



CITY OF BEAVERTON

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APPEAL OF A LAND USE DECISION

Revised 01/2016

PLEASE SELECT THE SPECIFIC TYPE OF APPEAL FROM THE FOLLOWING LIST:

- APPEAL OF A TYPE 1 DECISION
APPEAL OF A TYPE 2 DECISION
APPEAL OF A TYPE 3 DECISION
OTHER

APPELLANT NAME(S):

Beaverton Business Owners, LLC

SIGNATURE(S): (Original Signature(s) Required)

Randy Matthews
RANDY MATTHEWS

EACH APPELLANT MUST HAVE PROVIDED EVIDENCE TO THE DECISION MAKING AUTHORITY THAT WAS CONTRARY TO THE DECISION.

APPELLANT REPRESENTATIVE: All pre-hearing contact will be made solely to this person.
IF MORE THAN ONE APPELLANT, APPELLANTS MUST DESIGNATE A SINGLE APPELLANT REPRESENTATIVE.

NAME: E. Michel Connors COMPANY: Hathaway Larson, LLP
ADDRESS: 1331 NW Lovejoy St., Suite 950
CITY, STATE, ZIP Portland, OR 97209
PHONE: 503-303-3111 FAX: 503-205-8406
SIGNATURE: E. Michael Connors (Original Signature Required)

REQUIRED INFORMATION

SITE ADDRESS: Map T1S R1W 3A Tax Lot 1700 CASE FILE NO. UNDER APPEAL: See attached ltr from E. Michael Connors dated June 24, 2019.
SPECIFIC APPROVAL CRITERIA / CONDITION BEING APPEALED: See attached letter from E. Michael Connors dated June 24, 2019.
SPECIFIC REASON(S) WHY A FINDING / CONDITION IS IN ERROR AS A MATTER OF FACT, LAW OR BOTH: See attached letter from E. Michael Connors dated June 24, 2019.
SPECIFIC EVIDENCE RELIED ON TO ALLEGE ERROR: See attached letter from E. Michael Connors dated June 24, 2019.
HOW DID THE APPELLANT(S) PROVIDE EVIDENCE TO THE DECISION-MAKING AUTHORITY? WHERE IN THE OFFICIAL RECORD IS SUCH EVIDENCE?: See attached letter from E. Michael Connors dated June 24, 2019.



# HATHAWAY LARSON

Koback · Connors · Heth

June 24, 2019

## VIA HAND DELIVERY & EMAIL

Jana Fox  
Planning Manager  
City of Beaverton  
Community Development Department  
Planning Division  
12725 SW Millikan Drive  
Beaverton, OR 97076-4755

Re: Life Time Fitness Athletic Facility – Peterkort PUD Property  
**Appeal of Planning Commission’s Decision**  
Application Nos. DR2018-0128, LD2019-0008, LO2018-0005, SDM2018-0007 &  
TP2018-0009  
Our Client: Beaverton Business Owners, LLC

Dear Ms. Fox:

This firm represents Beaverton Business Owners, LLC (“Beaverton Business Owners”) with respect to the above-referenced matter. Pursuant to Beaverton Development Code (“BDC”) 50.70, Beaverton Business Owners hereby appeals the Planning Commission’s decision (the “Decision”) approving Life Time Fitness’ (“Life Time”) Application Nos. DR2018-0128, LD2019-0008, LO2018-0005, SDM2018-0007 & TP2018-0009 for an athletic facility proposed at the southwest corner of SW Barnes Rd. and SW Cedar Hills Blvd (the “Applications”). This letter and the attached completed and signed City Appeal of Land Use Decision form (the “Appeal Form”) set forth the appeal information required by BDC 50.70. Additionally, we enclosed a check in the amount of \$2,134 for the appeal fee. For the reasons set forth in this letter, the Planning Commission erred in approving the Applications and the City Council should deny the Applications on appeal.

### 1. BDC 50.70.1.

Beaverton Business Owners is entitled to appeal the Decision because it participated in the Planning Commission process by providing oral testimony at the Planning Commission’s May 15, 2019 public hearing and submitted written argument and evidence on November 21, 2018, December 14, 2018, May 15, 2019, May 29, 2019 and June 5, 2019. We have attached the completed and signed Appeal Form. This appeal was filed within ten (10) calendar days after the Planning

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Commission's signed orders and decisions were dated and mailed as set forth in the City's Notice of Decision, dated June 14, 2019.

**2. BDC 50.70.2.**

This letter and the attached Appeal Form contain the information required by BDC 50.70.2 as explained below.

**A. The case file number designated by the City.**

The application or case file numbers for the Applications at issue in this appeal are DR2018-0128, LD2019-0008, LO2018-0005, SDM2018-0007 & TP2018-0009.

**B. The name and signature of each appellant.**

The attached Appeal Form contains the required name and signature for the appellant Beaverton Business Owners.

**C. Reference to the oral or written evidence provided to the decision making authority by the appellant that is contrary to the decision.**

Beaverton Business Owners provided oral testimony at the Planning Commission's May 15, 2019 public hearing and submitted written argument and evidence, including the letter from Kittelson & Associates, dated November 21, 2018, the letter from E. Michael Connors, dated December 14, 2018, the letter and attachments from E. Michael Connors, dated May 15, 2019, the letter and attachments from E. Michael Connors, dated May 29, 2019 and the letter and attachments from E. Michael Connors, dated June 5, 2019, which were contrary to the Decision.

**D. If multiple people sign and file a single appeal, the appeal shall include verifiable evidence that each appellant provided written testimony to the decision making authority and that the decision being appealed was contrary to such testimony. The appeal shall designate one person as the contact representative for all pre-appeal hearing contact with the City. All contact with the City regarding the appeal, including notice, shall be through this contact representative.**

This appeal is being filed by a single appellant, Beaverton Business Owners. The attached Appeal Form identifies the appellant's representative (E. Michael Connors) whom the City should contact regarding this appeal.

**E. The specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error.**

Beaverton Business Owners is appealing the Decision on multiple grounds, under multiple approval criteria and based on both legal and factual grounds. Beaverton Business Owners are relying on all of the evidence in the record before the Planning Commission, in particular the testimony provided at the Planning Commission's May 15, 2019 public hearing and the written argument and evidence

referenced in Section 2.C above. The Planning Commission erred in approving the Applications pursuant to the Decision on the following grounds.

- a. The Planning Commission erred in concluding that Life Time's TIA is appropriate and does not underestimate the traffic impacts and required transportation mitigation measures.**

BDC 40.03.1.A and B, and the Peterkort PUD approval require Life Time to analyze the traffic impacts of the project and provide its fair share of the PUD transportation improvements consistent with the Peterkort PUD approval. Life Time's traffic impact analysis ("TIA") relies predominately on Life Time's 2007 Traffic & Parking Design Characteristics Report (the "2007 Report"), a traffic analysis that is close to 12 years old and clearly outdated. Many other local jurisdictions have required Life Time to provide a traffic study based on more recent trip generation data and comparable clubs. The Kittelson & Associates memorandums, dated May 14 and June 5, 2019 (the "Kittelson TIA Analysis"), highlighted several flaws and deficiencies with the 2007 Report which resulted in the TIA substantially underestimating the traffic impacts of this facility and the necessary mitigation measures. The Kittelson TIA Analysis identified additional Peterkort PUD transportation improvement conditions that Life Time should be required to provide as part of this project. Since the TIA was based predominately on the flawed and outdated 2007 Report and Life Time failed to account for all of the traffic impacts and required transportation improvements, the Planning Commission erred both legally and factually in concluding that the project adequately addressed the transportation related requirements and not imposing additional transportation mitigation measures.

The Planning Commission erred in dismissing the flaws and deficiencies with the 2007 Report identified by Kittelson on the grounds that the 2007 Report showed higher trip generation than the ITE manual and therefore Life Time could have relied on the ITE trip generation instead. The ITE manual requires traffic engineers to use project specific data if it is available and the ITE trip generation data does not adequately or accurately address the traffic impacts of a particular use. The 2007 Report specifically concluded that it would not be appropriate to use the ITE manual for Life Time facilities because they are so unique:

"A close review of these ITE land uses indicates that their similarity to Life Time Fitness Centers may be in name only, and that there are significant differences (largely size and membership characteristics) between the ITE data samples and Life Time facilities. Life Time Fitness Centers are larger in floor area than the ITE land uses, and membership levels at LTF are usually significantly higher. LTF Centers also provide other amenities and sports features not typically found in the ITE surveyed fitness and athletic clubs. These features are unique to LTF Centers, and now that there are a substantial number of them in the United States, together they can be used to develop traffic and parking characteristics unique to Life Time Fitness." 2007 Report, p.1-2.

Therefore, the 2007 Report itself contradicts the Planning Commission's conclusion that it does not matter if the 2007 Report is flawed because the ITE manual trip generation numbers are lower. The ITE manual trip generation numbers for fitness centers are artificially low because

Life Time facilities are so much larger and have substantially more members than a typical fitness center.

The Planning Commission erred by not requiring Life Time to provide more relevant information regarding the Life Time Work space component of the project, which at 45,000 square feet is a significant part of the overall project. None of the Life Time clubs studied in the 2007 Report include the Life Time Work component. Life Time stated at the May 15, 2019 hearing that the office/work shared space is similar to WeWork and yet the Planning Commission dismissed this comparison. Beaverton Business Owners demonstrated that WeWork offices generate more than double the traffic of a traditional office use.

The Planning Commission erred in disregarding the Kittelson TIA Analysis because the City, Washington County and ODOT staff agreed with the TIA methodology. None of these transportation agencies responded to or addressed the Kittelson TIA Analysis. Nor did Life Time's traffic engineer specifically refute the Kittelson TIA Analysis. In the absence of any response or evidence explaining why the points raised in the Kittelson TIA Analysis are not valid, the Planning Commission's determination that the TIA is adequate and reliable is not supported by substantial evidence.

This area of Beaverton and Highway 26 already suffer from serious traffic congestion and the Life Time facility will add significant additional traffic to this already congested area. Life Time failed to account for all of the traffic impacts and required transportation improvements, and therefore the Planning Commission's approval of this project will unfairly shift the PUD mitigation measures and costs to other undeveloped portions of the PUD. The City Council should require Life Time to provide an updated traffic study, address the other flaws identified in the Kittelson TIA Analysis and ensure that the traffic impacts are adequately accounted for and the necessary transportation improvements are provided by Life Time.

**b. The Planning Commission erred in concluding that the outdoor swimming pools are allowed under BDC 20.10.40.**

BDC 20.10.40 expressly requires all uses and activities in the CC zone to be "conducted wholly within an enclosed structure" except for a specific list of uses expressly exempt from this restriction – food carts, parks, playgrounds, outside play areas for child care and educational facilities, transit centers and certain accessory open air sales/display/storage areas. Based on the plain language of BDC 20.10.40, it is clear that fitness club swimming pools must be wholly enclosed within a structure (i.e. indoor pool) because neither a fitness club nor a swimming pool qualifies under any of the exempt uses. Since the proposed outdoor swimming pools are not wholly within an enclosed structure, the Planning Commission erred both legally and factually in concluding that they are not prohibited under BDC 20.10.40.

The Planning Commission erred in concluding that BDC 20.10.40 allows all recreational facilities to have outdoor activities and is intended only to limit outdoor storage and sales activities. BDC 20.10.40 exempts specific allowed uses in the CC zone and requires that non-exempt allowed uses be conducted wholly within an enclosed structure. As a non-exempt allowed use, the swimming pools must be located wholly within an enclosed structure. The Planning

Commission's determination that BDC 20.10.40 only prohibits outdoor storage and sales activities is inconsistent with the plain and unambiguous language of this provision.

The Planning Commission also erred in concluding that the proposed outdoor swimming pools are wholly within an enclosed structure. The BDC defines a "structure" as "[a] walled and roofed building" and the outdoor swimming pools are not within a walled and roofed building. The Planning Commission erred in relying on another definition of "structure" as that definition does not require any enclosure and is clearly intended to apply to a different situation. Additionally, the Planning Commission erred in interpreting the terms "structure" and "enclosed" in isolation and ignoring the term "wholly." BDC 20.10.40 requires all uses to be conducted "wholly within an enclosed structure," which clearly indicates that it was intended to require a fully enclosed structure that is walled and roofed.

The Planning Commission erred in ignoring the plain language of BDC 20.10.40 and basing its interpretation on its purported legislative history. BDC 20.10.40 must be interpreted consistent with its plain language. If the City Council intended BDC 20.10.40 to only limit outdoor storage and sales activities when it adopted this code provision, it would have adopted language consistent with such an intent. The much broader language in BDC 20.10.40 demonstrate that it was not intended to be applied so narrowly.

**c. The Planning Commission erred in concluding that the parking structure building is not subject to the 35-foot height limit set forth in BDC 20.10.15, footnote 6 even though it is within 100 feet of residentially zoned property.**

The CC District limits the maximum building height to 35 feet if the building is within 100 feet of "residentially zoned property." BDC 20.10.15, footnote 6. The property immediately north of Life Time's property across SW Barnes Rd. is a residentially zoned property (R-1). BDC 10.35.1 provides that "all zoning district boundaries shall extend to the centerline of the right-of-way." There is no dispute that the parking structure building is within 100 feet of the R-1 zoning that extends to the centerline of SW Barnes Rd. Since the parking structure building is 60 feet and exceeds the 35-foot height limit, the Planning Commission erred both legally and factually in concluding that this building is consistent with the 35-foot height restriction.

The Planning Commission erred in concluding that BDC 20.10.15, footnote 6 limits the 100-foot measurement to the boundaries of the parcel. BDC 20.10.15, footnote 6 does not limit the measurement to parcel boundaries or exempt right-of-way, rather it expressly applies the measurement to any "residentially zoned property." The Planning Commission's interpretation is inconsistent with the plain language of BDC 20.10.15, footnote 6.

The Planning Commission's interpretation is also inconsistent with the plain language of BDC 10.35.1. BDC 10.35.1 clearly and unambiguously provides that all zoning district boundaries extend to the centerline of the right-of-way. If the zoning of the right-of-way was immaterial or separate from the adjacent parcel, there would be no reason for BDC 10.35.1 in the first place. As the Planning Commission acknowledged, when a parcel changes zoning the adjacent right-of-way automatically changes its zoning as well because the two are connected and interrelated. This is evident by the fact that when right-of-way is vacated it automatically reverts to the adjacent parcel.

**d. The Planning Commission erred in concluding that the development proposal is consistent with the pedestrian orientation Design Guidelines set forth in BDC 60.05.35.6.**

The Design Guidelines expressly require the buildings and primary entrance to be oriented toward and connected with public streets, especially if the adjacent streets are major pedestrian routes. BDC 60.05.35.6.A through D. Both SW Barnes Road and SW Cedar Hills Blvd are designated as major pedestrian routes. Both the buildings and the primary entrance are configured, oriented toward and accessible only from the surface parking lot on the opposite side of SW Barnes Road and SW Cedar Hills Blvd. Additionally, Life Time acknowledged that the reason for this configuration and orientation of the buildings is the outdoor pool, a use that is not even allowed in the CC District. Since the buildings and primary entrance are not oriented toward and connected with SW Barnes Road and SW Cedar Hills Blvd, the Planning Commission erred both legally and factually in concluding that the project complies with BDC 60.05.35.6.

The Planning Commission erred in concluding that the proposed site design is consistent with BDC 60.05.35.6, notwithstanding the lack of oriented toward and connected with SW Barnes Road and SW Cedar Hills Blvd, because of “[t]he need for the pool to receive southern exposure and connect directly to the athletic building as well as the need to connect the office facility directly to the athletic building.” BDC 60.05.35.6 does not allow for exceptions to accommodate the best sun exposure for pools or to cater to the applicant’s operational preferences. Additionally, Beaverton Business Owners submitted evidence demonstrating that Life Time recently proposed swimming pools on the rooftop of the facility in Walnut Creek, California, which if proposed here would eliminate the need to orient the buildings opposite the public streets. Finally, the need for a connection between the office facility and athletic building is due solely to Life Time’s decision to move the office use from the athletic building to the parking structure building.

The Planning Commission erred in concluding that the project satisfies the requirement to orient the primary entrance toward the public streets due to the entrance to the office space. BDC 60.05.35.6.D requires that the “[p]rimary building entrances should be oriented toward and located in close proximity to public streets and public street intersections,” not any entrance. The athletic building entrance, not the office space entrance, is the primary entrance and that entrance is oriented away from and not accessible from SW Barnes Road and SW Cedar Hills Blvd.

**e. The Planning Commission erred in concluding that the massive size and scale of the project is consistent with the Design Guidelines set forth in BDC 60.05.35.**

The Design Guidelines require the buildings to promote and enhance a comfortable pedestrian scale and orientation, particularly along major pedestrian routes such as SW Barnes Road and SW Cedar Hills Blvd. *See* BDC 60.05.35.1.D and 60.05.35.7. Although Life Time made some revisions to the project, it did not significantly reduce the overall size of the project and it is still too massive for this property and area. The proposed club, which would be approximately 220,000 square feet in total area, will be significantly larger than almost all of Life Time’s recent proposed and/or approved projects, including numerous Diamond Clubs that are significantly smaller than



the proposed club. Beaverton Business Owners submitted extensive evidence demonstrating that many other jurisdictions have successfully required Life Time to reduce the size and/or redesign the project in order to comply with similar local code requirements. Additionally, a substantial number of community members expressed serious concerns about the massive size of this project. The City has the discretion to require Life Time to propose one of its more typical sized athletic facilities which would be more appropriately sized and suited for this particular property and area. At a minimum, the City Council should require Life Time to provide visual studies that show the impact of these massive buildings on surrounding views and pedestrian areas. Since the project is too massive for this property and area, and is not designed promote and enhance a comfortable pedestrian scale and orientation, the Planning Commission erred both legally and factually in concluding that the project is appropriately sized and complies with BDC 60.05.35.

**f. The Planning Commission erred in concluding that Life Time is not required to contribute toward the 20% open space requirement under the Peterkort PUD approval.**

The Peterkort PUD condition of approval no. 43 requires the open space requirements of BDC 60.35.15 to be satisfied as part of the overall PUD development. BDC 60.35.15.1 imposes a 20% open space requirement on all PUDs. Life Time is not proposing any open space as part of its project and failed to demonstrate that the open space requirement can be adequately satisfied with future development in the Peterkort PUD. Since Life Time failed to provide any open space or demonstrate that it can be accommodated in future developments, the Planning Commission erred both legally and factually in concluding that the project satisfies the open space requirements.

The Planning Commission erred by concluding that Life Time is not required to provide open space because it does not include residential development. Life Time should be required to contribute *some* open space toward the overall PUD open space requirements. By failing to contribute any open space, the remaining parcels will be required to provide more than 20% open space on their properties in order to make up for this deficit. Life Time could create open space opportunities by putting the outdoor pools on the roof of the facility as they did in Walnut Creek, California.

The Planning Commission erred by concluding that Life Time is not required to at least show the 20% open space requirement can be accommodated on the remainder Peterkort PUD property. Life Time erroneously claimed that the open space requirement can be satisfied on the open space tracts on the map provided by Life Time, but those open space tracts are not part of the Peterkort PUD.

**g. The Planning Commission erred in concluding that Life Time satisfied the tree removal criteria and adequately justified the removal a substantial number of trees on the Life Time and adjacent properties.**

Life Time is proposing to remove a substantial number of trees, including 42 of the 44 trees located on the Life Time property and 15 trees on the adjacent property, 14 of which are significant trees. BDC 40.90.15.3 requires a Tree Plan Three if the applicant proposes to remove more than 75% of the total DBH of trees in Significant Natural Resource Areas (SNRAs).



Regardless of whether or not a Tree Plan Three or Two is required, BDC 40.90.15.2.C.4 requires Life Time to demonstrate the “removal of any tree is necessary to accommodate physical development where no reasonable alternative exists.” The Planning Commission erred in concluding that a Tree Plan Three is not required and Life Time demonstrated that the removal of the trees is necessary to accommodate physical development and there are no reasonable alternatives.

The Planning Commission erred by concluding that a Tree Plan Three is not required because Life Time is not proposing to remove any trees from a SNRA. Life Time is removing 7 trees from the SNRA located on an adjacent property. Application Narrative, pp. B-57 & B-58. Life Time failed to demonstrate that the removal of these trees is less than 75% of the total DBH of non-exempt trees within the SNRA. Absent such evidence, it was error for the Planning Commission to conclude that a Tree Plan Three is not required.

The Planning Commission erred in concluding that Life Time demonstrated compliance with BDC 40.90.15.2.C.4. Life Time claims it explored alternative design options and the proposed design has the least impact on the trees, but it failed to provide any evidence to support that contention. A mere claim that they considered alternative designs is not evidence. It is also difficult to believe that a design requiring the removal of 42 of the 44 trees currently located on the property is the design with the least impact on the trees.

**F. The appeal fee, as established by resolution of the City Council.**

We enclosed a check in the amount of \$2,134 for the appeal fee as designed in the City’s Notice of Decision.

**Conclusion**

The Planning Commission erred in approving the Applications for the reasons set forth in this letter and therefore the City Council should deny the Applications on appeal. If the City Council were to approve this project as proposed, it would establish a bad precedent for future development in the Peterkort PUD area to similarly avoid the BDC requirements, unfairly shift the burden of the PUD transportation improvements to subsequent developers and jeopardize the entire development plan envisioned by the Peterkort PUD approval. A more typical athletic facility would enable Life Time to design the project in a way that complies with the BDC. It is incumbent on Life Time to propose a project that can satisfy the applicable approval criteria and not the City’s obligation to contort its development requirements in order to fit Life Time’s most ambitious format.

Very truly yours,

HATHAWAY LARSON LLP



E. Michael Connors

cc: Client  
Enclosures