AGENDA NO. 3

PLANNING COMMISSION
RESOLUTION NO. 2007-P14

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OCEANSIDE, CALIFORNIA RECOMMENDING APPROVAL OF A CONDITIONAL USE PERMIT, REGULAR COASTAL PERMIT, AND A WAIVER OF LOCATIONAL REQUIREMENTS FOR A REGULATED USE ON CERTAIN REAL PROPERTY IN THE CITY OF OCEANSIDE

APPLICATION NO:	C-55-06, RC-3-07
APPLICANT:	Tianna Martin
LOCATION:	417 South Coast Highway

THE PLANNING COMMISSION OF THE CITY OF OCEANSIDE, CALIFORNIA DOES RESOLVE AS FOLLOWS:

WHEREAS, there was filed with this Commission a verified petition on the forms prescribed by the Commission requesting a Conditional Use Permit and Regular Coastal Permit for a regulated use and a waiver of locational requirements for said Regulated Use under the provisions of Articles 36 and 41 of the Zoning Ordinance of the City of Oceanside to permit the following:

a massage establishment operating as part of a day spa business and a waiver of locational requirements for regulated land uses;

on certain real property described in the project description.

WHEREAS, the Planning Commission, after giving the required notice, did on the 12th day of March 2007 conduct a duly advertised public hearing as prescribed by law to consider said application.

WHEREAS, pursuant to the California Environmental Quality Act of 1970, and State Guidelines thereto; this project has been found to be categorically exempt from environmental review per Article 19 Categorical Exemptions, Section 15301 Existing Facilities;

WHEREAS, pursuant to Oceanside Zoning Ordinance §4603, this resolution becomes effective 10 days from its adoption in the absence of the filing of an appeal or call for review;

WHEREAS, studies and investigations made by this Commission and in its behalf reveal the following facts:

FINDINGS:

For the Conditional Use Permit:

1. The proposed location of the use is in accord with the objectives of the Ordinance and the purposes of the district in which the site is located. The proposed massage services as part of a day spa business are not contrary to the Zoning Ordinance objective for the CG (General Commercial) zoning district and to the intent of Article 36 of the Zoning Ordinance. The proposed operation is consistent with the General Plan Land Use Element objective for the underlying General Commercial land use designation affecting the property.
2. The proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the city. The proposed use is subject to specific operational conditions that will cause the use to operate compatibly with the surrounding land uses and it will not be detrimental to the general welfare of the City.
3. The proposed conditional use will comply with the provisions of the Ordinance, including any specific condition required for the proposed conditional use in the district in which it would be located.

For the Regular Coastal Permit:

1. The proposed project is consistent with the policies of the Local Coastal Program and its effective zoning code.

For the Locational Waiver:

1. The day spa with associated massage services will not be contrary to the public interest.
2. The proposed day spa with associated massage services will not result in a concentration of adult-oriented uses and will not be contrary to the spirit or intent of Article 36.
3. The proposed project will not impair nearby property or the integrity of the underlying district.
4. The proposed project will not encourage the development of an adult entertainment area or otherwise promote community blight. There are two (2) known regulated uses within 1,000 feet (in all directions) of the proposed project site.

5. The proposed project will not negatively impact any governmental programs of redevelopment, revitalization, or neighborhood preservation.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby recommend approval of Conditional Use Permit (C-55-06), Regular Coastal Permit (RC-3-07) and waiver of applicable locational requirements subject to the following conditions:

Planning:

1. This Conditional Use Permit (C-55-06), Regular Coastal Permit (RC-3-07) and waiver of Regulated Use Locational Requirements are limited to massage services as a component to a day spa operation comprising approximately 1,200 square feet of floor area.
2. The massage services may not at any time be operated independent of the day spa business. The revenue derived from the massage component of the business shall be limited to 51 percent of the business total. The applicant shall provide evidence of annual revenue from the massage component in relation to the total business gross income at the time of business license renewal.
3. This Conditional Use Permit does not apply to any services or activities of an illicit sexual nature. Any evidentiary material pertaining to on-site or off-site acts of prostitution, or other acts of sexual conduct associated with the existence of this business, its proprietorship, its employees or clientele, shall be grounds for revocation of the Conditional Use Permit.
4. This Conditional Use Permit shall be called for review by the Planning Commission if complaints are filed and verified as valid by the Code Enforcement Office concerning the violation of any of the approved conditions or assumptions made by the application.
5. Prior to the transfer of ownership and/or operation of the site the owner shall provide a written copy of the applications, staff report and resolutions for the project to the new owner and or operator. This notification's provision shall run with the life of the project and shall be recorded as a covenant or other recordable document approved by the City Attorney on the property.
6. Unless expressly waived, all current zoning standards and City ordinances and policies in effect at the time improvement permits are issued are required to be met by this project. The approval of this project constitutes the applicant's agreement with all statements in the

Description and Justification and other materials and information submitted with this application, unless specifically waived by an adopted condition of approval.

7. The applicant, permittee or any successor-in-interest shall defend, indemnify and hold harmless the City of Oceanside, its agents, officers or employees from any claim, action or proceeding against the City, its agents, officers, or employees to attack, set aside, void or annul an approval of the City, concerning Conditional Use Permit (C-55-06) and Regular Coastal Permit (RC-3-07). The City will promptly notify the applicant of any such claim, action or proceeding against the City and will cooperate fully in the defense. If the City fails to promptly notify the applicant of any such claim action or proceeding or fails to cooperate fully in the defense, the applicant shall not, thereafter, be responsible to defend, indemnify or hold harmless the City.

8. The hours-of-operation shall be limited from 9:00 a.m. to 8:00 p.m. These hours can be limited further by the Planning Commission upon review of any valid issues or complaints pertaining to the hours-of-operation.

9. No neon signage shall be permitted. No window signs shall be permitted, with the exception of hours of operation displayed on the entrance door.

10. The north facing canopy sign shall either be removed completely or shall display only the name of the business advertised. No signage visible from the public right-of-way, including a side-walk sign, shall include the word "massage" at any time.

11. No more than 50 percent of the frontage windows and door shall be covered with window treatments including, but not limited to curtains, drapes, and blinds.

Police:

12. A list of services and the cost of such services shall be posted in a conspicuous place on the premises at all times.

13. All persons providing massage shall be fully clothed in hygienically clean apparel while engaged in the practice of massage. As used herein, "fully clothed" shall mean the wearing of clothing which is comparable to the clothing commonly worn by nurses and physically therapists while performing their respective professional duties.

14. All persons engaged in the practice of massage shall have a valid business license issued by the City of Oceanside as well as a permit to practice massage issued by the Oceanside Police Department.

15. Permits issued by the Oceanside Police Department shall be valid for one (1) year from the date of issuance and shall be renewed annually.

16. The business shall display the massage business license and a copy of the license and/or permit for each person providing massage services at all times.

17. All persons engaged in the practice of massage shall have successfully completed a minimum of one hundred (100) hours of instruction in the art of massage provided by a recognized school or institute of learning which offers a course in instruction approved by the State of California Office of Private Postsecondary Education or comparable out-of-state agency, which shall include anatomy, physiology and hygiene, massage theory and history, ethics of massage and business practices.

18. All persons engaged in the practice of massage shall not have been convicted of any of the following offenses:

    a) Any offense involving lewd conduct or an offense involving the use of force or violence upon the person of another; or,

    b) Any offense described in California Penal Code sections 266h, 266i, 311 through 311.7, 314, 315, 316, 318, 653.22, or 647 (a), (b), or (d); or,

    c) Any offense described in California Penal Code, Part One, Title 9, Chapters 7.5 and 7.6; or,

    d) Any offense which requires registration as a sex offender under California Penal Code section 290; or,

    e) Any charge of violating any lesser included or lesser related offenses, including Penal Code section 415, in satisfaction of, or as a substitute for, an original charge or any of the offenses listed above.

19. The business operator shall maintain a record, which includes the date and time of each massage, the name and address of the patron, the name of the person administering such massage and the type of massage given. Such records shall be made available upon request for inspection by the Oceanside Police Department. The information contained in such records shall be confidential.

20. The business operator shall provide clean and sanitary towels, sheets and linens for each patron. Towels, sheets and linens shall be provided in sufficient quantity and shall not be used by more than one person unless such towels, sheets and linens have been re-

laundered. Separate closed cabinets of containers shall be provided for the storage of clean and soiled towels, sheets and linens and such cabinets or containers shall be plainly marked "clean linens" and "soiled linens".

21. Separate lockers shall be provided for patrons.

22. All exterior doors shall be unlocked from the interior during business hours.

PASSED on March 12, 2007 by the following vote, to wit:

AYES: Martinek, Blom, Troisi, Balma, Horton and McLeod

NAYS: Parker

ABSENT: None

ABSTAIN: None

ADOPTED Resolution No. 2007-P14 on March 26, 2007.

Dennis Martinek, Chairman
Oceanside Planning Commission

ATTEST:

Jerry Hittleman, Secretary

I, JERRY HITTLEMAN, Secretary of the Oceanside Planning Commission, hereby certify that this is a true and correct copy of Resolution No. 2007-P14.

Dated: March 26, 2007