

**No:** 2 - Vice Mayor Schwartz and Mayor Ruzzano

**Abstain:** 1 - Commissioner Caggiano

**A motion was made by Commissioner Peerman, seconded by Vice Mayor Schwartz, to approve the original motion not amended. The motion carried by the following vote:**

**Yes:** 3 - Commissioner Simone, Commissioner Peerman and Vice Mayor Schwartz

**No:** 1 - Mayor Ruzzano

**Abstain:** 1 - Commissioner Caggiano

- B.** [ID 2017-031](#) PROVIDING FOR COMMISSION MEETING RULES FOR MARGATE CITY COMMISSION MEETINGS TO BE AS DETERMINED BY THE MAYOR.

*RESOLUTION 17-011*

**A motion was made by Commissioner Caggiano, seconded by Mayor Ruzzano, that this Resolution be approved.**

*CITY ATTORNEY GONZALES NOTED THAT THE RESOLUTION WOULD BE FURTHER AMENDED TO INCLUDE A PROVISION STATING THAT THE RULES OF PROCEDURE THAT WERE ATTACHED WERE INCORPORATED INTO THE RESOLUTION.*

**An amendment was made for the addition of, "At the Mayor's discretion" in Section 4 regarding the addition of the items. The amendment carried by the following vote:**

**Yes:** 4 - Commissioner Caggiano, Commissioner Peerman, Vice Mayor Schwartz and Mayor Ruzzano

**No:** 1 - Commissioner Simone

**The original motion as amended carried by the following vote:**

**Yes:** 4 - Commissioner Caggiano, Commissioner Peerman, Vice Mayor Schwartz and Mayor Ruzzano

**No:** 1 - Commissioner Simone

*THE MEETING RECONVENED FOLLOWING A BRIEF RECESS.*

## **7) RESOLUTION(S) - QUASI-JUDICIAL HEARING**

*CITY ATTORNEY DOUGLAS R. GONZALES read the following statement: Florida*

courts have determined that there are certain types of matters, including the following applications, which are to be treated differently than other issues considered by the Commission. Most decisions of the Commission are legislative in nature, which means that the City Commission is acting as policy making body. In contrast, in Quasi-Judicial matters, the Commission is applying existing rules and policies to a factual situation, and is therefore, acting like a Judge or Jury in a courtroom. In such cases, the courts have decided that due process and fundamental fairness requires that more formal procedures be followed. The City of Margate's procedures for Quasi-Judicial Hearings are as follows: All who wish to speak shall be collectively sworn in by the City Clerk. The hearing shall be conducted in an informal manner. He would read the title of the item to be considered and City Staff shall present a brief synopsis of the application and make a recommendation. Next there would be a presentation by the applicant. The Commission would then hear from participants in favor of and in opposition to the application. All witnesses were subject to cross examination by the City Staff, City Commission and the applicant, and a participant may request that the Commission ask questions of a witness. The applicant and Staff will make concluding remarks and no further presentations or testimonies shall be permitted, and then the public hearing will then be closed. All decisions of the Commission must be based on competent substantial evidence presented to it at the hearing. All backup materials provided to the City Commission as part of the Agenda, will automatically be made a part of the record of the hearing, and all approvals will be subject to Staff recommended conditions, unless otherwise stated in the motion for approval.

CITY ATTORNEY GONZALES asked that any Commissioner that engaged in Ex-Parte communications regarding this Quasi-Judicial Agenda item disclose that information including City Commission discussions with interested parties including the petitioner and City Staff, and any visitations being discussed should be disclosed at this moment.

COMMISSIONER CAGGIANO said that he met with both Staff and the applicant.

COMMISSIONER SIMONE stated that she met with Staff.

COMMISSIONER PEERMAN stated that she met with Staff and the applicant.

VICE MAYOR SCHWARTZ stated that she met with Staff and the applicant.

MAYOR RUZZANO stated that he met with Staff.

CITY CLERK JOSEPH J. KAVANAGH swore in those affected parties wishing to provide testimony.

- A. [ID 2016-797](#) APPROVING A SPECIAL EXCEPTION USE TO ALLOW A GASOLINE SERVICE STATION USE WITH PROPOSED CONVENIENCE MARKET AT 5485 WEST ATLANTIC BOULEVARD SUBJECT TO THE FINDINGS OF THE DEVELOPMENT REVIEW COMMITTEE.

RESOLUTION 17-012

DIRECTOR OF ECONOMIC DEVELOPMENT BEN ZISKAL, being duly sworn, provided a slide presentation and explained that this item was a proposal for a new Cumberland Farms Gas Station. He showed renderings of the proposed gas station and what was proposed. He showed the elevation of the gas station traveling westbound on Atlantic Boulevard. He showed the façade traveling westbound, as well as the façade facing Atlantic Boulevard with the south elevation. He also showed the west elevation facing U.S. 441 and the north elevation facing the existing Lakewood Shopping Center. He stated that the Site Plan was for a convenience store just short of 5,000 square feet and a gasoline station consisting of 16 gas pumps. Director Ziskal

said that the location was on Atlantic Boulevard and was the site of a former Walgreens that was currently vacant. He stated that the property was due west of the existing McDonalds between McDonalds and Boston Market and TD Bank to the west of the property. He noted that the current condition of the property was vacant. He explained that the proposal before the Commission was the fourth of a series of different gasoline service station proposals seen over the last three years. He said that the first proposal was a RaceTrac at the north end of the City in 2014, which was denied due to compatibility issues with the adjacent residential project called Merrick Preserve. He explained that the other two projects were the Orion gas station at U.S. 441 and Atlantic Boulevard and the WaWa proposed to be built at the intersection of U.S. 441 and Copans Road. He stated that both gas stations were approved adding a new gas station for westbound and southbound traffic with Orion and a new gas station for eastbound and northbound traffic with the WaWa. He noted that both were located at major intersections in the City. Director Ziskal stated that the Site Plan shown today was a collaborative effort of four different Development Review Committee (DRC) reviews by the applicant. He said that the applicant was working on this project back since June 9, 2015, with three subsequent resubmittals throughout 2016. He explained the amendments to the Site Plan and showed the first Site Plan with extensive visibility for the gas pumps. He stated that there was a linear formation of gas pumps on the south along Atlantic Boulevard, with the convenience store pushed to the north allowing passersby to see the prominent feature of the gas canopy. He showed the second Site Plan showed the same layout; however, it focused on the east side of the property with open space, a walkway, increased grass, alterations for drive aisles and pedestrian safety. He noted that Staff advised that the second Site Plan was not satisfactory to the Transit Oriented Corridor (TOC) design standards. He noted that the third version of the Site Plan made significant modifications by moving the gas pumps to the west of the property running perpendicular rather than parallel to Atlantic Boulevard. He stated that the convenience store was still pushed back significantly from the roadway with a large grass area between the building and Atlantic Boulevard. He said that Staff's recommendation was that the building be pushed closer to the wall to allow the building the prominent feature in the development. He explained that the fourth submission before the Commission tonight indicated that the building was pushed to the front. He stated that pedestrian enhancements from the existing sidewalk and connecting onto the private property were enhanced. He added that the gas canopy was to the west and the front of the building and the front of the gas canopy were in line with each other so passersby going east to west would get a clear view of the building, prior to seeing any of the gas canopy. He clarified that passersby traveling west to east would still see the gas canopy. Director Ziskal explained that following the four reviews, the applicant chose to move forward with applications for variances and the Commission's consideration for this proposal. He reiterated that traveling east to west the building would be seen. He noted that there was an outdoor seating area. He added that from the west a glass entrance into the convenience store was visible and the dumpster enclosure was incorporated into the design of the architecture. He added that the dumpster enclosure had been tied together with the building via an archway maximizing the aesthetics for the convenience store and minimizing the impacts for the gasoline canopy. Director Ziskal stated that though the applicant made four iterations and four revisions to the Site Plan, Staff recognized that there was physically no way to design a gas station with pumps that would meet the City Code. He noted that per the Code, the occupant of the gas station must have visibility over all pumps in a triangular Site triangle and must have a kill switch to stop all gasoline in the event of an accident or emergency. He noted that making a linear development of a gas station with pumps was virtually impossible and they had to be parallel to each other so the pumps could be seen from the glass door of the building. He stated that it would be impossible to build out the frontage or any area in between the pumps and the building. He added that the nature of the gas station was to pull circulation around the pumps; therefore, build out frontage was impossible. Director Ziskal stated that on January 3rd, 2017, the

applicant appeared before the Board of Adjustment for consideration of four different variances. He said that one variance dealt with the distance between this gas station and the existing Orion gas station; the second variance dealt with the building frontage; the third variance dealt with landscape tree spacing; and the fourth variance was a request to utilize bollards in lieu of wheel stops. He stated that the proposed Cumberland Farms was 985 feet from property line to property line to the existing Orion gas station, and Code required a 1,000 foot separation. He noted that Staff recommended approval of the variance, which was granted. He explained that the rationale for the approval was that the facilities themselves were not within 1,000 feet; however, the Code required that there be 1,000 feet from property line to property line. He said that if denial was recommended, the existing property lines for Cumberland Farms could be modified and the applicant could still get the line moved to meet the 1,000 foot requirement. He noted that approving the variance was the easier way with less hurdles for the applicant while still meeting the intent of the Code. He explained that the second variance regarding building frontage. He noted that the City only counted the area where an actual structure or the dumpster enclosure was, which was approximately 32 percent of the site. He said that Code required that 70 percent be built out. He stated Staff recommended approval because it was impossible to meet that requirement due to the gas canopy. Director Ziskal mentioned the third variance regarding landscaping and explained that Code required trees to be spaced on center every 30 feet. He explained that the variance request was to cluster some of the trees together and provide an open space to enhance visibility to the facility. He said that Staff recommended approval of the variance, providing the total number of trees on the right-of-way met the Code requirements and that an aesthetic trellis be provided over the sidewalk for pedestrians to walk under and providing enhanced aesthetics to the roadway. He noted that the applicant agreed to that; therefore, the variance was approved. He stated that the applicant then requested for all parking spaces pulling into the convenience store to have the sidewalk flush with the pavement and to be able to install bollards rather than wheel stops.

DIRECTOR ZISKAL reviewed the existing criteria as follows:

A. B. C.

The first three criteria dealt with the existing neighborhood compatibility with adjacent properties. He stated that Staff found no objection to the request. He explained that the proposal was in a Corridor Zoning District with all sides surrounded by adjacent commercial property such as the Lakewood Shopping Center, McDonalds, Boston Market, Pollo Tropical and TD Bank. He said that the inclusion of the gas station on this property would not create a detrimental effect to the adjacent neighbors as they all had similar characteristics as the gas station.

D.

The fourth criteria pertained to ingress and egress with regard to pedestrian and vehicular safety and the ability to collect refuse. He stated that there was an enhanced pedestrian network. He noted that the sidewalk would be modified to include a 12 foot wide sidewalk across the property. He added that there would also be a connection directly into the building and a pedestrian network completely surrounding the convenience store, as well as connecting to the main parking lot. He showed three entrances from the interior alley way or main drive aisle of Lakewood into the parcel. He said that the City Engineer had raised concerns during DRC and during final design, the City Engineer recommended that it be cut down to two entrances and he would work with Staff on the plans. He noted that there was a slight concern regarding the S curve of the drive aisle. He added that the particular concerns the Engineer had dealt with the access points from the drive aisles to the existing stop bars and stop signs connecting into the main thoroughfare. He noted that it was a concern, but not a major objection to the way it was proposed. Director Ziskal explained that when entering the property from



the west there was a proposed right turn in from the main circulation area. He stated that both Engineering and Planning Staff objected to this and requested that it be removed. He said that the location would cause congestion and backup problems onto the Atlantic Boulevard corridor. He showed that there was a dedicated right turn lane, but immediately upon making that turn there was a double lane merging into a single lane at the point of making the entrance; therefore, there could be a crossing pattern. He added that high volumes of service at a gas station could cause potential backups onto Atlantic Boulevard; therefore, Staff requested that the entrance be removed and having the applicant work with two of the three connections on the north side of the property. Director Ziskal stated that there was no problem with the double trash and recycling area providing clear access for the Waste Management trucks to get into the facility for access.

E.

The fifth criteria dealt with adequacy of off-street parking regarding safety concerns for pedestrians and potential conflicts with vehicle traffic. He explained that the plan layout indicated that a majority of the parking flanked the north and west side of the convenience store. He said that there was a small parking area to the north and south on the east side located near the dumpster. He added there was a parking space area on the far west side of the project. He stated that the only potential vehicle conflict would be the one of the west of the project; however, everything else had a clear pedestrian walkway with no vehicular conflict. He felt that the design provided the maximum safety for the pedestrians.

F. G.

Criteria six and seven dealt with orientation, location and size of the buildings, as well as sufficiency of setbacks. He showed the existing structures and explained that they had the same setbacks and visibility as the existing structures of McDonalds, TD Bank, Boston Market and Pollo Tropical. He stated that there would be no conflict and the gas station would not be out of character.

H. I.

The next two criteria dealt with sufficient stormwater. He noted that stormwater was handled by the Engineering Department and all development projects required approval from Broward County. He said that the applicant was currently going through those necessary precautions. He stated that no issue was seen with the stormwater on the site. He added that the adequacy of landscaping was sufficient in every area except for the previously mentioned variance granted. He explained that there were extensive buffers along Atlantic Boulevard with enhanced landscaping on both drive aisles on the east and west entering the project. He added that landscaping was enhanced surrounding the building with additional landscaping to the north.

J. K.

The last criteria pertained to compliance of the applicable goals, objectives and policies of the Margate Comprehensive Plan and the Margate Community Redevelopment Plan. He reiterated that this was the fourth request for a gas station in the last three years. He said that two were approved; therefore, this would be the third new gas station in the City. He noted that there was a need for northbound and westbound supply and that Orion met the needs for the westbound traffic and the proposed WaWa met the needs for the northbound traffic. He said that there were seven other existing gas stations along the U.S. 441 or Atlantic Boulevard corridors. He noted that Staff reviewed the number of gas stations and found that from a design standpoint, a gas station could not do better than this design team did. He stated that they met the intent of the TOC Code. He said that accepting the application would enhance the aesthetics and it would be an improvement to the site by adding new construction, sales tax revenue, gas tax revenue and Ad-valorem tax revenue for the City. He said that the property owner had tried to

secure other tenants, such as restaurants or retail stores; however, hurdles were being faced regarding clauses and leases such as non-compete clauses limiting what could be sold on the site. He mentioned visibility as well, which meant they were not able to block other tenants, such as Ross. He noted that Margate reached a point of saturation with regard to gas stations; however, accepting this gas station would constitute a proliferation of the uses, specifically considering the two new gas stations approved in the last two years. Director Ziskal concluded that the addition of the gas station would be contradictory to the goals, objectives and policies of the Comprehensive Plan and the CRA Plan. He stated that both plans called for a reduction in stand-alone auto uses such as big box stores, gas stations, drive through facilities and automobile repairs; however, Staff favored long term a fewer amount of large gas stations providing the types of convenience store items and amenities such as this one, as opposed to the small gas stations existing. He added that if a number of gas stations closed throughout the City, this would be a favorable site and location, but due to the existing number of gas stations Staff continued to maintain the recommendation of denial at this point.

COMMISSIONER SIMONE questioned where the access road was that Director Ziskal previously showed.

DIRECTOR ZISKAL explained that it was directly west of the structure coming in and was the main entrance of that portion of the shopping center. He said that the proposal was to make an immediate right; however, Staff recommended that it go to the main aisle, make the turn and then approach the convenience store and gas pumps from the north, rather than making the sharp turn and approaching from the west.

MAYOR RUZZANO asked how a gas truck would enter. He asked whether the sidewalk would be sloped because the elevation was off.

DIRECTOR ZISKAL said that they would be making improvements. He noted that the existing sidewalk was along Atlantic Boulevard and the proposal showed it no longer directly adjacent to the turn lane. He said that a portion of the sidewalk was being shifted onto the property to pick up the slope with two ramps provided.

VICE MAYOR SCHWARTZ spoke about the WaWa gas station taking care of the northbound traffic; however, there was a Marathon gas station around the corner.

DIRECTOR ZISKAL agreed that there was a Marathon gas station in that area.

#### THE MEETING RECONVENED FOLLOWING A BRIEF RECESS.

ATTORNEY MATTHEW SCOTT, Tripp Scott Law Office, 110 Southeast 6th Street, Fort Lauderdale, Florida, being duly sworn, said that he represented the applicant. He introduced Mark Gottlieb, representing the applicant, Scott Goldsmith, representing the owner of the shopping center, Brian Thomas and Mike Troxell, Engineers from Thomas Engineering. Attorney Scott explained that the applicant had the burden to show by competent substantial evidence that the criteria were met. He further explained that City Staff, if opposing the application, must show competent substantial evidence indicating why. He stated that if City Staff was unable to show evidence, by law, the Commission should vote in favor of the application. He said that as a request for special exception approval for new construction; therefore, a Site Plan was required to be provided. He gave a slide presentation and explained that the location was on the north side of Atlantic Boulevard towards U.S. 441. He reminded the Commission that there was no gas in the City before getting to U.S. 441. He noted that there was a vacant dark Walgreens in the front center of the shopping center for almost three years. He showed

images from the CRA's website showing that the CRA wanted the site to be developed. He mentioned the background of the applicant and explained that Cumberland Farms had been around since the 1930's with hundreds of stores around the Country. He stated that it was a family owned business with no franchises. He said that in 2009, Cumberland Farms engaged in a nationwide re-branding, while redesigning the stores and architecture. He added that Cumberland Farms increased the amount of goods being provided and transitioned from just selling gas to focusing on the convenience market with a neighborhood market idea to compete with Starbucks and Dunkin Donuts. He showed images of the new concepts such as the coffee options, interior design, fruit kiosk, outdoor seating and the window features. He stated that Cumberland Farms was committed to providing all types of fresh foods and more groceries than a convenience store, such as in a neighborhood market. Attorney Scott stated that he was working with the City and the CRA for 1.5 years on this project with submission of several Site Plans. He emphasized that he had a great collaborative experience with Director Ziskal with regard to what the City was looking for, even though he recommended denial. He said that the City wanted mixed use development close to the street with an alleyway behind, which was challenging because it was a shopping center with anchor tenants. He explained that most retail tenants did not want to be up against the street for an existing parking center and they wanted the parking in the front. He noted that this was the only Cumberland Farms of its kind, where the pumps were turned to the side and the building was within 30 feet of the street with massive sidewalks. He said that the applicant tried to make the site work and be innovative. He explained that 12 foot sidewalks would be added, as well as a trellis feature over the entire middle. He added that there would be bicycle racks at the front entrance with an outdoor seating feature. Attorney Scott stated that it would be incredibly activating to the area, rather than the big ugly building setback from the street with a vacant parking lot. He noted that there would now be a new building with good architecture close to the street. He explained that the pumps were hidden from the westbound traffic and only the sidewalk level to the development would be visible. He noted that it was currently awkwardly elevated and was opposite of what the CRA wanted because it was currently not a developed or redeveloped site that was being actively used or an activating streetscape. He explained that the way it was currently elevated discouraged anybody from walking up to the sidewalk area. Attorney Scott showed additional details of how close the building was to the street, as well as the outdoor seating area and the trellis. He showed the landscaping and noted that the Code required 15 percent landscaping; however, the applicant was exceeding that with almost 25 percent landscaping throughout the site. He added that the applicant would consider providing a rotating art exhibit on the bottom right corner of the site, if the Commission felt it would further activate and bring good development to the City. He felt that provided evidence that Cumberland Farms was more than the average gas station and was not just trying to fill stores. He said that the CRA had the money and plans to try to rebuild facades, but Cumberland Farms was not asking for CRA money and was proposing something to drastically improve the streetscape. He reiterated that he would commit tonight as a condition to provide an art exhibit, which Director Ziskal mentioned that the Commission might find favorable. He showed the elevations and noted that windows would be added to brighten up the area. Attorney Scott explained that he met with the Commissioners and heard their concerns. He added that he met with Lakewood on the Green and security was mentioned. He said that Staffing was brought up and he clarified that the new brand stores tripled the level of Staffing of the legacy stores because it was a bigger space and more foods were being cooked. He stated that there would be 10 to 15 cameras throughout the store. He added that part of the store had cameras that were actively viewed or recorded. He mentioned the street façade concerns and stated that there would be windows added. Attorney Scott stated that the plan was to make something the City could be proud of. He felt that it was important for the Commission to understand where the burdens lie, because a lot of time and money had been spent. He wanted the Commission to know there were rules regarding how decisions were made. He read

aloud from a key case in the Supreme Court in 1957, regarding how the decisions should be made. He read that quasi-judicial decisions, in order to be valid and not be overturned on appeal, must be based on competent substantial evidence. He said that the definition of competent substantial evidence as defined by the Court, was such evidence as will establish a substantial basis of fact, from which the fact that issue can be easily inferred. He read that it was such evidence as a reasonable mind would accept as adequate to support conclusion. He said that the evidence relied and to sustain the ultimate finding should be sufficient, especially of relevant material that a reasonable mind would accept it as adequate to support the conclusion reached. He read that to this extent the substantial evidence shall also be competent. He noted that some statements made by Director Ziskal were not based on competent substantial evidence, which caused Director Ziskal to draw the conclusion that the City reached a proliferation point of gas stations. He noted there was no market search provided in Director Ziskal's testimony. He said that he would have a representative of the applicant speak as a witness and talk about the market study that was conducted as evidence showing that it was a great site and there was demand even while acknowledging the existence of the Orion, WaWa and other gas stations in the City. Attorney Scott stated that a vast majority of the requirements were complied with. He spoke about the special exception criteria and what the applicant had the burden of showing by competent substantial evidence that was met. He noted that A, B, C, E, F, G, H and I of the criteria were met as stated by Director Ziskal. He said that the criteria not met were D, J and K. He explained that D related to ingress/egress and traffic; therefore, he allowed the Engineer to provide testimony.

RYAN THOMAS, 1000 Corporate Drive, Fort Lauderdale, Florida 33433, Civil Engineer, being duly sworn, explained that he was working in the market for 25 years since 1993. He noted that he had his own practice with three offices in Fort Lauderdale, Jupiter and one in Tampa. He said that he met with the Florida Department of Transportation (FDOT) in the past and had preliminary discussions with them in a pre-application meeting, and that he had tentative approval. He stated that to make the entry safer he wanted to turn the driveway into a lane into itself so there was no merge to take care of the front situation. He said that regarding the back situation, and explained that the fuel truck would come in on the east side of the site, make a left around the back and make a left on the third entrance. He explained that fuel trucks disposed of their fuel on the passenger side of the vehicle. He noted that the first entrance was for the refuse pickup and the customers. He said there were six drive aisles and was similar to any Publix, Ross or WalMart parking lot. He noted that Cumberland Farms would have three driveways with specific uses; two were for the truck and one was for the customer. He felt that an agreement could be worked out with Director Ziskal regarding the access. Mr. Thomas spoke about the current two foot elevation change between the back of the curb and where the parking lot was planned. He explained that there was now to be 10 feet between the back of the curb and where the first 12 foot sidewalk started. He noted that there would be a five to one slope, which was gradual. He added that with the plantings and landscaping it would look great in comparison to the two foot wall with railings. He explained that it would be five feet in one direction and one foot up. He added that all of the stormwater would be contained on site and that only a minimal amount would go into the swale.

MAYOR RUZZANO said that he was confused about how the truck would get in.

MR. THOMAS reiterated that coming from the east driving west, the truck would make a turn at the first entrance. He explained that there was a cut between McDonalds and Walgreens.

VICE MAYOR SCHWARTZ said that on the west side of Walgreens there was no place to get out unless going around the other side of the building going west.



MR. THOMAS noted that there was a driveway on the east side of the Walgreens, which showed on the Site Plan.

MAYOR RUZZANO stated that there was no room for the truck and that a left could not be made.

MR. THOMAS explained that the truck would have to go into the center and make a left. He said that as part of the DRC package a truck route and vehicular circulation plan for fire, garbage and fuel trucks was provided.

COMMISSIONER PEERMAN asked whether the turn in could be fixed if approved. She explained that many times in Margate there were issues regarding too much stacking of cars such as at Winn Dixie and Starbucks.

MR. THOMAS noted that FDOT had requirements for ingress stacking, and that for a shopping center it was usually 100 feet throat for stacking. He said that if there was a single tenant user it would be 25 feet from the right-of-line into the property to avoid cars bumping out into Atlantic Boulevard. He noted that in this proposal there was approximately 75 feet from the right-of-way to the slip lane and from the slip lane into the first conflict point was another 30 to 35 feet; therefore, there was well over 100 feet to get in without any conflict.

COMMISSIONER PEERMAN mentioned the merging at that point.

MR. THOMAS said that the radius could be extended.

COMMISSIONER PEERMAN mentioned a dedicated right turn lane.

MR. THOMAS said that there was one already and there was also a dedicated left. He noted that FDOT wanted those converted into one with one going straight and one going to Cumberland Farms. He stated that he wanted to capture as much traffic into the site before it went into the center causing a lot of traffic in the center. He added that there were other entrances as well, and that not 100 percent of the traffic would be coming into the entrance.

COMMISSIONER CAGGIANO felt that it was important that the windows were added for visibility under the umbrellas, versus the blank wall.

MR. THOMAS explained that the remaining two items related to the City's Comprehensive Plan and the CRA Plan. He said that there were many objectives and goals of those plans, which included redevelopment in the City, increasing the employment base and providing desired and demanded services for employees. He stated that the adopted TOC provisions was all about improving some of the main roads in the City and improving facades.

SCOTT GOLDSMITH, 400 Clamata Street, Suite 201, West Palm Beach, Florida, Director of Development and Leasing for North American Development Group (NADG), being duly sworn, stated that NADG owned the Lakewood Shopping Center since 2012. He gave a brief history of his business since 1977, and stated that NADG owned 23 million square feet of retail between the United States and Canada. He noted that the head office was in West Palm Beach, Florida. He added that there was 1.5 million square feet of new development going on in Florida today. He thanked Director Ziskal and Staff for working through the process. He explained that in early 2014, Walgreens reached out to NADG and indicated that sales were suffering. He stated that Walgreens then intended to cease operations, which with 15,000 square feet in a highly prominent

location, this was a shocking challenge for the shopping center. He explained that Walgreens had no problem leaving the building, which was already being neglected. He said that NADG began negotiating with Walgreens to regain possession of the premises in order to preserve the tenant mix for the shopping center and strengthen the curb appeal to Atlantic Boulevard. He stated that possession was taken in late 2014, when all options were explored to replace Walgreens. Mr. Goldsmith stated that significant time was spent canvassing the market and utilizing contacts and relationships both regionally and nationally to determine interest. He explained that if the canvas was blank, the first choice would have been to bring in a restaurant such as Longhorn Steakhouse; however, because of the inherited anchor lease restrictions that included a limitation of less than 1,500 square feet of available restaurant square footage, only a Subway type establishment could be used and a concept restaurant was not an option. He further explained that banks and financial institutions were approached as well; however, with five banking institutions already in the quadrant and a severe slow-down in bank branch expansion due to online banking, a bank was not an option. He mentioned interest from a user who did not want a full branch, but only a drive through ATM, which was clearly not an option. He stated that NADG approached other retail uses; however, it was determined that the interested parties were second class users or worse that would pursue minimal if any improvements to the building. He noted that type of user would detract from the shopping center and keep any compliance with planning and zoning objectives bringing the building closer to the street. Mr. Goldsmith explained that after careful due diligence, it was clear that Cumberland Farms new prototype was a new prospect for the shopping center. He said that the prototype was first class in architecture and food offerings, particularly at breakfast. He noted that breakfast was a major void at the shopping center and at the intersection. He explained that today's Cumberland Farms was more than a traditional gas station. He said that the breakfast sandwiches, baker items and pizza were excellent. He noted that loyal patrons pointed out the highly competitive gas prices available. He explained that Cumberland Farm's long history starting in the 1930's coupled with its stability helped to further NADG's confidence in the user. He stated that Cumberland's neighborhood market provided a needed service to the community, as well as a major amenity to the shopping center. He noted that the lease agreement was formalized September of 2015, and since that time, Cumberland had worked tirelessly with City Staff to construct a non-prototypical building with architecture that went above and beyond. He said that it included the patio seating along Atlantic Boulevard, as well as putting the building significantly closer to the road. He stated that Cumberland made great strides in bringing the out parcel closer to compliance with the City Staff's vision. He added that Cumberland also provided the first class architecture while complying with anchor lease restrictions. He stated that NADG fully supported Cumberland Farms locating at the shopping center and if not approved today, he feared that a second tier user would be the only option, which everybody wanted to avoid. He said that NADG looked forward to continuing a long and prosperous relationship with the City of Margate and hoped to have the opportunity to share a cup of coffee at the location of the future.

COMMISSIONER CAGGIANO asked what was considered a second tier user.

MR. GOLDSMITH said that was a subjective term, and that some users that approached were Tire Shops, Dollar Stores and Good Will users.

MAYOR RUZZANO asked what Walgreens was paying in rent.

MR. GOLDSMITH said that he preferred not to disclose that information; however, it was significant and Walgreens was traditionally a high paying user.

VICE MAYOR SCHWARTZ asked whether a Tire Shop was zoned for that area.

MR. GOLDSMITH did not know the answer and said that he was referencing some of the users that reached out.

DIRECTOR ZISKAL explained that the property was located on a TOC corridor district, which was the most liberal of the commercial districts; therefore, a Tire Shop would be permitted in that location.

VICE MAYOR SCHWARTZ also questioned whether auto repairs were also permitted.

DIRECTOR ZISKAL explained that if it was a retail store with installation as an accessory, meaning it did not exceed 25 percent of the square footage, it would be permitted as an accessory.

ATTORNEY SCOTT asked Mr. Goldsmith to explain what a back fill tenant meant.

MR. GOLDSMITH explained that back fill meant to reuse the existing building shell; therefore, there would be no benefit from bringing anything closer to the street corridor. He noted that the building would still remain as it was.

ATTORNEY SCOTT explained that the newer development type standards would not be required if it was a permitted use, and the City would only be getting Business Tax and permits. He mentioned that the key issue tonight was whether there were too many gas stations and whether the market could support the Cumberland Farms.

MARK GOTTLIEB, 500 Doris Road, Vero Beach, Florida, Cumberland's Preferred Developer and Representative of the Applicant, being duly sworn, explained that Cumberland Farms took much more serious consideration into site selection being a family owned business. He said that before selecting a site Cumberland did a market analysis, reviewed the competition, demographics and traffic patterns and margins of the area. He noted that Cumberland wanted to do a new unit and they performed their analysis of this site and felt there was a need. He noted that it was prior to the approval of the WaWa. He stated that last summer when doing the redesign the store was brought closer to the street with no circulation around the store. He said that a full streetscape was being done with additional landscaping than normal, which increased the budget. He noted that at that time, WaWa was approved and Orion was being done. He stated that Orion was not going to satisfy the needs of the westbound traffic. He stated that after working with Director Ziskal and Staff, the building prototype was changed to try to accommodate everybody because there was a need. He stated that it was a company store that wanted to be part of the City for a long time. He noted that windows would be installed.

ATTORNEY SCOTT emphasized that this was a world of alternatives. He said that this was a vacant site that would be vacant for a while; however, if approved, there would be a new exciting development with cool and exciting architecture. He added that it would be close to the street and would activate the area of the shopping center. He noted that if not approved, the tenant restrictions would provide for not quite an A+ type of tenant that would make a multi-million dollar investment into the site. He added that Cumberland would be happy to provide an art exhibit on the right corner of the site to allow for a more activated pedestrian friendly area. He felt that a lot of the objectives of the CRA were met by drastically improving the façade, expanding the sidewalks, encouraging bicycle use by adding bicycle racks, as well as creating a gas station use that has only gas on one part that was hidden with the rest of the site having no vehicle circulation to encourage people to come and walk and hang out.

VICE MAYOR SCHWARTZ asked what the plan for Cumberland Farms on Atlantic Boulevard was.

ATTORNEY SCOTT stated that if approved, the long term plans of Cumberland Farms was to close that store and restrict it from being a future gas use, because it was too small of a site. He said that if the application was approved, Cumberland did not want to sell it to another gas use and have that be competitive.

VICE MAYOR SCHWARTZ asked whether it would be deed restricted.

ATTORNEY SCOTT agreed that it would be deed restricted.

VICE MAYOR SCHWARTZ asked about updating the eye sore on Atlantic Boulevard.

MR. GOLDSMITH explained that the long term plan for Florida was to raise and rebuild. He clarified that if there was a site where Cumberland could purchase additional land, they would close it, tear the store down and build the new prototype. He noted that Cumberland Farms wanted all the Florida stores to be the new larger 5,000 foot prototypes. He stated that right now the existing store was making money; however, he agreed it could use a face lift. He said that the canopy was not in great shape and new money was not being put into the outside. He noted that the inside was clean and well stocked when he visited there last week. He said that Cumberland was not going to invest in an old unit if they could have a newer unit. He explained that some gas stations would sell to another user while keeping a supply contract when still making money and then leasing it. He noted that Cumberland was a corporate store and did not want any competition, which was why it would be deed restricted.

VICE MAYOR SCHWARTZ said that she lived near the Atlantic Boulevard Cumberland Farms, which had a lot of stacking. She wanted to hear that somebody was going to make that Cumberland Farms look better.

MR. GOLDSMITH said that he had taken pictures and sent them to the corporate office. He believed that it might be cleaned and spruced up a little. He noted that part of the issue with circulation was due to the old standards.

COMMISSIONER SIMONE thanked everyone for coming tonight and providing a thorough presentation and sticking with Margate while trying to make changes for issues mentioned by Director Ziskal. She felt that Cumberland Farms met the criteria.

COMMISSIONER PEERMAN said that she went to the Cumberland Farms on Atlantic Boulevard and agreed it could be made a little nicer. She felt that this was a good presentation on both sides.

COMMISSIONER SIMONE said that she was also thankful for the artwork.

MR. GOLDSMITH noted that an agreement was made allowing all of the Melbourne stores to rotate local artist's work, while providing the lighting etc. He said that he would be open to working with Director Ziskal to formalize that.

COMMISSIONER SIMONE asked that it be added in.

COMMISSIONER PEERMAN questioned whether it should be added in tonight.

ATTORNEY SCOTT agreed and said that it should be added tonight as a condition.

ATTORNEY ROD FEINER, Coker and Feiner, Representative of Orion in Margate, being duly sworn, stated that Orion was in opposition to the special request. He said that Orion was subject to the variance that was granted for the distance separation,



which the Board of Adjustment granted, but because the City Code did not provide mail notice, only a sign was posted. He noted that because of that, Orion never knew the variance was being requested or Orion would have attended the variance hearing. He said that he listened to the variance tape and noted that everything on the tape did not meet the legal standard for a variance because there was no hardship that they were not aware of, which was the legal requirement for a variance. He stated that Orion had 30 days from the Board of Adjustment item to file in Circuit Court. He added that Orion was currently evaluating its options on that. Attorney Feiner stated that the application before the Commission was premature and should be tabled or denied without prejudice for Cumberland Farms to come back. He explained that in the backup material of the last DRC meeting, the Engineering Department and City Staff stated that they wanted a traffic study supplied. He noted that Cumberland Farms agreed to provide a traffic study; however, it appeared from the backup that no traffic study was ever done. He said that his experts would have wanted to evaluate that to provide the City with competing information on both internal site circulation and overall traffic on how that would stack up, even with the right hand turn lane, onto Atlantic Boulevard. He stated that could not be done because Cumberland did not follow through on the DRC requirements. He noted that the proposed resolution could be an approval, subject to them providing a traffic study. He said that if the traffic study was provided but the City did not know what it said, the Commission would be voting prematurely. Attorney Feiner added that he heard tonight that this was not the typical convenience store, and that a lot of fresh food and coffee would be served to compete with the Starbucks and Dunkin Donuts. He felt that meant that it was not a typical convenience store, but gas sales, plus a restaurant with sit down areas outside and updated food. He noted that the traffic study needed to take into account all the updated elements with additional trips and people to the shopping center, as well as the entire Atlantic Boulevard area. Attorney Feiner stated that the competent substantial evidence standard mentioned by Attorney Scott was correct and summarized very well; however, competent substantial evidence was not met for the requirement on ingress/egress to the development in the surrounding property areas. He added that compliance was not demonstrated with the Comprehensive Plan. He said that the Comprehensive Plan had lots of goals and objectives, but some of those goals and objectives competed with one another. He stated that it was the Commission's responsibility to decide what was wanted in the area. He noted that Attorney Scott said that the goals and objectives were met with the TOC by bringing the building closer so that the canopy would not be seen. He stated that the canopy was still even with the building, but could not be seen driving westbound. He added that the TOC regulations and Comprehensive Plan also stated that automotive uses were disfavored, especially new automotive uses, in the TOC district. He said that was a competing goal because the TOC was trying to move away from automobile uses. He expressed concern with the plan to close the existing store and deed restricting it to avoid gas sales, because there would be an empty gasoline service station site that would sit vacant and undeveloped for 5, 10 or 15 years. He stated that it would remain vacant because people were always concerned with environmental issues associated with a pre-existing gas station when purchasing. He added that Director Ziskal did an excellent job showing all the existing service stations in the City, such as the WaWa. He said that this type of service station could cause issues to those stations such as Marathon or other small stations that would probably go out of business. He stated that he was in favor of fair competition in America; however, if that did occur there would be more slum and blight in the area by having vacant gas stations sitting as eyesores. He reiterated that this application did not satisfy the Comprehensive Plan. He said that another reason this was premature was because there was discussion of getting together in the future and working with Staff regarding the entrances. He noted that in a Quasi-judicial proceeding, the Commission was voting on the plan before them. Attorney Feiner stated that if planning to redesign, this item should be continued by the applicant or the Commission, until the applicant came back with a formal finalized plan that included the traffic study component and a summary of

*the market study if that was how Staff's recommendation for denial was being contested. He noted that the study and an executive summary was not part of the backup provided. He reiterated that it was premature; therefore, he recommended denial or tabling.*

*AMANDA RUZZANO, 116 East Palm Drive, being duly sworn, stated that she lived directly across the street from where the gas station was proposed. She noted that she sent her children door to door about the issue and determined that 18 homes were against the variance and 4 homes were for it, which they signed about. She mentioned that it would have been nice to be notified by mail. She provided the signatures to the Commission.*

*ATTORNEY SCOTT said that he objected to that being given to the Commission, as it was not evidence. He clarified that the law in Florida was that it was not for the Commission to hold a plebiscite on whether the application should get approved or not. He said that it was one neighborhood; therefore, it was drastically unfair to give something that was unauthenticated. He asked whether the signatures were notarized and he noted that children walked around to get the signatures; therefore, it should not be considered by this Commission.*

*MRS. RUZZANO said that it could be notarized or each person could be called.*

*CITY ATTORNEY GONZALES stated that Mrs. Ruzzano could make her statement; however, the signatures would not be accepted into the record.*

*MRS. RUZZANO stated that because of the close proximity, the neighbors felt that the Commission should be made aware. She said that the building was nice looking which she felt fit in; however, there were a lot of gas stations. She said that she did not have trouble finding gas in the City because they were on every block like pawn shops. She felt that if notified, more homeowners would have given opinions. She said that Cumberland Farms should have taken care of the existing establishment all along instead of now because a new store was wanted.*

*BOB AGRAMONTE, President of Lakewood on the Green, said that he lived down the street from the proposed project and he liked the idea. He stated that he always complained that it was an inconvenience to find gas in the City. He explained that he would have to turn left on U.S. 441, to get into the prior Hess station and having to cut across Atlantic Boulevard to get to the prior BP station if going west. He said that there were no gas stations going north and added that there was a Chevron station where TD Bank was now; a Shell station where Orion was now; the Shell station on Coconut Creek Parkway and U.S. 441 which was now a BB&T Bank; a Marathon station on U.S. 441 that needed to go out of business because it was ugly; and the Valero gas station down the street. He felt Margate did not have enough gas stations. He welcomed Cumberland Farms because it was not just a gas station, but was a convenience store with snacks like Dunkin Donuts. He stated that he did not want to go to 7-Eleven because of the vagrants sleeping in the dumpsters and asking for money. He noted that some of his neighbors were concerned with traffic; however, he felt that there was no traffic issue.*

*MAYOR RUZZANO stated that he lived across the street and the traffic was horrible. He said that Mr. Agramonte made some good points. He mentioned a developer promising to build an elaborate entranceway if the City approved his permit; however, the developer thought it was in the back of the building. He noted that Commissioner Caggiano appreciated the window feature.*

*ATTORNEY SCOTT explained that everything that was offered tonight could be a*

condition of approval that was enforceable in a court of law. He stated that he would be happy for the motion to put into writing everything he offered so that if compliance was not met, the City could make it a matter of Code Enforcement action or a lawsuit.

MAYOR RUZZANO asked what the exact plans were for the existing Cumberland Farms and when it would close down, if this item was approved tonight.

ATTORNEY SCOTT said that he was making a commitment about the windows and the art exhibit.

MAYOR RUZZANO said that he previously heard developers make commitments.

ATTORNEY SCOTT explained that when developers did not follow through, the City had the right to seek to enforce the lack of compliance with the commitment.

MAYOR RUZZANO clarified that \$130,000 was negotiated for the water hookup, which was given back.

ATTORNEY SCOTT said that these were legally enforceable commitments he was making. He noted that adding the windows, which was a specific commitment, was legally enforceable. He stated that those items that were not legally enforceable were things he could look into, such as the entrance and the back areas, which he would work with Staff on. He clarified that those items were not definitive that court, the Special Magistrate or Code Enforcement could determine that there was a violation, which was the standard wanted when putting conditions on resolutions.

MAYOR RUZZANO asked whether there would be diesel at the gas station.

ATTORNEY SCOTT agreed that there would be diesel.

MAYOR RUZZANO questioned the hours of operation.

ATTORNEY SCOTT stated that it was a 24 hour operation.

MAYOR RUZZANO asked what the estimated cost of the project was.

ATTORNEY SCOTT said that it was approximately \$4 million dollars. He explained that with regard to the traffic study, the DRC Staff said that it would be a condition and that it would be provided as part of the process. He noted that it was not a condition preceding coming forward; therefore, it was a misrepresentation by the counsel for the competitor. He added that the applicant did not skirt around it and it was mentioned as a potential condition. He stated that everything was fully compliant from the DRC comments, which was why the item came this far and that Director Ziskal was the gatekeeper for that process.

VICE MAYOR SCHWARTZ said that she never heard the possibility of closing the existing Cumberland Farms, but she had heard that it would be looked into. She expressed concern with an empty gas station being there. She asked whether the traffic study was in reference to what she read about the conditions of approval from the November 22, 2016, DRC meeting. She read, "the conditions of approval were that the petitioner must comply with the following findings announced during the November 22, 2016, DRC meeting, #12; provide a traffic study for vehicle stacking at driveways."

ATTORNEY SCOTT said that it was not a major concern because the footprint was drastically being reduced. He stated that there was a 15,000 square foot building, Walgreens, was currently there, which had use and traffic levels that were substantially

higher than the 5,000 square foot proposed building. He explained that it was a condition of approval because it was not something that would kill the project or would drastically increase traffic levels. He noted that changing from a 15,000 square foot building to a 5,000 square foot building was a reduced impact and a lower usage level; therefore, the traffic levels would be lower. He noted that this was not a fast process, as it took 1.5 years with 4 to 5 site plans and countless meetings.

COMMISSIONER PEERMAN asked whether this could be approved with conditions regarding the windows and artwork.

CITY ATTORNEY GONZALES said yes.

COMMISSIONER PEERMAN asked what the distance was for sending variance notices previously.

DIRECTOR ZISKAL stated that it was 300 feet.

COMMISSIONER PEERMAN said that Palm Drive would not have received a notice, nor would Orion.

DIRECTOR ZISKAL agreed.

VICE MAYOR SCHWARTZ asked the City Attorney's opinion to allow the Orion representative to come back with whatever competent substantial evidence he felt he had been precluded from showing.

CITY ATTORNEY GONZALES said that he was not the trier of fact in this proceeding, but was more in the nature of a Judge to determine objections to certain evidence and things of that nature. He stated that he could not supplant what the Commission's decision would be, as to whether the Commission believed they needed additional information before finding that there was competent substantial evidence to support a finding one way or another.

MAYOR RUZZANO questioned whether there could be a reason for a vote.

CITY ATTORNEY GONZALES said that as the trier of fact, the Commission was entitled to ask for additional time or additional information.

COMMISSIONER SIMONE asked whether the Commission could conditionally approve this with having the applicant coming back with the new road design regarding ingress and egress.

CITY ATTORNEY GONZALES explained that part of the conditions in the resolution before the Commission there were various things, such as the traffic study. He noted that this approval would be conditional on these things. He asked Director Ziskal whether there was still time for the applicant to satisfy the various conditions set forth in the former board approval or recommendation.

DIRECTOR ZISKAL pointed out that at the DRC meeting, preliminary site plan approval was received so there would still be modifications, and the final site plans would go through iterations of deviations as the final design was completed. He said that it was not uncommon to work out the design challenges between the preliminary site plan approval, coming before the Commission to see if the project was supported and then working out the final design details during final site plan approval. He noted that was the reason why the items were put as conditions for this hearing was so that the issues would be worked out and conditions would be met as put forth by the DRC.



CITY ATTORNEY GONZALES explained that since the items were subject to the conditions, they would still need to be satisfied. He noted that if the applicant did not come through with those items, the project could be denied, because there was legal recourse.

DIRECTOR ZISKAL stated that there was a specific clause in the City Code stating that any representation made before the Commission in getting a permit or granting an approval, automatically became a condition of that approval. He further explained that anything said tonight or agreed to would automatically be a condition of the approval.

VICE MAYOR SCHWARTZ asked whether this item would come back again or would it be worked out with the DRC.

DIRECTOR ZISKAL said it would not be required to come back before the Commission, but would be worked out with Staff.

MAYOR RUZZANO asked whether Director Ziskal had any recommendation for proceeding.

DIRECTOR ZISKAL asked whether Mayor Ruzzano meant recommendation or condition. He explained that sometimes the Commission made recommendations that may not end up in the final design. He clarified that if it was not a condition it was not required. He stated that if it was a recommendation an applicant may take the recommendation into consideration and choose not to do it. He noted that a recommendation was very different than a condition.

MAYOR RUZZANO asked whether it had to be mentioned now.

DIRECTOR ZISKAL said that if voting on this tonight he would certainly discuss the condition tonight.

MAYOR RUZZANO mentioned the trellis and asked whether it could be extended longer so the gas pumps did not stand out.

MR. GOTTLIEB said that details of the trellis needed to be worked out with Director Ziskal, as it was a condition of the variance regarding the landscaping. He explained that if the trellis could not be worked out the applicant would go back to the 30 foot standard landscaping and not have a variance at all. He said that the design of the trellis was not previously discussed, and he did not feel that additional trellis would be wanted as there was already a large trellis being put in along with everything else. He did understand that he needed to get with Staff and have a traffic study done.

ATTORNEY SCOTT said that the trellis could be moved to the west to further hide the pumps, which was something the applicant could commit to.

CITY ATTORNEY GONZALES noted that there were certain restrictions in the leases regarding visibility.

ATTORNEY SCOTT said that he believed it was not an issue; therefore, he could again commit as a condition to move the trellis to the west to get closer to the pumps if the Commission wanted that.

COMMISSIONER PEERMAN felt that the trellis should be centered with the building.

ATTORNEY SCOTT said that the applicant thought that the trellis framed the site by

being in the middle with the pedestrian walkway to the store. He noted that it was not about trying to maximize visibility of the pumps, and that the applicant felt that it architecturally looked better. He added that at the Board of Adjustment there was discussion regarding the spacing of the trees and Director Ziskal suggested putting the trellis where the trees were being spaced, which was a great idea to fill the gapping between the trees.

COMMISSIONER PEERMAN asked whether the applicant was ready to agree to the conditions of the windows to the patio, artwork on the corner, solving the right turn into the pump lane and moving of the trellis to the west.

ATTORNEY SCOTT agreed to all three of the conditions and noted that the trellis was already a condition of the Board of Adjustment and he would commit to moving it west.

COMMISSIONER PEERMAN added that the applicant was also in agreement to finish up everything that was in the resolution.

ATTORNEY SCOTT said that he agreed as he would have to regarding the resolution.

COMMISSIONER CAGGIANO said that he was hoping that the existing Cumberland Farms was not closed down, but rather do something about the stacking. He felt that store was taking care of the west to east side because there was only one other gas station there. He felt that it was a problem closing the existing Cumberland Farms and having a potentially dead store there from the day it was closed and deed-restricted. He stated that the design work was gorgeous.

COMMISSIONER SIMONE asked what road the applicant spoke about with regard to changing.

ATTORNEY SCOTT explained that there was the road to the east that would be used for access for the fuel truck with no changes made. He added that there was a road directly to the west, which he was discussing making changes to so as to avoid vehicle conflicts and a better flow, which was the primary concern from a traffic perspective. He noted that there was no other road. He apologized for confusing the amount of roads, but the only other road he discussed was just access to the site.

MAYOR RUZZANO asked whether the existing Cumberland Farm property could be deeded to the City.

ATTORNEY SCOTT explained that the long term plan was to close the site, which would not happen for a few years. He stated that he could not give the land as a condition tonight on behalf of a national company.

VICE MAYOR SCHWARTZ asked whether he would rather see it empty.

ATTORNEY SCOTT said that was not something he could do.

COMMISSIONER PEERMAN asked whether the applicant would speak to the Commission prior to closing it, because she felt that the applicant might want to keep it open as a smart idea for that end of town.

COMMISSIONER CAGGIANO mentioned the conditions were artwork, windows and trellis, but he questioned how the entry would work.

COMMISSIONER PEERMAN said that it was on the conditions as a right turn drive into; therefore, it would have to be worked out.

MAYOR RUZZANO stated that hearing no further testimony, the Quasi-Judicial hearing was closed.

**A motion was made by Commissioner Peerman, seconded by Commissioner Simone, to approve with agreeing to conditions of the windows to the patio, the artwork on the corner, solving the right turn into the pump lane issue and moving the trellis west, along with everything included in the resolution.**

**An amendment was made by Vice Mayor Schwartz, seconded by Mayor Ruzzano, to continue this to allow the petitioner from Orion to present his information.**

COMMISSIONER PEERMAN said that this was competition and Orion would not have received a notice because it was more than 300 feet from where Cumberland Farms was. She stated that due diligence was done. She said that there would always be traffic brought into the City. She felt that this would just delay the project.

MAYOR RUZZANO agreed that the applicant did his due diligence and did what the City asked.

**Mayor Ruzzano pulled his second and the amendment failed for lack of a second.**

**The original motion carried by the following vote:**

**Yes: 5 - Commissioner Caggiano, Commissioner Simone, Commissioner Peerman, Vice Mayor Schwartz and Mayor Ruzzano**

THE MEETING RECONVENED FOLLOWING A BRIEF RECESS.

**B. [ID 2017-011](#) APPROVING AN AMENDMENT TO THE ALEXANDER PLAT TO ALLOW FOR 137,000 SQUARE FEET OF SELF-STORAGE USE.**

RESOLUTION 17-013

CITY CLERK JOSEPH J. KAVANAGH swore in those affected parties wishing to provide testimony.

CITY ATTORNEY GONZALES asked that the Commissioner disclose any communications.

COMMISSIONER CAGGIANO said that he spoke with Staff.

COMMISSIONER SIMONE said that she spoke with Staff.

COMMISSIONER PEERMAN said that she spoke with Staff and the petitioner.

VICE MAYOR SCHWARTZ said that she spoke only with Staff.

MAYOR RUZZANO said that he spoke only with Staff.

DIRECTOR OF ECONOMIC DEVELOPMENT BEN ZISKAL, being duly sworn, showed