



**Request for City Council Committee Action  
From the Department of Community Planning & Economic Development**

**Date:** September 15, 2005

**To:** Council Member Gary Schiff, Chair, Zoning & Planning Committee and Members of the Committee

**Prepared by:** Hilary Watson, Senior City Planner, (612) 673-2639

**Approved by:** Jason Wittenberg, Planning Supervisor, (612) 673-2297

**Subject:** Appeal of the decision of the City Planning Commission by Gregory Walsh

**Previous Directives:** At the August 15, 2005, City Planning Commission meeting, nine of the Planning Commission members were present. Six of the Planning Commissioners voted to approve the rezoning petition to change the zoning classification of the property from R4 to C2 to allow an indoor theater located at 506 East 24<sup>th</sup> Street. Two of the Planning Commissioners voted to deny the rezoning. All eight of the Planning Commissioners voted to approve the conditional use permit to allow an indoor theater located at 506 East 24<sup>th</sup> Street. Please note that the President of the Planning Commission does not vote unless a tie vote needs to be broken.

<b>Financial Impact:</b> Not applicable
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<b>Community Impact:</b>
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<b>Ward:</b> 6
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<b>Neighborhood Notification:</b> No official statement was received from the neighborhood organization.
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<b>City Goals:</b> See staff report
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<b>Comprehensive Plan:</b> See staff report
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<b>Zoning Code:</b> See staff report
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<b>Living Wage/Job Linkage:</b> Not applicable
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<b>End of 60/120-day Decision Period:</b> On August 29, 2005, staff sent a letter to the applicant extending the 60-day decision period to no later than November 24, 2005.
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<b>Other:</b> Not applicable
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**Background/Supporting Information:** Gregory Walsh, an adjacent property owner, has filed an appeal of the decision of the City Planning Commission to grant approval of a conditional use permit for an indoor theater located at 506 East 24<sup>th</sup> Street. Please note that because rezoning applications require City Council approval they cannot be appealed.

The original staff report and the minutes from the August 15, 2005, City Planning Commission meeting are attached.

The appellant has stated that “the commission is indulging in spot zoning. The use is much too intense for an R4 District. More input is necessary.”

The appellant’s complete statement and reasons for the appeal are attached.

**Excerpt from the  
CITY PLANNING COMMISSION  
MINUTES  
Minneapolis Community Planning & Economic Development (CPED)  
Planning Division  
350 South Fifth Street, Room 210  
Minneapolis, MN 55415-1385  
(612) 673-2597 Phone  
(612) 673-2728 Fax  
(612) 673-2157 TDD**

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**MEMORANDUM**

DATE: August 16, 2005

TO: Steve Poor, Manager, Community Planning & Economic Development - Planning Division; Phil Schliesman, Licenses

FROM: Jason Wittenberg, Supervisor, Community Planning & Economic Development - Planning Division, Development Services

CC: Barbara Sporlein, Director, Community Planning & Economic Development Planning Division

SUBJECT: Planning Commission decisions of August 15, 2005

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The following actions were taken by the Planning Commission on August 15, 2005. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued:

Commissioners Present: President Martin, El-Hindi, Krause, Krueger, Kummer, LaShomb, Motzenbecker, Schiff and Tucker – 9

Absent: Henry-Blythe

**8. Open Eye Figure Theater (BZZ-2506, Ward 6) 506 East 24th Street ([Hilary Watson](#)).**

**A. Rezoning:** Application by Susan Hass with the Open Eye Figure Theatre for rezoning from R4 to C2 to permit an indoor theater for the property located at 506 East 24th Street.

**Action:** Notwithstanding staff recommendation, the City Planning Commission recommended that the City Council **approve** the rezoning petition of 506 East 24<sup>th</sup> Street from R4 to C2 based on the following findings:

1. The character and form of the building supports an active commercial use at the street level;
2. The former use of the building as a theater supports the re-use of the building as a theater;
3. The site is connected to the commercial area on the west side of the freeway by a pedestrian walking bridge;
4. There are several high-density residential uses in the area that can support commercial uses such as the proposed theater; and
5. Comprehensive Plan Policies 6.5 and 6.6 support this type of use.

**B. Conditional Use Permit:** Application by Susan Hass with the Open Eye Figure Theatre for a conditional use permit for an indoor theater for the property located at 506 East 24<sup>th</sup> Street.

**Action:** Notwithstanding staff recommendation, the City Planning Commission **approved** the conditional use permit application for an indoor theater located at 506 East 24<sup>th</sup> Street based on the following findings:

1. The character and form of the building supports an active commercial use at the street level;
2. The former use of the building as a theater supports the re-use of the building as a theater;
3. The site is connected to the commercial area on the west side of the freeway by a pedestrian walking bridge;
4. There are several high-density residential uses in the area that can support commercial uses such as the proposed theater; and
5. Comprehensive Plan Policies 6.5 and 6.6 support this type of use.

Staff Hilary Watson presented the staff report.

Commissioner Schiff: I didn't mean to interrupt mid-sentence.

President Martin: Before she got on to the next one, I thought you wanted to talk about the rezoning?

Commissioner Schiff: Yeah. I just wonder if you could put the rezoning map back up. I can think of lots of reasons why this is in the public interest for giving economic re-use to a historic building. But when I look at this and you say it's surrounded by multi-family residential zoning, all you have to do is go straight across the highway and see a whole strip of C-2 that faces the freeway. If C-2 zoning is appropriate on one side of the freeway, why not the other?

Staff Watson: It's a good question. I guess for us we look at the freeway as a very large barrier between the east side and the west side of the freeway, so that did not have any impact on our evaluation of the site.

Commissioner Schiff: I just wondered because we traditionally, I know, as urbanists, think of freeways as walls that divide people. But, if we were to think of it in a larger scheme as a road and there being buildings on both sides of it, like you would have with Lake Street or Franklin, then you'd see commercial zoning being appropriate on either side of it.

President Martin: Even when it has walls between it?

Commissioner Schiff: Even when it has walls and you're just looking at an aerial photo, you see...

Staff Watson: Right, you can't drive over 24<sup>th</sup>... You can't drive over the freeway on 24<sup>th</sup>. There is a pedestrian walkway that crosses the freeway at this location.

Commissioner Schiff: OK, I just wanted to push back on that thought. Thanks.

Staff Hilary Watson presented the remainder of the staff report.

President Martin: Any other questions for Hilary? OK. Commissioner Krueger.

Commissioner Krueger: I've been at this location when it was Patrick's Cabaret and it operated for 9 years there. That is my understanding. If we had a business that operated there 9 years illegally...? It seemed to be an appropriate space then. I guess I need clarification on why it's not an appropriate space for something that was used for almost a decade.

Staff Watson: I tried to find out more history on Patrick's Cabaret. From what I understand, it went in illegally as far as the zoning code is concerned and I wasn't here back in '91 to speak to how it got in and how it started operating – because as I understand, it was well frequented. So, it's not that no one knew about it. But it was then, when the rezoning came about, I believe that's when they started to... when the city was trying to shut them down and have them relocate - which they are now located on Minnehaha and Lake Street. The rezoning information didn't tell me why they didn't approve the B3S-4 which would have allowed the theater, but instead approved the B1

which didn't, but then they allowed them to operate for 4 more years. I can't answer that question and some of those who have been with us for many years – even then – couldn't tell me the specifics of why the gap in the timing of it.

Commissioner Schiff: Patrick always prided himself on being an outlaw. So perhaps...

President Martin: He still does.

Commissioner Schiff: I think it's part of his artistic statement, actually. To thumb his nose at authority.

Commissioner Krueger: Is the C-2 the lowest level to have a theater or performance space?

Staff Watson: That is correct. It's not allowed in the C1.

Commissioner LaShomb: Hilary, where is the parking for this? Is there going to be some designated parking here? I don't see parking lots or anything. I mean a lot of vacant lots...

Staff Watson: Yes, the applicant is working with Lutheran Social Services on a parking lease.

Commissioner LaShomb: And Lutheran Social Services is...?

Staff Watson: It's located on the corner of Portland and 24<sup>th</sup>.

Commissioner LaShomb: Oh, LSS. Boy, that's a no-brainer. OK, so they would be contracting. So they don't have a parking requirement per se? Does C2 have a parking requirement of some sort?

Staff Watson: The parking requirement is 27 spaces and they're looking at a lease which accommodates approximately 70.

Commissioner LaShomb: And what are other C... Can you do a little shopping list of other potential uses in a C2 should this fail at some point? I'm not saying it will, but 10 years up the road, grants run out and other things happen.

Staff Watson: Yes. I apologize; I forgot my zoning code today which was not right.

President Martin: You came without your zoning code, how is that possible?

Staff Watson: Doing it all from up here. Actually, in finding number 3, I do list some uses that are allowed in the C2 district which would be a restaurant, a reception or meeting hall, vocational business school, dry cleaning establishment, Second hand goods store...

Commissioner LaShomb: So you would define it as light commercial?

Staff Watson: It's our general commercial district. C1 would be our neighborhood-serving commercial district, but again, it's not allowed in the C1.

Commissioner Krause: I was just going to suggest we had this issue with the Ritz Theater to a certain extent too and it does kind of suggest to me that we need to have theaters below a certain seat capacity as permitted uses in the C1. Because they're small and they don't have that kind of significant impact. If they're too big, then yes, they need to be C2.

President Martin: That makes sense, although with the Ritz, we had a parking agreement in place and there's other commercial on that street, so the use is similar but the situation is different. OK, anything else Hilary?

Staff Watson: I don't have anything else.

President Martin: OK, I'll open the public hearing for item number 8.

Susan Haas (506 24<sup>th</sup> Street East, co-applicant with Michael Sommers): We started the theater in 2000 after 25 years of professional experience and have been looking for the last several years for our own model as how to survive as a small arts organization. We have produced work at the Southern Theater, we have installed a theater space at the Franklin Art Works two years running (2002-2003), we have installed a space in Northeast at the tin shed on Lowry and Washington Northeast – have brought our audiences to those communities very successfully. We are married. We've been married for 26 years and have lived in the Central neighborhood at 3024 Portland, 3205 Portland currently. And Open Eye's first production, which was one of our largest productions, was produced at Patrick's Cabaret on 24<sup>th</sup> Street in 1998. And it was commissioned by the Walker Art Center. We know that it works as a performance space. It's 8 blocks from our home and it's in a neighborhood that we have lived in and know needs – what we can bring to it. And we want to do that. We don't want to go to Lyn-Lake, we don't want to go downtown, we don't want to go to Uptown. We want to be in our neighborhood. We will be addressing a number of things here, but that is why we are interested in coming to this space at 506 24<sup>th</sup> Street. In terms of the questions, I can address about the parking that was raised. We do have a signed agreement with LSS at Portland and 24<sup>th</sup> and Patrick's Cabaret told me two months ago, he said hey, you don't have to rezone that, it's already been done, I did it. Well, he was zoned I believe, C1 where a lodge was allowed and he operated as a lodge for some time. We like to know how things have to be done and just do them accordingly. And that's what we're trying to do. The building itself has been owned for 20 years about. I don't know the precise timing, by the same owner. We have signed a purchase agreement with that owner and we will buy the building if the zoning is approved. We have lived here, we are committed to here, we are bringing our resources here. We have a letter – I believe you have it distributed, a pack of letters – we have a letter from the McKnight

Foundation awarding us a \$50,000 capital grant for this project. It is there waiting for the signatures. We have a large following for our work. Our work is family friendly. We do two kinds of programming, all ages, which is about bringing all ages together, not just about doing for any one particular audience. And the other is we do kind of exploratory, experimental work which keeps us stimulated as artists discovering new things and also is great for our audience and they have attended that programming. In the summer, we do a program called the driveway tour and we developed that after 9-11. And it has been successfully run and funded for 3 years and in 3 years we have performed in 90 neighborhoods in the Twin Cities community for 7,000 people. We raised money for this program, we do not charge for it and its purpose is to bring communities together face to face for a cultural, fun, experience.

President Martin: OK, Ms. Haas, you've got a great operation, you do really good work, but we need to hear about the zoning and the CUP.

Susan Haas: Well, I think maybe Mr. McCarthy can report and I'll stay up here.

Jim McCarthy (2112 Humboldt Ave. South, Board member of Open Eye): I have been helping Sue and Michael in the attempt to one, acquire the rights to buy the property subject to rezoning and also to help with the rezoning. We've brought some new pictures and I want to address the points raised in the staff report. The staff report basically suggests that the proposed use of this building as a puppet and figure theater and offices for the theater and workshop for the theater are not appropriate in connection with the other uses around the property. And that a C2 zoning would be inappropriate for the existing uses and zoned uses around the property. I think in fairness when one really looks at that area, that's incorrect. First of all, I think you have to look at the building. The building was built in the late 1890's; it's been there now for over 105 years. It was designed as a mixed use building – commercial on the first floor, residential on the second and third floor. Nothing has ever been able to wrench it from what it was designed to do. It has been zoned commercial, mixed-use for over 80 to 85 years of its existence. When the current owner moved in during the 1980's, there was a commercial carpet shop in the building next to him with an identical storefront and a commercial use to the right of him. He hoped to turn it into some residential use and got the property rezoned R4. R4 allows up to 3 units. Anything beyond that requires a conditional use permit. Never has a conditional use permit ever been applied for or granted by the city. Therefore, the only legal use since the 1980's has been for 4 units. In the 1990's, since the residential experiment didn't work, it returned to its original designed use which was commercial use. Through the 1990's it was used as a cabaret. It happens it was rezoned – it became B1 which allowed a lodge. If you went to the performance, you became a lodge member. Patrick was not driven out by the city, he had found other quarters. It died a natural death over there. Since then, the current owner has never been able to develop it and make it work as residential because it won't work as residential. It needs to be used what it was designed for. And if you look at the building, you realize it can't be used for anything else. It's actually unclear how it ever became R4 again. The last official action of this Commission and the last official action of the City Council was to rezone this property commercial. It rezoned it a B1

use. That was the last action. Anytime consider this property - that was a decision of the City Council and this board. When the maps were re-done after the '99 rezoning, we were told that a mistake was made and that people reverted to the map that showed R4 and didn't reflect the B1 rezoning that took place in '96 and it became R4 again. But there was never the basis of let's consider how to do this. Now we have, several years later, an application to again make this property conform to what it was designed to do. So that's the building you have. You have a mixed-use building. Matter of fact, if you look at the city plan, under the only drawing in the city plan shows what an ideal building would look like... takes into account this historic use and character...and it has a picture of a building with commercial on the first floor and residential on the top floors.

President Martin: Kind of looks like this one.

Jim McCarthy: Looks just like this one. It's what we're saying people should do these days – respect the building, respect the architecture, respect the design. And guess what – if you slap an R4 on it, you can't make it purely residential. The function is following the form a little bit here. OK, that's what the building tells us. What does the neighborhood tell us? [Indicating illustration on overhead] I think what you have to do is look at the neighborhood and when we say it has a residential character, well let's look to the west. We have a 20 foot wall that runs for at least 6 blocks and a freeway. There's nothing residential about that. Council Member Schiff's observation is that the facing zoning to the west is commercial and indeed there is a walkway. One of the letters that is going to be part of the packet comes from the Children's Theater which highly encourages this and says they are looking forward, they've had a working partnership with the puppet theater for years, they are now looking forward to having a geographic relationship where simply the foot bridge connects the Children's Theater-Minneapolis Art Institute with the Open Eye theater and helps bridge the whole programming of the Children's Theater over into the Phillips neighborhood. When you start then at 26<sup>th</sup> Street and 5<sup>th</sup>, at the south end of this development, you have an industrial zone. It is the Wells Fargo site; it is over two square blocks of industrial zoning and industrial buildings. Certainly nothing residential about that.

President Martin: Although interestingly, it appears to be still zoned R4.

Jim McCarthy: No, it's actually zoned I1. The zoning maps, they put the letters in a funny location. Across the street then you do have two houses. They face an industrial site and the freeway. Then you have three lots of a church. Then you have two boarded up houses, then you have a two or three lot auto body shop, then you have a single house facing the twin towers of the Public Housing Authority. That gets you up to one block away from the face of our building. Now the block facing the building are these two, 14-story towers. It is the residential character of these buildings that I assume is supposed to be driving the compatibility analysis because it's the front of our storefront that's looking at the front of these towers. What you have is a large parking lot, and then you have a full floor of large public meeting rooms and offices. There is not a single residence on the floor of either of those buildings. It's office on the first floor, residences up above. Face to face, our building office first floor facing theirs. The

only compatible use in the neighborhood is the use it was designed for. Anything different, for which you'd need a conditional use permit to put a fifth residential unit into that building, would be incompatible with the zoned property and zoned use across the street. If you look to the west, what you see, and you look down 24<sup>th</sup> Street to Park and Portland, is you see one boarded up house, the house on the corner of 24<sup>th</sup> and Portland, and then the Lutheran Social Services parking lot, followed by the Lutheran Social Services office building. Again, nothing terribly residential in that neighborhood, certainly our use as a puppet theater of this building, or any of the uses, whether it's a book shop, an art gallery, a retail space – any kind of C2 use would not be incompatible with any of those uses. The only place that you find any typical residences of 2 to 8 unit buildings is north of this building, abutting the back of it. Now, first of all, think about what we're talking about. We're talking about the back of that building. All zoning in the city puts commercial zoned buildings up against R2, R4 areas. You go all along Franklin, all along Lake Street, all along Hennepin. You have the zoning facing the street. You have then residential butting up to the back of it. There's nothing unusual about that. That's what you have here. Except you don't have residences, you've got two empty lots. And then you've got a series of lots that are either houses that are of marginal quality, some boarded up, some have notices all over them, and you have high drug activity and high police reports on that one, two blocks on 5<sup>th</sup> Avenue from Franklin down to 24<sup>th</sup> Street. That is the residential area, but having that butt up to a C2 building is no different than its butting up to C2 buildings along Franklin which is what it does. So, we suggest that when you really look at the actual uses and the actual zoning in the whole surrounding area, there is nothing that the rezoned C2 property is incompatible with. The other standard: Is it in the public interest? Staff suggests that it's only in the owner's interest, not in the public interest. I think you've heard enough about the contributions of the figure theater to the community. You will have a letter; I think it will be presented to you from the Mayor urging a rezoning. You have letters from Lutheran Social Services, from the Children's Theater...

President Martin: Lots of letters.

Jim McCarthy: ... Most of the organizations in the area saying this is a great organization, there's one thing that this neighborhood needs more than anything – investment of dollars in viable uses. Just help turn those few blocks around. You will get a large investment well done in this building if you grant this rezoning. You won't if it doesn't and that property will begin to languish. I think that's in the public interest. There were also references to the impact on the City plan. And the references were not pointed out to the 6.5 and 6.6 of the City plan which says that Minneapolis will continue to promote the economic and creative vitality of arts activities in the cities. And which recognizes that for the economic and most importantly, the civic benefits that the arts bring to the community, we will encourage this activity and in particular, not just for the art with international presence, but also art that responds to local specialty interests. In the local neighborhood focus of this theater, I think it well serves the plan requirements that are laid out and I think those are equally important with the others. The other items cited, I think, are also consistent. 9.15 in the plan reported: will protect residential areas from negative impact of non-residential uses by promoting appropriate transitions. But

again, I think what I've just described is that the transition from the uses from industrial to high density, mixed-office, public meeting space and 14-story residential to our building, backed up to the R4, which has both multi-unit buildings and single-family homes, meets that criterion. It also meets the criterion that throughout the code is talked about enforcing and encouraging the historical design and use of the buildings in the city. The last point is whether a conditional use permit should be granted. And as I understand the staff position is that if you rezone to C2, then there's no opposition to the conditional use permit and that the proposed use doesn't present any problems. They simply recommended denial of the CUP on the theory that if it's not zoned in C2, the CUP wouldn't be appropriate. I think for the reasons you have heard and will hear, it's very clear that this use is an appropriate use in the area. The other point that I think goes to this is that they say the factor 4: ...Are there reasonable uses of the property permitted under the existing zoning classification and the staff report lists what those other reasonable uses are. I would submit that that aspect of the report is inaccurate. Single family dwelling, two family dwelling, this property will never be used as a single family or two dwelling. Multiple family dwelling, three and four units. Well it has 4 units in it now and that makes no economic use of the first floor or basement. A community garden - that's only going to happen if the building is bulldozed and you put a garden in between the two other buildings. I don't think that meets any of the plan suggestions. Same with public parking. Place of assembly - you know, conceivably, one could put a church in there. Really, you'd think of a puppet theater as a place of assembly, but I understand that under the zoning regulations that isn't considered a place of assembly, but the uses really are not different. The last one is community residential facility serving 6 or fewer persons. I don't really see that as an alternative. That property has been there now for 25 years under the current owner who is trying to find alternative uses for it. Never once has any of the community agencies come forward and suggested its use as a community residential facility. So I think that the alternative uses identified by the staff really do not exist and there's no evidence offered in the staff report that there is any economic use other than the use for which this building was designed for which was mixed commercial and residential. I think that the staff has addressed that there is a change in the character and trend development. What they have identified is that this kind of use is consistent with those changes and will help revitalize one of the last corners in Phillips that has not been touched by economic revitalization that areas several blocks away have felt. We are hoping that by the activity of the figure theater going into the area and the work that's going to be done, that in fact that little corner of Phillips West will also experience a revitalization. The plans in the packet that you received - you have seen the plans that have been developed for the reworking of the building. The funding for that is in place and the fundraising by the board is ongoing. So we think that this is in the public interest and that it should be rezoned and that the benefit will not be achieved for this neighborhood without rezoning.

President Martin: Others who wish to speak to item number 8. Thank you.

Betsy Sohn (Hope Community organizer and community outreach manager, 611 East Franklin Ave.): I know you've heard a lot about all the positive things that Open Eye

could bring to this location. What I want to extend that to is that... Hope Community has involved over the last many years over 1,200 people in community conversations about what is their vision of community. And people have told us over and over again that they want public places in which they can gather. They want places for entertainment. They want places where they can come together in community and do positive things. This location is one of those places that people would like to come together and do positive things. The fact is that there is – 5<sup>th</sup> Avenue right now is a commercial corridor. It just happens to be a corridor for a lot of illegal commercial activity.

President Martin: Nontaxable commercial corridor.

Betsy Sohn: Correct, so let's change that around and be able to tax it. To bring a positive activity into a place where there's negative activity is another form of revitalization. It's not just economic, but it's very much community desired. When adults are talking with us about what they want for a community, they want to have places to do these things. Children also tell us that they want to stay here, they want to stay in this community, they want to be involved in positive things. And they also say that they're very afraid to go outside because they are afraid of the drug dealers and the prostitutes. And they tell us that they want adults to do something about it. So here's a situation where there's an arts organization and business owner who wants to come in and bring some positive street life. A willing seller of the building who has tried over the years to use this building in conformance with the zoning and has been unsuccessful. And a community that wants to be able to go there to participate in things. So, in all, I agree with others who have stated that this is a positive public purpose – it's not just in the benefit of the owner. And I want to challenge the people who have the power to be creative and do something about this. The reason that Patrick's Cabaret was able to stay in that location is because zoning staff and the Planning Commission were creative and worked together and found a way to make that possible under the zoning and I see no reason why that shouldn't be able to happen again. Thank you.

President Martin: OK, I'm going to close the public hearing. I'm sorry, since people weren't jumping up, it's hard to know. I'll reopen it.

Greg Walsh (500-502 East 24<sup>th</sup> Street, adjacent to applicant): Much has been made of the fact that parking is available and it's true, parking is available. However, it's strictly temporary. If you recall the site plan, this area was shown as a parking lot. The area is in fact scheduled to be redeveloped by a group called the Phillips Park Initiative. This is a second concept of what it could look like. And the Eye Institute and Lutheran Social Services are as we speak engaged in discussions of renting space for Lutheran Social Services to park at the Eye Institute. At which time, the land will be redeveloped as residential property. The area does have a serious parking problem. If you look to the north from 24<sup>th</sup> Street, this was yesterday morning – you can see that there are cars parked half-way down the block. The City of Minneapolis has decided to allow the high rise towers to be used as general residential property use and most of the people who live there own cars. And the parking at the high rise is strictly limited. There is a chronic parking problem on 24<sup>th</sup> Street, on 5<sup>th</sup> Avenue, on Portland Avenue and Open

Eye's solution to the parking problem is strictly transitory. For a little history of the building, Mr. Schiff you're correct – Patrick was a bit of a rebel. I've lived next door to that building for 22 years. He did operate illegally and when he attempted to purchase the building, he was not successful, and that's why he moved. I could talk to you for 30 minutes about Patrick stories. But, prior to Patrick occupying the building – and he did live at 506 East 24<sup>th</sup> Street – there were other residential tenants that lived [tape end]...were there for three years, there was a theater group called Smick Smack that lived there for several years before the Beau brothers did. When Patrick moved out, there was another guy that moved in and stayed there for a couple of years and then Lee Rolf just started redeveloping the property as a residential property – I don't know why he didn't continue the renovation because it's framed out. He's done sewer, water, electrical, but he never finished the renovation. If I could briefly pass through the report that was written by staff. The signatures required to start this petition when Ms. Haas asked CPED who owns the two vacant lots to the north of the property to sign the petition, they said they would sign only at the direction of the City Council, but they've signed the petition, and to the best of my knowledge, they were not directed to do so by the City Council. If you look at the property's proximity to a commercial corridor – 5<sup>th</sup> Avenue is not a commercial corridor, it's strictly residential. There is one commercial business – Carlynn Automotive repair in the 2500 block of 5<sup>th</sup> Avenue and he's operating under a conditional use permit that strictly restricts what he's allowed to do there. It's not an automotive body shop, it's a car repair shop. The building immediately to the east of 506 has been residential for many years. The only reason that one of the... there are two spaces there, it's split into two storefronts. The only reason one of them is currently being used commercially is because Open Eye Figure Theater is renting it, subletting it, from the previous tenant and they are using it for commercial purposes. The statement: this application is in the interest of the property owner is strictly true. I live right next door to this thing, I share a wall with this building, I share sounds, I share odors with this building. The wall may be 2 feet thick, but it's also a hundred years old and things to pass back and forth through it. The parking situation is untenable. The surrounding properties are in fact residential and this is not an appropriate use for this building. This building should remain residential and it should be zoned as such and I'm very strongly against this application.

President Martin: Thank you. Anyone else, item number 8?

Dallas Johnson (2400 Portland Ave.): When you heard about the fact that the theater faces across the street at an abandoned building and then on the corner of 24<sup>th</sup> and Portland there's a residence, that's me. So I bought the house and there's so much to deal with in the neighborhood that isn't positive. Over the course of my life, I came here from New York, I lived in Lower East Side in the East Village and I have taken care of 17 kids unofficially as a foster parent from different countries and have gone through a lot of stuff living in neighborhoods like where I'm living now. I look for things like this to improve the community. As a homeowner, I think it's really important. And I know the work that they do, I'm familiar with a lot of the organizations that they work with and I have heard second hand from people from the Walker and McKnight and places like that how much they think of this theater and I don't want to go on repeating the same

thing that you've already heard, but as a homeowner I'm really passionate about wanting this across the street from where I live.

President Martin: Anyone else. And at this point, given all that we've heard, I'm going to ask for new information only.

Cynthia Francis (Ebenezer, buildings located 3 blocks southeast of the application): We have over 605 units in total in all of our buildings of seniors. This is affordable senior housing and subsidized housing. So this is really critical for our neighborhood. We feel that we have something positive in the neighborhood. I know lately that West Phillips has had some bad press and we're really looking forward to increasing the public awareness in a positive way. I know right now for National Night Out these lovely people had their puppet show on our campus and it was so well received and they're looking forward to seeing this in the future. As it is right now, we have to go to Heart of the Beast which is over on Lake and 15<sup>th</sup> and that's quite a stretch. We have to bus all of our people over there. So they're really looking forward to having something positive like this in our neighborhood. Thank you.

Piedad Walsh (500-502 24<sup>th</sup> Street East): I am the wife of Mr. Gregory Walsh. We are just one wall and then the building that Sue has is trying to rent or to buy in the future. I apologize if my English is not too good. And if you don't understand me, I will repeat it. I am from Madrid, Spain. My accent is not so good. But I do not know so much about the laws here yet. I first came here in 1971, but I am living now steady here for the last 7 years. I know how good...I mean, I feel bad to be against the idea of Sue Haas because I am a person who loves the theater. Anything that is good to her, I think that we should expend more money – all the countries in the world about cultural things, then other things. But, I live there. I live in Phillips. Phillips, I know, is not a very good neighborhood. My husband is working there for several nonprofit associations for the last 22 years. I have been working in India as a social worker and many other things, so I know...

President Martin: Ms. Walsh, I'm going to ask you to talk about this.

Piedad Walsh: OK, to the point. I am not rejecting the beautiful idea. I am only rejecting the changing of zoning, know where I live, we do feel – I am not so sure – Sue has mentioned that she has agreement to buy the place to the owner of the building. I should like to be sure that he is really going to sell it to her. I think she's a great person – I don't trust so much in that person who owns the building because he had been always hiding renting the building to people – that they were not so great. He only cared for the money of the people who pay.

President Martin: We're not talking about zoning here.

Piedad Walsh: OK, but I am afraid of this rezoning. I want the best for her business, but for even being a great success, she maybe wants to change and move and go. And that rezoning is done there. And the owner of the building can put a grocery shop that

we know they are all for drugs because that's what they are in the neighborhood. The rezoning [will] allow for having any other kind of business. And I don't want to mention all of them because you already know. And that is what make us not want the rezoning at all. We think it's not good, but it's not for her, it's just to be sure maybe that she will buy that place or... something that give me an idea, that the neighborhood is not going to be worse, that is going to be really better. Thank you very much. I hope you understand me.

President Martin: [responding to comment off-microphone] No debates. I think we have a pretty good sense of where things are at here. Now I am going to close the public hearing. Commissioners, we have the rezoning and we have the CUP.

Commissioner Krueger: Just a question on the B13 that it used to be zoned. Is that currently still in the code, or has that been replaced by what...?

Staff Watson: The B1 was a zoning classification found in the '63 code. It's no longer there. It would be equivalent to today the OR1 zoning district, not a commercial zoning, but the OR1 – office residence.

President Martin: And Commissioner Krueger, just so you know, since I was here when this came through before. We struggled really hard to figure out some way within the existing zoning classification make it work. It wasn't easy, but that was what we came up with.

Commissioner Krueger: So the only option for a performance space or theater space is to go to C2? There's no other conditional use permit?

President Martin: It's the problem that Commissioner Krause referred to that when the zoning code was revised and people were thinking about theaters – everybody's thinking Guthrie, right? And not all theaters are Guthrie. Many are pretty tiny. So we have a conundrum in the code that we have a lot of uses in the city that are theaters that don't quite fit what the code says.

Commissioner LaShomb: Well, I think this is one of those tough issues because you know in your heart what you'd like to do, but your head tells you - you can't do it. What I think this fundamentally comes down to is every time we gather at the Planning Commission, and I've been doing it for about 3 ½ years, we at least have 3 or 4 items in the packet every time where people have laudable goals for rezoning and the problem is that it creates a serious problem when you start doing what this is clearly doing. And it's spot zoning – what they're doing is saying 'Oh, we have a laudable goal that's going to make the community a better place, it's really a worthwhile project'. And I suppose all that's true, but the problem is, we then plunk a new zoning classification in the middle of another and even though there's some across the freeway, I personally don't think that's relevant at all – the freeway is pretty wide. I think the basic point is that this is an R4 district. It has serious problems, there's no doubt about it. It's also making some improvements over time. I've ridden my bike down Portland many times and been

amazed by a lot of the good things. But I think the fundamental problem we have here is that if we start going down the road of doing rezonings for laudable goals, then we're going to be making a lot of decisions up the road that we're going to regret because once you do it for the first one – I know this idea about well, it's just a special purpose thing – but once you start doing rezoning to achieve laudable goals, the system starts to break down. I've had an opportunity to watch Zoning and Planning Committee once or twice and I kind of do it to see whether they think the way I think and generally they don't always think the way I think, Commissioner Schiff. And I don't always think like Commissioner Schiff thinks. But, boy, I've heard some real debates about zoning issues on Zoning and Planning and what I'll tell you is that those guys would come and hit us with a stick if we allowed this rezoning. I just don't see the public purpose that would be achieved in doing this spot rezoning, so for that reason I'm going to move the staff recommendation on the rezoning (Tucker seconded).

President Martin: Discussion.

Commissioner Schiff: Well, I'm going to move a substitute to approve the rezoning (Krueger seconded). Not using the exact words, put just to paraphrase, if we start acting rationally now, Lord knows where it will end. This building was built as a mixed-use commercial building. I don't know what public good it serves to down-zone it to the point of economic lack of viability. And I don't think it serves any of our urban goals in order to continue a 1960's mentality of large, blobs of zoning categories and to argue against mixed uses. We've been moving against that for years. I think we would have to find a reason in the Comprehensive plan of why C2 zoning is OK on one side of the freeway and not the other. We're supposed to look at these rezonings in reference to our Comprehensive plan. And if you can say that commercial uses are acceptable on one side of the freeway – why not the other? I think commercial uses are acceptable. I think residential are acceptable. And I think we need to look at ways that historic preservation and economic choices can be preserved without using the zoning code as a heavy-handed tool that really serves no public good other than to make a nice straight line on a map with one solid color and to erase the necessary complicated aspects of the history of the city's development. Yes, this is messy. Yes, this is mixed-use. That's vitality. That's what we're trying to get to in the City of Minneapolis. So Ed Voernig and everybody else turned their head and ignored Patrick Scully's illegal use for years. That was the solution they came to. Let's all turn our head and close our eyes. [response off microphone, laughter] And nothing to do with family friendly fun. You know, that was one way of solving things. I look at some of the rezonings we've done where we've approved duplexes next to single family homes and we've recognized that both duplexes and single family homes are low density. And that's appropriate in a low density neighborhood. Well, against freeways, you've got lots of activity already. There are surface lots, parking can be provided. Yes, that's a private agreement and if we were to go back into when this building was built, the grandfathered rights would say that no parking should ever be provided. There's kind of an interesting error on the staff report. Unless my history is wrong. It's unusual. It says that the building was originally constructed in the 1890's. At the time, the property was zoned commercial. Well, there was no zoning at the time. The City's first zoning code was approved in 1921.

President Martin: '24.

Commissioner Schiff: '24. Thank you. So back then, property owners could build what they want to meet the local need. And we've already been through a terrible history of tearing down these historic buildings because we weren't flexible enough and I think that needs to end and we should embrace the uses that these buildings can find. So, I'm going to support this rezoning and I think the parking issues can be worked out.

Commissioner Motzenbecker: I would just agree with Commissioner Schiff as well. In looking to the fact that the applicable zoning currently for this would have been the OR as was just mentioned and OR is one block to the east. So I don't think it's necessarily really a big spot zoning issue, especially if you're crossing the highway. And the idea that this piece is bringing – the idea of connecting community, and with all the goals that that it has been brought forward, I think some of the findings, 1, 3 and 5 are all appropriate. It addresses issues in all of those positively. So I would also agree with that motion. Thanks.

Commissioner Tucker: I would agree with Commissioner LaShomb that the issue is of spot zoning and we have to remember that zoning is forever. Well, not really forever, but there are...

President Martin: Until it gets changed the next time.

Commissioner Tucker: Yes. But the zoning stays there and other uses can come in. And there is an appropriate use for that building in the R4, you can put quite a lot of housing there, and we're putting lots of housing in old commercial buildings all over the city, so this is not a hard thing to do. So I think we can stick with our zoning code and uphold the staff recommendation.

Commissioner Krause: I'm going to support the rezoning because it's clear to me from the form and character of this building that this should have an active use at the street level. And I'm quite sure that this was what we would have called maybe a commercial node at one time before the freeway went through and totally disrupted that. I think that the fact that it's adjacent to a freeway wall – that suggests to me that it isn't as troubling to have a commercial use in this location. It's not like it's surrounded by residential and frankly, I'm very familiar with that area and there's a lot of institutional uses and things too that it isn't a consistently low density residential area there. And Commissioner Schiff is right, we need to be open to some other kinds of uses. And I think that it is relevant what is on the other side of the freeway because there is a direct connection. You saw that that bridge touches right down practically on this parcel. And it's connecting directly to the C2 on the other side. So for all of those reasons, as well as some of the things that were stated in references to the Comp. plan support for the arts, I'm going to support the motion to rezone.

President Martin: OK, the motion that's before us is to approve the rezoning to C2. All those in favor of that motion, please signify by saying aye.

The motion carried 6 – 2 (LaShomb and Tucker opposed).

President Martin: That carries. We still have a CUP.

Commissioner Schiff: I'll move approval of that and I'll just note that the Planning Department is going through a list of all the CUP's that are needed in the City of Minneapolis and I think the Zoning code did err in requiring theaters only in the C2 category. I think they should be allowed in the C1 and also I don't think conditional use permits are necessary for this. So this entire application possibly could be eliminated in the next year as we review all of our conditional use permit tables in the code (Krause seconded).

The motion carried 8 – 0.

Staff Watson: Can I just ask... Sorry, if I was up there, I'd ask you, but I'm not. Just to clarify – the same findings for the CUP as the rezoning?

President Martin: Yes.