

**MINUTES  
CITY OF GLENDALE PLANNING COMMISSION  
CITY COUNCIL CHAMBERS  
5850 WEST GLENDALE AVENUE  
GLENDALE, ARIZONA 85301**

**THURSDAY, APRIL 2, 2015  
6:00 PM**

CALL TO ORDER

The meeting was called to order at approximately 6:00 p.m.

**Commissioners Present:** Commissioners Moreno, Harper, and Gallegos, Vice Chairperson Lenox, and Chairperson Johnston were present.

**Commissioners Absent:** Commissioners Dobbelaere and Hirsch were absent and excused.

**City Staff Present:** Tabitha Perry, Assistant Planning Director, Tom Dixon, CPM, Senior Planner, Deborah Robberson, Chief Deputy City Attorney, and Diana Figueroa, Recording Secretary.

APPROVAL OF MINUTES

Chairperson Johnston called for Approval of Minutes from the February 5, 2015 Workshop. After a brief discussion the Commission agreed to table the minutes to the May 7, 2015 Meeting.

Chairperson Johnston called for Approval of Minutes from the March 5, 2015 Public Hearing.

**COMMISSIONER HARPER MADE A MOTION TO APPROVE AS WRITTEN. VICE CHAIRPERSON LENOX SECONDED THE MOTION, WHICH WAS APPROVED WITH A VOTE OF 5 TO 0.**

WITHDRAWALS AND CONTINUANCES

Chairperson Johnston called for any withdrawals and/or continuances. Ms. Perry said there were none.

PUBLIC HEARING ITEM

Chairperson Johnston called for staff's presentation.

**1. CUP15-01:** A request by Daniel Kelly for a Conditional Use Permit (CUP) to grant a Type II Home Occupation to allow infant survival swim lessons in the R1-6 (Single Residence) zoning district. The site is located at 21512 North 73rd Avenue and is located in the Cholla District.

Mr. Tom Dixon, CPM, Senior Planner, stated this was a request by Daniel Kelly for a Conditional Use Permit to grant a Type II Home Occupation to allow infant survival swim lessons in the R1-6 (Single Residence) zoning district. He said the site was located at 21512

North 73rd Avenue and in the Cholla District. He noted this was a request to allow survival swim lessons for children on a one-to-one basis for children six months to six years in age. He explained these lessons will be provided for a range of abilities for beginner swimmers including special needs children.

Mr. Dixon noted that all applicable city departments have reviewed the application and recommended approval. He said the proposed use was consistent with the policies of the General Plan and the purpose of the R1-6 zoning district. He stated that Home Occupation users are subject to CUP in all residential districts. The proposal requires CUP approval because several standards in the staff analysis cannot be met by the proposed home occupation. He said it was important to note that the CUP review was to evaluate the merits of land use compatibility and does not validate issues such as liability, insurance, licenses or other operational aspects.

Mr. Dixon stated that the survival swim lessons have apparently occurred in the past in a private swimming pool on a single-family residence at the southwest corner of Melinda Lane and North 73th Avenue. He noted the pool was a polygon shape, measuring nearly 30 feet in length with a variable width. He explained that at one end of the pool, there are steps to the shallow end which is identified as the lesson area on the site plan. He said that in proximity to the shallow end, there is a parents' seating area consisting of a shaded patio adjacent to the house.

He stated that the purpose of this CUP request was to legalize the private swim lessons activity. He noted the program was based on the premise that very young children and those with special needs can learn to positively respond to a situation in which they involuntarily become immersed in water. He said the training involves control of the breathing impulse when under water, learning to suppress the panic behavior when submerged in water, and how to resurface in order to breathe until assistance was available or self-recovery, if possible. He stated the purpose of this method was to re-enforce the urgency of learning to self-help in the water and resist the immediate breathing impulse which can lead to sudden drowning.

Mr. Dixon explained that contact from several neighbors, commenting on last summer's lessons at this residence, have provided concerns that several students were in distress or complete fear for their lives. He said that this included, on one occasion, contact with the City of Glendale Police Department regarding a concern for a child's safety during lessons. There were also two complaints to the City of Glendale Code Enforcement in 2014 regarding illegal swim lessons being conducted from the property. He said that the logs from City Code inspector Tony Ciunta, dated May 1, 2014, and October 9, 2014, are provided following the Final Citizen Participation Plan. He noted that the CUP request is an attempt to legalize the swimming instruction program so that activity can continue into 2015 as a conditionally approved use.

He indicated that although the particular methods of instruction for this program are described as learning to back float and swim to the side of the pool, shrieks or screams of fear could be detrimental at an open air, residential pool surrounded by neighbors when conducting a swim instruction business. He said that in order to address this, stipulations are incorporated to ensure any anticipated detrimental effects can be mitigated.

Mr. Dixon noted that on February 20, 2015, the applicant mailed notification letters informing the adjacent property owners and interested parties of their request. He stated Planning staff

received three e-mails and a phone call expressing concerns about the operation of swim lessons involving screams coming from the pool area. He said that one of these directed staff to a police complaint that occurred on May 1, 2015. He said the call was from one of the e-mail responders. In addition, two logged entries from the City of Glendale Code Enforcement officer are included in the report attachments. He stated a Notice of Public Hearing was published in the *The Glendale Star* on March 12, 2015 and notification postcards of the public hearing were mailed to adjacent property owners and interested parties on March 13, 2015. He added that the property was posted on March 13, 2015.

In conclusion, Mr. Dixon stated this request appears to meet the required findings and should be approved, subject to the stipulations listed in the staff report. He asked for questions from the Commission.

Chairperson Johnston called for questions from the Commission.

Commissioner Harper asked if the city requires liability insurance for this application. Mr. Dixon stated that not to his knowledge, however would defer to the City Attorney. Deborah Robberson, Chief Deputy City Attorney, stated that the Commission was here to decide on the application and its land use; She added that the city does not regulate the operation of the business.

Commissioner Moreno asked if any code was being violated during the operation of the swimming lessons. Mr. Dixon stated that last year there had been a complaint through Code Enforcement that swim lessons were going on without the benefit of any kind of conditional use permit process approval. He added there was also a report of a child that might have been harmed. Commissioner Moreno asked if the child had been hurt by the lady providing the lessons or a family member. Mr. Dixon stated that he believes that no harm was actually done to the child but rather the child was afraid of the water. He added that there were no allegations of child abuse or anything of that nature.

Chairperson Johnston called for the applicant to make a presentation.

Joseph Lopez, applicant's representative, stated he would like to start with answering some of the issues raised by the Commissioners. He noted that they carry a million dollar liability insurance policy. He explained that the children attending were there with their parents and no harm was ever being done to these children. He said that the parents were always with their children watching the lessons. He explained that there were always different reactions to the lessons since ages ranged from 6 months to 6 years. He stated that in short, they were trying to save children's lives and more precisely, children saving their own lives. He explained the program.

Mr. Lopez asked to address some of the concerns that have been brought up by the neighbors. He stated that the noise and traffic issues were really not pertinent since they only have three lessons per hour and only last 10 minutes at a time so there will be minimal cars parked in the area. He added that not all of the children are screaming when they are having their lessons. Additionally, the lessons were between 9:00 a.m. and 4:00 p.m. Monday through Thursday. He talked about the incident when the police were called and ultimately the police officer apologized for interrupting the lessons and applauded what they were doing and thanked them. He said that

his wife conducts lessons in different locations. He said that they have done everything requested of them including attending the public meeting and in answering any questions. He submitted for the record a list of people in support of the application. He added they also have classes for special needs children.

Chairperson Johnston asked if the Commission had any questions for the applicant.

Commissioner Harper asked what training his wife had to conduct these classes. Mr. Lopez stated his wife was certified and trained in CPR for infants as well.

Commissioner Lenox asked how long they had been doing this at this residence. Mr. Lopez responded three years.

Commissioner Moreno remarked that he believes this was a good thing and he likes the fact that they were helping the community.

Commissioner Gallegos asked if the hours of operation have been the same in the last three seasons that they had been doing this. Mr. Lopez responded yes. Commissioner Gallegos asked if there had been any complaints for traffic in those last three years. Mr. Lopez responded no.

Chairperson Johnston asked what happened when there were multiple children. Mr. Lopez stated that they stayed with their parents until the lesson was over.

Chairperson Johnston noted that his belief was that the only reason they were here tonight asking for a CUP was because they had been cited for not having a permit. Mr. Lopez responded that he was correct and they should have investigated what was required before starting this program. He said they thought they were providing a needed service for the community and simply did not think it through. However, they would like to now proceed forward with the CUP. Chairperson Johnson asked how many other locations they had. Mr. Lopez stated they had one other location and they use a community pool.

Chairperson Johnston opened the public hearing.

Mr. Wysik, speaker, stated he lived two houses away from the applicant and was opposed to this application. He explained that this was a great program to help the children, however, it was noisy and he recently moved there to avoid the noise where he lived. He reiterated that his sole purpose for moving was because it used to be a quiet neighborhood. He was very surprised that this was happening in a residential neighborhood.

Randy Kimmens, speaker, expressed his opposition to this application. He said he lived about a half a block away from the property. He was concerned that this had been going on for three years before they got caught. He read a section from the CC&R's booklet disallowing any businesses. He was also concerned about the traffic in the area.

Mark Schwartz, speaker, expressed his opposition to this application. He believes the applicant has been avoiding speaking to the HOA and neighbors. He stated this simply was not a good fit for this neighborhood.

Luis Source, speaker, stated his support of this application. He said his children have gone through the program and he was very happy with the program. He explained there were a lot of home-based businesses in the area. He sees no problem with this program and believes this was good for the community.

Jazlyn Damasco, speaker, stated her support of the application. She said she was one of Ms. Lopez' first students at the swim survival program. She stated that she was a caring, compassionate and kind hearted person and was honored to have been taught by her. She read some drowning statistics in Arizona.

Kelly Broadfoot, speaker, stated her support of the application. She shared a story about her granddaughter who had gone through the program. She stated that at a party the child fell into the water and immediately went into her float. Her granddaughter was two years old and now is four years old. She was glad she was here today and not one of the statistics. She noted that this program was about survival.

Samantha Page, speaker, stated her supported of the application. She stated that these were not swim lessons but survival lessons. She shared a story about her friend's child who drowned after going through a doggy door to get to the pool. She recommends these classes to anyone with young children. She hopes the Commission approves the application and keeps the program going.

Kim Fried, speaker, expressed her support of the application. She stated she has three kids that have gone through this type of survival program. She said that she had walked the neighborhood gathering the petition signatures and everyone but one supported this program being in the neighborhood. She noted the one that was opposed was the one person that came up to say that he had only lived there for 4 months. She stated that the other 30 signatures were people who had lived there and are in close proximity to the applicant's lot and were supportive.

Lee Hinton, speaker, expressed her support of the application. She stated that she shares physical boundary property with the applicants and has never had any problem with the noise. She noted she rarely hears any noise coming from the home. She said she hears more noise from kids who are playing in the neighborhood. She talked about a conversation with Derrick Smith about the CC&R and the only issue they discussed was that the HOA was not in favor of any business which would generate employment opportunities.

Nicole Miller, Attorney for Arrowhead HOA, expressed her opposition to the application. She explained that no one would challenge that swim lesson were not useful, however, swim lessons were available in other pools. She stated that this business owner was already giving swim lessons at another pool. She explained that the Commission has to find if approving this application would not have an adverse effect on the adjacent properties and the surrounding neighborhood. She believes that this would and it has since the police have already been called in the past on two separate occasions because of the noise nuisance. She stated that allowing this business would interfere with the quiet enjoyment and peace of the surrounding area. She explained that the traffic would be an issue with having 21 lessons a day. She noted that the

stipulation would be hard to monitor. She stated that swim lessons were great but other places provide this service and this business was not appropriated to be in a residential area.

Chairperson Johnston asked if there had been any penalties or assessments against this homeowner in the past. Ms. Miller replied no. Chairperson Johnston asked if there were any pending. Ms. Miller also replied no. She explained the provisions in the CC&R's.

Greg Frontz, speaker, explained the value of lessons and having a permit and a good track record.

Gina Corazza, speaker, expressed her opposition. She said she lives and works in Glendale and pays rent and taxes to the city. She said that since she was gone most of the day, the noise has not impacted her. However, her neighbor of 15 years has mentioned the noise and the level of screams coming from the applicant's backyard. She believes that HOA's are good for the neighborhood and when you sign an agreement you should abide by it. Therefore, this program may not be a good fit for the neighborhood even if it's a good program for children.

Amy Hurbert Suggs, speaker, expressed her opposition. She stated that although swim lessons were beneficial, they all signed a contract with the HOA and should abide by it. She said she was pro business but believes this should not be in someone's backyard.

Chris McShanaz, speaker, expressed his support and noted he lives in the neighborhood. He talked about kids drowning in lakes and pools when there are people around and how the program was helpful. He explained that the noise was a non-issue since the neighborhood was a family kid friendly community and there will always be kid noise.

Jennifer Peery, speaker, expressed her support and stated she was a Pediatrics Physical Therapist and practicing in the community for over 20 years. She explained that she was in and out of homes every day. She noted that some of her patients with cerebral palsy started out with the applicant for therapy which did wonders and the outcome was remarkable. She noted that after that she has referred several of her patients to the applicant for therapy. She explained that this program could not be done in a public setting and hopes the Commission approves this application.

Chairperson Johnston thanked everyone coming and for participating tonight.

Chairperson Johnston asked the applicant's representative if he would like to make any closing comments.

Mr. Lopez reiterated that these lessons were not typical and cannot be done outside a controlled setting.

Chairperson Johnston closed the public hearing.

Chairperson Johnston called for a motion.

**VICE CHAIRPERSON LENOX MADE A MOTION TO APPROVE CUP15-01 SUBJECT TO STIPULATIONS NOTED IN THE STAFF REPORT. COMMISSIONER MORENO SECONDED THE MOTION, WHICH WAS APPROVED UNANIMOUSLY.**

Chairperson Johnston called for any additional comments.

Chairperson Johnston commented that the debate was not about the value of the classes but some of the other issues surrounding this program. He said it was difficult to put the Commission in a situation of having to interpret CC&R's and laws and regulations. He said the Planning Commission was there to primarily do what was in the best interest of the community and its citizens.

Chairperson Johnston called for the next step in the process.

Deborah Robberson, Deputy City Attorney, said this is final approval by the Planning Commission subject to a written appeal if filed within 15 days.

**OTHER BUSINESS FROM THE FLOOR**

Chairperson Johnston asked if there was any Business From The Floor. Ms. Perry said there was none.

**PLANNING STAFF REPORT**

Chairperson Johnston asked if there was a Planning Staff Report. Ms. Perry said there was none.

**COMMISSION COMMENTS AND SUGGESTIONS**

Chairperson Johnston called for Comments and Suggestions. Ms. Perry said there was none.

**ADJOURNMENT**

With no further business, Chairperson Johnston called for a motion to adjourn.

**COMMISSIONER HARPER MADE A MOTION TO ADJOURN. VICE CHAIRPERSON LENOX SECONDED THE MOTION, WHICH WAS APPROVED UNANIMOUSLY.**

The meeting was adjourned at 7:42 p.m.

**NEXT MEETING:** May 7, 2015.