

## URBANDALE PLANNING AND ZONING COMMISSION MINUTES

December 7, 2009

The Urbandale Planning and Zoning Commission met in regular session on Monday, November 9, 2009, at the Urbandale Administrative Offices Building, 3600 86<sup>th</sup> Street. Chairperson Jeff Hatfield called the meeting to order at 6:00 p.m.

Commissioners present were Dave Russell, Jeff Payne, Bill Kusy, Kevin Gass, Wayne Van Heuvelen, Paul Pick, Bridget Montgomery, and Jeff Hatfield. Staff members present were Steve Franklin, Community Development Manager/Chief Planner, and Cheryl Vander Linden, Department Secretary.

The first item on the agenda was to approve the minutes from the November 9, 2009 meeting. Mr. Pick moved, and it was seconded by Payne to approve the November 9, 2009 minutes. On roll call; Ayes: Pick, Payne, Kusy, Gass, Montgomery, Van Heuvelen, Hatfield; Passes: Russell; Nays: none. Motion carried.

The first item on the agenda was the public hearing on the Amendment to the "Day's Run West" Planned Unit Development Master Plan for Lot 4, The Square at Day's Run, 4400-4432 128<sup>th</sup> Street, case number 010-2004-02.02.03. Mr. Hatfield said, if there were no objections, he would dispense with reading the following official publication:

Case No. 010-2004-02.02.03

### OFFICIAL PUBLICATION

#### TO WHOM IT MAY CONCERN:

Notice is hereby given that the Urbandale Planning & Zoning Commission will hold a public hearing in the Urbandale City Hall, 3600-86<sup>th</sup> Street, Urbandale, Iowa at 6:00 p.m. on Monday, December 7, 2009, to consider a petition from Mr. Joe Pietrusznski, Assistant Vice-President of Hubbell Realty Company, on behalf of Hubbell Properties I, LC (Series C), owner, to amend the "Day's Run West" Planned Unit Development Master Plan for the following legally described property:

Lot 4, The Square at Day's Run, an Official Plat all now included in and forming a part of the City of Urbandale, Polk County, Iowa.

Lot 4 is known locally as 4400-4432 128<sup>th</sup> Street, and is currently vacant. The amendment is requested to allow the following uses to be located within 150 feet of the south and west boundaries of the commercial zoning (Parcel "A"): not more than one gasoline service station, convenience or quick stop store; and eating places, including drive-in and carry-out establishments subject to the provisions of Section 5 of the Zoning Ordinance, but not including caterers (5812) or live entertainment, and further provided that not more than one fast-food restaurant shall be permitted. The current

Planned Unit Development Master Plan prohibits such uses from adjoining or being located within 150 feet of the south and west boundaries of the commercial zoning (Parcel "A"). More information on this proposed amendment to the "Day's Run West" Planned Unit Development Master Plan 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 amendment to the "Day's Run West" Planned Unit Development Master Plan will be heard at the time and place set forth above.

There were no objections to the official notice as published.

Mr. Franklin said this request pertains to commercial property on the west side of 128<sup>th</sup> Street, south of Meredith Drive. The area has been platted into 5 buildable lots and an Outlot, known as "The Square at Day's Run Plat 1", and is the neighborhood retail portion of the "Day's Run West" Planned Unit Development (P.U.D.) District. Five of the lots are currently vacant, with a 9,600 square foot retail strip center having been built on the southwestern lot (Lot 5), which has residential adjoining to the south and west. Another future 9,600 square foot retail building is planned by Hubbell Properties on Outlot A, immediately to the north of the existing building. Walgreen Company owns the two north lots (Lots 1 and 2) along Meredith Drive, and Days Run Commons, LLC owns the center parcel along 128<sup>th</sup> Street (Lot 3).

The amendment has been requested to allow restaurants (including fast-food) and/or a convenience store to be located on the southeastern lot (Lot 4, fronts on 128<sup>th</sup> Street, residential to south, vacant land zoned for residential or elementary school to southeast).

"Restaurant" includes all types of eating places, including drive-in and carry-out establishments, subject to the provisions of Section 5 of the Zoning Ordinance, but not including caterers (5812) or live entertainment. "Convenience store" includes quick stop stores of any kind and gasoline service stations.

The existing Planned Unit Development Master Plan prohibits such uses from adjoining or being located within 150 feet of the south and west boundaries of the commercial area, i.e. next to/near residential. That criteria customarily would result in a building being developed between the residential and any fast-food or convenience store use, so that commercial building would therefore serve as a buffer between the residential neighborhood and fast-food or convenience store. The attached concept plan from the original PUD Master Plan is one example of how that might have been done, showing an L-shaped building to occupy the southwest corner of the commercial area with "outlots" to its northeast. With the rear wall of the structure being oriented toward the residential areas located to the west and south, the structure would have effectively blocked most of the lighting and noise from the parking lot and outlots.

The 150-foot distance in itself is not an effective mitigation of the problems associated with restaurants and convenience stores, especially noise. Its effectiveness lies in the expectation that the 150 feet of commercial property is too valuable to be undeveloped, and whatever development that occurred within that 150-foot distance would act as a buffer/separator between those uses and the residential neighborhood.

Mr. Franklin said fast-food and convenience stores are allowed on the other two lots that front on 128<sup>th</sup> Street, i.e. the lot immediately north of Lot 4 and on the corner lot that is owned by Walgreen's. The existing PUD Master Plan only allows one fast-food restaurant and one convenience store within this commercial area, and that would continue to be the restriction.

The prohibition of restaurants and convenience stores within 150 feet of the residential boundary was incorporated in this P.U.D. Master Plan, as it has in almost all others west of the Interstate (i.e. newer zoning), because those are two of the most-problematic commercial uses for residential neighbors. Both are characterized by significant noise levels, intense lighting, late operating hours, odors, high traffic levels, blowing trash, and other significant nuisances. Those negative factors are not easily controlled or mitigated without seriously affecting the business's operations, especially odors and the noise generated by vehicles and customers. Distance and landscaping has negligible affect: solid barriers such as noise walls, or buildings that in essence act as sound walls, are necessary to mitigate noise. Odor tends to be even more difficult to control.

The property is located in the Urbandale School District and drains to the 128<sup>th</sup> Street storm sewer system, and southeasterly eventually into a drainageway that runs through Living History Farms and into Walnut Creek. The commercial parcels adjacent to the north and west of Lot 4 are also part of the "Day's Run West" Planned Unit Development (P.U.D.), and included in the "The Square at Day's Run Plat 1" Final Plat, which was approved by the City Council on February 12, 2008.

The single-family residences to the south (Day's Run West Plat 2) are also zoned "P.U.D." and are part of the "Day's Run West" P.U.D. The properties to the east of 128<sup>th</sup> Street are located in the "Timberbrooke North" "P.U.D." Planned Unit Development, and are currently farmed. The parcel directly east is zoned for retail/office uses, essentially identical zoning as this property and with the same restrictions/requirements. The parcel to the southeast is being purchased under contract by the Urbandale School District, and is zoned to allow either an elementary school or single-family residential with a 70-foot minimum lot width.

Mr. Hatfield said show about where the 150 feet was?

Mr. Franklin said it's about a third of the way into the lot. If you measured from the south boundary, 150 feet would put you right about there.

Mr. Franklin said Staff recommends DENIAL of the above amendment to the “Day’s Run West” Planned Unit Development Master Plan.

Mr. Hatfield said so, when we actually vote, if we vote “yes”, we’ve voting for denial. If you vote “no”, you’re voting to pass.

Mr. Russell asked what were some of the thoughts on the denial? Was it the setback, the traffic?

Mr. Franklin said yes, really just all of those reasons that I mentioned.

Mr. Payne asked it could be built on any of the other ones, the top two there?

Mr. Franklin said correct. These two lots would be more than 150 feet, obviously, from the west line and from the south line. You can assume since Walgreen’s owns these two north lots, they’re going to build a Walgreen’s in the future there. That would be a permitted use. The next retail building is going to go here to the north of the existing building, so that’s already been accounted for. That type of use would be allowed here on Lot 3 because it’s more than 150 feet away. So Lot 4 is really the lot that’s in question, and those uses would be prohibited on Lot 4 because they are closer than 150 feet.

Mr. Russell asked what kind of uses would be allowed on that lot?

Mr. Franklin said there is a list of approximately 52 other items that could go there. In a nutshell, it would be all of the uses permitted in the Commercial Office/Service district, the “C-O” district, and then things such as retail bakeries, beauty shops, electrical repair, meat and seafood markets, book stores, hobby stores, etc.

Mr. Russell said so it could be retail there, as well.

Mr. Franklin said correct. Many other typical retail uses that would not have those issues that were mentioned associated with convenience stores and restaurants would be permitted uses.

Mr. Gass said obviously Hubbell doesn’t own that piece of property.

Mr. Franklin said the one here in the middle? That’s correct. Lot 3 is being shown as being owned by Day’s Run Commons, LLC.

Mr. Van Heuvelen said when we amended it the first time, there was an idea about a strip mall going on these three parcels? Could you show that concept again?

Mr. Franklin said this was a concept. It showed this whole corner here, which is 7.85 acres, being a large L-shaped retail building, obviously split up with many different users, with the rear wall of the building adjacent to those residential uses.

Mr. Van Heuvelen asked was this parcel owned by one party at that point in time? And now we've sold some off? Is that kind of what has happened?

Mr. Franklin said yes, that would be fair to say. Since the time that this concept was shown, it has been platted into these six lots and some of the lots have been sold.

Mr. Van Heuvelen said so when a parcel was sold to Walgreen's, it effectively eliminated this concept, right?

Mr. Franklin said correct.

Mr. Payne said but, conceptually, no one ever thought that there was going to be a convenience store on this, given the original conception. It wasn't shown at that time.

Mr. Franklin said again, it was a concept plan so you can't put a whole lot of weight in what they're showing, it was only a concept. As with any of these P.U.D.'s, what drove the uses was that list of permitted uses that's in the P.U.D. master plan. There are a total of 54 retail uses that would be permitted, as well as those office uses. And there are two of those uses, which would be restaurants, including fast foods, and convenience stores and gas stations, which wouldn't be allowed within 150 feet of the south and west boundaries of this commercial area. So, 54 uses, two of them couldn't be within a certain distance.

Mr. Hatfield said, based on this concept plan, though, barring parking problems, there could have been a restaurant and there could have been a c store on the northeast corner of that plat, if parking worked out and the drive worked out, etc.?

Mr. Franklin said correct. If it would have been platted that way, and they could have met their parking requirement for that use, correct.

Mr. Hatfield said but that's now a Walgreen's property. Whether it gets developed or not, who knows? That's not our concern, though.

Mr. Franklin said that's correct. The reality now is how it got platted, which is these six lots. That same property platted into six different lots. There is an existing building located here and the other five lots right now are vacant.

Mr. Kusy said when that was platted into six lots, that was all owned by one group, correct?

Mr. Franklin said yes, that's correct.

Mr. Kusy said because I'm less concerned about what the concept was, When this was platted, it was all owned, they made the decision to sell it to Walgreen's, they knew that they were limiting themselves, basically, to that middle lot on the east. And they sold that lot off, that was also their decision.

Ms. Montgomery asked have you heard anything from the neighbors?

Mr. Franklin said we've had no inquiries or phone calls from the neighbors at all.

Mr. Hatfield said there might be some neighbors out there in the audience tonight who might want to speak.

Mr. Franklin said could be.

Mr. Hatfield said, as this is a public hearing, the Commission will hear comments from both proponents and opponents, of the proposed rezoning request. First we will hear from any proponents.

Mr. Joe Pietrusznski, Hubbell Realty Company, manager of this property, said with me tonight is Caleb Smith with McClure Engineering. I'll give you a little history of why we're here before you today and so you understand the intent of our proposal. We have, for some time, for many different uses for this property. We've been approached by many different users on at least four of the six parcels here because we're going to keep retaining the outlot in the middle of the site to the west for a retail use. Walgreen's early on purchased the north side of the property for Walgreen's. There is the lot directly north of the red square (Lot 3) on the screen that was purchased by a group for a restaurant type use. And then what is left over is our lot to the south (Lot 4). He said a number of convenience stores have approached us, interested in this property, and we have told them no. We told them no because the P.U.D. has a 150-foot separation. We told them we'd be more than willing to work with them with the lot owners to the north to combine some fraction of Lot 4 and Lot 3 to allow a convenience store/restaurant mixed use in there. One of the things that came up with us, working with several people in the community and there were a lot less hassles at the time, was our buffering that is out there. Regardless of what we do out there, there isn't going to be substantial screening, even with the conditions set forth in your site plan standards.

Mr. Smith showed you earlier on that this is the 150 feet from the south property line and Mr. Franklin can go over this with you. But, in the original P.U.D., we had residential butting up against it. We had a little park in there with a trail and then we have a small little buffer area, and then we transition into these parcels. This is a view looking from north to south on the lot towards those homes that are on site. You can see that it's a relatively small buffer with plantings to meet the requirements for this

area, as the only mitigation. This right here is a road that carries all the traffic into this development. So, regardless, all the traffic has to come from a full-access intersection in this development and out into the lots. He said some of the complaints that I've heard, although I have not talked to all residents, but we have had two neighborhood meetings out here, to talk to the residents and get their feedback. Their biggest feedback to me was, regardless of what they do, they want to see an enhanced berm, substantial landscaping, fencing, much like what we did on the west side of this property to reduce some of the standards that we utilized to allow for those two retail buildings to occur and for the townhomes to be developed there. What they asked is, okay, Hubbell you're proposing to change this use to bring it a little closer to us, what can you do to mitigate light, to mitigate noise? What we talked through at these meetings was if we can greatly enhance the berm, put an 8-foot high fence, put stone columns, make it look attractive, add a lot of landscaping on their property and push the use toward them so they can see it less, that would be the most ideal situation. Right now they do not like looking at those uses. If say we were to work with a deal, much like we did in Johnston Commons, where we worked out with the lot next door for combined uses, and a c-store were to locate here without anything, they would get a pretty easy view of those uses. He asked what can we do to enhance value, to put that money towards the berm? Mr. Smith has some graphics here to walk through.

Mr. Smith said along this common property line right here, currently, there's a trail that runs from the streets up to the park area that Mr. Pietrusznski was talking about. I went out there today and took a picture of that. This is the view that you have of it. The terrain is rising as you go to the north, so the visibility there is pretty substantial there, what you could see on those commercial parcels. What we've done is, we've taken that design information we had for that berm and those tree locations, and put it together in a program called Sketch Up, what it might look like if we added a fence along the top of that berm and then if the c-store was to be located there on that back side, what kind of views you would have from that similar trail location. And that's the view that was produced. As you can see, that fence is significant enough that it will take care of a lot of those views that you have from decks and backyards that, right now, are not protected.

Ms. Montgomery said can you show again where, on that first map, your perspective from that? Like, where you're standing?

Mr. Smith said roughly sitting in this location here.

Ms. Montgomery said so the picture with the fence on it would be someone standing right there looking?

Mr. Smith said yes. My thought was that I wanted to get a shot that was roughly at the back point of the houses that are out there currently so that people sitting on their decks, etc., what kind of view would they have? And those are kind of the differences

that that fence would make.

Mr. Pietrusznski said one of the homeowners that we talked with, Mr. Lipovac, talked about the location of uses on this property and where they are in proximity to his property. What we were more than happy to do for Mr. Lipovac was raise the height of the berm and raise the fence, and also add additional landscaping to help mitigate what he can see from the back side of his home. We're more than willing to do that, as well. We stated, we are biased, we are owners of this property, of course, and we want to sell this property to specific uses. We want to work with you on something to mitigate that use with your property. Being biased, we believe we can do it better with a vertical structure rather than the horizontal distance. What we could do for the enhanced value of selling that portion of property, because as you know, if you can intensify a use, you can sell it for a lot more money. We were able to provide a substantial amount of landscaping to the south of this property. We've had two neighborhood meetings. The first one, nobody showed up, but we got a lot of phone calls. I talked to people in the surrounding area and then on the second meeting, we got a little more attendance, but I believe Mr. Lipovac was the only person who showed up who lives adjacent to the property, immediately adjacent to the lot. That was what we had in mind with opening this up for a little higher intensity use was turning that value into a higher berm to provide more mitigation than what exists there today.

Mr. Kusy asked will that plan only work if you're able to cooperate with the owner of Lot 3 in doing some kind of a joint mixed use development?

Mr. Pietrusznski said those discussions have been in play, nothing has come out yet. To be honest with you, I don't have signed purchase agreements from anybody, everything has just been in discussions with different users on the property, there is more than one. Nothing is set in stone, it's just opening up an opportunity to add value. Some of you may not view it this way, but we thought to create a win-win here, we can really enhance it, intensify the use, and hopefully provide a win-win if we could.

Mr. Van Heuvelen said so in other words, even though we're talking conceptually about a c-store, that may not be the use? It could be a restaurant or who knows what it could possibly be.

Mr. Pietrusznski said no, but in a neighborhood zone, if you restrict that use, you command a higher value because it doesn't exist. So why not be able to take that added value and enhance it in the berm, and make it a requirement that if this were to happen, I'd have to put that berm in for occupancy?

Mr. Jarad Gronau, 12912 Westbrook Drive, said I would be opposed to rezoning this parcel of land. I know a lot of the detriments were already mentioned tonight. Brighter lights, a lot more noise, possible odor effects, especially from a business that's going to be, whether it's a convenience store or restaurant, it's going to be going on past 5:00 or

6:00 p.m. at night, like some of the other commercial properties that are already in place there. So you're going to have traffic there all through the evening hours and into the night that could cause a problem. I think the biggest concern that I have, as a homeowner in the area, would be possible effects on resale value of a house. If I would ever choose to buy a bigger and better house within the great city of Urbandale, to contribute more property taxes. It's definitely a concern. And you can build up a berm, and a fence, as much as you want, but most of the homes in that area, especially on Westbrook Drive, the eastern part, you have a lot of two-story homes. If you or any possible buyers would come there and look out from that top story and you're going to see that gas station right there, possibly. That is a very big concern for me. Obviously it doesn't have to be a gas station, but if that's the way things are leaning right now, there are already two gas stations less than one and a half miles from this proposed site. There is a Kum and Go and a Pilot Truck Stop on Douglas Parkway. So I wouldn't think this necessarily has to be there, from a need standpoint, in the community. So I would be against the rezoning.

Mr. Van Heuvelen asked have you talked to any of your neighbors at all about this matter?

Mr. Gronau said just the next door neighbors. I don't think anyone is a big fan of a gas station being that close to the houses, like I said, on Westbrook Drive especially.

Mr. Russell said, from the diagram, can you point to which is your lot? So you're across the street?

Mr. Gronau said yes, my house does not directly back in but my front faces towards that property.

Mr. Gass said, for my clarification, what potentially could happen is that whatever it is that these folks want to develop could be still developed only a little further north, is that correct?

Mr. Hatfield said yes.

Mr. Gass said so as far as what you might be able to see out of your second story window, it may be still there, it may just be a little farther north.

Mr. Gronau said that's a valid point, but from my standpoint, the farther away from me, the better.

Mr. Gass said sure. That was basically for my clarification, too, I wanted to make sure that I understood.

Mr. Payne said I think, too, from that point, it can be moved up but there's going to

have to be a lot of cooperation between them because they don't own that lot to the north. Walgreen's owns it so there's a lot that has to go on, so I don't think we can assume that this is going to happen. If we do this, we have to look at it as though it's going to be right there, and it goes against the P.U.D.

Mr. Hatfield asked if there was anyone who wished to speak in either opposition or anybody who had any concerns.

Mr. Jon Lipovac, 12901 Westbrook Drive, said I'm actually a proponent for it, if we can get the wall built. It sounds like, when I've talked to Mr. Pietrusznski, that it's already zoned in a way that a Casey's store, or convenience store or a gas station, on Lot 3, and so as far as I'm concerned, the lay of the land, Meredith is actually a higher elevation than our street is. So, from where we stand, the closer we can pull that to the south, if we get a fence on top of that, the less that we're going to see. I don't know what other restrictions on that property itself as far as working hours, as far as if it's zoned a certain way where stuff can be open until a certain time at night. I definitely wouldn't want to see an all-night type of place there. But that's where we stand. At least something equivalent to the retaining wall, or fence, that's on the west side of that property. What I was thinking about is, there is a substantial wall and berm on the west side of the property here that shields the frontage road to the townhouse project, and I would assume that we would get the same type of privacy for the back yards of the residential properties, if we were going to put something that close anyway.

Mr. Van Heuvelen said you mentioned controlling the hours to some degree. I would imagine, if it's a c-store, probably 11:00 p.m. would be probable. Would that be a problem?

Mr. Lipovac said no, not necessarily.

Mr. Van Heuvelen said if it's a restaurant or a bar, I would imagine we're probably thinking in terms of midnight or 1:00 or 2:00 a.m.

Mr. Lipovac said definitely wouldn't want to see any bars in there, but if the property's already zoned that way, as far as these other lots, I understand there's not a whole lot we can do about that already. I'm not sure how it's zoned currently and what's available to go on, say, Lot 3. The reason I'm a proponent of it is the closer we can get it to and if we can make that berm or a fence higher, a good 6 or 8 foot tall fence on the current berm or maybe the berm a foot higher, and a fence on top, would help out greatly, I would think. He said, we have our house currently for sale, and we've also built a spec home on the lot here on the corner. The biggest complaint we get is the view out the back yard, as it currently stands.

Mr. Payne moved, and it was seconded by Kusy, to close the public hearing. On roll call; Ayes: Payne, Kusy, Russell, Gass, Pick, Montgomery, Van Heuvelen, Hatfield;

Nays: none. Passes: none. Motion carried.

Mr. Payne asked could I see the picture of this property that was done today, looking south? It was one that had snow on it.

Mr. Franklin said yes, that is looking from Lot 3 to the south, towards the berm, the existing access drive that comes into the property is here.

Mr. Payne asked is there a fence already there, farther as you go west?

Mr. Franklin said there is no fence. I have another drawing here that shows where the fences are. There is an existing fence on top of a berm located near the west property line here, and then there is an existing fence right there to the south of the existing building.

Ms. Montgomery asked do you have any pictures of those?

Mr. Smith said here is one that shows just a small portion of one.

Mr. Franklin said this is a 6-foot solid wood fence, it's right here. You're just seeing the end of it right there in the photo but it's at the bottom of the berm. Then this particular fence located over here on the west property line is, again, a 6-foot fence located at the top of the berm. The buffer requirements in the Zoning Ordinance come into play here, and there are different options based on the width of the buffer.

Mr. Russell asked how tall is the berm on the west?

Mr. Franklin said it's probably about 5 feet and then a fence on top of it.

Ms. Montgomery asked is the existing berm there on the south adequate for any of the other 52 uses, according to the ordinance?

Mr. Franklin said yes, based on the width of the buffer that is there, they've got the required height of berm and plantings that are required, yes.

Ms. Montgomery asked could we put restrictions on hours of operation and uses?

Mr. Franklin said that's something that's legally very difficult to do.

Mr. Van Heuvelen asked when does a restaurant become a bar? Using Jesse's Embers on 86<sup>th</sup> Street. Obviously it was a restaurant at that point. Then it became another place, which was a restaurant. Now it's Overtime. Is it still a restaurant?

Mr. Franklin said that's also kind of hard to define. The only way to really define it is to

look at receipts and just see what the percentage of sales are for food versus alcohol. We generally don't get into that just because the parking requirements are the same. But it can be pretty hard to define.

Mr. Van Heuvelen said so, in other words, a Jesse's Embers could go here which probably would be closing down at 10:00 or 11:00 p.m. most every night. And then through the evolution of other businesses, it could become closer to a bar, like an Overtime, which probably stays open later. And there would be no restriction on keeping it open until 2:00 a.m. in the morning. Would that be a true statement?

Mr. Franklin said yes.

Mr. Van Heuvelen asked how late can restaurants stay open?

Mr. Franklin said as late as they want, and is practical for doing business. Most of them are going to close somewhere in the neighborhood of 10:00 to 11:00 a.m., again, depending on whether they are a bar or a restaurant.

Mr. Van Heuvelen said but, as they move closer to being a bar, they probably stay open later.

Mr. Franklin said yes. One of the permitted uses in this P.U.D., # 17, says "eating places, including drive-in and carry-out establishments, subject to the provisions of Section 5 (which is parking and setbacks), but not including caterers or live entertainment and further provided that not more than one fast food restaurant will be permitted" on any of these six lots and then the 150 feet requirement. Permitted use #19 says "drinking places but not including discothèques, karaoke bars, or live entertainment, and not to exceed an occupancy of 125 persons, the area utilized for dancing shall not exceed 1/8 of the patron area, and dancing shall cease when the drinking place closes to the public". So a restaurant, including a fast food restaurant, would be a permitted use if you agree to amend the P.U.D.. A drinking place without live entertainment and a maximum occupancy of 125 people is a permitted use.

Mr. Van Heuvelen said so this could be a McDonald's, this could be a Long John Silver's, this could be a Wendy's that stays open all night.

Mr. Franklin said correct.

Ms. Montgomery said under the existing regulations or if they get their rezoning?

Mr. Franklin said those uses currently would not be permitted on Lot 4, unless you agree to amend the P.U.D.

Mr. Hatfield said that entire lot is excluded because it was originally platted without

restaurants and without c-stores, so they would have to come back to this Commission and back to City Council, and say I want to split it half again, can we do that?

Mr. Franklin said they would have to replat, correct, and that revised plat would have to be approved by P and Z and Council.

Mr. Hatfield said but they couldn't just slide it to the north half and say now we comply. It's an all or nothing, at this point, without further action.

Mr. Franklin said correct. The prohibition that would stand in the P.U.D. master plan is that there can't be a convenience store or a restaurant, adjacent to or within 150 feet of that south boundary.

Mr. Payne said I would agree with Staff in denial of the request, and I think a lot of it has to do with why we have those kind of guidelines to begin with. Because you've got lighting issues, hours, traffic counts. I can appreciate the economics involved with you have a piece of property and someone approaches you and says hey, I'd buy it if it could be something else. But that theory could go to any piece of real estate that we have zoned, platted. I don't think it's our point to be here and say let's try to work properties so that they can be sold. I think we have the rules, regulations and setbacks for a purpose because we've learned from our past. But, that's my opinion and I'll be quiet.

Mr. Hatfield said we put rules out there, or guidelines, so that developers know what they should do in the future. So there are 150-foot setbacks. The current developer put all the houses around this and have now sold most of the houses. They're now coming back and saying well, now that we can sell this thing, we'll raise the berm, we'd like to change the rules. It makes a slipperier slope the next time Developer B comes in. They might not be as good as this developer, they don't put the fence up as high. How do you say "yes" to this one, "no" to that one. And lastly, the people that bought the houses bought them under the old rules. Maybe they didn't know the rules were there, that could happen with a lot of people, but let's say half of them did know what the rules were. They bought it with that in place, with those guidelines, and now we're saying let's fudge it a little bit, and so they bought it under set of Rules A and I think we owe at least the current homeowners the status quo, that that's what they bought it under and to the good or bad, to the detriment or to their benefit, this is what we have. We're consistent. We could be consistently bad, but we're consistent.

Mr. Gass said there's a lot of effort that goes into these P.U.D.s too and I guess I agree with Mr. Payne and with Mr. Hatfield.

Ms. Montgomery said I don't agree. I think we can do a better job of protecting the homeowners by requiring the better buffer. I think that the berm that's there is totally ineffective. If I lived in Mr. Lipovac's house, it doesn't look like there's anything there

other than just a few trees that are on the back of everybody's property line. So I think we could do a much better job of protecting their assets by requiring Hubbell to build up the berm and put in the fence and plant more trees.

Mr. Russell said that's a 6-foot wooden cedar fence. It requires maintenance. They start to lean after a few years. We've all seen fences that are 8 or 10 years old. They look great for awhile. 8 or 10 years from now, but by then, Mr. Lipovac may have sold both lots and be out of there, but in my opinion, an 8-foot or 6-foot cedar fence is not worth much in 6 to 8 years from now.

Mr. Hatfield said but the trees, when they grow up, are worth a lot and there's nothing to stop anybody who lives there from putting 6 or 8 trees in their own backyards and watch them grow, like we all have. We've all put in the \$50 trees, or many of us have.

Mr. Payne said I think there is a bigger issue than just the berm. The trees aren't going to be very tall for a long time, we've all seen that. There are other issues, such as traffic counts, smells, lights. We sat here when the tower got built and listened to people in Day's Run West saying how bright the tower was out there, and how they didn't like the lights in that. And now you're going to have 24-hour fluorescent lighting. That's why we set rules. Mr. Franklin is the one who is going to have to take the calls from people who say they're trying to sleep and they have a glare in their bedroom window. Now, they've got nice trees out there that blocked them when they're on their deck. But there are other issues that we've learned that work.

Mr. Van Heuvelen said I think they're all good points and I merit your comments. I agree with everything that's been said, and I even know what you're saying, as well, and what Mr. Lipovac said. But my concern is when you start thinking, there wasn't much neighborhood flack on this, and I think part of it we just don't understand how this restaurant/bar thing works. And what we all think might be a Ruby Tuesday's that closes down at 7:30 or 8:00 p.m. at night and doesn't open until 11:00 a.m. in the morning, is what we think a restaurant is, quickly becomes something else and can get awfully close to that terrible thing called a "drinking place" before it stops being a restaurant. And then pretty soon it's open and then there's a noise issue, there are light issues, there are beer can issues, there is urination issues. I mean, it becomes a little bit different as it moves closer to that "drinking place" thing, so even though the neighbors may even want it, at this point in time, we have to think of the future. And what's going to go in there, maybe, next year, may not be what's in there, as we've seen on 86<sup>th</sup> Street with Jesse's Embers, may not be in there 10 years from now. Also if it's a fast food restaurant, I can remember when Long John Silver's on Douglas wanted to put in their drive-up a number of years ago. That created a lot of controversy. So what seems in our mind, it might be a Ruby Tuesday's, but it may not be that even initially or certainly down the road. That's why the rules are in place.

Mr. Hatfield said it could be a dress shop or could be a dentist's office, but what would

be built in their backyard would presumably be something that would have less traffic, less odors, less detrimental effects to the neighbors.

Mr. Payne said during the site plan phase, there is probably going to be some screening, with just the normal landscaping, with whatever is going to be on that lot, naturally.

Mr. Hatfield said in other words, Lot 4 will have to have trees and shrubs put in on the south end of it, as well, someday.

Mr. Franklin said yes, all of those uses would have landscaping requirements as part of the site plan process.

Mr. Kusy moved, and it was seconded by Russell, to approve Staff's recommendation for denial of the Amendment to the "Day's Run West" Planned Unit Development Master Plan for Lot 4, The Square at Day's Run, 4400-4432 128<sup>th</sup> Street. On roll call; Ayes: Kusy, Russell, Payne, Gass, Van Heuvelen, Hatfield; Passes: Pick; Nays: Montgomery. Motion (for denial) carried.

Mr. Hatfield said, just so the residents know, we are an advisory body to the City Council so there is another step if the developer chooses to go to the next step. Public notice will be given so just check your mailboxes.

Mr. Franklin said that public hearing would be held three weeks from tomorrow before the City Council.

Regarding Staff reports, Mr. Franklin said there are two items on the Pending List for the next meeting, one of which is a request to amend the Colby Woods P.U.D. That is the office building on 86<sup>th</sup> Street where Mercy Clinic used to be. They've moved up to NW Urbandale Drive. That building is now vacant and there is a veterinarian that wants to go in a portion of that space. However, that is the office portion of the Colby Woods P.U.D. so we'd need to amend that P.U.D. to be able to have a vet in there, which is more of a retail use. They also do want to do boarding, so you've got the issue of barking dogs and things that could disturb surrounding businesses and residents. And then Walnut Creek Estates 7, 10, and 11. You've seen that before as Walnut Creek Estates 7 and 10. They're going to split off another little plat and they're adding 5 or 6 lots.

Mr. Hatfield said so, we don't meet in 2 weeks?

Mr. Franklin said no, you do meet in 2 weeks.

Mr. Hatfield said assuming that those 2 items are 30 minutes in total, would everybody be agreeable to going to House of Thai on 100<sup>th</sup> Street immediately after the meeting

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for our holiday party? I'll call and make sure that they're open and that they're waiting for 8 or 9 of us. And you can invite Ms. Schilke, Ms. Mac Bean, Mr. Dekker and of course Mrs. Vander Linden, and Mr. Johnson.

The meeting adjourned at 6:46 p.m.