swim the length of the pool now. She stated that this place is so extraordinary and important to the residents of this community.

Ms. Painter stated that exercising using low impact water resistant leads to strength training, increased flexibility and balance. Aqua aerobics reduce stress, anxiety and even depression and that definitely is true. She added that persons with back, shoulder, knee problems also benefit from the aqua aerobics. She is very sold on it.

Mayor Poythress advised Ms. Painter that her three minutes are up. He noted that they got her point and thanked her.

Ms. Alvarez called one last time for Jeannie McAbee.

Jeannie McAbee, residing in Madera County, stated she lives up in the foothills. She comes down every Monday and Wednesday to do the water aerobics because her back will not allow her to do regular exercises. This benefits her because the gym is in the area. She just hopes that the City and gym can work together to figure out where it can stay so people who need it can use it.

Mayor Poythress thanked Ms. McAbee.

Ms. Alvarez called the next three names: Robert Ybarra, Mari Arredondo, and Meghan Oxelson.

Robert Ybarra, residing in Madera, California, stated he oversees the day to day operations at Fitness Evolution, formerly Thrive Fitness. He has been there for about 3½ years. In that time, he has had the opportunity to work under Mr. Montoya who has really been a role model for him by helping express his love for health and fitness to all their members. Every day that he is there is a blessing to be able to see these members come in and out. He is familiar with all these faces in here. He can name them off: Jesse, Tyrone, Terry, Larry who left, Mario who was in here earlier. He noted that they see them on a day to day basis and to be able to see them and grow with them every day that you are there is truly an honor to be able to share that. He added that to see a growing facility, a growing business, to witness it essentially for succeeding and inspiring lives, inspiring change in others, would be besides him. As far as he is aware from when it was taken over by Mr. Montoya, it was not doing too well. That is why there weren't that many members. That is why the lots weren't that full. Since the time he has been there, it was a growing business and since then they were able to just, really not only within that facility, within the community...so many outreach programs that he was able to do, things that they weren't being paid for they were volunteering, spending their time out in the community and that was all at the point of Mr. Montoya who led that and inspired that change. At this point he would just wish to grant that appeal of that revoke.

Mayor Poythress thanked Mr. Ybarra.

Mari Arredondo, residing in Madera, California, stated she is part of the neighborhood. She is for the neighborhood. She lives in front of the gym. Her house is close to the gym so she is very impacted and in fact, she might be the one neighbor that is most impacted by it. She doesn't know when the attorney took the pictures. She usually has two to three cars parked in front of her house morning, evenings, late at night. She has had vandalism in the last six years. She has lived there for 38 years. She honestly does not believe that this club...she understands that some of these people here need the club. She stated that they need their neighborhood. They need their homes. She retired 13 years ago. She thought she was going to have this nice, quiet, wonderful retirement. She is actually in the process of thinking of moving because of this impact. She stated that it is not so much the club; it is Mr. Montoya. She noted that the club is small so you have to say, this is for a certain amount of people. She added that Mr. Montoya is not into that; he is more into more and more and more clients, constantly. She commented that he has been told that there is no room, there is no parking but every week he is more clients and more clients.

Ms. Arredondo stated that because of the fact that Mr. Montoya brought up how wonderful he is and how he has seen his employees just grow and wonderful things, not to name names but, she understands that he promises and doesn't come through. She stated that he promises raises; doesn't come through. Ignores. She added that some of the employees are already gone. She herself, when it opened and she heard something, she helped whether he knows or not. She has provided supplies, crayons, paper, pictures; no more. She stated that she doesn't go out in front of her house anymore. At night, the cars are going, she's scared. She is seriously scared. Sometimes she will go out late because she forgot to water. She waters late. There are people walking through. There are people parked. She sees people coming in the dark, coming up to pick up their cars and she is like they could get hit.

Mayor Poythress thanked Ms. Arredondo.

Meghan Oxelson, residing in Madera, California, stated she is a born and raised Maderan. She apologized for the attire. She teaches at Madera High. They had jersey day. She left her two kids at home; a daughter

that goes to Sherman Thomas, part of the community, her two parents were over here, both 74. They have gone to the gym. Ms. Oxelson stated that she was at this gym in her mother's stomach so she has been around. Her parents live two blocks from there. She is down a little further. She moved back to Madera. She stated that the gym is a part of her life. She is there every morning between 6:00 and 6:15. She has her daughter there in breakdancing. Her son is in one of the other dance classes. She stated that the dance, from what she understands, is moving and she does understand that is going to take out a lot of the parking. She is for the gym. She wants the gym there. She does believe some of the pictures that were taken by the gym's lawyers weren't really honest. She thinks 6:00 o'clock would be a much better time to take the pictures of the impact to be honest.

Ms. Oxelson commented that Madera is growing. They used to be able to drive their bikes. Her parents used to pick them up. They lived right in front of John Adams. They went to Washington for many different reasons. They rode their bikes across town. She would never ride her bike across town anymore. She stated that is unfortunate but Madera is growing. Her parents live one block from John Adams. They cannot drive out of their driveway between 7:30 and 8:15 or 2:10 to 2:45. She stated that it is unfortunate and maybe there are solutions to it but they need to find them. She urged them to be extremely creative in their solutions. She doesn't think they have found them yet but throwing the baby out with the bathwater is what this feels like. She knows they keep referencing the pool but she learned to swim there. Her children have learned to swim there and as they have heard from everybody else, there are many people that are hurt by not being heard. She stated it is unfortunate but if they can figure out another way around that, she thinks their next generation is going to benefit from having this type of thing in Madera. She stated that they don't have much to offer. She stated that something that the gym does offer, especially standing up for Madera High School, their cross country. They are fantastic. They run around town. They go to the gym. The gym allows them to come in and get water and take a break if they need it. They've always offered free membership to foreign students that come to Madera. She added that God forbid, poor things that end up in Madera for a year from someplace else but they encourage the community. She is not sure what else to say other than she urges them to be extremely, extremely creative in their solution. She added that there's got to be one.

Mayor Poythress thanked Ms. Oxelson.

Ms. Alvarez called the next three names: Mike Fuller, Steve Salter, and Joe Rodriguez.

Mike Fuller, residing in Madera, California, stated he wasn't going to speak tonight. He advised that he has been out of town all summer. He just found out about this today from his hiking partner who he originally met at the gym. He won't say he is neutral because he has been a member of the gym off and on since he moved here in 2000. He added that he is also very sensitive to the residents in the neighborhood. He lives downtown. They have a new courthouse in front of his house. He commented that he hasn't gotten hit coming out of his driveway yet but he expects it to happen because he can't see because of the cars parked in the street despite his request for a stop sign. He added that this isn't necessarily an impact to the courthouse but he heard a reference to condoms. He has seen that in his neighborhood as well as human feces, urine and trash. He noted that they are not very pleasant things to deal with so it is not just a gym issue, it is a Madera issue that they have those issues especially as a growing city. He added traffic issues as well. He generally rides his bike when he goes to the gym. He stated that it is faster from this part of town to the other part of town during peak traffic. He restated that he is very sensitive to the impact on the residents.

Mr. Fuller stated that he too has benefitted greatly from the gym. He is not currently a member because he has been gone all summer and he was busy with International Women's Day in the spring. He stated, with all due respect to Councilman Medellin, that he suggested he sit down but he has back issues, knee issues, shoulder issues, neck issues. He also has mental health issues which he is actually surprised he is admitting that to the public to the point to where he has been a patient at the Madera County Behavioral Health Department. He is bipolar and he suffers from PTSD (Post-Traumatic Stress Disorder). He used to be medicated. He is not anymore. He is no longer a client of the Mental Health Department either and that is to a great degree because of the benefits he has gained from the gym. He came here tonight not to

speak but to see how the Council responds particularly because this is a growing issue and a growing community. He noted that the City is going to have issues like this coming up quite a bit.

Mr. Fuller stated that the last thing he will say is that he has had so many impacts in his neighborhood that it is likely he is going to move. It is just that the impacts are great enough and he has other interests in other communities so it is possible he may leave. He is not suggesting that the gym is to the point that the residents in that neighborhood should leave but it is an issue that the Council is going to have to deal with going over time. He noted that the last thing he will say is, as they know, he can be pretty outspoken and he is no stranger to political campaigns but as he has matured to personalize issues and make attacks on people and question their integrity, he doesn't think that is the most positive contribution to the effort. He stated that Mr. Montoya also knows that he is pretty outspoken too because he speaks up to him as well but he thinks he has been a great asset to the community and has done a lot as well. He is sure Mr. Montoya will make a great effort to minimize this impact.

Mayor Poythress thanked Mr. Fuller.

Joe Rodriguez, residing in Madera County, stated he has been a resident of Madera for the last 45 years give or take. He stated that that gym is his second home. He is way healthier today by the grace of God and that gym. He had high blood pressure. He was diabetic borderline and he was losing his license at the same time. He is a commercial driver so he has to keep his health up. That gym has been a blessing to him, his wife, his children. It has been to all of them. He looks forward to take his grandkids there because he sees that gym and it is part of Madera. It has been here so long. He understands the concerns of the residents. He is a homeowner as well and he has a few concerns in his neighborhood but he doesn't want to throw them out of town or tell them to leave because minuses here, minuses there. He is sure they can come to a medium somehow. He likes to talk to these young kids there. They are from high school because he sees a lot of them and they are rough kids but they are at the gym and they are telling him, you know Joe, since I started coming to the gym, I stopped drinking, I stopped smoking marijuana, I am getting healthier. He stated he is able to talk to these kids and encourage them so they don't go down the wrong path of life like some of his brothers did which are incarceration right now for a couple of decades. Even himself almost because growing up in Madera there was nowhere to go. If they closed that gym down, where is everybody going to go? They are going to have to travel to Fresno. These kids ain't going to be able to go. They are going to be out there on the streets and God knows what they will be doing. They will go back to their old lifestyle. He stated that he is just here to support the gym because it has been a blessing in his life and he has seen it in many of those kids and a lot of the seniors in there too. He likes to talk so it is a social place for him but it has made him a healthier, better, productive citizen of Madera. He hates going to Fresno. He noted that every time he wants to have a good dinner with his wife or they want to shop, they've got to go to Fresno. He stated that he almost joined a gym in Fresno on Herndon and he said, why am I going to be taking my tax dollars over there and then for the gym too. Then he hears of this and here he is. He has been up since 4:00 this morning because he has an early shift but this is crucial to him. He understands these neighbors but asked that they find some type of medium to balance this out. That is all he is asking.

Mayor Poythress thanked Mr. Rodriguez.

Steve Salter, residing in Madera, California, stated he and his wife have been members of the gym for about 2½ years. They usually go workout between 4:00 p.m. and 7:00. He has never seen really any trash, never a beer bottle, never any drugs. He is 51 years old and they just go there to stay healthy. He owns his own house too but when he bought his house, he didn't want traffic around his neighborhood either. He made sure not to buy by a commercial lot. That is basically all he has to say.

Mayor Poythress thanked Mr. Salter.

Ms. Alvarez called the next three names: David Keyser, Maggie Lihosit, and Rosalie Robinson

David Keyser, residing in Madera, California stated he is a member of the gym. His wife is as well. He is actually here representing Madera County Special Olympics. He stated that the gym has allowed their organization to use their heated pool. He noted that it is the only heated pool that there is. They currently have 15 athletes that practice at the gym and then ultimately end up going to competitions throughout the State of California. He stated that Special Olympics is near and dear to his heart. He has a son that is disabled. He will say that the gym actually granted them a temporary membership for his son. His son has severe autism so he is very sensitive to noises and just different things will really bother him. He stated that they being unsure of how he would react in that situation, the gym didn't put them in any sort of position where they were forced to pay for a membership for him without finding out first. He really believes that the owners were very kind to them when they didn't need to be. That is all he has to say.

Mayor Poythress thanked Mr. Keyser.

Maggie Lihosit, residing in Madera, California, stated she has been a member for 20 years and she happens to have some back issues. She had to take medication. Since she started going to the gym and using the water exercise classes, the swimming, and any kind of exercise that she can do in the water has helped her in such a way that she still has a problem but she doesn't need medication. She added that she is mobile thanks to that. She knows of course of other people because she has seen a lot of people in the pool that walk in with a walker and if it wasn't for the pool, they would have not even been able to do that. She does feel for the neighbors personally hearing their situation will make her more conscience of where she parks and things like that but she would really, really, like that somehow they could work this out so that the gym could continue and hopefully help the neighbors too.

Mayor Poythress thanked Ms. Lihosit.

Rosalie Robinson gave her address in Madera County and stated that they will notice it is not in the immediate neighborhood. She visits Billy Goodale frequently. She noted that Ms. Goodale doesn't get around and she isn't able to use the gym anymore. She also visits Zetty and Virgil Gabrielson in the neighborhood who are not able to. And last year, she volunteered in the TK (transitional kindergarten) at John Adams. She stated that the impact on the traffic is extremely negative. She stated that this gym is too large for the neighborhood. She noted that if the profits are as good as it sounds like they have been, this facility should have expanded to a different neighborhood a long time ago. She stated that the issue is code enforcement and creative business practices so that a residential area will be appropriately impacted.

Ms. Robinson stated that you slow down as you drive past Thomas Jefferson or as you come from John Adams anyway if you are doing school hours. She noted that the people she has been seeing jaywalking have not been the disabled people. They have been people with earphones over their ears who wander across the street any time of the day without taking a good look at someone who is driving by. Her opinion is that she doesn't know why a renewal of a use permit hasn't been required before now. She commented that the problem is three or four years old. She knows that people jaywalk more even in school zones lately but for health and safety, they have to allow for how people behave. They have to provide adequate parking or else limit their membership. Otherwise, they are not doing their members a favor and they are certainly not doing the neighborhood a favor either.

Mayor Poythress thanked Ms. Robinson.

Ms. Alvarez called the last name on the list: Scott Linsky.

Deputy City Clerk Zelda Leon stated that Mr. Linsky advised her that he will no longer be addressing the Council tonight.

Mayor Poythress opened the item up to anybody else who has not signed in who would like to make a public comment. He asked that they feel free to come up and state their name and address.

Gerald Holiday, residing in Madera, California, stated he is one block away. He stated that he is not impacted by the noise that is going on but the traffic he is. He stated that it is not only at the intersections by the health club but even a block away, people are taking the corner at about 30 miles an hour. He stated that there have been a few accidents over there. People park in the street. He advised that one incident was that he was at the corner of Venturi and Orchard creeping out into the intersection so he could see if it was safe or not and he almost got hit by doing that but there was no other way to do that. Another time there was a truck in his lane going the opposite direction. The truck was parked there. Mr. Holiday stated that he motioned him, you are in my lane. The driver was right there talking to somebody and the driver told him to go around. Mr. Holiday stated that it is that kind of attitude that adds problems to the neighborhood. He thinks that in his letter he wrote about the safety conditions noting that it is probably in the Council's packet.

Mayor Poythress replied that it was.

Mr. Holiday stated that the DaSilva family set the baseline on how that club could operate for years. He stated that there was no problem when the DaSilva family was running the facility. He would just say to take a look at that. He added that everybody in town knows that it is impacted negatively. He offered to answer any questions.

Mayor Poythress stated they are good and Mr. Holiday said it all. He thanked Mr. Holiday.

Mayor Poythress stated that he was reminded by the Mayor Pro Tem to let everybody know that when they are done with public comment, that will close public comment for the evening. He added that otherwise somebody says, well wait a minute, I want to respond to this and that. He stated that kind of creates disorder and they can't do that.

Tyrone Carter, residing in Madera, California, stated that while he was sitting there he forgot his address but now he knows it. He advised that he lives across the street from the Mayor. Mr. Carter stated that he does go to the gym and it has been a great blessing. He feels that the gym has a responsibility to the neighborhood and he believes that the neighborhood should not have a closed mind. He thinks that, and he says this to the neighbors, if they could just give the gym another chance, if they can get some people...he doesn't know if they have a board of directors or someone who can help them to get this moving forward to where they can come up with some solutions. He noted that this is because the neighbors want their neighborhood to be a safe place, to be a good place. He added that all of them in here want that. He commented that they don't want in their hood trash and all of the other things and crime. He stated that there is a place where they can go to where they can work this out to be a benefit to everyone. He will say this, leave, go home and have dinner, if they can't work it out then he suggests that they close the gym down. He noted that that is going to impact a lot of people.

Mayor Poythress thanked Mr. Carter.

Mayor Poythress asked if anybody else wishes to make a public comment. No other requests were made and Mayor Poythress closed public comment.

Mayor Poythress stated that what he would like to do is look to his colleagues, after this evening of testimony and so forth, and see what comments they would like to make, or observations, or analysis, whatever they would like to do. He called on Council Member Holley.

Council Member Holley stated that years ago he sat on the Planning Commission for the City. He has always told the City that if they kept building on the west side of town that it was going to get overcrowded and it has done that. He noted that they had the southeast side and they didn't want to use at the time. They kept building on the west side and got overcrowded. He stated that they are in that situation right now. He added that it is not the gym that is causing the problem. It is the people where they are parking. He has been over there several times before this incident never happens and he looked around their City. He noted that if everybody was to use the parking lot, they would probably save some of the parking. He

goes to Sierra Vista School every day. They have a big problem over there with parking during the day. They have it at night when they have some PTA (Parent Teacher Association). He commented that parking in Madera is a problem. He doesn't care where you go. How they solve it is work together. He stated that they need to come with a solution. He hates to see people lose jobs because they are complaining about not having parking. He stated that trash is something that happens everywhere. They can look outside and your yard will be clean. The wind comes up and you've got more trash in your yard than you know what to do with. Council Member Holley stated that is just the nature of the beast. He stated that they need to find a way to work together. He hopes that this City is not in the opposition of closing people, losing jobs. They don't want folks going to Fresno just to get the service that they can provide here in Madera. He stated that closing down a job hurts him to see that happen. They are trying to get jobs to Madera not send them away. He watched this gym and Mr. Montoya work throughout their City and do a lot of great things that people don't even know that he does. He stated that Mr. Montoya's business has done a lot for the City and they don't want to lose that because they don't want to work together.

Council Member Holley stated that he has been in Madera probably longer than most of them out there. He was born and raised here. He has watched it grow. He has been on both sides of the streets. He has been a Councilman. He has been a Planning Commissioner for the City and the County. He has seen things happen in Madera and it is growing. They have to expect growth if they want to survive but how they work toward it is working together. He was at the meeting that they had at John Adams. He sat back there and he listened. He stated, we want to work together. How they do that is getting Mr. Montoya and a group of people to sit down with the City. He commented that they did it all backwards and left it up to Mr. Montoya and he didn't know what to do with it. But, as he comes out here today, he knows what he wants. He asked how can they get there. Council Member Holley stated that the City needs to help out and work this out. He stated that the City Planning Department needs to come up with some kind of solution to where they can get this gym to provide what people want in the neighborhood. He stated that is how they do it. They've got to show some love and understanding. They can't be bitter about this. They can't just say, I don't want it in my neighborhood. He stated that if they come over to the southeast side of town, they will see what he is talking about. They have it in their neighborhood everyday but they need to work together.

Mayor Poythress thanked Council Member Holley and called on Council Member Oliver.

Council Member Oliver stated he would like to take the opportunity to invite up perhaps Mr. Chopra with Fitness Evolution or Mr. Montoya. He wanted to ask a couple of follow up questions as to the business operations if they don't mind, or perhaps counsel.

Council Member Oliver stated that they obviously had great feedback from both sides. He really wanted to get down to their business plan, the market for fitness facilities here in Madera, why they invest here. He noted that there was mention to growth at this particular location. He asked that they give him a little of an overview as to their membership, their growth over the past year or couple years, or perhaps attrition rates. He asked what some of the markers are that they look at as a proprietor in the fitness industry to have a viable and profitable business enterprise.

Chris Montoya replied that over the last few years the attrition rate has been really high at the Sunset location so they are losing close to 90% of the people they sign up in numbers. So if they sign up 100 well there is 90. Before that they had a quick growth rate and they purchased the club on Cleveland to keep up with that. In fact they took CrossFit out of the facility. They took martial arts out of the facility so they have tried to stay ahead of the growth of that facility but as they can see, the facility has done a great job of touching people's lives. He has tried to do the best he can to teach that to the young people that work for them. He stated that Sunset has done a great job until about a year ago they are losing pretty close to what they are gaining.

Council Member Oliver commented that Mr. Montoya said he shifted his martial arts. He asked if he ceased those operations.

Mr. Montoya replied no it is on Pine Street. It has its own facility.

Council Member Oliver asked that they elaborate for the record what their business relationship is. He understands they have a property owner. They have Fitness Evolution, representative who purchased the business.

Sanju Chopra replied that Mr. Montoya's company owns the property now. Mr. Chopra stated they are operating the gym. He noted that Fitness Evolution is currently operating the gym.

Council Member Oliver asked how many facilities Mr. Chopra has in his portfolio.

Mr. Chopra replied that in total they have 47. He heard the word corporate and stated that they are not a corporate company. They are a smaller company. The reason they came to Madera is that they felt that it is a great opportunity. They have six stores in Fresno. They are actually the largest operator in Fresno. They had a lot of people from this community that reached out to them and said, we want you here in Madera. He stated that they have the club on Cleveland that they are in the attempt of expanding. They have had some run-ins with the City there as well of trying to let them expand there.

Council Member Oliver asked if he can provide any estimate as to the breakdown of the use of the facility whether it be the percentage of people that use group exercise or the aqua aerobics programs or the machine weights. He stated that typically in a facility he imagines he has a good idea as to what that layout might look like to be viable.

Mr. Chopra stated that the hard part of that statistic is like a lot of the people said here, they start in the lower impact workouts and they try to work their way up to the actual weights. They have different programs at different times of the day. He noted that most of their group exercise classes are at night or early in the morning catering to the daily worker. Their weekends are very, very slow. He commented that most people don't work out on the weekend. They are with their family. Their peak times really are Monday, Tuesday, Wednesday and then it just drops off significantly. He advised that they really are probably seeing between two and three hours a day of activity and that is generally what they said earlier is between 5:00 and 7:00/7:30, and probably sometimes 7:00 to 8:00. They might see a little bit earlier 6:30 depending on the people and what they have to do at work and their drive.

Council Member Oliver asked what their current membership is.

Mr. Chopra replied that it is a little under 3,000 members. He added that they actually have more members at their store on Cleveland. He noted that it is a smaller facility but it is a true workout facility. He thinks the difference here is that people are going to the pool and they are spending a little bit longer than a typical 30 minute workout because by the time you go to the pool, you get changed, you get in the pool, you go do your workout, you get out, you gotta take a shower and then you get ready to leave. He stated that whole process takes a little bit more time than just going to go get a workout and just leaving.

Council Member Oliver asked if the 3,000 is total for the Fitness Evolution membership irrespective of facilities or is the 3,000 the estimated number for users that frequent Sunset.

Mr. Chopra replied that what they do is they do home users. He explained that a home user is someone who signs up at that store. He stated that it is under 3,000. They know that. He added that whether it is 2,900 or 2,850 depends on whether they've had certain number of cancellations this month and certain number of adds this month. They've been staying pretty steady. He added that there is another gym coming in town now that was approved at Bethard Square. They've had people starting to go there as well so they believe that there is going to be a reduction of use because there are going to be some people going to that location.

Council Member Robinson stated that inevitably, this is not a sleepy town anymore. They are going to have major growth within the next 10 years. They have the casino coming onboard. They have the Love Truck Center coming. They have the businesses that are moving in to Freedom Industrial Park. In his past, he

has been all over the world, all over Europe, Asia. He lived in Berkeley when he was a student at UC Berkeley. He noted that parking is horrendous there not to mention going to San Francisco. He has been a coach at the college level. He qualified for the U.S. Olympic Trials. He knows about working out. They know that they want to inspire their student athletes here in the City. He added that they need to work out. He asked how they are going to compete with the rest of the student athletes in the state. He noted that if you are not working out yearly then you are at a loss. He added that you can't just work out six months and expect to get a scholarship. He has been a head coach at Kings River College; at Berkeley High. He sends kids to colleges on a scholarship. He received a scholarship. He stated he is a disabled veteran and he was injured at juvenile hall with a broken neck. He used that gym. His wife used the gym. His children use that gym. He asked where can you go. He noted that they don't want to go to Fresno. He commented that they are already bleeding them dry with taxes. They are trying to increase their police force. They need taxes for that. They need a place for them to workout. He commented that they talk about people walking around, dropping a condom on the ground, vagrants. He told them to go to Berkeley. They will see that all over the place. If they want to smell urine, feces, go to San Francisco. He said that this right here is nothing. If they go to Oakland, Watts County, they see people laying on the street dead. He noted that this right here is like heaven compared to other major cities. He told them not to go to Detroit. He advised that he has more to say but he's going to think about it.

Council Member Medellin stated the following: October 16th, November 23rd, December 17th, February 26th, March 5th at John Adams, March 8th a warning from Planning Commission, March 30th and then an April 8th deadline which still isn't reached. He directed his comment to Mr. Montoya and stated that he would be embarrassed that these folks who love this gym and love this community and love that they have a place to go to work out...he has pages of testimony of people who just came before them to say how they love the gym, and he has no regard for the neighbors, no regard for rules and regulations, or for the community. He would be embarrassed. He noted that Mr. Montoya has made no attempt whatsoever to work with their Planning Department. He has made no attempt whatsoever to work with their neighbors and now in the eleventh hour he is suggesting mitigation, that the neighbors said he had promised years ago, and now he is suggesting that they work together. Council Member Medellin stated that this isn't a matter of lets come here tonight to this meeting and, I have an idea, let's work together. He noted that Mr. Montoya has had multiple opportunities to mitigate and rectify this situation and in his opinion, he shouldn't even be here this evening. In his opinion, he thinks Mr. Montoya has ignored those. Council Member Medellin stated that they can discuss parking in different cities and different areas but he is going to tell Mr. Montoya why they have parking issues. It is because they have unpermitted uses at Thrive Fitness. They have Zumba dance. They have more equipment than is allowed. They have yoga, massage tables. They have dance. They have cardio. These are all unpermitted uses that once again he ignored the City of Madera. Council Member Medellin stated that in his opinion, it was to make a buck. He noted that Mr. Montoya is going to impact their community so he can make a buck. He honestly takes offense to that because the Madera residents that came in here to say, we want to keep our gym, they should have their gym. And they should expect leadership and ownership to make sure that happens.

Council Member Medellin stated to Ms. Treder that he takes offense to the photos she showed. He noted that other than Ms. Treder, he thinks everybody in this room and out there in the lobby have been by Thrive Fitness when it goes on for blocks. He added that including the last two neighborhood watch meetings they had where they were parking blocks away. To him, he takes offense to those photos she showed and make it seem like only 60% of the parking lot is full. He stated that they both know that is not true. He added that there is a huge impact. He noted that even one of the people that came up here, Ms. Oxelson, who was for the gym and loves the gym, and was in her mother's belly in the gym, had said those pictures were untrue. He wants to come to a solution but he wants to let the record show that this isn't something that the neighbors just came with months ago that they have noise issues or parking issues, or garbage issues. He noted that it has been years. He stated that their Planning Commission has made multiple attempts to work with Mr. Montoya for months but to no available. He commented that then another extension was granted and Mr. Montoya is upset because they didn't offer him another extension. Council Member Medellin stated that he just wants to set the record straight that this wasn't something that just came up recently. He thinks this was something that Mr. Montoya created and the way he conducts business here in Madera. Council Member Medellin stated that is all he has for now.

Council Member Robinson stated that they need to find a solution so they can all work together. He stated that the fitness gym is one of the best gyms in the area. They are expanding in different areas. They have to take into effect the church noting that they have their activities also. He stated that if they go on his street in the Kennedy Estates, they have a parking problem right there without a gym. They have people that live four families in a four bedroom and they have cars. Some of them are migrant workers. A lot of them are poor. They can't afford to go to Fresno and use the gym there. They don't have BART system here. The negative is Fresno's benefit. He stated that another negative is unemployment. They have people that support families. They have to go on roads down on the County. He noted that this is a depressed area. They need to diversify. He referred to quality of life, activities and asked where they are going to search for that. They talk about health. They talk about the well-being of all their citizens as opposed to having nothing to do. He stated that the idle mind is the devil's workshop. He noted that if their youth have nothing to do, they are going to go with the wrong path and that is the truth right there.

Council Member Foley Gallegos stated she would like to go on record that this is her district that this gym is in. She has lived here all her life. She lives in this area and she teaches just down the street from Thrive Fitness. She thinks that if she was backed up to the gym or next to it...she is a few streets from it, so she doesn't get the whole impact that these neighbors do that are out here. She would like to say to Mr. Montoya that she has heard a lot of testimony his way and through the neighbors. Her name was put on a flyer so she has been flooded with emails from Thrive Fitness clients and she has gotten phone calls. People have come to see her. She thinks that it is important that she is out there and that she is getting that information but, he has to understand that people that go to the gym are there for an hour / hour and one-half. The residents live there. They are there day and night. She noted that is a big difference. When they are up here and they have concerns, it is their home. That is where they eat, sleep and live. The gym members go and come. They are hit and miss twice a week, three times a week. She knows it is important to have that in their neighborhood. She stated that the DaSilva family did a great job. She grew up here. She went to the gym. Her kids did dance at the gym. She has been part of that gym and to see what it has gone to now is almost a shame, shame on him for doing that to their residents in their community. She knows they need to come up with a solution but it should have been never come to this. It should have been worked out with the neighborhood and with his company. She has been to the last neighborhood watch meeting and it was crazy. They had their police officer there and his shift sergeant showed up and it was like, oh my gosh. She stated that it was amazing just to see. She noted that this is again at 6:00 o'clock. She thinks it was a Thursday; crazy traffic.

Council Member Foley Gallegos stated that they are here tonight to make a decision on their Planning Commission. She is not sure a lot of the residents know but the Planning Commission is there because of the Council. The Council has elected them in those positions so they represent the Council and the Council represents their community because they are elected officials. When they put people in those positions, they put them and hold them in high standards because they would only put people there that they can trust and can come to the Council when it is a situation like this. She stated that they are here tonight to make a decision if that Planning Commission did their job and where they are going to go from here. But, as a resident of Madera, noting that she has lived here all her life, she is a community member and now a City official, they need to work something out to make all the parties work together and be happy. She wishes everybody could have read all the emails she has gotten and the phone calls she has gotten. She stated that this is a great community. She loves Madera. She plans on staying here the rest of her life. She has raised her kids here. They have gone away to college and they are going to come back here. She knows he doesn't live here but who is to know if he will stay. She noted that they are going to stay and they will always be here even though he may not be here. If the gym sells to somebody else, the people are still all going to be here and it is still going to be a part of their community and it is going to be part of their neighborhood. She would also like to go on record with her colleagues that she takes this very personal because it is her district and she lives in the area and she works there so she is constantly seeing all that is going on throughout the day because she is there all day. She would hope that they can come to a solution and work together and all the parties will walk away today and be able to sleep tonight and not with a heavy heart like she has been for the last few nights.

Mayor Pro Tem Rigby directed his comment to Mr. Montoya and stated that he lost a lot of sleep these last couple of days. He is not here to judge him as a man and he is not here to even judge his character. He noted that the unfortunate thing is that in the ample amount of time that Mr. Montoya has had in front of the microphone before citizens before him, an apology was not even made.

Mayor Pro Tem Rigby commented that Mr. Montoya has impacted a lot of lives noting that that goes without saying. He added that there are many people who testified this evening of needing this gym. It becomes a necessity of their lifestyle. He stated that he tends to agree with his colleague Council Member Medellin dating back to October 16th. He is curious as to why it has taken this long to get his, to get what was deemed a parking plan, which was seemingly laid out as sort of a new conditional use permit.

Mayor Pro Tem Rigby stated that what intrigues him the most from several testimony tonight including that of Mr. Montoya's attorney is the hours of operation being highly impacted from 5:00 p.m. to 7:00 p.m. yet his club remains open until 11:00 p.m. in a neighborhood where many, he believes, are trying to sleep, get ready for work, get ready for their busy day. He noted that Mr. Montoya's colleague said that many are only there for an hour and it becomes a ghost town, noting these are my words not his, after this time of 7:00 p.m. Mayor Pro Tem Rigby stated that he actually lives two blocks away from his club. He has taken many walks with his wife and the place is rather packed at 9:00 p.m. He stated that it is, if you will, a new social place. It is the modern day bar. He stated that a lot of people are meeting. A lot of people are socializing which he thinks they need. He thinks it is great but it is in a neighborhood. Mayor Pro Tem Rigby stated he is curious as to why the Cleveland Avenue gym which is located in a commercial zoning area is only open until 9:00 p.m. on a Friday but yet their Sunset location is open later on a Friday, 10:00 p.m. He noted that is what is advertised on their website so if that is incorrect, he might want to change that.

Mayor Pro Tem Rigby stated that not having the opportunity to implement the plans that were presented today are far from the truth to be honest. He understands that Mr. Montoya's attorney was only brought on later in the game and added that Mr. Montoya has been sitting down with Code Enforcement. Mayor Pro Tem Rigby stated that he spent most of this morning actually going through the meeting notes of Mr. Montoya with Code Enforcement. He referred to language that was used like, it's not my problem, this is the problem of the Police Department; traffic, I can't control traffic, that is something for the Police to take care of. In February, Mr. Montoya sat down with the Police Department to kind of explain what it was that needed to be worked out with Police Department. Mayor Pro Tem Rigby stated that again, kind of reiterating what Council Member Medellin had said, yet still no succession plan, still no site plan, still nothing, just again more lip service.

Mayor Pro Tem Rigby stated he wants to remind his colleagues that they are not here to argue parking. They are here to determine whether or not the Planning Commission is within its right to have revoked the CUP and/or make some sort of change. Mayor Pro Tem Rigby stated he is interested in a creative solution. He is disappointed again, that their manager started naming off several members of the club in the chambers tonight. Mayor Pro Tem Rigby stated he doesn't know if he could name the people that live across the street or the people that live down the street. To him that was an issue. He is curious to know if he even knows who the pastor is across the street at the church.

Mayor Pro Tem Rigby stated that with that, he is open to a creative solution but he is not open to keeping doors open until these solutions are met. He stated that with that, he believes he is done.

Mayor Poythress thanked his colleagues for their comments, their passion and their insight. He would also like to thank everybody that was here this evening for their comments and for their concern. He stated that he can see both sides. If he was in the neighborhood, he would really have concerns about what has been happening as they have testified and as his colleagues have pointed out. He stated that it is also a great gym. He has been a member for 27 years. He swims there twice a week. He loves the pool just like all of them. But, he believes that based on what they have heard this evening, the patience has run out and it may sound counterintuitive but he believes that the only way to reach a solution is to support and affirm the revocation of the use permit.

MAYOR POYTHRESS STATED HE WOULD LIKE TO MAKE A MOTION FOR OPTION 1 ON THE RESOLUTION FOR THE DECISION OF THE MADERA PLANNING COMMISSION REVOKING CONDITIONAL USE PERMITS 1963-23, 1989-30 AND 1991-13 TO BE AFFIRMED. THE MOTION WAS SECONDED BY COUNCIL MEMBER MEDELLIN.

MAYOR POYTHRESS CALLED FOR THE QUESTION AND THE MOTION FOR ITEM C-1, RES. NO. 16-152, PASSED BY A ROLL CALL VOTE OF 5-2. AYES: MAYOR POYTHRESS, COUNCIL MEMBERS RIGBY, MEDELLIN, OLIVER, FOLEY GALLEGOS. NOES: COUNCIL MEMBERS HOLLEY, ROBINSON.

RES. NO. 16-152 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, MAKING A DETERMINATION AFTER HEARING AN APPEAL OF THE PLANNING COMMISSION DECISION REVOKING CONDITIONAL USE PERMIT 1963-23, 1989-30, AND 1991-13

Mayor Poythress called a recess at 8:44 p.m. The meeting was called back to order at 8:50 p.m. with all members present.

C-2 Public Hearing and Consideration of a Resolution Approving the 2015/2016 Community Development Block Grant Consolidated Annual Performance and Evaluation Report and Financial Summary

Grant Administrator Ivette Iraheta stated that the Department of Housing and Urban Development (HUD) requires entitlement communities receiving Community Development Block Grant Funds to annually review and publically report on the progress made in carrying out the Five Year Consolidated Annual Action Plans. She added that submission of the Consolidated Annual Performance and Evaluation Report (CAPER) is a reporting tool HUD requires to meet this obligation.

Ms. Iraheta stated, as required, at this time she would like to offer translation services to those who may require them. She made the announcement in Spanish. No one requested assistance.

Ms. Iraheta stated that through June 30, 2016, the City has expended \$1,037,158 of their total allocation of \$1,087,069. She noted the distribution on the display. She commented that staff believes this performance demonstrates the City's strong commitment to meeting the objectives of the CDBG program in a timely manner and continues to meet the grants primary objectives. She added that the CAPER also reflects Council's support of an extensive number of the Vision Plan Goals through its 2015/2016 allocations of CDBG funds.

Ms. Iraheta stated that staff recommends that Council approve submission of the 2015/2016 CAPER. Ms. Iraheta offered to answer any questions.

Mayor Poythress asked if there are any questions for Ms. Iraheta. No questions were asked and Mayor Poythress opened the public hearing. No comments were offered and Mayor Poythress closed the public hearing.

ON MOTION BY COUNCIL MEMBER HOLLEY AND SECONDED BY COUNCIL MEMBER OLIVER, ITEM C-2, RES. NO. 16-153 WAS ADOPTED UNANIMOUSLY BY A VOTE OF 7-0.

RES. NO. 16-153 A RESOLUTION APPROVING THE 2015/2016 COMMUNITY DEVELOPMENT BLOCK GRANT CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT AND FINANCIAL SUMMARY REPORT

C-3 Consideration of:

(1) A Resolution Adopting a Boundary Map Showing the Territory Proposed for Annexation to City of Madera Community Facilities District No. 2005-01.

(2) A Resolution Declaring the City's Intention to Authorize the Annexation of Territory into City Of Madera Community Facilities District No. 2005-01

Planning Manager Chris Boyle stated there are two properties that have proposed to enter into CFD 2005-01. He stated these are the first steps in completing that annexation which would be adoption of the map and a notice of intent to annex. Mr. Boyle offered to answer any questions.

Mayor Poythress asked if there are any questions for Mr. Boyle. No questions were asked and Mayor Poythress announced he would accept a motion for action.

Mayor Poythress announced that they would take them individually beginning with C-3(1).

ON MOTION BY COUNCIL MEMBER MEDELLIN AND SECONDED BY COUNCIL MEMBER FOLEY GALLEGOS, ITEM C-3(1), RES. NO. 16-154 WAS ADOPTED UNANIMOUSLY BY A VOTE OF 7-0.

RES. NO. 16-154 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, ADOPTING A BOUNDARY MAP SHOWING TERRITORY PROPOSED FOR ANNEXATION TO CITY OF MADERA COMMUNITY FACILITIES DISTRICT NO. 2005-01

ON MOTION BY COUNCIL MEMBER MEDELLIN AND SECONDED BY COUNCIL MEMBER OLIVER, ITEM C-3(2), RES. NO. 16-155 WAS ADOPTED UNANIMOUSLY BY A VOTE OF 7-0.

RES. NO. 16-155 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, DECLARING ITS INTENTION TO ANNEX TERRITORY (ANNEXATION NO. 3) TO A COMMUNITY FACILITIES DISTRICT AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES THEREIN, TO THE CITY OF MADERA COMMUNITY FACILITIES DISTRICT NO. 2005-01 (PUBLIC SERVICES)

C-4 Public Hearing and Consideration of Introduction of an Ordinance Amending Subsection B of Section 3-5.08 of Chapter 5 of Title III of the Madera Municipal Code Relating to the Adjustment of Speed Limits in Certain Zones

City Engineer Keith Helmuth stated that the purpose of this public hearing is to allow public comments relative to the proposed revisions to speed limits adopted by the City on June 1st of this year that were reported inconsistently with the results of the recent speed surveys. He noted that adoption of the amended ordinance will result in consistency between the ordinance and speeds actually posted at various streets. He added that it will allow enforcement activities where inconsistencies resulted in the ability to make such enforcement. He stated that in all cases, the proposed revisions result in the reductions shown in the ordinance approved on June 1st.

Mr. Helmuth stated that with regard to posted speeds however, the posted speeds generally match the proposed revisions with two exceptions. He commented that a Story Road segment between Yosemite and City limits is to be reduced by 5 miles per hour. For southbound Granada, from Industrial to the City limits, the revision increases the posted speed limit by 5 miles per hour to 45 miles per hour. He added that it is important to note that in this area, the speed limit was previously 45 miles per hour. This is previous to the ordinance from about five years ago. He advised that it was inadvertently posted at 40 when it should have been 45. Mr. Helmuth offered to answer any questions.

Mayor Pro Tem Rigby referred to the scratch out on Granada Drive from Howard Road to the south city limits and asked if that indicates they are moving it to 45.

Mr. Helmuth replied that there is a complete scratch out. They are removing that one and replacing it with two. He noted that the segment between Howard Road and Industrial is set at 40 miles per hour. He advised that is adjacent to the park. He stated that between the speed survey and the recognition that the park is there, they were able to set that at 40. Regarding the segment between Industrial and the city limits, that was originally coming in at close to 50 miles per hour on the speed survey. What they did on that one originally, and this time around, was to look at the available site distance coming from the side streets and lowered that by 5 miles per hour. He explained that for setting speed limits, they are required by state law that they set the posted speed limit within the closest 5 mile per hour increment. If they see the 85th percentile reading, it needs to be 50. If it is 47 then you go to a 45 posted speed. He advised that there is the allowance to go ahead and drop it a further 5 miles per hour if you have special conditions such as site distance restrictions, pedestrians are required to walk in the road because there are no sidewalks, stuff like that. He added that if they have areas where the road design just simply can't handle the 85th percentile speed, the design speed is somewhat less, they can post at what the designed speed for the roadway is.

Mayor Poythress asked if there are any other questions for Mr. Helmuth. No other questions were asked and Mayor Poythress opened the public hearing. No comments were offered and Mayor Poythress closed the public hearing.

Mayor Poythress called for title.

The introduction of an ordinance was read by title by the City Clerk.

ON MOTION BY COUNCIL MEMBER OLIVER, AND SECONDED BY COUNCIL MEMBER MEDELLIN, FURTHER READING WAS WAIVED, AND ITEM C-4, INTRODUCTION OF AN ORDINANCE, WAS ADOPTED UNANIMOUSLY BY A VOTE OF 7-0.

INTRO. ORD. INTRODUCTION OF AN ORDINANCE AMENDING SUBSECTION B OF SECTION 3-5.08 OF CHAPTER 5 OF TITLE III OF THE MADERA MUNICIPAL CODE RELATING TO THE ADJUSTMENT OF SPEED LIMITS IN CERTAIN ZONES

C-5 Consideration of a Resolution Approving a Second Amendment to the City Attorney At-Will Employment Agreement Relating to Ceasing Receipt of a Technology Allowance and Authorizing the Mayor to Execute the Amendment

Director of Human Resources Wendy Silva stated that the City Attorney desires to change a benefit in his employment agreement. She advised that specifically, he would like to stop receiving the technology allowance and instead receive a City cellphone. Ms. Silva stated that because of a change in the California Government Code, they must now have this on this part of the agenda. She advised that there is an announcement on the report that will need to be read from the dais. She noted that she is not sure if anybody wants to raise their hand before action can be taken on the item. Ms. Silva advised that she provided a printed copy in case it wasn't handy. Ms. Silva advised that it is on the first page of the report itself.

Council Member Oliver made the following announcement: If approved, the proposed amendment to the City Attorney's at-will employment agreement would stop his receipt of a \$75 per month technology allowance and provide for issuance of a City cellphone for business use effective September 1, 2016.

ON MOTION BY COUNCIL MEMBER HOLLEY, AND SECONDED BY COUNCIL MEMBER RIGBY, ITEM C-5, RES. NO. 16-156 WAS ADOPTED UNANIMOUSLY BY A VOTE OF 7-0.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA
APPROVING A SECOND AMENDMENT TO THE CITY ATTORNEY AT-WILL
EMPLOYMENT AGREEMENT AND AUTHORIZING THE MAYOR TO EXECUTE
THE AGREEMENT**

D. WRITTEN COMMUNICATIONS

There are no items for this section.

E. ADMINISTRATIVE REPORTS

E-1 Consideration of a Resolution Approving Agreement with Akel Engineering Group for Professional Engineering Services for Preparation of Sewer and Water System Condition Assessments and an Asset Management Plan and Authorizing the Mayor to Execute the Agreement

City Engineer Keith Helmuth stated this is the item for preparation of Sewer and Water System Condition Assessment and Asset Management Plan. He noted that the purpose of this project is to assess the condition and age of all pipes within the City. Specifically, they would address the critical need components or possible near term failure pipes. They are all aware of Schnoor Avenue which is seen on the bottom of the screen and advised that this effort would help in preventing that from happening in the future as the pipes age throughout the City. He added that it would identify repair and replacement needs for all components and update the City's Geographic Information System (GIS) database. He advised that they already do have a database. He noted that it is fairly well populated but this would also serve to add additional pipes and additional information for those pipes.

Mr. Helmuth stated that it would also initiate development of an asset management plan. He advised that an asset management plan is to coordinate activity of an organization to manage the infrastructure capital assets to minimize the total cost of owning and operating them while delivering the service level that customer's desire. He stated that the asset management plan would contain various pieces of information that allow the Public Works Department to input information, keep track of repairs and then like what they are doing through the day. He advised that it will do other things as well. It will help to plan for the future. It will give them an idea of what it is going to cost to repair pipes or other infrastructure.

Mr. Helmuth commented on why move forward with an assessment effort. He advised that it is good planning to manage the City's risk. He stated that the most compelling reason is...Schnoor Avenue again. They want to preserve the existing valuable infrastructure and plan for unexpected emergencies and failures; try to avoid them. He added that the effort will paint a picture of future costs to replace or comprehensively repair individual pieces of pipe rather than go out and repair them multiple times. He noted that some cities get into a point where it is a continuous fire drill. They are repairing pipes left and right but if you are able to go ahead and repair pipes, replace them one time, you don't come back. They save money over the long term.

Mr. Helmuth stated that the plan will also identify improvements on five year increments; one to five years, five to ten years, etc. so they can have a better ability of what they see in the future in terms of cost. He added that it will identify those future candidates for immediate repair.

Mr. Helmuth stated that a portion of the study is already included in the rate structure approved in 2005 by City Council. He referred to the display which provides an example of the infrastructure within the City. He advised that the red lines are the major trunk lines. He noted that the trunk lines are the first things that they will be looking at. He pointed to an area on the screen showing the downtown portion of the City and advised that is where they have the oldest pipes. He added that the red in general is just the trunks running through the City. Where they had the failure on Schnoor Avenue, the pipes were actually about 67 years old. He clarified that that is a big guess. They weren't able to identify exactly when they were though they

may have found records recently that can show that. He stated that areas to the north of the failure, those pipes are 40 years old.

Mr. Helmuth stated he has already talked a little bit about this but why move forward with the asset management plan. He noted that it is good business. It establishes a program to collect field maintenance and repair that can be incorporated in the asset management plan. He stated that the plan is expected to house several pieces of the information. It includes repairs, regular maintenance. It gives them an idea of what is happening with the system. It holds the type of pipe, the age of the pipe, the size of the pipe; just about anything they can imagine that they can research. He added that it is also expected to assist in a tool in providing recommendations for appropriate and timely repair, rehabilitation, replacement. He noted that it will give Public Works over time the ability to know, we need to work on this pipe, flush it, run devices through there to cut the roots out. He advised that it will give alerts on that.

Mr. Helmuth stated that the funding on the project is broken into year one and year two; kind of like a Phase I and Phase II. He advised that the first year, the project cost is \$1,232,000. In the first year they will expand the existing Geographic Information System. They identify the high risk pipe segments, the Schnoors and other locations. He noted that the budget allows for one-third of the sewer and two-thirds of the water system to be looked at the first year. It will also begin the asset management plan analysis and implementation.

Mr. Helmuth added that during the first year, Public Works will be coming forward with a request for an appropriation of about \$100,000 for doing the flushing prior to running cameras through the system. He advised that with the City doing that, it is anticipated to save about \$130,000. If they got it through the consultant, the cost would be about \$230,000 for flushing. Public Works believes they can do that for \$100,000.

Mr. Helmuth stated that year two will also have to be funded by Council again. He stated that it is beyond the budget that they had originally in the rates. He advised that it is an additional \$1,061,000. As they move through the year one portion of this, they will be looking at the various different pipes to get an idea for how much they have to do in the second year, if they are going to do it in the second year. They will give Council the option to look at that and decide how far they go. He advised that in the second year they will complete the remaining pipes. Right now they are looking at about 90% of the sewer and the water pipes. He added that it could be that through the first year they are able to reduce that. He advised that it will also complete the asset management plan and they will potentially be bringing an item to Council looking at purchasing a piece of software, going into a formal asset management plan. If they don't do that, they will still be implementing a program that allows Public Works to identify, repair, maintain. Mr. Helmuth offered to answer any questions.

Council Member Medellin stated for the record that this is not them being reactionary to what happened on Schnoor. If he remembers correctly, in February Council gave direction to go out to either an RFP/RFQ (Request for Proposal/Request for Qualification) to do this. He noted that it was just kind of coincidence that after that, this had happened on Schnoor.

Mr. Helmuth agreed that it was coincidence. They actually went out with the RFP, he thinks, it was a week or several weeks before the failure.

Council Member Medellin restated for the record that they were on it; they just kind of missed it by a short period of time.

Council Member Medellin directed his comment to the Public Works Operations Director Dave Randall regarding the flushing. He stated that saving over \$100,000 is great and asked if they are going to be able to capture that water that they flush through and maybe recycle it, use it somewhere or are the hydrants just kind of going to flow into the street.

Public Works Operations Director Dave Randall replied that the flushing isn't done from the hydrant; it is done through the vacuum trucks and jet rodders. He stated that it will all be contained within the pipes. He agreed that it does take water. They can't use recycled water noting there are too many problems with the pumps and the nozzles and such. He stated that they do this on a normal basis anyway however, this is a little more intense. They have to be right there so they have to hire some more people and it will wear out some hoses and nozzles. Even after conferring with the people that do this on a day to day basis, they feel they can do this quite adequately. They have two machines so they have redundancy and back up and they like to save the money.

Council Member Medellin agreed and added that he just wants to be cognizant of the fact that if they are going to raise water rates and then they flush and have water spewing down the streets that, he gets less calls.

Mr. Randall stated that they won't see it in the streets. It will be all in the pipes. If it is in the street, they have a problem.

Council Member Medellin stated this was just clarification and for the record.

Mayor Poythress asked if there are any other questions for Mr. Helmuth. No other questions were asked and Mayor Poythress announced that he would accept a motion for action.

ON MOTION BY COUNCIL MEMBER MEDELLIN AND SECONDED BY COUNCIL MEMBER RIGBY, ITEM E-1, RES. NO. 16-157 WAS ADOPTED UNANIMOUSLY BY A VOTE OF 7-0.

RES. NO. 16-157 A RESOLUTION OF THE COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING AN AGREEMENT WITH AKEL ENGINEERING GROUP FOR PROFESSIONAL ENGINEERING SERVICES FOR PREPARATION OF SEWER AND WATER SYSTEM CONDITION ASSESSMENTS AND ASSET MANAGEMENT PLAN AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

F. COUNCIL REPORTS

Council Member Robinson reported that on Tuesday he attended the barbeque at Rotary Park with Parks and Recreation. He forgot to mention the greatest generation, the elderly.

Council Member Foley Gallegos thanked Mr. Przybyla, their Finance Director, for allowing her to come and sit with him and kind of learn some of the ins and outs of the finance of the City and get the brackets of every department and how it works. She also met some of his staff. She noted that it was really enlightening to her. They had good conversations and asked for information about some finance issues that they have. She noted that Mr. Przybyla is going to look into it and get back to her.

Council Member Foley Gallegos reported that her Transit Commissioner contacted her regarding issues with some trees that were hitting their Madera Unified School District busses. They had called in and called in. She talked to John Scarborough and before she knew it those trees were being taken care of and everybody is happy going down their streets now. She thanked the Parks Department for taking care of those issues.

Mayor Pro Tem Rigby stated he had a quick follow up. If they will recall, several meetings ago, the Council sent direction towards the Madera Ministerial Association (MMA) along with Pastor Leach to move forward with adopting the official motto of the United States of America, "In God We Trust". It will be displayed behind the dais located with words "In God" on the far side of the logo and "We Trust" on the opposite. He passed around a picture. He stated that if it is ok with the Council, they are moving forward. He added that funding has been made available from the MMA and they are excited that this will hopefully be hanging in the dais within the next month and one-half or so.

Mayor Poythress stated that it looks great.

Council Member Oliver stated that he got to present a proclamation on the Mayor's behalf and their colleagues for National Gymnastics Day with V-Force Gymnastics. He noted that although it is just outside the City limits, the owners of the gym are City of Madera residents. They started out as young entrepreneurs here about five years ago. Their business is doing great. It was a great celebration and not only fitness and the sport of gymnastics but as well as nutrition.

Council Member Oliver commended Mary Anne Seay and her staff. He stated that over the last couple of months there have been ideas for opportunities on making some adjustments, some modifications to some of their adult sports recreational programs. He stated his appreciation for their taking the time to meet with folks and looking at ways to improve their programs to ensure greater accountability not only for the City but for the respective team managers and whatnot. He restated his appreciation to Ms. Seay dedicating that time, for following up and for following through.

Mayor Poythress asked if they are making it easier for them to win their basketball games.

Council Member Oliver agreed and added that they are going to have handicaps and they are going to score out on three pointers. They've got a lot of new changes underway.

Council Member Medellin hopes for five on one.

Mayor Poythress reported on their visit to the KB Home neighborhood a week ago Monday. He was joined by the Director of Community Development Dave Merchen, Director of Financial Services Tim Przybyla, and their Willdan representative. They had a chance to meet the other Mr. Montoya, Ron, his wife, and people in the neighborhood. He would say that it was a really successful meeting. He noted that Mr. Merchen, Mr. Przybyla and the Willdan representative, Susanne, did a wonderful job. They did a great job getting the information out there and really rooting out and explaining what the true causes were for the increase in their assessment. He noted that it was an increase in assessments but it had more to do with their escrow accounts. They were able to show on the tax statements what the CFD (Community Facilities District) actual cost was. He added that Mr. Przybyla spent a lot of time with people one on one dealing with their individual situations as well as Mr. Merchen. Again, he thinks it was a very successful evening. A lot of clarification occurred. He stated that there is nothing like the facts. He asked Mr. Merchen and Mr. Przybyla if they want to add anything else.

Mr. Przybyla replied that he would just say that the food was good so he thinks they should have a follow up meeting at their house.

Mayor Poythress agreed that there was a lot of food.

Mr. Merchen replied that he was impressed by the number of people that were in attendance. He doesn't know that they got a total count but the house was full. It seemed like there were 25 or more people. As they all know from their personal and professional lives, the number of times that each of them in the room said the same thing to get the point across, was astounding. He noted that it was essentially having to repeat the same thing four or five times coming from three different people all saying it slightly different, to have it finally soak in, and then for it to not really set until Mr. Przybyla and Susanne talked to them one on one. He noted that it was kind of an interesting process to see that.

Mayor Poythress added that it was very respectful. Nobody was out of control and accusing people of things. They had really good questions and very legitimate. It was very good.

City Administrator David Tooley stated he doesn't doubt that it was the Mayor's calming influence at the meeting. He does want to specifically recognize Mr. Merchen and Mr. Przybyla for their work on this. This represents the best of what this City does. We care, we reach out, we engage. He stated that it is reflective

of all the values that they as a Council emphasize. He wants those two individuals to receive the credit that they deserve.

Mayor Poythress agreed. He stated that he had the easy job. He just had to say, hey guys, how you doing, I've got the experts right here. He agreed that they were great. When they have true professionals on their team it makes a great deal of confidence walking into the room.

Council Member Holley thanked them for taking a load off his back. He is glad he wasn't there. He knew they could handle it. He commented that if one is there, we are all there. He appreciates what they did. He didn't get any more phone calls. He didn't get any more bad emails. He applauded them for a job well done and added that is what they call teamwork.

G. CLOSED SESSION

G-1 Closed Session Announcement – City Attorney

City Administrator David Tooley stated they have had a very stimulating evening. He suspects and he is going to recommend to the Council that his performance evaluation will take a minimum of two sessions. They will not make this a habit but he is going to recommend a two session approach. They can either kick it off this evening or they can simply reschedule because it is after 9:00 tonight.

Mayor Poythress stated that Mr. Tooley has had a long day and he thinks he needs to go home and rest up. He would recommend that they push it out to the next meeting.

Council concurred.

G-2 PERSONNEL EVALUATION--Pursuant to Government Code §54957

Position: City Administrator

G-3 Closed Session Report – City Attorney

See comments for item G-1. Item G-2 was not heard this evening and will be rescheduled.

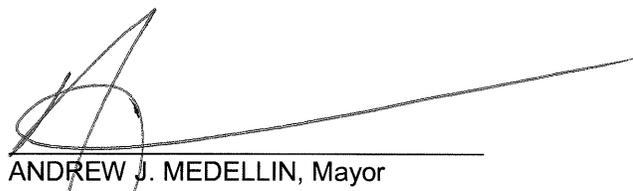
ADJOURNMENT

The meeting was adjourned by Mayor Poythress at 9:19 p.m.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN

Approval of the minutes is not addressed in the vision or action plans; the requested action is also not in conflict with any of the actions or goals contained in that plan.


SONIA ALVAREZ, City Clerk


ANDREW J. MEDELLIN, Mayor

