

## URBANDALE PLANNING AND ZONING COMMISSION MINUTES

October 27, 2008

The Urbandale Planning and Zoning Commission met in regular session on Monday, October 27, 2008, at the Urbandale Administrative Offices Building, 3600 86<sup>th</sup> Street. Chairperson Paul Pick called the meeting to order at 6:00 p.m.

Commissioners present were David Russell, Jeff Payne, Kevin Gass, Jeff Hatfield, Jill Creveling, Wayne Van Heuvelen and Paul Pick. Staff members present were Paul Dekker, Director of Community Development, and Steve Franklin, Community Development Manager/Chief Planner.

The first item on the agenda was to approve the minutes from the October 13, 2008 meeting. Mr. Van Heuvelen moved, and it was seconded by Hatfield, to approve the October 13<sup>th</sup> meeting minutes. On roll call; Ayes: Van Heuvelen, Hatfield, Russell, Payne, Gass, Creveling; Nays: none. Passes: Pick; Motion carried.

The next item on the agenda was the public hearing on the "Landmark Office Park" Rezoning from "A-1" Agricultural Reserve District to "C-O" Office/Service District (9300-9600 Blocks of Plum Drive), case number 010-2008-01.03.

Mr. Pick said, if there were no objections, he would dispense with reading the following official publication:

Case No. 010-2008-01.03

### OFFICIAL PUBLICATION

#### TO WHOM IT MAY CONCERN:

Notice is hereby given that the Urbandale Planning and Zoning Commission will hold a public hearing in the Urbandale Administrative Offices Building, 3600-86<sup>th</sup> Street, Urbandale, Iowa at 6:00 p.m. on Monday, October 27, 2008, to consider a petition from Mr. William B. Spencer, President of Landmark Office Park, LLC, owner, to rezone the following legally described property from "A-1" Agricultural Reserve District to "C-O" Office/Service District:

Parcel "A" of Section 15, Township 79 North, Range 25 West of the 5<sup>th</sup> P.M., as recorded in Book 6109 at Page 730 in the Office of the Polk County Recorder, all now included in and forming a part of the City of Urbandale, Polk County, Iowa; said tract of land contains 38.88 acres more or less.

This property is located south of Interstate Highways 35/80 and north of the Glen Eagles development, more or less mid-way between 86<sup>th</sup> and 100<sup>th</sup> Streets along a

future extension of Plum Drive. More information on this proposed rezoning can be obtained at the Department of Community Development, 3600-86<sup>th</sup> Street, Urbandale, Iowa between the hours of 7:30 a.m. and 5:00 p.m., Monday through Friday. All interested parties either for or against this proposed rezoning will be heard at the time and place set forth above.

There were no objections to the official notice as published.

Mr. Dekker said this request pertains to a property located along the Plum Drive corridor, approximately midway between 86<sup>th</sup> Street and 100<sup>th</sup> Street. It adjoins Interstates 35/80 for 1,332.04 feet and has a total area of 38.02 acres, including the future right-of-way for Plum Drive. Most of the property is currently used for agricultural purposes. North Walnut Creek runs through the southwesterly corner of the property, and there is also a major drainageway that runs through the property diagonally to the northeast from North Walnut Creek.

The rezoning has been requested to allow the property to be developed for office uses. The proposed use conforms to the Comprehensive Plan.

The property does not currently have water service or street access. Plum Drive is proposed to be constructed through the property at some future date, with a four-lane cross-section with turn lanes identical to the segment that was completed between NW Urbandale Drive and 100<sup>th</sup> Street in Summer, 2008. The City had prepared preliminary construction plans for the remainder of Plum Drive between 86<sup>th</sup> and 100<sup>th</sup> Streets a number of years ago, but the three property owners along the corridor have not yet agreed on an alignment or a timetable for the construction. The corridor alignment to the west is somewhat constrained, being substantially defined by the intersection of 100<sup>th</sup> and Plum (which was defined by required separation from the Interstate and existing streets), minimum curve radii, and the width of that property, but some flexibility remains through this property and the property adjoining to the east. Neither of the adjoining property owners is currently ready to proceed with the design and construction, or to set a definite future date. Wetlands on this property within the proposed Plum Drive corridor have been mitigated, so the construction plans could be completed as soon as a consensus on the corridor alignment has been reached.

There is an existing 16" water main along 100<sup>th</sup> Street to the west and a 12" water main in Plum Drive to the east, so a 12" water main can be extended to and through this property in conjunction with the future construction of Plum Drive. Sanitary sewer service is available to the property from a trunk sewer that runs through the property, along the west property line to approximately its mid-point and then northeasterly along the major drainageway.

Interstates 35/80 adjoin to the north. The property to the east is zoned "P.U.D." Planned Unit Development and is regulated by the "Best Commercial" Planned Unit

Development Master Plan. The property to the west is zoned "A-1" Agricultural Reserve District. Both are used for agricultural purposes. Single-family residences in the "Glen Eagles" neighborhood adjoining the entire south boundary, other than for the North Walnut Creek floodplain and related public open space.

The property is located in the Johnston School District, and the Northwest Market Center Urban Renewal Plan/Tax Increment Finance District (established for economic development purposes).

Mr. Dekker said Staff recommends approval of the above rezoning from "A-1" to "C-O" subject to the following Conditions of Rezoning:

1. A public right-of-way having a minimum width of 100 feet shall be dedicated for Plum Drive together with temporary construction easements through the entire property at the time any portion of the property is first divided for any conveyance other than for public purposes, along an alignment to be determined by the City.
2. Access to Plum Drive shall be restricted to full-movement accesses located not less than 600 feet from any other full-movement access, and to right-turn only accesses that may be allowed if separated by a distance of 300 feet or more from any other access point. Right-turn lanes shall be provided for all accesses, and left-turn lanes shall be provided for all full-movement accesses, all in accordance with standard City specifications. Common access easements shall be provided as appropriate to share accesses to the public streets and to facilitate access between adjoining properties. Minimum separations between accesses shall be measured from centerline to centerline. Accesses shall align with accesses on the other side of the street, if any.

The developer shall be responsible for the full improvement of Plum Drive to the extent customarily required for new development under the City's current policies and ordinances and any Development Agreements that may be negotiated, including but not limited to bearing all costs for all required turn lanes.

3. A landscaped buffer yard shall be provided along the entire south boundary of the property excluding the North Walnut Creek floodway and that portion of the floodplain that may be dedicated to the City as public open space, if any. Said buffer yard shall have a minimum width of 50 feet and shall include a berm having a minimum height of 5 feet as measured from the highest ground elevations in proximity to the buffer yard, and two rows of coniferous trees staggered on-center at a distance of not more than 13 feet, supplemented by shrubs and understory trees in accordance with Section 4.34 (A), paragraph 1 of the Zoning Ordinance.
4. A pedestrian trail having a 10-foot width shall be provided within a public easement or dedicated public open space along North Walnut Creek, connecting between

Plum Drive and the existing public open space adjoining to the south.

5. The predominant building material shall be brick having a red or brown tonal coloration, except as provided below. "Architectural block" with integral color or a burnished or textured surface emulating stone products may be utilized as foundation elements and for detailing. Side and rear elevations shall be comprised of the same materials and reasonably similar in character and quality as the front, unless screened from substantially view from streets and residential areas by topographic differences, plant materials, or other screening devices, in which case building detailing may be reduced. Colors shall be restricted to muted shades except for signage and architectural accents.

Other materials including but not limited to "Robertson" or similar architectural metal panels may be allowed if approved by the City Council and appropriate to a particular architectural design that projects a conservative image of quality and durability. "Common" concrete block and metal siding is expressly prohibited in any and all cases.

One of the Commissioners asked whether this was an appropriate time to consider rezoning this property, since it does not have street access at this point.

Mr. Dekker said in his opinion it is since the property does have sanitary sewer available and water and street access will likely come to the property together when Plum Drive is constructed. There's a good chance that the City will be the lead in constructing Plum Drive when one or both of the adjoining properties are ready and agreeable to the street extension. And when that occurs, the rezoning almost has to be in place because the "A-1" District has a 20-acre minimum lot area that can't be met once the street goes through, since the entire parcel is less than 40 acres. Zoning always has to precede the actual development of the property, and if you think about other development parcels this property is a little different since about all have some sort of street running by, but at the same time similar because the rezoning is done as a step towards preparing for development in a few years, not immediate. Very frequently development isn't particularly feasible until one or more adjoining properties are first developed in those sorts of cases.

Mr. Pick said, as this is a public hearing, the Commission will hear comments from both proponents and opponents of the proposed rezoning. He said first we will hear from proponents.

Ms. Erin Ollendike, Civil Design Advantage, 5501 NW 112<sup>th</sup> Street, Grimes, stated she was present to represent this proposed zoning change on behalf of the owners, along with Mr. Bill Spencer, the President of Landmark Office Park LLC, the owners. She said the property is owned by a partnership.

She said that the request complies with the City's Comprehensive Plan and they are in agreement with the conditions recommended by City staff, and would appreciate favorable consideration by the Commission. She said she'd be happy to answer any questions the Commissioners might have.

Mr. Pick asked if there was anybody present who wished to speak in opposition.

Ms. Carol Mandziara , 9800 Brookview Drive, Urbandale, she received a notice of this proposal in the mail and questions why the owners are thinking about developing the property now when there seems to be quite a bit of vacant commercial space around right now. She said she also is concerned about what will happen to the wildlife that this property is home to, including a big 12-point buck that lives here. She said she watched Plum Drive being constructed to the west of 100<sup>th</sup> Street this summer and that appeared to be very disruptive to the ecosystem and displaced a lot of wildlife that probably moved to this property. If this property is developed as well, where will they go from here?

Ms. Mandziara said she is also concerned about what this rezoning will do to their property values. She feels it will lower their property values. She said she probably wouldn't have bought their house if they had known this might happen. And finally, what exactly is proposed to be constructed on this property?

Mr. Pick replied that the rezoning is just a first step in developing the property, and by the time it actually is developed the market situation may be very different, and there may be a strong need for more office space. That tends to take care of itself, because the developers are not going to spend a lot of money developing the property if they don't feel there's a market for more. So, to answer your question about why this would be developed when there is a lot of vacant space, it's logical to expect that development won't occur until that is no longer the case.

Mr. Van Heuvelen stated that in the past this neighborhood has expressed concerns about the uncertainty of what would happen with this property. This rezoning won't provide an absolute guarantee of what will be there since he assumes that the developer doesn't have any specific users in mind at this point, but it does go a long way towards removing some of that uncertainty for the neighborhood, in that the rezoning clearly defines that this property will be used for offices of some sort.

Mr. Gass noted that this property was designated for office development by the Comprehensive Plan more than 20 years ago, so this rezoning isn't a change from what has always been intended for this property. He said that it was looked at again two years ago with the help of a consultant because there were some who thought perhaps retail might be a better use of the property, and the consensus and recommendation of the consultant again was that office development was the best use for this property.

Mr. Hatfield stated that the Commission has heard concerns about the loss of wildlife habitat numerous times and there is empathy for that concern, but all property owners do have a legal right to develop their property. The City has some say into how and for what, but can't stop it from happening entirely.

Mr. Mark Safranski, 4732 95<sup>th</sup> Street, Urbandale, stated he is concerned that development of the property would increase flooding, and whether the development would alter the creek flow in any way.

The Commission asked Mr. Dekker if he might respond to that concern.

Mr. Dekker said that the development will not result in flooding or other material changes to the creek flow. All development is required to provide storm water detention, for the sole purpose of preventing increased flooding. In fact, the potential for major flooding is diminished, since detention acts like miniature reservoirs, sort of a Saylorville in miniature, by holding back the additional runoff. There very definitely is more runoff from development, but the detention holds back the excess and releases it at a controlled rate.

Mr. Dekker said it often doesn't appear that way to the average citizen, because the permitted release rate is what is called a 5-year storm rate, and there will be more small storms that run off and can pass through the storm detention at the 5-year rate and therefore basically resulting in more 5-year storm releases. That really does look like a lot more water, so there is a tendency to think the detention isn't working because there's an assumption that since there now is much more runoff from small rains that's going to be true all of the way up the scale. And that with as really big rain, things are really going to be bad, but that's not the case.

The 5-year release rate is a lot more water, but the entire drainage system is designed to easily handle that amount of runoff, so it's not an issue from a flooding standpoint. However, it can be an issue from an erosion standpoint, because far more storms result in 5-year releases. So, the engineers have to be cognizant of that and provide stabilization of the channels, to keep the erosion under control.

As a final comment, all of properties along the creek have been required to comply with the FEMA-designated 100-year flood elevation. You're probably well aware of comments that have been made about the validity of those elevations, that often they've been shown to be too low, and that has proven to be the case in part of Urbandale when FEMA updated the original study. However, that was not the case for North Walnut Creek, where the update showed that the original elevations were overly conservative, if anything. That's not to say that none of homes could ever flood, because there's no guarantee against a massive storm and changes in weather due to climatic change or that sort of thing. But, even a house built at the minimum one foot over the 100-year flood, if it did flood, is going to incur a shallow amount of water in its

basement, that wouldn't be at all pleasant and would ruin carpet and that sort of thing, but would never be the devastating, total or near-total destruction evidenced this summer or in 1993.

Mr. Jeff Patzner, 9415 Hickory Drive, Urbandale, stated he also was concerned about the impact on property values and possible flooding.

The Commission asked Mr. Dekker if he had anything to offer with respect to the concern about property values.

Mr. Dekker said that this property has always been designated for office development, before a single house had been built because the zoning line between the residential and office was established to provide for the office corridor, and residential allowed only on the land that wasn't absolutely critical to the corridor. So, one answer to the question is that there hasn't been any change and if office development had an impact on residential property values in theory that has already taken place, that the marketplace adjusted the residential values to account for any detrimental affects although it might not necessarily seem so to any of the residents.

That's more of a hypothetical answer, and probably not that reassuring. However, there is a real-life case in Urbandale that should be reassuring, that being the residential development that adjoins the office development in the "C-O" zoning along Hickman Road between 70<sup>th</sup> and 72<sup>nd</sup> Streets. If you were to visit that area you would find that the houses adjoining the offices are no different in value or character than those on the opposite side of the street. In staff's opinion and experience, the future office development will not have any negative affects on property values in this neighborhood.

The Commission asked whether there was any flooding along this creek in 1993.

Mr. Dekker said there was not, but probably about the highest flood to occur along North Walnut Creek in 1993 was about a 50-year flood. The City has had 100-year floods along Beaver Creek, and along Walnut Creek out in the western part of the City, but each of the creeks in Urbandale has fairly small drainage basins and there weren't any major rainfall events within the North Walnut Creek basin in 1993. In the case of Beaver Creek, the 1993 flooding actually was at about a 500-year flood level, largely due to the uncontrolled release from Saylorville at that point that kept Beaver Creek from emptying when there was a large rainfall in its basin. That was a case where the FEMA elevation had been set too low, partly because of engineering work of somewhat dubious quality by an Army Corps consultant and partly because of inadequate data at the time, particularly not adequately anticipating that could happen with Saylorville. The neighborhood along Beaver was just being developed and the FEMA elevations would have been too low, but when the 1993 flood occurred the City adjusted the requirements to stipulate that the homes had to be set above that flood elevation. FEMA subsequently redid the Beaver study and the minimum elevation requirements

were raised to be almost the same as what the City had required. There are two homes that are a few inches less than the one-foot above flood that is normally required. Some of those residents got very nervous with this past year's recurrence, but they all stayed dry so that's a fairly good testament to those studies being pretty good and effective in Urbandale's case at least. I'd hate to say that "never" will any flooding happen because I'm not that good at forecasting the future.

The minimum elevation requirement is one foot above the 100-year flood elevation so if we have a 100-year flood, it likely will get people nervous because it could, in theory, be within a foot in height from coming into the basements and that's bound to create concern, wondering if it's going to keep going higher, or stop. If it does exceed that, as I mentioned before about the worst that anyone is probably going to experience is some wet carpet and not a lot more than that. This isn't a very big creek, and exceeding the engineer's calculations is really a lot of water, much more than it sounds. But again that is taking into consideration with all new developments, whether it's single family residential or commercial, do have to provide storm water detention and that will moderate the large storms that could otherwise cause flooding. With commercial the detention capacity has to be greater because there's more run-off from more hard surfaces, but all of that is factored in by the engineers.

Mr. Patzner said my final item is that we don't have a plan on where Plum Drive is going to go through. Is there any way that we would have a voice in that? Just because I'd hate to see Plum Drive come up right up to my back yard, right on the other side of that berm.

Mr. Van Heuvelen said my guess is that it will be fairly close to the middle, strictly from the standpoint that they're going to want to build on both sides of Plum Drive. If it's going clear to the south by you, then of course they're only able to build on the north. So my guess is, of course it's up to the owner and the City, but it's probably going to be fairly close to the middle just because that would allow development on either side of Plum Drive

Mr. Patzner said that makes all kinds of sense to me, you're probably right. But it doesn't guarantee anything.

Mr. Dekker said the parameters of City specification, with the givens in terms of where it needs to connect and the parameters set by minimum radius curvatures, the alignment is basically going to be between this the one-third/two-thirds points on the east boundary. That's the amount of flexibility that's available on the easterly line, and as we said, the alignment is pretty well fixed on the west boundary.

Mr. Reggie Goodale, 9431 Hickory Drive, Urbandale, said I'm kind of down at the bottom next to the creek, as well. Some of you probably recognize the name and the face back from the "big box" days when we were talking about putting big box back

there. I'm very appreciative of the work you all have done in that area, and helping continue to advance office park development as opposed to big box back there, because I think that's a very positive thing and a move in the right direction. However, as we move forward and look at this property and the development of it, as we look at office space development, I think there are some issues that I'm concerned about. I'm not sure that tonight's the night to do that, but I wanted to get those out on the table. Certainly the berm that's being proposed, and watching that, the buffer, I think that's an important element to keep an eye on. Plum Drive, where that comes through, I think that's a concern, particularly not wanting it too close to our homes, I think from a safety perspective of not letting cars in there close to the children and being able to get out to the interstate by nabbing a child and abducting a child quickly, and quick access out to the interstate. So I think that's an issue to watch closely.

Mr. Goodale said one issue that hasn't been talked about tonight is maybe a buffer back at the interstate to help alleviate some of the noise back there. Currently there's a pretty good row of trees that perhaps are going to be maintained, or whatever, but that's something I would encourage you to look at and maybe consider, if there are any existing trees. Or if we could get some sort of a buffer back at the interstate to help with some of the noise. Currently it's not too bad, but if everything is bulldozed down clear out at the interstate where the fence line is out there, clear on the north end of the property, that could significantly increase that. Another concern that I have, but probably fairly minor, is the buffer that would go behind the residential area. As we look at and put that in, making sure that the trees would be maintained, if there are trees that die, that those would be replaced in a reasonable period of time. The size of trees going in, Mr. Dekker had mentioned the size of the trees at Urbandale Golf and Country. I don't know if that size of trees are what we're looking at for the berm here? And then another issue that I'm concerned about or would like to have a little bit more detail on is the creek and the green space that's planned to be left in place. I think there was a comment by the developers that most of the trees would be left in place. Some additional information there, I think, would be very helpful. And I'm certainly concerned about the water run-off. I trust our city engineers and hopefully they can plan, along with Mr. Dekker, in getting that right. And if they don't, you can rest assured that if we have damage in that area, I'll be back before this committee or before the Council to make sure we can get some resolution to that.

Mr. Van Heuvelen said to Mr. Dekker, it seems to me that a lot of these issues, and they're very valid issues, but they seem to be site plan issues, and they're going to be specific to what goes in on this particular property. Virtually every one of those questions are very good but we just don't what is going to go in and when it's going to go in. I'm wondering if maybe we can just go ahead and give these people notice somehow when a site plan does approach, that somebody can be noticed on this, at least one of these people, to know that their site plan is up to bat and they can look at what specifically is going to go in there?

Mr. Pick said I don't believe that site plan issues are a public hearing issue.

Mr. Van Heuvelen said no, but they certainly can come and we can certainly put them on notice that we're going to consider a site plan, and that way, these issues that right now are impossible to consider, valid as they are, when there is actually something proposed, then we know what we're dealing with.

Mr. Russell said if you were to do that, then would we have a public hearing on the site plan?

Mr. Van Heuvelen said no. It's just letting them know that tonight's the night we're going to talk about the site plan. If they want to show up, that would be fine. It's not unprecedented at all. We've done this on numerous occasions. Probably I should have raised this awhile back. Just make sure that these good people know when we are considering the site plan.

Mr. Russell said but they don't get an input at that time?

Mr. Van Heuvelen said sure, we're pretty good about letting people speak.

Mr. Hatfield said it might not be a public hearing but we still take comments. This is not labeled a public hearing, for legal reasons.

Mr. Gass said we have the Des Moines Register attending most of our meetings. That certainly could be a form of communication to notify people.

Mr. Van Heuvelen asked Mr. Dekker if it was possible to flag the file somehow that, when this comes up for site plan, that somebody in the neighborhood could be notified?

Mr. Dekker said what the Commission has done in the past is invite people to leave their names and addresses if they wish to be notified, and then we'll do that when a site plan is filed. But it does get difficult if there's a significant amount of time involved because you have to flag the file somehow to pick that up. And as time goes on, people do move so you kind of lose that connection a little bit. But certainly that's a way to go. I'd also encourage everybody to periodically check out the agendas that are posted on the city web site and that will give you about a month notice on anything coming up. And you won't see any site development until you see a plat come through, so that's going to be the first thing. It's not likely to happen before next summer, I would guess, at the very earliest.

Mr. Reggie Goodale, 9431 Hickory Drive, Urbandale, said the Commission probably remembers me from the 2006 Comprehensive Plan study, when I appeared and spoke to the Commission several times in opposition to changing the plan to allow big box retail on this property. I'm very much in favor of holding the line and keeping this as

office zoning, and very much appreciate the Commission's consideration in that respect.

Mr. Goodale said there still are some issues that he would like the Commission to keep in mind, in addition to the concerns about runoff and flooding that have already been expressed. Those include what will be done with respect to berms and landscaping, because the buffering will be very important. Also, I would like as much information as you can provide about where Plum Drive will be built. I would like to see it very much kept away from the neighborhood, because of the noise and a fear that it could provide back door access to the neighborhood and therefore place the neighborhood children at greater risk for kidnapping. Also with respect to noise, as much as possible should be done to maintain the buffer along the Interstate, to wall it off if possible and to keep all of the trees. I'm also curious about what will happen to the creek and how much green space will be left, and what the size of the trees will be in the buffer.

The Commission asked Mr. Dekker if he could respond to some of the concerns about the buffer yard and noise.

Mr. Dekker said the buffer requirements under this zoning are the same as required throughout the corridor, with a 5-foot berm and two rows of coniferous trees within a 50-foot landscaped buffer. That's also what was required between the neighborhood and commercial development along Northpark Drive, and that's a pretty good example of what the buffer will look like when it goes in, since it's still pretty new. As to what it will look like in the future, the Urbandale Golf and County Club golf cart storage sheds along 86<sup>th</sup> Street are a good example, other than they don't have the berm required in this buffer yard. The southern is relatively new, and the northern one shows what the trees will be like in about 20 years. They're a very good visual buffer. In fact, when the site plan was approved for the southern shed some individuals said they didn't even realize there was a north shed. Those have the same spacing as required here. It's not really possible to plant them any closer together, and in fact some landscaper's think that's too close but it does work and will provide a pretty solid screen by some time after 5 years and before ten years, about the best that is possible.

Mr. Dekker said that trees do not do much to mitigate noise. Development may help reduce the noise impacts of the Interstate by virtue of buildings being constructed. The office buildings, as a solid mass, will block some of the noise. It won't be total and absolute, and depending on the exact location and how tall the office buildings actually are they may not help much—it's possible that most will be one-story offices and therefore not high enough to block very much of the noise. At the very least, the office development won't make the Interstate noise worse.

Mr. Dekker said just a couple of the other items, any trees that are in the Interstate corridor are going to be left. The DOT controls those and they're pretty protective of those. As to any trees that might be removed, trees don't help much with noise. They really don't help other than that studies show that if someone can't see the noise source

they tend to think it's quieter. What will help some with the noise is that, as this area is developed, we'll get some buildings and the buildings are very good at blocking noise. They won't block all the noise but will help, at least.

Mr. Payne moved, and it was seconded by Hatfield, to close the public hearing. On roll call; Ayes: Payne, Hatfield, Russell, Gass, Pick, Creveling, Van Heuvelen; Nays: none. Passes: none. Motion carried.

Mr. Hatfield asked Ms. Ollendike if they agreed with all the staff recommendations, as written?

Ms. Ollendike indicated that they did.

Mr. Van Heuvelen moved, and it was seconded by Gass, to approve the "Landmark Office Park" Rezoning from "A-1" to "C-O", subject to Staff recommendations and that the City will make a good-faith effort to notify people who may want to attend a meeting on the site plan, and the citizens who are here tonight and your neighbors are instructed to make sure you follow the agendas because it will be incumbent on you to see when this comes up for plat, as well as for site plan. On roll call; Ayes: Van Heuvelen, Gass, Russell, Payne, Pick, Hatfield, Creveling; Nays: none. Passes: none. Motion carried.

Regarding Staff reports, Mr. Dekker said we don't have anything on the "pending list" at this point, so we will not have a meeting on November 10.

The other thing was that the Commission had noted that it would be helpful what the follow-up was on Council action on items that come before the Commission, so we'll try to report on that. I really haven't talked to Mr. Franklin about the need to do that yet so you'll have to help us remember that for a little bit until we get into the habit of reporting as part of our normal routine. The last items that you dealt with was the Fisher Preliminary Plat Time Extension that was approved as recommended for the three years. Hy-Vee, they still are working on the traffic study, and the City Council decided to set the P.U.D. amendment aside along with the site plan until the traffic study has been addressed, and that has been revised and resubmitted to the City Engineer, so that should be addressed at this next meeting of the Council. Then the Brunswick site plan, you received copies of the letter indicating that that had been put on hold indefinitely, so that site plan was approved by the City Council as recommended by P & Z but there was discussion about limiting it only to Brunswick Zone and some discussion of that sort.

Mr. Van Heuvelen asked limited only to what?

Mr. Dekker said limiting it only to Brunswick Zone.

Mr. Van Heuvelen said so the zoning is limited to a Brunswick owned and operated

facility?

Mr. Dekker said the City Council said that in approving the site plan, that was the intent. The zoning does not necessarily limit them.

Mr. Van Heuvelen said so the site plan is specific to Brunswick but obviously if someone came up with a different site plan, "Jimmy's Bowling Alley", they could use this zoning, would that be correct?

Mr. Dekker said that would be correct.

Mr. Van Heuvelen said so they'd have to use a different site plan is the only thing.

Mr. Dekker said in theory.

Mr. Russell said bowling alley only.

Mr. Dekker said the zoning is limited to a bowling alley so it has to be predominantly that. It could be a different mix as to how the package is put together. Brunswick Zone had bowling and laser tag, and game room, small restaurant/bar. That doesn't necessarily mean that another user would be bound to that same mix. As staff has said on a number of occasions, you're not approving a name or a company, you're approving a use, and only a use.

Mr. Van Heuvelen said a site plan is good for 2 years, right?

Mr. Dekker said that's correct.

Mr. Van Heuvelen said but after 2 years, if this would happen to expire, it would still be zoned of course to allow a bowling alley. Is that correct?

Mr. Dekker said correct.

Mr. Van Heuvelen said could we, if we so desire at that point in time or members of the Commission, whoever it's made up of at that point in time, can they affirmatively take steps to take bowling out of there, or does that depend on the next proponent?

Mr. Dekker said there are two things that come about. One is that P.U.D.s have a shelf life, so to speak. That if nothing comes forward within an identified time frame then at that point the Commission and Council can call for new hearings and re-evaluate whether the zoning should be retained. In this case it would be the 2-year lifetime of the site plan and after that point, there's no guarantees necessarily that the zoning would continue on, although there would have to be some findings and showing by the city that that was no longer an appropriate use. The other aspect that can be done at any

time is that the City Council can, on their own motion, do a rezoning. The Commission doesn't really have a say on that other than that you can recommend, or suggest, that the Council give that consideration.

Mr. Van Heuvelen asked do we know whether or not title has transferred to Brunswick or is this merely an option for, obviously now, a couple of years' period of time? Or have they actually taken possession of the land?

Mr. Dekker said I do not know that, and without knowing how their contract read, I don't know what the trigger point for closing on the property might have been. Sometimes it's with City Council approval of a site plan but I'm guessing that was not the case here or they probably would not have let the site plan go to Council.

Mr. Van Heuvelen said my reason for concern is that, if I recall correctly, the reason that the City Council reversed position was that they received a letter from MidAmerica saying we promise we will not ask for any more rezoning to the west, that this is our last stand in terms of asking for office space to be rezoned to other uses. That's a correct statement, right?

Mr. Dekker said correct.

Mr. Van Heuvelen said so my point is, if it did transferred to Brunswick or somebody else, they are relieved of that burden that MidAmerica bore when they brought that letter to the City Council.

Mr. Dekker said MidAmerica's assurance only applied to parcels other than the Brunswick parcel. And Brunswick's acquisition would only be of the Brunswick parcel, so that assurance isn't necessarily affected.

Mr. Van Heuvelen said one way or the other? It may not have been that strong to begin with and even if they would sell it to Brunswick, it really wouldn't make that much difference because it didn't make a lot of difference to begin with.

Mr. Dekker said I'll let you decide what merits the letter of assurance may or may not have had.

Mr. Van Heuvelen asked were there any lessons for P & Z here in this whole thing, because this was a different situation than I've ever seen before, in a lot of different respects?

Mr. Dekker said I would say that if there's a lesson it's that as we've told you, you're approving a use, not a given business. So if you're not comfortable with a bowling alley, then you shouldn't approve Brunswick, because you have no assurance that it's going to end up being Brunswick now or at any point in the future. That's not to pick on

Brunswick, but to use that as an example for any time anyone is presenting a proposal with a defined user. If you're not comfortable with the use as operated on the average, you shouldn't approve it for an optimal operator. This wouldn't be the first time when a property was rezoned with good intentions that didn't get followed through for one reason or another, even with the very best of intentions just because things don't always turn out the way a proponent expected, and disregarding other times when intentions might not have been quite so good.

But even if Brunswick had followed through and built the project, there's no assurance that it would always be operated by Brunswick. And if you're not comfortable with someone else operating the business, then you ought to be very cautious about approval. And that same thing is true for any development; if you're not comfortable with the possible results produced by someone you might not think to highly of, then you ought to be very cautious overall. It's always important to determine the worst-case scenario rather than focusing on the best or past performance by any one individual. That's not to say that you ought to be continually paranoid, and that you always need to be fearful of the worst-case scenario, but you ought to know what it is, and decide how probable it is and if there are ways to protect against it. The general rule is, would it be OK in the majority of situations, with some really good exceptions and perhaps a few not so good, or would you be uncomfortable with most of the outcomes save for one or two of the very best. If only with the best exception, an approval based on that exceptional situation is going to come back to bite you sooner or later. Once approval is given and a problem is in place, it's very, very difficult to fix. "Let's give it a try and see how it turns out" is not at all good for zoning, because vested rights or "grandfathering" is established that will last for a very long time, often decades and about as close to forever as anything gets. So, if a proponent is showing you a particular proposal and you say I like that one, but I would have problems if it's they used a little different plan or it was some other company doing the same thing, if you can't legally assure yourselves that what you're being shown is exactly what's going to result, then you ought to be very cautious and probably should not approve it.

Mr. Russell said but again, the earliest that that zoning could be referred back would be 2 years?

Mr. Dekker said no, the zoning could be immediately revoked by initiation by City Council, although its' not quite that easy or universally possible.

Mr. Russell said so we could go in and revoke the amendment for the bowling alley for Brunswick now then?

Mr. Dekker said yes, that's possible for the City Council to do. The automatic provision would not take effect for 2 years.

Mr. Russell said okay, if nothing's done, it's 2 years.

Mr. Dekker said right. The City Council can initiate a rezoning at any time, the PUD time line is two years.

Mr. Van Heuvelen said there's no doubt about it that the strength, the muscle, the financial power of Brunswick, was important to a lot of people who voted on this issue, both here as well as at City Council. If you look back at our minutes and see some of the questions, and I think it was either you, Jeff or Dave who asked at our meeting, you're going to own it, you're going to operate it, right? And so I think the brand name of Brunswick had something to do with the favorable view of it. Some people not, maybe not, but it influenced some people. I'd say one other thing that I thought was a little bit different and will lead to some heightened skepticism on my part is that, generally speaking, when we have proponents here, it's the owner of the land or their representatives, might be an engineer, or might be an attorney. This was a situation where the sellers were and I found that, on so many occasions when we got to some interesting questions, it was "I don't know", or "I think so", or "we just don't have any knowledge of that". And it really led to some holes, I think, in our decision making process.

Once again, I give credit to Jeff and Dave because you asked some questions like "when are you going to build", "when are you going to start"? Well, they were not sure. And who's going to operate it? Well, Brunswick. We find out now that maybe that wasn't exactly true because if you look at the letter, that was 3 or 4 days after our meeting, I think, and I'm not accusing those people of being dishonest, but I find it hard to believe that the financing slipped away in those 3 or 4 days. My guess is that some of this was percolating, perhaps, even for months but the representatives that were here before our Commission could easily give the answer "I just don't know" or just kind of assume certain things, and it led us into a position where we were assuming things, too. Presumably the Council, as well. So I guess when it comes to people appearing before us, I'm going to have some heightened skepticism about people that are trying to sell the land, as opposed to the people that are actually going to do the developing or their representative.

Mr. Russell asked there are no guidelines that we could require, that if you have a petition before this board, that it has to be by the real party in interest, is the legal term? But should it be by the person who is truly is going to be purchasing the land?

Mr. Van Heuvelen said obviously tonight I think we saw some good representation on the part of an engineer and obviously we've seen many attorneys here before so they've gone a great job. I think anybody can be their advocate, I don't think we have to restrict it. I'm just saying that when they make a choice to either not be here, which we've had people that just don't show up and I know some Commissioners through the years who have said that's an automatic "no", if I have to be here, then they'd better be here, so I'm going to vote "no". I've always disagreed with that because I'm here as a

volunteer, nobody forces me to be here. So I've never quit bought into that, but I'm closer to buying into that tonight because I see that sometimes when they come here without somebody who knows what's really going on that the answers come a little bit too easy and the "I don't knows" come too easy<sup>1</sup>

Mr. Dekker said the flip side of that is that, with the zoning, you very frequently don't know who the end user is. Just like tonight, the Commission couldn't tell the neighbors whether the property is going to be an insurance office or a bank or what it's going to be exactly, much less to state it will be "insurance company x" occupying an insurance office. All we can tell them is that it's going to be an office. In fact, taking the position of not approving a request unless the petition comes from an end user, in this example Brunswick, is precisely contrary to what we just discussed, about not approving something based upon who, but rather on what. If Brunswick had appeared at those meetings, would that have changed anything today? That perhaps creates a false sense of security in that, oh, Brunswick is making the petition and they're a great company. But Brunswick still would have been unable to follow through, or could still have gone dark sometime down the road. This wasn't a case of the developer making a representation, using a reputable name to sell the proposal when there wasn't any true relationship. Brunswick was very much involved and committed to the property, and had the best of intentions. They met with staff several times and were very serious about building on this site, but the economic conditions made that an imprudent decision for them at this point in time. Having had them at the public hearings wouldn't have changed anything.

I would suggest that the point to note isn't that the developer was making the proposal on their behalf, but rather that if the decision to approve was based solely and only on Brunswick being the operator and that the bowling center otherwise would not have been approved, for possible operation as "Joe's Bowling Center", that perhaps was not a prudent decision. In fairness to Brunswick, I would tell you that based on my experience Brunswick had the very best of intentions, but their facilities cost more than \$10 million to build and they had to make the hard decision that now probably wasn't the best time to make that kind of investment that is highly reliant on disposable income being available for an entertainment venue.

Mr. Pick said yes, it would be just like a single family lot developed that's put in. Just because that developer is coming before us, then they could then turn around and sell the land to whoever for all the lots.

Mr. Van Heuvelen said but if Brunswick had been here, some of the questions that were asked, both of site plan and the rezoning, would have had to be have been answered. As it was, with the two representatives who were trying to sell the land, whenever the questions got tough, or just there were an awful lot of questions, where they were only able to answer "I don't know" or "that's up to them". And if you look back at our minutes of the last meeting, twice questions were asked "you're going to be the operator?",

“when are you going to start?”, and both times it was kind of mushy answers because they didn’t know, because it wasn’t Brunswick. And we were relying on, I think, to some degree, the muscle, the brawn, the prestige, of Brunswick.

Mr. Russell said I think that had a lot to do with my decision because knowing it would be a first-class operation.

Mr. Van Heuvelen said as opposed to Jimmy’s Bowling Alley.

Mr. Hatfield said I agree with Mr. Van Heuvelen, and he’s not saying that we should develop new rules. He’s saying that the hair on the back of his neck is going to creep up when he sees a similar situation in the future where this is going to be operator, this is exactly how it’s going to be run, but that person isn’t in the room. I’m the salesperson and I don’t really know what this person is going to do.

Ms. Creveling said but along those same lines, I think Mr. Dekker’s made this same point before too, is any time you’re changing the zoning, it’s not just for that user. Brunswick could have gone belly up before they even got it built, you know, or a year down the road, and it could be Joe’s Bowling Alley.

Mr. Dekker said again, I would reiterate that Brunswick did have good intentions, this wasn’t a situation where Brunswick’s name was used to gain approval when the true intent was to open Joe’s Bowling Alley.

Mr. Pick said I do think they had good intentions. For you to say, how could things change that much in 3 or 4 days, believe me the economic conditions did change very dramatically in 3 to 4 days. And financing commitments do get pulled in that amount of time.

Mr. Van Heuvelen said yes, but you can’t tell me with eleven bowling alleys nationwide, that they didn’t have an inkling? It’s possible, I’m not going to argue it, I’m just saying that there’s chances are that back at headquarters in Chicago at Brunswick, that letter was long-since drafted and they knew that there were some problems. I find it difficult to believe that it just happened in that 3 or 4 day time period. It’s possible, but I’m skeptical.

Mr. Payne said people in the bowling industry here in Des Moines would have told you exactly what you said, that they all knew they were coming and they all knew they had backed out well before, or had been given reservations, well before we looked at it. We hear things after the fact, it’s all speculation and hearsay, but when you deal with people in the industry now that knew what was going on, they say yes, they had canned that one long ago. That’s just another person’s opinion, it might be right, it might be wrong. I think there’s some level of truth to that, probably.

Mr. Dekker said we deal with enough of these that you can pretty well get a read as to what's happening when somebody has a "line" versus when they're serious. I would say in this case Brunswick was very serious right up to the time that they filed the site plan. And at that time, someone at corporate said you know, this isn't a good time to go forward. The investment was an \$11 million investment, and if you feel a little bit shaky about that, you probably don't want to pull the trigger on that. But they were very serious in their discussions with us right up to the day of filing the site plan.

And at that point, they said you know, we're not going to be able to go forward on this, let's pull it. And then their engineer talked to them and said you know, we've already got the work all done, you've already spent the money for the site plan and if you think you might go forward eventually you might as well continue on and get the site plan approved because it's not costing you any more, so that's why the site plan went forward. Brunswick had good intentions, I think, up to that point but the economy dictated that it just wasn't a good thing to do right now. They're not the only ones who have done that, obviously. The City has approved other plans this year that were going ahead full speed, but have been "parked" in recent week.

But again, I guess I would suggest that the lesson to be learned is that if you're only comfortable with a development with a specific operator or developer, if it's OK if it's Brunswick but not for another operator or developer, then that's not a good basis for approval. In this case it was Brunswick that fell out of the picture. The same thing could have happened with all of the developers and builders who are no longer in business. If you had approved a development only because so and so was a reputable builder, that's another example of the lesson to be learned because somebody else is going to do that project now and you'll have no idea or control over who is going to be holding the property after the bank forecloses and sells. That sort of situation can come about for any number of reasons where there were good intentions originally. The results can be just as painful as when the intentions weren't good. Again, I would encourage you to always look at "what is this use" and will it be acceptable with the average operation. There are always the best operators and the not-so-good, and a lot of "industry standard" operators. If you'd have a concern with the average operation and are only comfortable with the best, then the prudent decision is not to approve and assume or hope it will all work out for the best.

Mr. Hatfield said as long as we're getting philosophical and conversational, I was going to say we had another example tonight that we've seen a lot of times in the past, of the person, I'll paraphrase, who said "I've lived here two years, I like the trees, I like the deer, I wish you would do nothing". If you know anybody that's got something undeveloped in their back yard, have them read the Comprehensive Plan. Mr. Van Heuvelen didn't pull out his excellent speech, but generally, it's going to be something, wouldn't you rather have this use? Everybody needs to look at the Comp Plan. I feel sorry for her that she didn't know it, she didn't know the process, now she does. We don't know what property values may do; it's not for us to say it's going to go up, it's

going to go down. We don't know. It's up to the market.

Mr. Gass said if it was a packing house, I'd say that there would probably be a good chance of property values going down. But the kind of office that that land is going to generate, I'd say it's probably going to go up. But you're right, there are no guarantees.

The meeting adjourned at 7:30 p.m.