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

Date: June 23, 2005

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

Prepared by: Becca Farrar, Senior City Planner, (612) 673-3594

Approved by: Barbara Sporlein, Director, Planning

Subject: Appeal of the decision of the City Planning Commission by Lara Norkus-Crampton and Aaron Rubenstein.

Previous Directives: At the May 23, 2005, City Planning Commission meeting, eight of the Planning Commission members were present. Planning Commissioners voted 5-2 to approve the CUP for a PUD, variance of the interior side yard setbacks, variance of the rear yard setbacks and variance of the Pedestrian Overlay standards. Planning Commissioners voted 7-0 to approve all other land use applications associated with the development known as the Lagoon Mixed-Use Development located at 1320 Lagoon Avenue South, 2900, 2904 and 2908 Fremont Avenue.

Financial Impact: Not applicable

Community Impact: See staff report and attached neighborhood letters
Ward: 10
Neighborhood Notification: The applicant notified the Lowry Hill East Neighborhood Association (LHENA) by letter on March 1, 2005 informing them of the development project. The developer has met with LHENA on five separate occasions since January of 2005, to discuss the project. Staff has correspondence from the neighborhood group which states support for the proposed project subject to some conditions. Neighborhood summaries, letters and additional information are included in the packet as well.
City Goals: See staff report
Comprehensive Plan: See staff report and the attached applicable Uptown Policies & Uptown Land Use Features
Zoning Code: See staff report
Living Wage/Job Linkage: See staff report
Other: Not applicable

Background/Supporting Information: Lara Norkus-Crampton and Aaron Rubenstein have filed an appeal of the decision of the City Planning Commission. The appeal is associated with the decision of the City Planning Commission to approve land use applications associated with

the development known as the Lagoon Mixed-Use Development. The applications that are being appealed are as follows: **(1)** Conditional Use Permit for a Planned Unit Development, and **(2)** Variance of the required rear and interior side yard setbacks for the proposed residential structure. The minutes from the May 23, 2005, City Planning Commission meeting are attached.

The appellants have stated that the decisions are being appealed based on the Planning Commission errors of finding regarding: (1) the project's height and resulting lack of compatibility with surrounding development and lack of conformance with comprehensive plan policies, (2) the project's Transportation Demand Management Plan and air quality impacts, (3) setback variances, and (4) other reasons which are detailed in the statement of appeal. The appellant's complete statement of the actions being appealed and reasons for the appeal are attached.

Excerpt from the
CITY PLANNING COMMISSION
MINUTES
Minneapolis Community Planning & Economic Development (CPED)
Planning Division

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MEMORANDUM

DATE: May 24, 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 May 23, 2005

The following actions were taken by the Planning Commission on May 23, 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:

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

6. James McComb (BZZ-2340, Ward 7) 2701 East Lake of the Isles Parkway (Hilary Watson).

A. Expansion of Non-Conforming Use: Application by James McComb for an expansion of a nonconforming use to allow a one-story addition to an existing duplex in the R1 zoning district for the property located at 2701 East Lake of the Isles Parkway.

Action: The City Planning Commission adopted the findings and **denied** the expansion of a nonconforming use to allow a one-story addition to an existing duplex in the R1 zoning district located at 2701 East Lake of the Isles Parkway.

B. Variance: Application by James McComb for a variance to reduce the front yard setback along West 27th Street from the required 25 feet to 11 feet to allow for a fireplace chimney and to 14 feet to allow for a one-story addition to an existing duplex for the property located at 2701 East Lake of the Isles Parkway.

Action: The City Planning Commission adopted the findings and **denied** the variance application to reduce the front yard setback along West 27th Street from the required 25 feet to 11 feet to allow for a fireplace chimney and to 14 feet to allow for a one-story addition to an existing duplex located at 2701 East Lake of the Isles Parkway.

Staff Hilary Watson presented the staff report.

Commissioner Krause: How much of the variance is attributable to the stack for the fireplace or the hearth?

Staff Watson: That goes down to 11 feet.

Commissioner Krause: And if that wasn't there, what would the variance be required – so in other words, how much depth is just attributable to the hearth…is it 2 feet, 3 feet?

Staff Watson: It's about 3 feet. The applicant is going to bring this up today, but when you look at their site plan, and it's hard to see on the small, small version, but when you look at the full elevations and floor plans that they submitted, you can see that to the edge of the fireplace, it's 11 feet, 4 inches and then to the edge of the addition, it's 14 feet. So, we went down to 11 because 4 inches… I mean, people put bricks in the wrong spot sometimes, so just to err on the side of caution; we went to 11 feet and to 4. According to this drawing, it's a 3 foot, but if you measure the chimney, it's 2, so it's something with the drawing. This home is 17 feet from the front property line just for reference sake. But the required setback in this zoning district is the 25.

President Martin opened the public hearing.

Matt Collins (Attorney representing owner, Jim McComb): In addition to Mr. McComb speaking today, he's invited his architect who designed the addition for his home. If I could, I would open with a few opening comments and then pass it over to the other people and then I would request that I be permitted to speak again to some of our position. Mr. McComb bought the house. It had sustained damage due to the City of Minneapolis sewer work. At this time, he has an opportunity to update the house with new plumbing fixtures, heating, air conditioning and update or actually refurbish many elements of the original structure itself. What he's learned is that without the addition of this room to the kitchen, real estate agents have told him that the lot is too valuable to have this home as it exists today on the lot. That if he were to sell the house, the house would be demolished and new construction would be placed on the lot. Thereby taking up that 110 foot front yard that faces Lake of the Isles. Today we are challenging the staff's recommendation because they based that recommendation on two things: That the site line from the neighbors' house will be diminished and the site line from the street will be diminished. As you'll see shortly, there are some pictures that will show

that really the site line won't be diminished. For one, there's trees and other vegetation in the way, that's the only site line that will be diminished. Secondly, the staff's report addresses whether or not they believe the addition will improve the appearance and stability of the neighborhood. Well, if the addition is not built, the stability of the neighborhood will not be improved because the house will be torn down in the future. We won't have this piece of historical architecture in the neighborhood after the house would be sold. The setback is exaggerated. I don't believe the staff has taken into account the additional 3 feet that the sidewalk setback provides for the property line. And the staff report focuses on the injury to the other property, specifically the home located on Irving Avenue. And I believe under the ordinance and the statute, it's not just one single homeowner that should be taken into account, but the entire locality and we do not believe that the granting of the variance does anything but improve the locality of the neighborhood. And at this time, I would pass it over to Rosemary.

Rosemary McMonigal (McMonigal Architects, 1224 Marshall St. NE): Before I talk a little bit about the addition and the view issue, I wanted to touch some on the process and Hilary mentioned briefly that this wasn't a real clear-cut issue. And I just want to tell you, the Planning Commission a little bit about the issue that came in front of us. We received a phone call January 14th from Mr. McComb just talking about his project. And before we do one bit of work on any project that involves an addition or major remodeling, we talk to the City to the Zoning Department to talk about everything from setbacks to lot coverage to what the zoning is. And in fact, on January 19th, we received the confirmation that it was a 10 foot setback on 27th which of course is exactly what we look for before we start any design work. We did proceed with design based on that. We had it in writing faxed back to the Zoning Administrator who then reassured us that yes, that was the setback. We were very surprised when two months later, Mr. McComb came to us and said he had heard that no, that isn't what the setback is. We pulled out our files, nope, here it is, it's 10 foot, it's what we were given and told to work with. And then in turn, we immediately called the Zoning Administrator that we had worked with who said yes, the question had come up about it and now they weren't sure what it was. So, two more days went by and they decided to rule on it as being a reverse corner and then a 25 foot setback. We all know that mistakes can happen like that, but it was disappointed to us to have been two months underway on a project with information documented and then changed. So, just in terms of the process, I wanted to share that. In terms of the architectural character, this is a very, very small addition to a house that is much larger in stature and actually, we had a much larger addition when we understood the setback was the 10 foot setback that we were originally told. In fact, this addition and the 1-story nature of it is in keeping with houses of this character. We've worked on many houses from the 1800's and turn of the century. It's a small addition, being one story with a flat roof and coping, not unusual to what would be put on a low-level addition to a house of this character. I think there's been some confusion as to the character of the addition. And the character of the addition is taken exactly from another detail on the front of the house – front meaning Lake of the Isles front. And on that front, there's a low projection on the house with windows closely banded together separated with wood trim and panels. And that's exactly the same character we picked up with on the side addition or the front reverse side on the property. So the addition isn't some completely different character, it's actually working from exactly what's there now. This 240 square foot addition, like I mentioned, is small given the size of this house and the character of the house. So the solution we feel

architecturally is appropriate, is sensitive to the character of the house and there's also been apparently people confused that we don't think it's a historic structure. I want everyone here to know that we know it's historic. We did review all the records immediately. All the proportions of things we're proposing to do are in keeping with a historic structure. The McComb's are interested in this house and preserving it because of its historic character so there really shouldn't be any confusion about that. In terms of the setbacks, yes the 106 foot setback from the front is a hardship. It's a real hardship on this property. It pushes the house entirely to the back of the lot where there's very, very limited space. The side yard current setback is 25.5 feet; 23.8 feet at the bay. The adjacent property at 2700 Irving is 17 feet to their front porch. If you tore off their front porch, their house does not meet the 25 foot setback. So in fact, it is a hardship for the block here, the setback that we're talking about. The chimney is normally an accepted obstruction into the setback, but because we're not meeting the 25 foot setback, that's not acceptable. And the same thing you could argue about the 17 foot setback to the 2700 Irving is that their stairs project and obstruct within that, so their setback is less than the 17 foot. So coming back to hardships, once again, the large front setback leaves no space to enlarge the house to the rear at all. There is no space. Within the house, we are – I know there's the comment made by Hilary that you just change the house from within – we're charged with being wise with how we remodel houses. There is a stair in the house that serves the basement, first, second and third floors. That wraps on two sides of the kitchen and we can't just haphazardly say let's tear that stair out because there would be no way to the basement, there would be no way to the third floor. That same stair, we actually looked at very early on of tearing the stair and putting a new addition out just for the stairs so that the kitchen could enlarge within the footprint. However, if we put a stair addition on, the footprint would be same size, but four stories high instead of the one that we're proposing. Then also, not lightly is the existing boiler chimney, plumbing stack and main HVAC runs in the house which border the kitchen on the other side. That is also a hardship. The existing kitchen which is used for both the kitchen space and the eating table at its narrowest dimension is 7 foot by 8 foot, 2 [inches], which is very, very small given an existing house of that size and that location. I did bring some photos to respond directly to the issues of views. In terms of the views, there's been a series of photographs taken. Here's Lake of the Isles Parkway. Here's 27th. The numbers 1, 2 through 6 are all photographs taken along this view corridor that is being discussed. Here is the house; here is the so called property that's the front setback property. And then, in terms of the photos as you move along the view corridor… This is standing at the first viewpoint which is the corner of Irving and 27th. And you're seeing the sidewalk here, the boulevard area adjacent – about where the property line start, the McComb's house and outlined in black is the addition completely obscured by the landscape that's here in the front. So that's the first photo that I want share which is right on the corner. Then if you move… The second photo that I want to point out [tape unclear, comments off microphone]… Thank you.

James McComb (applicant, 2701 East Lake of the Isles Parkway): I've owned the home for 30 years. When I bought it, it was a rooming house. We cleaned it up, converted it to a duplex. That unit has always been rented to somebody that serves as a caretaker for our property and takes care of our pets when we travel. So it is really a unit that is occupied by a person that receives a discounted rent in addition to providing us services to help us maintain and secure the property when we're out of the city. After buying the house, I had a house history done – well before the City did their study of Lake of the

Isles. And I learned that the house was built by William Donaldson and designed by Long and Keys. At the time, I worked for Dayton companies. I thought it was always ironic that I was living in a house built by a competitor of my employer. But recognizing the historic character of the house, I decided that whatever I did should be respectful of the heritage of the house and its position on Lake of the Isles. I will tell you that our history showed that from 1887 to 1954, the house had always been occupied by an executive of a Minneapolis corporation. The most recent executive was the president of Northern States Power Company. He sold the house to a person whose last known occupation was caretaker who sold it to Madeline Owen whose occupation was beautician at the Arcade Beauty Salon. Madeline Owen, in 1958…

President Martin: Mr. McComb, this is interesting, but it would be helpful if you would talk about what's actually before us which is the addition.

James McComb: I'm approaching that. The house was converted to a duplex in 1959 and operated as a rooming house. So it went from executive housing to rooming house in 5 years. We still have the kitchen that was designed in 1887 for use by the servants for the Donaldson family. In fact, in the house, there are two rooms that were clearly caretaker bedrooms for the people that served the Donaldson family. Over the years, I have asked realtors – I am in the real estate business – what I should do with my house and they would walk through it and say great house, nice floor plan, but this kitchen – nobody wants a kitchen like this in a house of this size and caliber. Hence the desire to make a modest addition to the north side of the house because that's the only way that we can expand the house. I'm currently living in a house on Lake of the Isles that we're renting. It has a similar room to the one I'm proposing. It's 570 square feet in comparison. The suggestion that we could accommodate the kitchen somewhere else in the house is not really realistic or feasible because of the plumbing stacks, the chimney. My neighbor, Mr. Bales, suggested that we could put the kitchen in the dining room, move the dining room to the study and put my office upstairs in one of our three bedrooms. That was a gratuitous offer on his part, but it doesn't fit with the character of the house. The most original part of this house is the interior. That's what Long and Keys designed of what is visible today. The front of the house has been altered; the rest of it has been covered with stucco. We're intent, given the ability to have the variance, is to replicate the millwork that was in the house in 1887. We have found copies of that millwork in the building. We will have it custom made. We are having a custom made buffet re-installed in the dining room which became a bedroom when it was a rooming house. We're doing everything we can to ensure that this house is a fully functional house for the kind of people that want to buy housing on Lake of the Isles and avoid the situation that occurred just a block away from us to the north where somebody bought a house for a little more than $1.7 million and basically dismantled it. Our house is functional. It has structural issues which can be corrected. It is now free of all plaster on 3 floors. We can make all of the improvements at less cost than whatever could be done in the future. We had to have the house appraised to arrange the financing to make the improvements. The land value is $1.6 million. The house value is $1.8, meaning the building is worth $200,000. My appraiser told me I'd be nuts to spend over $500,000 to repair this house. It didn't make sense. The real estate community this last weekend confirmed that in their minds, the house is a tear-down. I'm disturbed by that. I'm extremely disturbed by that. I've lived in this house for 30 years, I've raised my kids there, [and] I love the house. I would not like to see it torn

down and I'm trying to do everything in my power and putting my dollars behind it to see that doesn't happen. I don't know how much of the voluminous correspondence you've seen from my neighbor. But one of his e-mail's referred to people sitting in our new addition observing them dine on their porch. In 30 years, I've never paid a lot of attention to what Mr. and Mrs. Bales do with their house in the way of entertaining. As you saw by the plans, the windows are high – they're 6 feet above the floor to let the morning sun in, but not view out towards the Bales' property. They seem to think that people have an interest in what goes on at their house, but I can tell you that Maria Bales knows what time I get up in the morning (and I get up between 3:30 and 5 in the morning most mornings) and she's told me that. And she advised one of our neighbors across the street that she shouldn't take so many showers.

President Martin: Mr. McComb – Come on, will you really please talk about this.

James McComb: We've covered the issue of the views, the setbacks, the visual issues, the design. Basically, this is a once in a life opportunity for 2701 East Lake of the Isles to be updated and to be made compatible with today's lifestyles for a house of its type. This will never occur again. I need your help in permitting us the variance so they can add the addition that will change the house from being a tear-down candidate to a viable residence in the future. The neighborhood association… There were 9 votes in support of our position to add the addition because their motion to not support failed 8 to 9. The neighbors supported our effort. I did not pack the room with my supporters. I went with my wife. Mr. Bales had his supporters there. And we were able to, through the weight of the evidence; convince our neighbors that it was a worthy project to permit the variance and the addition to our house. I hope you will agree. Thank you.

Matt Collins: If I could just address a few of the points made in the staff's recommendation. First regarding…

President Martin: That we haven't already heard, Mr. Collins?

Matt Collins: Yes. Regarding the expansion of nonconforming use, the request for that, addressing finding number 2: The question is whether or not the addition would be compatible with the adjacent property and the neighborhood. The staff focuses on the sight lines from the house to the lake and along the street. Whether that qualifies as compatibility in the neighborhood, I don't think it does. One, the sight lines that the home on Irving Avenue seems to protect are not protectable property interests. Sight lines are not protectable. Secondly, in case law interpreting variances statutes, they look to whether or not the home already exists. In this case, the home exists. It's just a 240 square foot addition which would not change the essential character of the locality. Second finding number 4 talks about the addition will not improve the appearance or the stability of the neighborhood. There really was no findings. The staff relied on findings number 3 which talk about traffic impacts. Clearly not the factual findings necessary to make a decision like this. You need to look at the historical significance of the home and the neighborhood to make a determination as to whether this will add to the appearance and stability of the neighborhood. Clearly, the addition will because it will prevent a tear-down of the existing home. Regarding the findings for a variance. Four findings must be made. First, the property cannot be put to a reasonable use. Second, circumstances are unique. The staff did find for Mr. McComb in those two findings.

Finding number 4: The staff also found for Mr. McComb. They based their denial of the variance on their finding for number 3 which states whether the addition is within the spirit and intent of the ordinance and will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. Here again, the addition is in the front yard and it does not significantly diminish sight lines. Again, a view similar to the expansion of a nonconforming use analysis – a view is not a protected property interest to be considered. Secondly, whether it affects the essential character of the area as you saw from the pictures, the sight lines that it does affect – only take into account vegetation already existing. And I don't believe whether an injury to an enjoyment of other properties, specifically the Irving Avenue property that has been called out is enough to overcome. What the statutues talks about is altering the essential character of the locality. They're not focused in on one single home-owner, but the entire locality because obviously, in situations like this there is always an upset neighbor. That's why the board must look to the entire locality to see whether a granting of this variance will comply. Thank you.

James McComb: Could I just share a couple photos with you that I think are illustrative of…

President Martin: We've got those in our packets, Mr. McCombs. We have a whole set of them.

James McComb: Those are not in the packet.

President Martin: Well, we've got 6 or 7 or 8…

James McComb: This is the house at 2700 Irving Avenue South and you will notice that their Irving Avenue setback is about 5 feet and the view across the front yard is the 17 feet. The house at 2655 Irving Avenue, which is the corner of the intersection – the house and garage has roughly a 3 or 4 foot setback from the sidewalk. And the house at 2645 Irving has a porch that extends within roughly 5, 6 feet of the sidewalk on the Irving Avenue side and maybe 8 to 10 feet… or, I'm sorry, on the 27th side it's within 5 to 6 feet and on the Irving side, 8 to 10 feet. The type of addition that we're proposing is consistent with the way houses have adapted to the streetscape at the particular corner that we're located on and I would hope you would take that into consideration. Thank you.

President Martin: Others who wish to speak to item number 6.

Christina Melloh (2642 Irving Avenue S): This does not directly affect my views as a homeowner, but I'm more concerned about our views as a community. I would like first say though that as a representative on the East Isles Executive Committee, that the East Isles Committee did not support this decision. What it did was it took a vote and the gentleman is correct that it was 9 to 8 and it was immediately followed by a vote of concern where the neighborhood voted to send no opinion on this issue because there were so many opinions – people should come and speak for themselves. So that's where we landed, I think that's a fair assessment. This is a historic site. It is a historic site for green and parkway. The gentleman who is the owner of this home kindly came to our neighborhood meeting and told us there is an amazing view from his home and

he is right and it's from the front and it's from the side. And historically, this site in particular has a 25 foot setback for a reason and I would like to clarify that almost all of the housing on Irving Avenue South has a significant setback. The numbers that were just sited were related to homes that are exceptions and presumably, since I haven't seen any major additions in recent years, historical exceptions. So, just to the point, I would like us to see us preserve the historic nature of this home. This is the shortest distance from Hennepin Avenue to Lake of the Isles, one of the most visited state parks… or parks in the state of Minnesota. To introduce an 11 foot setback to this location, I would just ask you – hardship? This is a mixed blessing for this homeowner because their home was destroyed by the shaking of city property when they cleaned out the road and as a result, they have had their house ruined by that activity on the street and that's why it's being redone. The homeowner told our neighborhood that he has lived there 30 years with an adequate kitchen. So hardship, hardship for selling it maybe, but I didn't think that was what this variance… an exception from a variance was intended to do was to make it a more beneficial sale down the line. The goal here is to look at the neighborhood and try to address why do we have a variance and I would just encourage us all to know that as a community, we are losing our green space. If we are to allow this type of exception to expand the value of properties in this neighborhood, then we are just suggested that everybody is going to do this. And all I can say is say goodbye to our green space. This is a prime property – it has a 5,000 square foot home. There is no hardship. And I encourage you to support green space in the City of Minneapolis. There are no neighbors who have homes that have had major additions cutting out this type of green space in recent time with an exception of a variance in our immediate area because I would have received that notice. So, I just want to clarify that that has not happened and one of the reasons I love Irving Avenue South is that when I go down it, I see a lot of green and I don't see buildings and I think 5,000 square feet is enough.

Charles Rossley (2655 Irving Avenue South): I'm opposed to both A and B. I think they're not compatible with adjacent properties. All the houses on my block have a 25 foot setback as the ones do across the street. And I think they would impede on the views of adjacent neighbors.

Carla Rohwedder (1521 West 27th Street): I'm from one of the 6 houses up the street on both sides affected by this proposed addition. I would have a partly occluded view and one of our other neighbors here, who's also opposed, and if Mr. McComb represented that neighbors were not against this proposal, this is in error. There are several of us here. Mr. McComb never came to any one of us to show us the plans for this. The only way I found out about this was that I went to an East Isles Residents' Association meeting 6 days ago where the plans were given out. And I'm shocked. He has been my neighbor for 30 years and he could have come and told me what his plans were and explained to the rest of us what he was trying to do, but none of that has happened. And it seems to be propelled forward while the neighbor most affected is out of this country on a commitment and can't get back here until June 4th. So at the very least, I hope it's postponed, but I believe it deserves to be denied.

President Martin: Thank you. One more. I think we're getting the picture here.

Ellen Longmire (1520 West 27th Street): I also brought a picture. And I brought this picture to convey the following idea which is it's showing the approach to Lake of the Isles along 27th Street. This is one of the quickest approaches, if not the quickest from Hennepin to Lake of the Isles. It's used by hundreds of people on a nice day going to and from the lake. The nature of it, as it stands, is that both of the reverse corner lots on the lake which are in these positions, have a significant setback so as you approach the lake, you see this green opening up very nicely and I feel that it would be a big mistake to allow this variance for homes to get close to the sidewalk and obstruct this view. That's all I have to say. I wasn't at the neighborhood meeting because I had already communicated with the Zoning Committee of the neighborhood and didn't feel I needed to go and give a vote.

President Martin: Thank you. OK, I'm going to close the public hearing. Commissioners?

James McComb [off-microphone, tape unclear]: … Rebuttal?

President Martin: No, we don't debate here, Mr. McComb, we take information….

James McComb: People who testified were dishonest.

President Martin: We're not going to get into that. You gave us your testimony. They gave us their testimony. We have to make our best judgment.

James McComb: Let me…

President Martin: No, sorry.

James McComb: They said that I did not ask to speak to them and I asked both Carla and Charlie if they wanted to speak with me and they did not. And I object to them lying to this august body over whether I asked to consult with them or not.

President Martin: OK. Public hearing is closed. Commissioners?

Commissioner Schiff: Madame Chair, I'll move to deny. The staff recommendation.

President Martin: Say that again.

Commissioner Schiff: Move to deny.

President Martin: So you want to approve.

Commissioner Schiff: Move to accept the staff recommendation; move to deny the variance (Krueger seconded).

President Martin: Alright, so you're moving to approve the staff recommendation which is to deny the expansion of the nonconforming use and the CUP? Or did you want to do them separately?

Commissioner Schiff: Separately.

President Martin: Second. Discussion?

Commissioner Schiff: I'll just say, if this property was individually historically designated, we wouldn't have to worry about the precedent setting nature of this variance, but I think we do have to be concerned about views for subsequent properties that are in this area and how this could help trigger a chain reaction. If this property was individually historically designated, then a variance of this type to the original structure could be granted by the Heritage Preservation Commission and would not be precedent setting to the overall character of the district. But this property is not designated individually and so we're stuck with the possibility of creating a precedence.

President Martin: OK, that was a motion to approve the staff recommendation on the expansion of nonconforming use. All those in favor of that motion, please signify by saying aye.

The motion carried 6 – 1 (Krause opposed; Tucker abstained)

President Martin: Variance.

Commissioner Schiff: Move to deny (Krueger seconded).

The motion carried 5 – 2 (Krause and Kummer opposed; Tucker abstained)

7. McDonald's (BZZ-2318, Ward 3), 916 West Broadway Avenue North (Lonnie Nichols).

A. Conditional Use Permit Application by JADT Food Group, LLC, dba McDonalds, for a Conditional Use Permit for extended hours to operate the McDonalds restaurant and drive-through located at 916 West Broadway Avenue North in the C3S (Community Shopping Center) zoning district for 24 hours per day, seven days per week. Regular hours of operation allowed under C3S zoning are 6:00 a.m. to 10:00 p.m. Sunday through Thursday and 6:00 a.m. to 11:00 p.m. Friday and Saturday. McDonalds was granted a CUP by the City for extended hours of operation from 4:00 a.m. to 1:00 a.m., seven days a week, with no speaker boxes to be in use after 12:00 Midnight or prior to 6:00 a.m. McDonalds currently operates the drive through from Monday through Thursday 6:00 am to 12:00 am, Friday 6:00 am to 1:00 am, Saturday 7:00 am to 1:00 am, and Sunday 7:00 am to 12:00 am.

Action: The City Planning Commission adopted the findings and **denied** the conditional use permit application for 24 hour operation for the McDonalds restaurant located at 916 West Broadway.

Staff Lonnie Nichols presented the staff report.

President Martin: Lonnie, a clarification. When this was before us 2 years ago, what is now the Cub store was a Target and was not open for 24 hours, but now is a Cub and it is open 24 hours, right?

Staff Nichols: That is correct.

President Martin: I'll open the public hearing. Is there anyone wishing to speak to item number 7?

Doris Baylor (owner with Tim Baylor): This is my general manager, this is Kyle Patterson. And what we wanted to speak to was why we want to oppose this recommendation. We've been in this community over 7 years. We've been extremely good neighbors, we've been good investors in our property, we have talked to our neighbors. The issues that were raised in 2003 have been addressed with our new technology. We have a screen that appears when a person places their order. And that screen shows exactly what they've ordered, so there's not a lot of verbal exchange. If there are problems, we can address them very quickly without a lot of conversation. We can adjust the volume on those speakers and they are directed right at the car and not projecting out into the community. We feel very strongly that this is a good partnership with the community. We've got the letters of support from our neighbor, neighboring groups. We also have worked with other businesses in the communities to really be more efficient and to maximize security and eyes on the street [tape end]… expense, but as you know in any business, you have to look at opportunities to increase your revenue as well as increase opportunities for your staff. Many of our staff would like to work longer and there is a demand for our high quality food in the community. And so we would like to be open to provide those services. If you have any questions about the operations, the technology itself, because those were the issues that were raised, Kyle can answer those.

President Martin: Thank you. Others who wish to speak.

Carrie Howell (Member of Hawthorne Area Community Council, 411 22nd Ave N). I'm not here in that capacity, I'm here as a neighbor. McDonalds has been a good neighbor; however, Broadway is surrounded by residential. And since the ordering and all that goes on behind the building, that faces the residential and you're going to have idling cars, which you can feel in the buildings – I know, because it happens where I'm living. You have boombox cars, you have extended traffic. We have spoken with Mr. Baylor in our meetings and we've asked for a firm commitment to security to using the off-duty police persons that Cub uses and Winners uses and the new Merwin Drug Liquor store is going to be using as well. And we haven't had a response about that – we didn't get a firm commitment. The HACC board did vote for it. There were 10 people there, 6 voted for, 2 abstained and 2 voted against. I'm really concerned about the fragile nature of Broadway and the fact that our neighborhood is just starting to pull itself up by the bootstraps. McDonalds has been a help in that. But I don't think that having this extra traffic noise, headlights and maybe security issues – I'm not sure how he's going to address the security issues. We couldn't get a firm idea of how he was going to do that. He was going to do it as needed. So, those are my objections. Not that I object to McDonalds, but this is a fragile area and the residential folks are going to be having more of a problem I think with noise.

Georgeann Yantos (423 North 25th Avenue): I have a couple of concerns also. And in particular, I noticed his letter from Sherman Associates talking about overnight traffic and recommending additional security issues. In the couple of meetings I was with him, he flat refused to pay any additional dollars for security overnight. We requested off duty police. So I'm really concerned about that. I'm also concerned about the high volume of calls. If you notice on the police incident report – not only at his business but right along Broadway there at 916 and all the other addresses that you have in front of you. There's just a high volume of calls to our police department. Please consider those things in your decision. Thank you.

President Martin: Anyone else? OK, I'll close the public hearing.

Commissioner LaShomb: I'm going to move the staff recommendation (Tucker seconded). Well, there's a list in the packet that shows the various businesses that have 24 hours and those that have limited hours and there seems to be a trend. The grocery store has 24 hours, but the others seem to have limited hours, I guess there's an exception, White Castle for some reason has 24…

Commissioner Schiff: It's grandfathered.

Commissioner LaShomb: It's grandfathered. My point about this is – I think if you grant this to McDonalds, then every one of these groups that have limited hours are going to come in here and also want to do this. And given what I thought I saw in here about police activity up in that area, I'm not really sure that I wouldn't want to have 24 hour operation with all these others. I think McDonalds is a fine business. I like McDonalds. But I just don't think in this situation that 24 hours is appropriate.

Commissioner Krause: Madame Chair, I'm going to vote against the motion to deny. I don't really feel as if we really know definitively whether these businesses being open 24 hours is a help or a hindrance to the public safety and the atmosphere on the street. And really, that's not something the staff has been analyzing for us – they're rather strictly following the standard of impacts on adjacent residential areas. So what I look to and read very carefully – both our discussion from last time and also the letters that came to use – I really think we have to let the community decide. The people that are on West Broadway every day, the people who have made substantial investments, other people who have made substantial investments in the businesses there, and really listen to their opinion of whether this is a help or a hindrance. We already allow them to be open from 4 in the morning until 1 in the morning. We're talking about 3 hours additional here. And it's my sense that perhaps those police incident reports maybe were capturing things that we wouldn't otherwise be capturing because we have the eyes on the street. So I would be in favor of granting the conditional use permit and I'm going to vote against the motion.

Commissioner Schiff: I just want to note for Commissioners the unique design of this strip mall where it's close to residential properties. It's not built up close to the street…

President Martin: We tried to fix that when it came through for original approval and it went nowhere.

Commissioner Schiff: Funny how these things just keep coming back sometimes. So yes, the applicant went against the Planning Commission's original wishes and had this built back towards the homes.

President Martin: Can I tell you why? Because they could not get bank financing to put it up at the street. And actually the banker testified.

Commissioner Schiff: So, this is going to have more of an impact on residential homes than otherwise if it's a typical McDonalds where it's built a little closer towards the street and it's surrounded by its own drive through and there's some distance. This is just too close to those other residential homes. I will note that there's a real lack of 911 calls happening in the early morning right now. If you look through the long list of police calls, there is a gap. And I would suggest that's because it's closed and this shows that it's working and the majority of calls right now are happening during the daylight when this business is open and we don't need to disrupt the community unnecessarily. This is adequately serving the needs of the community in its current hours of operation.

President Martin: OK, the motion is to approve the staff recommendation which is to deny the CUP for 24 hours. All those in favor of that motion , please signify by saying aye.

The motion carried 6 – 2 (Krause and Motzenbecker opposed).

8. Biltmore – On Lake Calhoun (BZZ-2338, PL-170, Ward 13), 3809, 3811 and 3813 Sheridan Avenue South (Becca Farrar).

A. Conditional Use Permit: Application by Travis Van Liere, on behalf of the Biltmore Land Group, LLC, for a Conditional Use Permit for a 6-unit cluster development in the R2B district for the properties located at 3809, 3811 and 3813 Sheridan Avenue South.

Action: The City Planning Commission adopted the findings and **approved** the application for a conditional use permit to allow for a 6-unit cluster development for property located at 3809, 3811 and 3813 Sheridan Avenue South.

B. Conditional Use Permit: Application by Travis Van Liere, on behalf of the Biltmore Land Group, LLC, for a Conditional Use Permit to allow development within 40 feet of the top of a steep slope for the properties located at 3809, 3811 and 3813 Sheridan Avenue South.

Action: The City Planning Commission adopted the findings and **approved** the application for a conditional use permit to allow development within 40 feet of the top of a steep slope for property located at 3809, 3811 and 3813 Sheridan Avenue South , subject to the following condition:

1. Removal of vegetation on the steep slope shall be prohibited except as authorized by the zoning administrator in section 551.520 of the zoning code.

C. Variance: Application by Travis Van Liere, on behalf of the Biltmore Land Group, LLC, for a variance of the front yard setback requirement along Sheridan Avenue for the properties located at 3809, 3811 and 3813 Sheridan Avenue South.

Action: Notwithstanding staff recommendation, the City Planning Commission **approved** the application for the variance of the front yard setback requirement to 20 feet along Sheridan Avenue for property located at 3809, 3811 and 3813 Sheridan Avenue South based on the following findings:

1. The design intent and the spatial configurations of the cluster development are meant to act as a whole and to shift one piece out of that whole would disrupt the entire development;

2. Not allowing the variance would reduce the amount green space and views that are planned;

3. The spatial envelope of the proposed corner building will reinforce the street wall;

4. The buildings are going to be inserted into the grade; thus, perceived height is reduced;

5. Proposed vegetation on the site will help mask that particular building;

6. Based on the concept of the cluster development, it is important to make it work with a common space. Leaving the gaps between the four front buildings does get the common space down in the front and connect it; and

7. The rhythm of the front four buildings being separated is more sympathetic to the neighborhood context.

D. Variance: Application by Travis Van Liere, on behalf of the Biltmore Land Group, LLC, for a variance of the front yard setback requirement (reverse corner) along West Calhoun Parkway for the properties located at 3809, 3811 and 3813 Sheridan Avenue South.

Action: The City Planning Commission adopted the findings and **approved** the variance of the front yard setback requirement (reverse corner) along West Calhoun Parkway for property located at 3809, 3811 and 3813 Sheridan Avenue South subject to the following conditions:

1. Reduce the drive aisle width to 22 feet and shift the applicable residential structures an additional 2 feet south.

E. Variance: Application by Travis Van Liere, on behalf of the Biltmore Land Group, LLC, for a variance to permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope for the properties located at 3809, 3811 and 3813 Sheridan Avenue South.

Action: The City Planning Commission adopted the findings and **approved** the variance to permit development in the Shoreland Overlay District within 40 feet of the top of a steep slope for property located at 3809, 3811 and 3813 Sheridan Avenue South.

F. Major Site Plan Review: Application by Travis Van Liere, on behalf of the Biltmore Land Group, LLC, for a Major Site Plan review for the properties located at 3809, 3811 and 3813 Sheridan Avenue South.

Action: The City Planning Commission adopted the findings and **approved** the site plan review application for property located at 3809, 3811 and 3813 Sheridan Avenue South subject to the following conditions:

1. Planning Staff review and approval of the final site, elevation and landscaping plans.

2. All site improvements shall be completed by May 23, 2006, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.

3. The access drive shall be reduced 2 feet to the minimum of 22 feet so that the residential structures fronting on West Calhoun Parkway can be shifted 2 feet to the south.

4. The proposed structure located at the northwest corner of the site (on the corner of West Calhoun Parkway and Sheridan Avenue South) shall be modified to meet the 10 percent window requirement on the second floor facing Sheridan Avenue South.

5. Retaining wall / fence structures shall not exceed four feet. All proposed retaining wall / fence structures are subject to final review and approval.

6. The applicant shall define more clearly define on the final site plan where the proposed fencing will be located and shall provide a detailed elevation of any proposed fencing with the final plans.

7. The retaining wall being proposed at the entry off of Sheridan Avenue South shall be removed from final plans in order to maintain required sight distances and visibilities.

G. Preliminary Plat: Application by Travis Van Liere, on behalf of the Biltmore Land Group, LLC, for a Preliminary Plat (PL-170) for the properties located at 3809, 3811 and 3813 Sheridan Avenue South.

Action: The City Planning Commission adopted the findings and **approved** the preliminary plat application for property located at 3809, 3811 and 3813 Sheridan Avenue South.

Staff Becca Farrar presented the staff report.

Commissioner Schiff: Becca, can you explain what you understand the impact of the staff recommendation to be on the proposal? Without approving that sideyard setback, are you intending for them to remove a unit or to make all the units smaller and closer together?

Staff Farrar: Well, it's pretty much up to the applicant. How it is in its current configuration, one would expect that they would lose 1 to 2 units. And we don't necessarily think that 6 units is injurious – it meets all the requirements in regard to lot width, lot area requirements, all of that stuff. But by denying that setback on Sheridan, it would likely require a reduction – they'd have to move their 40 percent open space with a cluster and I think that's impossible if we were to deny that variance.

Commissioner Motzenbecker: Becca, can you clarify if the house at 3815 – that house directly behind the development, is that existing or has that been torn down?

Staff Farrar: Well, it was existing. They did remove the majority of that structure actually for renovations. And I did speak with the developer or the builder of that property and he had said that basically they were looking to do some renovations and merely fix it and I think that he found the foundation or actually the structure itself was weak, but I believe they're building on the existing foundation. That's the way that I understand it. But I drove out there myself and it looks to be, other than the foundation which supposedly is old, looks to be entirely new.

Commissioner Motzenbecker: And what is the City's position on.. because the current house is outside of that setback and the proposed use would fit within that same setback line as it appears, so it technically would not be a change in where that building sits, so I was just wondering what the City's take is on that. The garage of the current house on the lot that's going to be turned out is in the same sight line as the proposed building.

Staff Farrar: I think that our perspective on that was that even though it is somewhat in the same sight line, I believe it's set back further than 20 feet just from visually looking at it. Perhaps it's not. But it's also a tuck-under garage and I think if you're going to be looking at a 35-foot structure, as opposed to a tuck-under garage, I think the impacts are going to more substantial.

Commissioner Tucker: I just had a question about the common open space for the cluster. As proposed, that meets the 40 percent?

Staff Farrar: It does.

Commissioner Tucker: And that's in the space between the front houses and the two back houses, or does that include the front slope?

Staff Farrar: It also includes the front. The way that they're platting it is that each individual structure will be located on its own lot. The rest of the area is common space.

Commissioner Tucker: And so the units in back can get to that front slope by the stairs?

Staff Farrar: Correct.

Commissioner Tucker: So, the driveway parking area doesn't reduce that to less than half of the 40 percent needed?

Staff Farrar: That's correct.

Commissioner Tucker: Thank you.

President Martin: OK, I'll open the public hearing and ask if there's anyone who wishes to speak to item number 8.

Dan Anderson (3812 West Calhoun Pkwy.): The only reason I'm up here right now is because Charles Stinson had promised us a wall along here which I believe he intends to follow because we've had 20 years of erosion. And my picture window is right here. As long as this doesn't go out any further, I don't have too big of objection. And we have a utility pole here and he's promised us that he'll put that underground and I don't want to be assessed on moving a transformer, so I just want to be on record doing that. Other than that, those homes have been abandoned now basically they're empty for two months now – it'd be nice to get something going. He's been forthright, I've seen his work around town. We have no objections and good luck.

Julie Allenson Erickson (3822 West Calhoun Pkwy.): I live in the same set of structures as Dan going this way. And I'm concerned about how far this sticks out for Dan and for the rest of us. That's really a great walking area, et cetera. And is this within… I believe he said it went to 20 feet on the front on West Calhoun Parkway and is that the full 20 feet, or is the 20 feet pushed out further?

Staff Farrar: Well, the way that the site's configured, it's 20 feet at the closest point on West Calhoun Parkway, so they're sort of located in a diagonal manner, out along West Calhoun Parkway. It's 20 feet at the closest.

President Martin: 20 feet for the one that's furthest north.

Staff Farrar: However, it extends much further.

Julie Allenson Erickson: So you're thinking this one is 20 feet.

Dan Anderson: This is a little deceptive. Let's look at the home that's standing here now. Is… Can you see my finger? So I believe, Charles, let me know if I'm wrong here, from the existing home that's there, we're talking about 4 ½… 3 feet closer.

Julie Allenson Erickson: Then how did we get from 55 feet for the existing homes to 20 feet.

Staff Farrar: As I was mentioning before, the setback is irregular along West Calhoun Parkway. It sort of jogs in and out and that's why it's 20 feet at the closest point.

Dan Anderson: This might help you too. This home that's here now, this has been torn down. And this home goes all the way back to here with a garage and an extension and a deck on top of that. It's a congested corner, but my concern is I don't have any issue with it. Maybe other neighbors do.

Julie Allenson Erickson: I just want to make sure it really isn't going further out than we're anticipating. I haven't seen these plans until today.

President Martin: Well, Ms. Erickson, we have plans and if the developer says what they're going do what it says on these plans, it won't move.

Tom Austin (3790 Lake Calhoun): I'm actually supportive of the project. I'm really grateful that Charles Stinson, who's actually a modern day Frank Lloyd Wright, is going to be developing something in the neighborhood because it will really be a face lift. It is a dilapidated neighborhood in many ways and I encourage you to approve the variances that he's requested. Thank you.

President Martin: I think a lot of people here might laugh at the idea that you guys live in a dilapidated neighborhood [laughter].

Commissioner Schiff: That and McDonalds is quality food [laughter]?

Charles Stinson (architect and one of the owners and developers): If I could take just a minute to kind of go in the background. The Biltmore group, the owners, it's a group – myself as the architect, Streeter and Associates (three of the partners) and a fifth partner. And we formed this group about three years ago and the intent of doing it was to do some good development – to kind of put our money and our effort where our passions are. And we were actually invited by a neighbor into this project and then the property next to it became available and now this neighbor said, 'Why don't you get that one too?'. So it was a stretch for us to do this, but we did it. And it's almost a year now that we've met with the City and the Planning Department and the Zoning has been to great to work with. We've met with policemen and engineering, et cetera. We realize that the property, with the zoning, we could get a density – it's approved in the zoning up to 12 units. That was never our intent. We originally were going to have them attached units. Early in the process, one of the planners suggested that perhaps we stretch them out to get some space and maybe go to single family homes – that the space between them would be more receptive to the neighborhood. As we got into this, we saw another benefit to doing this. And this is where the importance of the Sheridan setback comes in. Because of the terrain of the site and the hill, to get handicapped accessibility into the units became more challenging. So our idea was we wanted to keep the hill and keep the trees, but so actually our driveway that we have under the property [illustration on overhead] – the driveway into the property, the idea is we're going to do that in pavers and make it kind of a European courtyard which [is] actually heated to take care of the snow removal problem. But the idea is coming in here that we'd actually carve that down so we'd keep a low profile. So, even though we have a 35 foot height that we're allowed to go 35 feet, our idea is to keep it lower. So by doing the tuck-under and the garage access from that point, that could also take care of our handicapped accessibility because guests could come from that entrance as opposed to going up the stairs on the Calhoun side and we could take a 2-car garage and then

have enough room for an entrance and then we're going to be roughing in an elevator in each building, so it's up to the owner to put one in if they want. With that width, that became our width and that worked within the setbacks of the existing building. All the requirements, all the variances that we're looking for – the existing buildings that are there now would require the same variances that we're looking for. The other thing we're doing is we looked at (if we could zoom out a little to look at the overall neighborhood)… We also got involved, besides ourselves as architect and builder, Cohen and Partners, who just have won a lot of awards nationally and locally, and they're just great contextual land planners, I mean we really get into neighborhoods, they just do a great job. Working with them, we looked at the whole texture of the neighborhood. Again, instead of putting these buildings together, having them individual and work within the character and the setbacks. I circled a number of homes all the way around this neighborhood – I think there's 12 or 14 within the block – that are all within the setbacks that we're looking at on Sheridan. And the location of the buildings on Calhoun, we vary from actually… from the actual curb, we are about 105 to 132 feet away from the curb and where we'll be on Sheridan is 32 feet away from the curb. So, in that idea, the units we're looking at – we're looking at 2,000 square feet to 5,000 for the biggest one. So the idea is 2,000; 2,000; 3,000; 3,000; maybe 4,000 and 5,000. So we're not overpowering the neighborhood and actually we're smaller than a number of the footprints that we have in the neighborhood. But also, creating kind of a little community within the community with the shared open space and a visual open space. And the house directly to our south, the one that Erik and Stef are walking on, they've enlarged the footprint quite a bit. So even working with them, they'll have an open view over our open space and through those buildings if we keep the setback we have. So, early on we met with the immediate neighbors when we were working with the City and kept them informed and their support and then we went from there to the neighborhood zoning or planning meeting and we got unanimous approval on that. And this last week, we got together with the concerned neighbors on Sheridan. Since then, we've included today, we have letters from the neighbors that didn't come. We have letters from the immediate neighbors – all of them that immediately touch or see our property are in total support of the project just as it is. And there's also a list – in the neighborhood meeting last Sunday – all the neighbors that were invited on Sheridan came and we also have a list if you would like to look at the names and their opinions. So from that there were no opposed. They were for or neutral. So our goal is to do just a really great project on this site and have it a win-win for everyone.

President Martin: Mr. Stinson, I think there are some questions. Jason, you had something?

Staff Wittenberg: Just a quick point. Reference was made to the ability to put 12 units on the property, but according to Ms. Farrar's report, page 17, at least 5,000 square feet of lot area is required per dwelling unit and 5,058 is proposed per dwelling unit, so my understanding is that 6 units is the maximum number that could be placed on the property without any kind of variance.

Charles Stinson: I'll have Travis answer that.

Travis Van Liere (landscape architect, Cohen Partners): Early on in the process, when we were just feeling out what the zoning requirements were for this site, it was stated to

us when we spoke with the Zoning Administrators that ultimately if we wanted to, we could do 6 multi-family units on the property. That would be within the 5,000 square foot requirement, giving us 12 units for the site. We had never intended to do that. That was just stated to us as part of what could be potentially put on to the property by zoning code. That was very early on in the process.

Commissioner Schiff: I do have a question for Mr. Stinson. Given the staff recommendation to deny the side yard variance, what would that do to your project?

Charles Stinson: Well, the units would have to either be joined together or we lose the handicapped accessibility. Because within the zoning, we're not allowed to have entrances between the buildings.

Commissioner Schiff: And then, do you have an elevation for the west side facing Sheridan that you can show us.

Charles Stinson: Yes. To show the approach coming down Sheridan. This is the view from mid-block which our site is at the very end. This is the next one, progression. The sawhorses are where our property begins so we're getting closer. And this photograph is taken – this is the beginning of our property. This is where the renovation is going on. So walking up the street, there's existing landscaping that we intend to keep and the site grade goes up and that's why we are digging the units into the ground here at the entrance. So, to the right, you cannot see in this photograph the existing garage which is at the same location as we propose the new building to go. So if our new building, which at the top of the hill will be 2 stories, it won't be 3 stories, because we're digging the lower level in. So it will be off the page from here. And because of the line of vision – the triangle – from that corner, we're 130 feet away from the road so there really is no vision. And the people most influenced by our property directly to the south are in total support of the project the way it is now. The other thing that happens, if we move things back, actually the view that they now will be getting with this plan will be reduced because we're keeping kind of a view corridor for them through the middle of the project.

Commissioner Schiff: Mr. Stinson, I think that view there helps address one of my concerns which is of a wall being created as you go down the sidewalk. But can you show the west elevation? I have very small, shrunken versions of them and I have a hard time figuring out what's a window and what's part of the exterior structure.

Charles Stinson: This would be the west side. It doesn't show all the trees. The drawing was an attempt to show the architecture. If we drew all the trees, you wouldn't see the architecture. But the materials we're using as well – you can see where it will just be a 2-story at that point. And the materials we're using are natural tones – kind of a golden limestone and kind of a bronze window and try to have traditional colors and materials with kind of fresh, modern forms.

Commissioner Schiff: OK, so the vegetation would pretty much obscure the entire first level.

Charles Stinson: And also, in the driveway there will be kind of a view corridor into that courtyard. So it isn't just a wall of buildings. There's some rhythm to it and the same from the Calhoun. Even from Calhoun, what you see on the corner here, we're terracing it, or we're stepping it back, so it actually reduces – the corners are kind of recessed in 4 feet from each side.

Commissioner Motzenbecker: Mr. Stinson, the staff has some concerns with the height of the retaining walls in front of the property, or the Lake Calhoun frontage of the property. Can you address the reasoning behind that height?

Charles Stinson: What we're doing is at that point on the grade is creating kind of a lawn area. Our idea is we put a giant number in our budget for landscaping. We're going to be spending hundreds of thousands of dollars to do immediate large landscaping. And there we're looking at a natural stone like a blue stone, so it will be very subtle. But at least then we could work on the grades and the main level, as opposed to having a balcony or something, you're coming out on to the site. So it will be very understated, plus it's a hundred feet away from the parkway. It's a long ways back.

Commissioner Motzenbecker: Could you address the intent of the height of the wall? I believe it was 6 feet high…?

Charles Stinson: Well, it varies.

Travis Van Liere: The reason why it's 6 feet at front is basically the grading plan works its way out from the back of the site to the front of the site and we're dictated by what the existing elevation is set at the road for Sheridan and driveway access is into the site. We kept all the elevations for the back areas of the site at the same grade for all the units and then moved up only 8 feet from the garage to the main floor and that grade pushes that out to the front and it requires those retaining walls to be at the height so that the entry area is as a level entry into the site. Otherwise, we would have continuous stairs coming right up to the front….

Commissioner Motzenbecker: Could those walls on the Calhoun frontage be reduced? Because they don't look to me like they're retaining on the Calhoun side. They look like they're providing enclosure for the yard. Would reducing the height of them affect your retaining function?

Travis Van Liere: We could reduce them a little bit – 4 feet is probably what we could get down to. Otherwise, it's going to be pretty steep on the parkway side for the grades.

Charles Stinson: Could I add one other thing? From the pedestrian, as you can look at the wall here – by having the wall at this point on that lawn, as you look up, it really blocks the view of the building. It's going to make the building look much smaller in height and as well is for the privacy. The idea – and everybody is getting older – and if you can do things that are accessible, it just is nicer. So even guests coming over, instead of walking out on a balcony or dropping down a steep lawn, the main living area can just open up to a subtle lawn so there's some subtle activity on the lake instead of just walls of building. Again, in trying to create something that's in harmony with the

neighborhood and the field, it's kind of a win-win scenario. It seemed like it was a wonderful solution that took care of… I mean, it's been a year tweaking these projects…

President Martin: Mr. Stinson, you're pitching us here [laughter]. We're not buyers.

Commissioner Motzenbecker: One more question on the wall. I know there were some questions stated about a metal fence, at least on the plan there was some indication of a metal fence around the rear of the property, but then there was also a conflicting elevation showing the stone wall was there as well. Could you please clarify that for me.

Charles Stinson: There's no metal fence. There's a railing up above that we may be using airplane cable on the upper level just because it's transparent (because of height requirements). And I have an example for that [shows overhead]. This is a house that we did on Cedar Lake and you can see the cable railing.

Commissioner Motzenbecker: So it's a cable rail fence. Thank you.

Commissioner Tucker: Could you talk a bit more about the south elevation. I'm particularly interested in the part between the 20 foot setback and the 41 foot setback – what that's going to look like.

Charles Stinson: [showing illustration] The south elevation is on the bottom. The house that Erik and Stef are building actually goes from here to about back here. They are creating a kind of a roof-top deck and that's where their view now will be between our buildings and kind of to the open space of the pool area. But the back buildings are very simple. It's about … actually we stepped back the corners, so it's about 22 feet. And stepping back and with natural materials and the glass we are planning to use there, was like translucent so it was more of a glow so they wouldn't lose privacy and neither would we. So it's really like two glorified carriage houses.

Commissioner Tucker: What would be the effect of moving that one back to the 41 feet?

Charles Stinson: Well, we would lose the open space as one, courtyard space and they would lose their view that we're creating.

Shane Cohen (Cohen partners, 400 1st Avenue North): I just wanted to say, more historically, I go around and lecture – recently at Clemson, South Dakota, North Dakota, University of Minnesota… on urban design and neighborhood planning issues. It is the most passionate thing besides my kids and family for sure in my life. Two things I just wanted to share with you. When Biltmore started, they invited Travis and I over to talk about their development group and they said two things: We want to push you to do the best development possible and we want you to push us; very unusual for developers. And the second thing that Streeter said is we want to spend a lot of money on landscape. That's also very unusual.

President Martin: Come on, you guys did Jackson Meadows, didn't you?

Shane Cohen: Absolutely.

President Martin: So it's not so unusual for you.

Shane Cohen: But it's understated. No, but Harold's a great developer. So, I think this started out actually in our office as 6 attached… Biltmore's idea was 6 attached units. I felt extremely passionate that that was not the right proposal. That we needed breaks between each one and that we'd see 4 from Calhoun. That the breaks, the voids, would be as important as the masses. And I think we've achieved a really interesting balance of scale and relationship to street. And the wall that we're proposing – and I think we can get it down to 4… my friend has been working with these contractors and streeters on these blue stone walls now for quite a few years and they do have an unbelievably quiet and pleasing texture to them that will set this line up across Calhoun. So I think it's a quite positive addition to the architectural character facing Lake Calhoun.

Jim Lotter (3831 Sheridan): I guess I would just like to say that I'm not in approval of the setback along Sheridan. I think it caps the end of the street and ruins the site line for all of us that live back on Sheridan. Right now, that's true, there is a garage there, but it's a tuck-under garage and it's not above the ground level. Building a 2-story plus unit that's there is going to impede the end of the block, it's going to kind of cap it and it's going to change the look of the street and the neighborhood as we know it.

President Martin: Anyone else? I'm going to close the public hearing. We have a whole bunch of stuff here, Commissioners. I think we're going to need to march through them in order. We might be able to do a couple variances together, but not the hard one.

Commissioner LaShomb: I'm going to move approval of conditional use permit A and B (Tucker seconded).

The motion carried 8 – 0.

Commissioner LaShomb: Well, I'm going to need some help with some justification, but I want to move approval of the variance under C (Motzenbecker seconded).

Commissioner Motzenbecker: I have lots. I think that keeping the setback… I don't think it should be reduced to 41.5; I think it should kept up at 20 feet. Specifically because in a cluster development, the intent of the development – the design intent and the spatial configurations are meant to act as a whole. And to shift one particular piece out of that whole would disrupt the entire thing and basically ruin the intent of the cluster development. It would also reduce the amount of green space, reduce some of the views that were already mentioned. Some of the ideas about the placement of… under the zoning code, the building placement and façade: the building shall reinforce the street wall, et cetera – the spatial envelope of that proposed corner building does do that and I think it does so in coincidence with the building that's in front of it. It again should not be moved back to conflict with that. In speaking to the views or the height of that particular piece as well, it's been stated by the architect that the buildings are going to be inserted into the grade so it will reduce the perceived height of the building from beyond as well as the picture that was shown and that I have been to the site as well and to see that vegetation that's currently there, which a lot of the vegetation as

proposed to have been kept on the site, I think would help to mask that particular building as well. Thank you.

President Martin: Commissioner Tucker, you have things to add?

Commissioner Tucker: Yes, I wanted to second many of his comments. Back on the idea of the cluster, I think it's important to make it work with a common space and leaving the gaps between the four front buildings does get that common space down in to the front and connect the two. I also think the rhythm of the front four buildings being separated probably is more sympathetic to the neighborhood context than having a single building four of those wide. Normally I am all for keeping that street wall wherever the neighbors are at 41 feet, but I think in this case it does work and I would support granting the variance.

President Martin: OK, so the motion is to approve the variance for the front yard setback. All those in favor of that motion, please signify by saying aye.

The motion carried 7 – 1 (Krause opposed).

Commissioner LaShomb: I'll move D and E (Tucker seconded).

The motion carried 8 – 0.

Commissioner LaShomb: I'll move the site plan with at least…I see possibly two changes (Tucker seconded). One is I think number 6 needs to be amended to say that the retaining wall fence structure in the front yard shall not exceed 4 feet and then the next sentence is probably appropriate. And then I'm not quite sure what 8 means, so…anyone can tell me whether that should be in there or not. I would propose taking it out, but I could be wrong. Is it necessary to have it in there – I guess that's the question. [response off microphone] I see a head yes.

President Martin: Becca is saying yes.

Staff Farrar: That proposed retaining wall was discussed several months ago as PSPR or PPR – it's known as a few things now. But regardless, Public Works had asked for that to be specifically removed from the plans because it reduces site visibility and you can't see in or out when maneuvering.

Commissioner LaShomb: So I would approve the site plan with a modification to item number 6.

Commissioner Motzenbecker: I would like to add an additional condition. I have a concern with the proposed number 4, reorienting that building to face Sheridan. Again, the same argument being with the cluster development. While normally I agree with that intent, in this case, it would compromise the intent of the cluster development to have to reorient just the one building out of sync to have to face and have an entry on Sheridan. So I would move with that.

President Martin: So you're proposing what, deleting that?

Commissioner Motzenbecker: Yes, deleting that condition.

Staff Wittenberg: I'm actually concerned that the Commission may not have the authority to do that. Single family homes for example, there is no authorized exception from the front entrance facing the street. And I think the code is perhaps not clear about whether there is an exception from that requirement for a cluster development. Actually, I'll take that back. We do have clusters where there are units that don't face the street. I would take that back – you do have the authority.

Commissioner Schiff: I just have a question for the author. What the purpose is for explicitly allowing a 4 foot retaining wall in the front of the house.

Commissioner LaShomb: I haven't been out there to look at the site, but if the ground is going to be so steep going down to the street or the curb or whatever it is there, it's really pretty unusual property. I would rather allow some green space for the buildings on top of the hill. 6 feet is much too high to me – 4 feet… There are lots of retaining walls around Lake Calhoun – it's not a big surprise that people…

Travis Van Liere: Can I say something on that retaining wall? There's a retaining wall there right now.

President Martin: Right, you showed it to us.

Travis Van Liere: Without it, that whole front would erode. There aren't large enough trees there to hold that property up.

President Martin: It seems necessary.

Commissioner LaShomb: And I think I was going to get to that – I think there's a reason why there are retaining walls. So things don't slide down including people and trees and bushes. So that's the reason why I think the 4 foot is justifiable. But 6 feet to me gets to be a little prison wall look. I think 4 feet is a normal height for fences and other things.

President Martin: Commissioner LaShomb, is it considered a friendly amendment to you to delete condition number 4?

Commissioner LaShomb: Yes, I think it's fine.

President Martin: OK, so the motion that's before us is to approve the site plan with condition number 4 deleted and condition 6 amended to stipulate that the retaining wall is no higher than 4 feet. All those in favor of that motion, please signify by saying aye.

The motion carried 8 – 0.

Commissioner LaShomb: I'll move the preliminary plat (Tucker seconded).

The motion carried 8 – 0.

11. Lagoon Mixed-Use Development (BZZ-2286, PL-169, Ward 10), 1320 Lagoon Avenue South, 2900 Fremont Avenue South, 2904 Fremont Avenue South and 2908 Fremont Avenue South (Becca Farrar). This item was continued from the April 25, 2005 and May 9, 2005 meetings.

A. Rezoning: Application by Gretchen Camp, on behalf of The Ackerberg Group, for a petition to rezone a portion of the subject property from the C2 district to the C3A district for the property located at 2900 Fremont Avenue, 2904 Fremont Avenue and 2908 Fremont Avenue South.

Action: The City Planning Commission recommended that the City Council adopt the findings and **approve** the rezoning petition to change the zoning classification of the property located at 2900 Fremont Avenue, 2904 Fremont Avenue and 2908 Fremont Avenue to the C3A district.

B. Conditional Use Permit: Application by Gretchen Camp, on behalf of The Ackerberg Group, for a conditional use permit for a Planned Unit Development for the property located at 1320 Lagoon Avenue South, 2900 Fremont Avenue, 2904 Fremont Avenue and 2908 Fremont Avenue South.

Action: Notwithstanding staff recommendation, the City Planning Commission **approved** the application for a conditional use permit to allow for a Planned Commercial Development for property located at 1320 Lagoon Avenue South, 2900 Fremont Avenue, 2904 Fremont Avenue and 2908 Fremont Avenue based on the following findings:

1. The density is appropriate for the area with regards to existing sufficient transit;

2. The project recognizes the value of height with respect to a desire for density, especially when height is traded against public space; and

3. The project adds to the unique character of Uptown.

4. The project adds daytime activity to the area.

And subject to the following condition:

1. The applicant shall be required to submit letters of agreement with Hennepin County to work together regarding the plaza and bridge as amenities.

C. Conditional Use Permit: Application by Gretchen Camp, on behalf of The Ackerberg Group, for a conditional use permit for the expansion of the Lagoon Theatre for the property located at 1320 Lagoon Avenue South, 2900 Fremont Avenue, 2904 Fremont Avenue and 2908 Fremont Avenue South.

Action: The City Planning Commission adopted the findings and **approved** the application for a conditional use permit to allow for a theatre expansion for property

located at 1320 Lagoon Avenue South, 2900 Fremont Avenue, 2904 Fremont Avenue and 2908 Fremont Avenue subject to the following conditions:

1. Modification of the façade along Lagoon to incorporate a theatre entry at the southwest corner of the theatre.

D. Variance: Application by Gretchen Camp, on behalf of The Ackerberg Group, for a variance of the interior side yard setbacks for the proposed residential structure for the property located at 1320 Lagoon Avenue South, 2900 Fremont Avenue, 2904 Fremont Avenue and 2908 Fremont Avenue South.

Action: Notwithstanding staff recommendation, City Planning Commission **approved** the variances of the required interior side yard setbacks for the proposed residential structure for property located at 1320 Lagoon Avenue South, 2900 Fremont Avenue, 2904 Fremont Avenue and 2908 Fremont Avenue based on the following findings:

1. The site has unusual configurations as it is an infill site. Additionally, the interior oriented design of the site justifies the variance;

2. The configuration is desired in order to maintain the outer liner of buildings;

3. Proximity to the Greenway and the bus corridor that runs along the northern edge of the site;

4. The bus corridor is a buffer from other uses; and

5. Granting the setback in general is not injurious to the use or enjoyment of other property in the vicinity.

E. Variance: Application by Gretchen Camp, on behalf of The Ackerberg Group, for a variance of the required rear yard setbacks for the proposed residential structure for the property located at 1320 Lagoon Avenue South, 2900 Fremont Avenue, 2904 Fremont Avenue and 2908 Fremont Avenue South.

Action: Notwithstanding staff recommendation, City Planning Commission **approved** the variance of the required rear yard setback for the proposed residential structure for property located at 1320 Lagoon Avenue South, 2900 Fremont Avenue, 2904 Fremont Avenue and 2908 Fremont Avenue based on the following findings:

1. The site has unusual configurations as it is an infill site. Additionally, the interior oriented design of the site justifies the variance;

2. The configuration is desired in order to maintain the outer liner of buildings;

3. Proximity to the Greenway and the bus corridor that runs along the northern edge of the site;

4. The bus corridor is a buffer from other uses; and

5. Granting the setback in general is not injurious to the use or enjoyment of other property in the vicinity.

F. Variance: Application by Gretchen Camp, on behalf of The Ackerberg Group, for a variance of the Pedestrian Overlay Standards for the property located at 1320 Lagoon Avenue South, 2900 Fremont Avenue, 2904 Fremont Avenue and 2908 Fremont Avenue South.

Action: The City Planning Commission **approved** the application for the variances of the Pedestrian Overlay District standards including (1) building placement for the residential building as it is not located within 8 feet of Lagoon Avenue or Fremont Avenue, (2) driveway widths, and (3) building façade window area for the Lagoon Avenue frontage due to an uneven distribution of windows for property located at 1320 Lagoon Avenue South, 2900 Fremont Avenue, 2904 Fremont Avenue and 2908 Fremont Avenue South subject to the following conditions:

1. The curb cuts/driveways shall be limited to a maximum of 23 feet, 10 inches off of Lagoon Avenue and to 24 feet off of Fremont Avenue.

2. The proposal shall meet the 40% window requirement along Lagoon Avenue but such window area need not be evenly distributed.

G. Major Site Plan Review: Application by Gretchen Camp, on behalf of The Ackerberg Group, for major site plan review for the property located at 1320 Lagoon Avenue South, 2900 Fremont Avenue, 2904 Fremont Avenue and 2908 Fremont Avenue South.

Action: The City Planning Commission adopted the findings and **approved** the site plan review application for property located at 1320 Lagoon Avenue South, 2900 Fremont Avenue, 2904 Fremont Avenue and 2908 Fremont Avenue subject to the following conditions:

1. Planning Staff review and approval of the final site, elevation and landscaping plans.

2. All site improvements shall be completed by May 23, 2007 unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.

3. The applicant shall submit a lighting plan showing foot candle measurements before final plans are approved.

4. The Travel Demand Management Plan must be approved by the Planning Director prior to submission of plans for final approval and building permit issuance.

5. Review and approval of a security plan as outlined by the City's CPTED officer.

6. Modification of the theatre to incorporate a principal entrance at the southwest corner of the building.

7. Incorporation of windows, entries, recesses, projections or other architectural elements to the north and west ground floor elevations of the proposed residential building to break up the blank uninterrupted walls that exceed 25 feet in width.

8. Proposed bollards in the plaza shall be replaced with landscape planters.

9. Approval of the conditional use permit for a Planned Unit Development.

10. Movie titles and times will be displayed and viewable from the street.

11. The pedestrian connection from the transit plaza to the Girard Plaza shall be expanded and made more direct subject to staff approval.

12. The sidewalk on the northern edge shall be at least 8 feet wide, notwithstanding variances going to zero.

13. The site shall include no fewer than 60 bicycle parking spaces.

H. Preliminary Plat: Application by Gretchen Camp, on behalf of The Ackerberg Group, for a preliminary plat for the property located at 1320 Lagoon Avenue South, 2900 Fremont Avenue, 2904 Fremont Avenue and 2908 Fremont Avenue South.

Action: The City Planning Commission adopted the findings and **approved** the preliminary plat application and the drainage/utility easement variance for property located at 1320 Lagoon Avenue South, 2900 Fremont Avenue, 2904 Fremont Avenue and 2908 Fremont Avenue.

Staff Becca Farrar presented the staff report. She noted letters received regarding the project and distributed to Commissioners.

President Martin: Becca, let me ask you a question. Because we've seen in our Committee of the Whole the proposal for the redesign of Calhoun Square which has, at least as we saw it, a great big open pedestrian sort of thing along what would be Girard. And we were told at that time that they were talking with this developer about having a kind of continuous open space that they were thinking of as an alternative street. Sort of public space street. So you're telling me this would not meet that intent.

Staff Farrar: Not the way that we define it. And quite frankly, I haven't had an opportunity to see that set of plans and I'm not the planner on that particular project. It's true that Girard used to go through and that's been vacated. And I realize that that's partially the intent of doing the public plaza, but it's still our opinion that you don't have active uses on Fremont with this proposal and you're creating this inward design, so that's great that you're incorporating active uses that line a public plaza, but what happens to the blank façade on Fremont? What about the building when it comes in for development across the street?

President Martin: I understand that, I just wondered whether there was any thinking about… What we were seeing was something that was going to sort of flow through in a very different, new, unusual way – which would put a lot of the entrances for both of those projects someplace other than on the current streets.

Staff Farrar: And I honestly can't comment. I haven't seen it.

Staff Farrar presented the remainder of the staff report.

Commissioner LaShomb: I'm still hung up on this looking internally issue. Maybe I'm not getting this, but when I was reading the language – and maybe it's just a small point, are you saying only if they put a door to the theater on Lagoon that that solves the problem for them.

Staff Farrar: No. I don't think it's quite as simple as that. Obviously, that's a condition of approval that we would like to see for the theater expansion. We think having some sort of entry on Lagoon is appropriate for this development. But the inward looking design itself relates to principal entrances and how the buildings are defined and active uses that line the street which is the intent of basically our site plan review chapter.

Commissioner LaShomb: As I recall, and we've seen this twice, the plaza is about 19,000 square feet and there is going to be a bridge that goes over to Fremont on the other side of the corridor. And in addition to that, there is going to be access off of what I call the trench, the bike path, Midtown Greenway. But anyway, so I guess my kind of sense is that – doesn't that plaza really become in a sense a street? A non car street?

Staff Farrar: Well, I think it's a plaza.

Commissioner LaShomb: It's a plaza, but even with that access? Because it isn't restricted in any way. So most of the activity is going to be in that plaza – isn't it going to basically?

Staff Farrar: That's the way that the proposal obviously has been designed, but I think what we were arguing is that it's great to have the plaza, but why can't you have both? Why can't you have active uses that line the street? Why can't you have a development that meets the intent of the pedestrian overlay standards? The overlay standards are not meant to reinforce a public plaza – they were meant to reinforce the public street.

Commissioner LaShomb: And then I have a second question about height. Are we getting to those points where we want to talk about things like height? Let's talk about height. The staff, we can ask anything. That's absolutely true. In the staff report, I thought the language was a little strange about height and it was kind of like – we think 13 is too much; we're not quite sure what it ought to be, but maybe it should be 6 to 8. Am I reading that wrong? Is there any standard really for the Uptown neighborhood that says that the height has to be… What's the limit you could do on height?

Staff Farrar: Well, obviously, it's going to vary by zone district. So, for this particular parcel, we're looking at an exception to allow something greater than 4 stories or 56

feet. In terms of how staff made the analysis as to what was appropriate, it's correct, there hasn't been a development of this size and scale that has gone to this particular part of Uptown and there is no neighborhood plan that defines what they do think is appropriate. I think what staff was trying to summarize, or trying to make a point of, is that if there is an area for increased height which is over the allowable zone district standards, which again is the 4 stories or 56 feet, it would be here. But to say that 13 stories or 146 feet is appropriate, I don't think that Planning staff was ready to say that this scale of height…

Commissioner LaShomb: Is there a fear that this height in this building is going to set the standard?

Staff Farrar: No.

Commissioner LaShomb: We hear about the library site possibly being developed. We hear about Calhoun Square. There's lots of things that could be developed in Uptown frankly. Are we concerned if we allow it on this site, that somehow we've set the standard?

Staff Farrar: Contextually, that's how we analyze every single application is in the context. And for this particular one, we looked at it specifically in the context of this parcel and its surrounding land uses. Should you choose to set that precedent, then it's been set.

Commissioner LaShomb: OK, didn't mean to try to take our job and shift it over. Although it would be nice sometimes.

Commissioner Motzenbecker: I just had a question as far as… again, back to the interior piece. The site itself is in the interior of the block. It has existing spaces ringing it. Fremont being basically the only edge that is fronting on a street. What would the staff solution be to giving more street frontage as you're requesting besides just the one corner entry, or is that all you're asking for?

Staff Farrar: Well, the corner entry for the theater and then having some sort of integration of active uses. The plaza is obviously a very large area. I don't know if the solution is to make that plaza area a little bit smaller. It seems large. And incorporating active uses on the first level of that office building… I think there are a lot of solutions, but we never quite made it that far with the developer in terms of trying to establish that. I don't think we wanted to just throw everything aside because we like the actual public plaza and the way that those entrances are facing… to say that OK, we're just going to ignore Fremont. I don't think we thought that was a solution.

Commissioner Motzenbecker: I had a second question regarding the windows into the garage on the Fremont side. It's my perception that a lot of parking garages are dark and darkened, not necessarily dark. And with the idea of trying to prevent crime and crime prevention through design and that type of thing, it seems to me that even though these windows are looking into a parking garage, wouldn't that be beneficial to bring more light into the garage and to allow eyes to look into that space?

Staff Farrar: I suppose one could argue that point, but I think then we go back to the pedestrian overlay standards and the 40 percent window fenestration requirement wasn't put into place to have windows that look into a parking garage. It was to have windows that look into active uses that line the street.

Commissioner Motzenbecker: Thank you.

Commissioner Schiff: On that point, do any of your conditions address that issue and require active uses in this area?

Staff Farrar: Yes, I believe the site plan application does address that.

Commissioner Schiff: Which requirement is that – which number?

Staff Farrar: Number 8.

President Martin: OK, there are a lot of folks here and I'm sure everybody wants to talk. But before anybody wants to talk, I want to ask, just as a show of hands, how many people are in favor of this development in general – not in every detail, but just in general? And opposed? So, I'm going to let the developer talk because the developer always needs to talk. Do we have any Council Members here who need to talk? Oh, Jon Wertges, yes, he needs to talk. I'll let about 3 or 4 people, pro and con talk, but I think we're going to have a sense of what the issues are and then if people need to hear more, we'll ask for more. Jon, the TDM.

Jon Wertges (Director of Traffic and Parking Services, Minneapolis Public Works Department): Director Sporlein asked me to give a short presentation of what's in the TDM plan and so with the indulgence, I do have it up on the screen, although I realize it's fairly small, I did hand out some copies, so you may want to share with your neighbor rather than taking every one. Basically, we have two purposes for TDM plans. One being to assess the transportation impacts for the development and the second, looking at reducing automobile impacts and promote alternatives. This TDM plan provided analysis of 8 intersections. I've got an aerial up on the map. They're difficult to see, but 3 along Hennepin and a number along Lagoon and Lake Street. Eight intersections, the analysis indicates that we're going to meet the level of service thresholds and provided changes to the traffic signaling system to improve the operations are taken. Public Works has examined those proposed changes and viewed them acceptable. The second area is the parking analysis that was conducted. 674 shared parking spaces, 80 for other users for a total of 754 total demand for parking. The supply on site exceeds that by a few parking spaces, so we feel that the supply will meet the expected demand. In addition to those two specific analysis pieces, the plan includes measures. I'd just like to briefly run through those. The first being what we call level the playing field. If we provide parking types of provisions such as paid parking, we want to ensure that the employee who wants to choose transit can get the equal type of benefit to ride the bus, et cetera. In addition, there is bicycling, walking, van pooling, and car pooling types of provisions in there. Information about all the alternatives to give people opportunities to do a number of things to get to and from the site. Whether it be for work purposes or for leisure purposes or residential needs. In addition, we have some what we call vehicular traffic movement and access restrictions.

A number of them were already highlighted by Becca relative to the delivery vehicles. In addition, the City has some concern about the intersection of Hennepin and 29th, right where the transit is. The project has proposed to limit the access outbound in that site for certain periods of the time. We also are reserving our option to further restrict that relative to concern to ensure that the transit and the operations on Hennepin still continue which are our higher priorities. In addition to that, the developer has agreed – there's been some discussion in the neighborhood about Fremont Avenue – will the traffic that comes out of the site on to Fremont go north into the neighborhood. How does it best access Lake Street? Lake Street in this section is one-way going northbound. After the development is up and running, we're going to revisit that and the developer has agreed to revisit that and seek community input and make further recommendations as it relates to possible changes in those one-way versus two-way operations on Fremont – either north up to 28th or south down to Lake Street. Then lastly, there's some minor revisions at Lagoon and Hennepin as it relates to lane assignments and the developer has agreed to further assess those in that same 1 year time frame after the project is developed. The project is going to work with or develop a commuter benefits coordinator to handle all the activities and alternatives that are needed for the site. Their target goals are 55 percent autos, 35 percent transit, 10 percent bike and walk. And they'll be doing that via surveys either before or ongoing to ensure that's moving forward. And lastly, they are going to participate with any further area-wide parking programs and exploration of what those may be as it relates to Uptown. With that, Public Works has determined that we do have an approvable TDM plan at this stage.

Commissioner Schiff: Just one minor question. I see the 10 percent bike walk and the plan currently only has room for 30 bike parking spaces. So, how many parking spaces would they need to provide if they're really planning for a 1,500 seat movie theater and an office building if it's going to have a substantial number of bikers coming to it.

Jon Wertges: Madame Chair, Commissioner, I believe (and I'm quick flipping through here) the project is going to provide at least 1 – yes, 1 bike parking for each dwelling unit and those are typically provided in storage or in the parking ramp for the residents themselves. And then there will be the additional parking racks to accommodate the theater and the office complex pieces of this.

Commissioner Schiff: So, according to the TDM, it's sufficient for a 1,500 seat movie theater plus 6-story office building to only provide 30 bike spaces.

Jon Wertges: Generally, it appears that will work. We also have provisions that we usually seek to allow or require the developer to meet the demand as it relates to bike parking. A bike parking ramp is fairly innocuous relative to price to install at a later date if the demand further exceeds the supply.

Commissioner Krause: Anticipating an intensification of use of Calhoun Square in the not too distant future, are there any issues in this TDM that might change or would be impacted by kind of the aggregate of these two projects together.

Jon Wertges: Chair and Commissioners, at this stage, it is difficult to say that. I understand that I am expecting another TDM plan to answer that very question that

would come in with the Calhoun Square development. But at this stage, I understand there's a number of land use changes with that that we've not seen a revised or a TDM period on the Calhoun Square project. We'd be looking for those types of single land cumulative effects.

President Martin: Thanks, Jon. OK, who would like to speak to item number 11?

Stu Ackerberg (Ackerberg Group): I'd like to start by thanking the staff: Becca, Beth, Barb, Jon and so many others for their diligence, their timeliness and responsiveness in working through this extremely complex project. I'd also like to acknowledge and thank the neighborhoods for their time and effort along with many other organizations that are involved and associated in and around this project area: the Greenway Coalition, the Uptown Business Association, and so forth. For many, many months now, we've been working diligently with them in reviewing this project, integrating to the best of our ability their comments and concerns and believe that the project that will be presented tonight is sound, a legacy type of asset, that integrates many of those comments into this process. I'd like to introduce – this is my partner, Clark Gassen. Clark owns FFD. I asked Clark to become involved with this project because of his commitment to Uptown, his passion and his energy and his experience in the residential field. And I'm very pleased to have him as my partner. We also have as our team many who will speak tonight and we'll keep this as brief as possible, our architectural team which is the BKV group, Jack Borman and Bill Baxley. They will speak after I finish and take you through some of the specifics of the project. We will also have Carol Lansing of Faegre and Benson who is our land use attorney, very familiar to you of course, and she will speak to some of the legal and structure aspects of our proposal. By way of background, the Ackerberg group has been involved in the Uptown area for many, many years. It really started with my father, Norman, who I believe was one of the visionaries in transforming Uptown to where we see it today. He began investing, developing, and redeveloping property in the Uptown area in the 1970's, even before Calhoun Square was proposed. We continue to be very active in Uptown. We've been involved with roughly 20 properties in the last 15 plus years and I believe we're the largest landlord in Uptown. We typically own property long term, continue to invest and reinvest in our assets, are very involved civically and philanthropically in our community. This is a most unique project for us. We're extremely excited and proud to be able to present it to you. As Becca discussed, from one perspective the constraints and concerns staff had with the property – as you're aware, it's an extremely unique site. We have very little frontage. It's truly an infill property. And while most of the infill properties that are presented here are infill of an edge property, this is the infill of the infill. We're filling in the donut hole effectively. Not only do we not have frontage on Lagoon, nor on Hennepin, we actually don't have any frontage on the Greenway. All of that property is the bus lane which is not owned by us. The only true frontage we have is on Fremont. So we have worked diligently, again, with our development team and the neighborhoods and the related groups to come up with a unique project that integrates outstanding architecture, a public plaza or terrace, whatever it might ultimately be called, which we believe is very much needed in the Uptown area. It's an extremely dense, vibrant area, but there's really no public space per se in the Uptown area other than the sidewalks which in general are relatively narrow in Uptown. There is the top of the mall and the mall itself, which is used maybe 3 days a year actively for the Uptown Art Fair and there's no other place for people to gather in spite of the density that is there. We believe that the

project that we're proposing is a landmark asset because of its architecture, because of its integration within the project site, the integration of the transit, the mixed use of office, retail, entertainment and housing as well as a tremendous amount of parking, substantially all below grade. The public plaza, we think will be an incredible amenity to the community. To the best of our knowledge, we're not aware of any other project in the Twin Cities that is designed as this is as far as being truly infill and creating the public amenity within our project area. We believe that it will be a marker for the Uptown area, signifying one of the most significant transit centers outside of the Downtown core. We've taken great care in our design to integrate and be respectful to the outer edge of buildings along Hennepin and Lagoon which are all maybe not historic in age but they're more period in design such that while our project may be taller in height, it is setback inside the project so that the scale to the pedestrian walking down the sidewalk will be the same in the future as it is today because those buildings are all being maintained. We believe that by creating this courtyard plaza, park, terrace area we'll essentially be creating re-creating the Girard Avenue as a pedestrian corridor, not vehicular but pedestrian which we think will be very dynamic linking the community to the north, the Greenway area, as well as creating this unique area for people to gather. All of this public infrastructure will be done privately by us at our cost and this project will have no subsidy at all involved with it. With that, I will pass this moment over to the architect so they can take you through some of the specifics and again, I thank you for your time and consideration of this project.

Bill Baxley (Partner, BKV Group and principal designer for project): I have brought a model today which many of you have seen already just for your reference. And I think Stu has done a good job of going through those points. You have the staff report and I think I will concentrate probably specifically on the staff concerns: height and street frontage if I would. If there are any other embellishments beyond that that you would like, being respectful of everybody's time here, we can certainly go into that, but I think if we concentrate on those specific items. Firstly, for reference, I'd like to talk about the Fremont elevation. I do have an elevation here which shows it in context with the Bar Abilene building. And while staff is correct, we don't have any storefronts on that street, we have been… at least tried to be careful with the scale in terms of working with the base of this building with the existing Bar Abilene building and also weaving in a considerable amount of open glass and store frontage along with the entrances to those pieces that wraps around the corner in a similar fashion fronting the Greenway. And we hope this open air action ability to create pretty much a boulevard, a planted area, reduction in number of curb cuts. While it's not active in terms of a store, I think it will add to the pedestrian experience along Fremont and be compatible with the existing structure that's there. Again, major materials on that façade will be glass, louvered metal siding material and stone. Again, above that 20 foot base piece is an all glass and stone building. We'll talk a little bit about the Lagoon Theater and the Lagoon entrance. And again, I think this was a challenge for us. It actually turned out to be the impetus for the entire project. This terrace, our core space, was where the project began. And this idea of providing a public place that was activated by store fronts as we do on the street internal to the site and linking through on Girard to the next largest development in Uptown – Calhoun Square, was a significant urban gesture and one that we thought should be the heart of this project. Through additional discussions with the neighborhood, the Greenway coalition, its evolution to provide a connection into the neighborhood, only a pedestrian one, and a connection down to the Greenway, I think

only adds to its overlay and connectedness with a residential portion of Uptown with a commercial portion through this plaza. And I do think its exploration of the understanding of what is frontage as it is defined by your code certainly does that. Again, we are limited being the fact that if we did not even modify the existing Lagoon Theater, which doesn't meet that current 4 and 10, 40 percent requirement, we're left with a 24 foot wide opening into the interior of the site. So by expanding the theater, modifying as much as we can to keep three of the existing theaters, expanding its frontage as you can see in this elevation here, I think we're providing an activation on a pedestrian level that is significant and the idea of drawing pedestrians internal into that site, into this space, and having a queuing and an activated area out in front of the building that's integrated with the street is more significant than simply a door on to the street. I think if what we're looking at here, even though it's air, we're creating a 70 foot wide door and window by creating this portal into the internal part of the site. So if one thinks of that void space as an opening, the requirement is more than met.

President Martin: So people who are coming to movies in the middle of the winter will no longer have to freeze outside in line?

Bill Baxley: Well, that's true; they can park, walk up and be wholly internal. They can still walk on the street.

President Martin: Just checking.

Bill Baxley: Any other questions?

Commissioner Motzenbecker: Regarding the Fremont side again. Just if you could speak a little bit to the challenges inherent in your building design to possibly incorporating some liner uses on that façade, perhaps in front of the ramp interior.

Bill Baxley: Well, part of the… again, it all starts with that public plaza on the inside. I think we want the major focus of the project to be about that plaza. So I think where we can, we've concentrated the most activity within that internal space. A liner space on the outside [would] provide for a number of reasons. It's a difficult area, obviously, for retail, if that's what you were thinking. But also in terms of our ability to evacuate and or service a necessary component of parking for this project and its distinct separation from many other retail components in the area. I think its isolation as well as its challenges for us from a parking standpoint, proved to be too great to overcome and we felt by enhancing the façade and providing a better pedestrian environment, we'd at least be compatible and improve the situation that's there and reinforce the importance of the terrace internally.

Commissioner Krause: Mr. Baxley, if you have that other photograph that shows the area of the theater. What is the use that's behind that glass that we see right there now? Is that a lobby area, is that after someone has purchased a ticket, is it before they've purchased it, is it the refreshment area? What's going on behind that glass right there?

President Martin: That's what I was trying to figure out – if people are going to get to wait in line inside.

Bill Baxley: That is actually part of the queuing area concession extension of the lobby of the theater. I'll put this plan up here. It's a little small, but I can explain those dually. This line here represents – if you're all familiar with the existing theater, the current profile of that theater. These three existing boxes will remain and we're going to keep those in place, there's a mezzanine up here, you're familiar there's a few bathrooms and things like that. But by glazing this entire face all the way back and then turning the corner which is what's represented here, one, along Lagoon Avenue will have vista then internally all the way to the main heart of the concession area which is one here; we have a smaller concession area for this part of the theater; and the ability then, you will come in, buy your ticket and then circulate back down. So it's a lower lounge if you will, a lower concession component. A highly active space and one that definitely signals theater I think from Lagoon Avenue.

Commissioner Krause: One other question Madame Chair and I'm surprised Commissioner Schiff hasn't asked this yet – will there be a marquee that actually lists the movies?

Commissioner Schiff: I'm proud to be known for something.

Commissioner Krause: I know you were going to get to it eventually, but I'll ask it for you.

Bill Baxley: I think it's an excellent question. We certainly have… We're currently in discussions obviously with the Landmark Theater folks and their ability to display and signal their theaters. They're excited about this expansion and the ability to provide stadium style seating. What they're particularly excited about is a canopy… We're now providing a marquee that is approximately six times the size of the current marquee. Not only providing, I think, the ability to provide terrific illumination and signal of additional movies, but to address those specific concerns. I think they're excited about the idea of announcing those movies on that new, larger size marquee. We've provided the slick, architectural version here without all the lights.

President Martin: Anything else?

Bill Baxley: Back a little bit maybe to the idea of this plaza and the doorway off of Lagoon. We do have a couple of other hastily put together renderings here. It begins to talk a little bit about the scale of that, the size of it. This is actually from the condominium building on that 20 foot level looking down into the plaza here to the edge of the glass office building and then north obviously to Minneapolis. The restaurant component here, the upper green roof terrace and the ability to – we're showing some art fair tents and things like that, but to truly, scale-wise and I'll show another picture here…Looking down into that plaza, to help one understand the way we are thinking about this and the truly public nature of what this can become. Again, at 19,000 square feet, the ability to have multiple functions and its connection to the greenway we find significant public space there in Uptown.

Commissioner Tucker: How wide is the plaza more or less?

Bill Baxley: Approximately 100 feet.

Commissioner Tucker: Would there be sunny spots in the winter?

Bill Baxley: We sure hope so. The arrangement of these buildings and the evolution of the movement of the main pieces has an open door facing due south. So, I think to the best we can, we should get an extensive amount of sunlight for the morning, a good portion of the afternoon. Certainly as we move around, as you can see here, as the sun hits to the west, we'll start to get shadows in on that Greenway, but I think the pattern of sunlight will always be evident in there and we will get a significant amount of sunlight internally.

Commissioner Tucker: And how about in the summer. Are there areas of shade?

Bill Baxley: Good question.

Commissioner Tucker: We want this to be a usable plaza, not just a nice diagram on your architectural drawings.

Bill Baxley: I think, and one can read our narrative also inside which describes the sequence of rooms about the plaza, this forecourt in front will be a bosk of trees that will provide some dappled sunlight, you'll come internal into the second room here which will have some water, some outdoor seating and also some large, planted vegetation and then back out through the gallery. So the idea is to create a mediation of condition in there to provide a lot of different varieties of visual experience.

Commissioner Tucker: But do you have sun studies that sort of show this through the day at different seasons so you're sure that you're getting these spaces – sunlight and shade?

Bill Baxley: I think if you can refer to our sun studies, which we have done at least on the equinoxes, we can begin to understand how those pieces are. We do have a 3-dimensional model animation I can run…

President Martin: Commissioner Tucker, it's sort of in the middle of the packet - it looks like this.

Bill Baxley: Any other questions relative to this?

Bill Baxley: This is a small view, but again, coming across the Greenway bridge, this is the part of that translucent piece of restaurant, the gallery connecting into that space, so again the creation of a variety of public sequence across the bridge, through the plaza, down Girard, and finally into Calhoun Square. This is the receptor then coming in from the neighborhoods.

President Martin: OK, others?

Carol Lansing (Faegre and Benson): I did hand out a letter to you [copy provided to Clerk] and that goes through points related to where we are requesting that the

Commission depart from the staff recommendations and I will not read you the letter and I will only briefly identify those points for you. We are requesting that you do grant an exception for height within the PUD conditional use permit. The zoning code encourages creative site development and encourages or allows, anticipates that increased height should be appropriate in PUD's based on a site specific location analysis. The only finding in the staff report that really is proposed as a basis for denying the 13 stories is that a tall building in this location will be incompatible with the scale and massing of the other buildings. While we agree it will be different, we don't believe that simply being different makes it incompatible. And as Mr. Ackerberg described to you and the architects did, this is a unique site that allows for maintaining the existing pedestrian scale and edge with the buildings that are already there on Hennepin and Lagoon. The creation of another pedestrian, smaller building on Fremont that will mitigate any potential negative impacts. This building will not loom over the pedestrians on the street that you need to be concerned with because of the unique size and location of this property, it's not in a Shoreland Overlay district and it's not in a historic district. Grant the exception for height, you will also need to address the setback variances. No yards are generally required in a C3A except for residential uses. This proposal does meet the standards for a variance. It is a reasonable use of a planned unit development of an interior type of site like this to have buildings that approach the setbacks of the rear and sides. It is also reasonable in a PUD that promotes creation of open space to allow those buildings then to be pushed closer to the setbacks. But I'll note that it's not coming right up to the edge – there will be plenty of space to address the concerns of the residents in those buildings that they have light and air between themselves and the lower buildings along the service drive to the west and Lagoon on the south. There are circumstances of this parcel which I've referred to that are unique in terms of its interior orientation, its large size which allows for PUD development. And granting these variances, I believe and staff has said, would not be injurious to the use or enjoyment of other property. Finally, the staff recommends two site plan conditions that we request you not impose. Those are numbers 6, related to the location of the theater entrance; and number 8, the incorporation of active uses on Fremont. You have already had discussion related to why the site was designed to promote public and active uses in the interior of that lot, essentially though recreating the Girard landscape. With respect to the incorporation of active uses on Fremont, we believe that the site plan does comply, or that this site does comply with the site plan regulations. The site plan code calls… says that parking garages should either incorporate active uses or have windows that allow you to see into and out of the parking garage. So we believe we comply with that requirement. To the extent that you believe some alternative compliance would be necessary to approve the Fremont elevation, I recall the discussion that you have had here today already that this is not an inward looking design. The Girard aspect is an enhancement to the area that in effect multiplies the street frontages that are available to pedestrians and would not be possible or practical if we had to re-orient the project to Fremont. If you have any questions, I would be happy to address them.

Commissioner Schiff: Ms. Lansing, your client's proposing to make substantial improvements to the public access of the Midtown Greenway, including a new pedestrian bridge. What kind of agreement do you have with Hennepin County that you'll be able to get the easements or that you are committing to the investment necessary to carry those out?

Carol Lansing: I think I'll ask Mr. Ackerberg or another to address it. I've not participated in those, but I understand that they are supportive of creating those and that the Midtown Greenway Coalition has also been extremely supportive. We certainly would provide any documents or easements that could be recordable to ensure that.

Unidentified male speaker for applicant: I simply would reiterate that we've had a number of different meetings, including with SHIPPO, Hennepin County, and all of the groups mentioned and have continued to provide documentation and request it when needed. So if it's needed by the City, to date, we have found it very positive that we would get such documentation.

Commissioner Schiff: So you don't have anything in writing now that you can give us any assurances as that this is going to go forward?

Unidentified male speaker for applicant: We do not. We're at the City first and we do have some correspondence from MTC that we've requested for that access point and interface and have not had any response from Hennepin County except positive so we would fully anticipate if it's made a condition that we would be able to provide it.

Commissioner Schiff: OK. Well, Ms. Lansing, I'll let you think about this during the public hearing because as you know, these drawings and these images aren't requirements of this application from our actions today because they actually take place off the site and they're not part of the property that we can make any conditions on. So all of this basically is a promise, and so I would ask you to come up with something while the public hearing is still happening that can give us more assurances that these promises are going to be followed up on. I specifically asked that of your client over two months ago and I've still gotten nothing. Thanks.

Linda Schutz: I would like to be the second speaker. Howard Verson's going to be the first and we have a third person speaking. So, I will be second.

Howard Verson (CARAG, 3121 Dupont Ave. S.): I would like to speak a little bit about… I guess it's item 4 on the land application. Adequate measures have been or will be provided to minimize traffic congestion in the public streets. The TDM, the Uptown arterials are currently rated at a level of service of D or E and at present, the Uptown area is experiencing what's commonly called as the bulging balloon effects of cut through traffic on the parkways and the residential streets. The traffic studies did not look at anything but the three arterials: Hennepin, Lake and Lagoon. Studies can be focused to highlight many aspects of a model, but this study narrowly focused on these three pieces of Uptown traffic. We're wondering what the effect of this project is going to be on the neighborhood collectors and residential streets where any traffic effects will be acutely or most acutely felt. They have a cute little chart in their report that shows traffic coming from 20 percent on Lake Street coming east, 30 percent on Lake Street coming west, et cetera, et cetera. And we're wondering if that's really representative of where the traffic is going to be because we think that currently the traffic is on 31st Street, 28th Street, 26th Street, Emerson, Dupont, et cetera, et cetera. It's on the neighborhood streets currently. And if we're adding more traffic into the equation, what is the effect on the neighborhood streets and this study really didn't look at that. The

other thing that the study looked at was the time it focused on which was the a.m. or the p.m. rush hours. I don't know if you're familiar with it, but in Uptown, we say the rush hour lasts 'til 9 o'clock and it really does, 9, 10, whatever. If you look at their diagram of their trip generation chart and it's focused on the p.m. peak, their figure of 93 cars coming out of the theater is actually probably pretty reasonable. We're wondering what happens at the 7 p.m. rush when we're trying to fill up a theater of like 1,500 seats. And then the other thing that's always left out of this equation is the Uptown Theater actually has 600 or 650 seats. There's also probably going to be parking here. So, none of this has really been studied in the TDM or in the traffic reports and we're wondering what the effect of a 5-hour rush hour is on the Uptown area. The other kind of interesting thing that they focused on is the modal splits. As previously mentioned, of 35 percent plus traffic, and again, this could be reasonable when you're looking at the p.m. peak and we're looking at the work a day crowd coming and going from the new offices, but we're wondering where this 35 percent of traffic coming to the theater is going to be. I think it's terribly unreasonable…We joked that if they could find 10 people taking the bus to this theater we'd like to meet them. I really don't think at this point they exist. Now they're claiming they're going to do all sorts of things to create this traffic, but in Minneapolis, the sociology just doesn't work that way. Nobody takes the bus to the movies. And I guess I'd like to use my 60 seconds on the soapbox to complain about the traffic design and basically as a disabled pedestrian, I get rankled when designers design in rudeness into their intersections. Pedestrian friendliness has often been just thought of as simply providing enough amenities. But the pedestrian environment, first and foremost is a matter of comfort and safety and literally the grace with which one can walk down the street. One of the most interesting examples here is at 29th – I'm sorry I don't have a graphic to illustrate this. But on 29th there for starters, introducing traffic into an environment which is now owned by the pedestrians, that street is essentially used as the bus terminal, or as part of the bus terminal and people are coming and going in kind of a casual manner which they would not fit with the introduction of automobiles. But then on top of that, they're introducing cars in a way where because of the left turns and right turns crossing the path of the existing left-turning busses and the left turns southbound coming into 29th, they're going to be putting cars in a place at which they are not expected and which is going to create a dodge-em-ball effect on pedestrians. Thanks.

Linda Schutz (1523 West 22nd Street): Well, since the other side took about 26 minutes [tape end] …Can a more comprehensive air pollution study be done for this site? Yes. According to Minneapolis code 551.150, Lake and Hennepin pedestrian overlay and air quality study can be done for proposals over 4,000 gross floor area or for new or additional parking spaces than the transportation impacts on development may address, can address air quality. We've had past air quality problems in Uptown. The one-way traffic pattern for Lagoon and for Lake Street was intended to address congestion and air pollution in 1989. Air quality studies after that were to be done, but to my knowledge, I am unaware of those studies or the results. The air quality monitor in Uptown burned down and was never replaced. Minnesota has abandoned its vehicle emissions testing program. The question is what can Uptown sustain. We can improve air quality through land use activities. This is typically done in a sequence you probably are familiar with. First, land use modeling; second, travel demand management study; and third, emissions modeling. Since the City is collecting TDM studies, it can do better air emissions modeling. There are federally approved software that exist to predict

grams per mile emissions for several pollutants: hydrocarbons, CO oxides of Nitrogen, CO_2 particulates and other toxics from cars, busses, trucks, motorcycles, et cetera, under various conditions. Several software packages exist and one, the national mobile inventory model is a free desktop computer application developed by EPA for multiple input scenarios and moves as a new set of modeling tools. According to May 5th testimony of Mr. Cronin, consultant to the City, Minneapolis can robustly – robustly was his word – capture air pollution effects information through site plan review, conditional use process and the TDM is the key to that. The City Council recently declined to authorize a discretionary EAW for this project and we were told this process – this process, site plan review and CUP would address air quality. Mr. Cronin said the site plan and TDM is the key to look at each intersection to assure positive air quality in the future no matter the projects. As I quote him, "…we get closer to the edge". The Mayor endorses a comprehensive traffic study for the overall area and this will allow an even more comprehensive air quality modeling for this project. Other cities, other real cities, such as Toronto and many California cities, and other states such as California and several on the east coast are engaged in very proactive measures using best available remote monitoring technology and other measures to not only assess the air pollution problem to know what it is so that it can then be property corrected. Second question, why is the more comprehensive air pollution study merited and desired? Community values in this city and in this state support it. We expect the city to protect and promote the health and safety of the public, the common good and to do no harm. The chain of lakes you heard tonight is the third most frequented tourist site in Minnesota, only behind the megamall and apparently Cabela's in Owatonna. These lakes in Uptown accommodate all of us – all of you who sit at the Planning Commission, all of us in this room, babies, and there are more of them in my neighborhood I'm glad to say, toddlers, school age persons, young to middle age adults, aging baby boomers like myself and seniors. There are many who wait for busses. This is one of the highest used bus centers in the state. They wait for busses and they will be exposed to whatever air pollutants or toxics are generated there – not just the current diesel fumes. And other multi-modal people will be exposed to whatever air pollution occurs whether they're pedestrians, whether, like Mr. LaShomb, they're avid bikers, whether they're joggers, rollerbladers, those who enjoy fishing or water sports, long time and our newest residents to this city and our visitors. Why do we need a more comprehensive air pollution study flowing from the TDM here? We need unbiased, proactive, thorough study to answer these long standing, unanswered questions, unresolved questions. We want to make sure Uptown doesn't have any dirty little secrets or big ones and we can't rely on conjecture or personal experiences or even looking at similar developments located elsewhere because of the unique characteristics of this area that I've described. Balancing is important for human health, our vaunted natural and recreational amenities, this incredible park and lake system nearby, sustainability, quality of life, balancing that against economic and market considerations, mixed-use and density goals, and the goal of neighborhood stabilization. It is a health cost issue. I can personally assure you that a CAT scan required by a doctor to assess lung problems costs $1,600 and you can be assured another could be required by a doctor in four months at the same cost. Health care costs in this state are out of control, that's why we have a problem at the legislature…

President Martin: Ms. Schutz, I'm going to ask you to talk about the project. Health care costs in the state don't have anything to do with this project.

Linda Schutz: OK, this relates to the project then. The Minnesota Pollution Control Agency indicates we will have to address mobile sources like cars and trucks and busses to avoid violating the Federal Air Quality Standards and there is no expectation that the fine particulates will decline for at least a couple of decades because we need national fuel standards for that and what needs to be considered? So far the traffic consultant for the Ackerberg Gassen project only modeled carbon monoxide emissions for one day in January and this is wholly insufficient and it was not independently derived data. Immediately adjacent, as I said, is the bus transfer station. There are seven harmful criteria pollutants under the 1990 Clean Air Act and the state and the feds are focusing on fine particulates and ground level ozone. Those are the ones that are increasing and they are increasing with population increases and vehicular increases which we are experiencing. Vehicles contribute to half or more of the particulates in ozone pollution and you cannot rely on measurements at only one intersection to address low level ozone or particulate pollution. Plus this TDM fails as do others submitted thus far to include summer peak numbers. They go up by 9,000 vehicles. We can only assess ozone in the area if we look at summer weather because ozone is created with a mix of sunlight. In Minnesota in 2004, the Twin Cities had 7 days of an air quality index over a hundred and there were 13 such days in 2003. We do have sensitive populations in this area: asthmatics, children, people with respiratory and heart problems and the elderly which we are inviting suburban seniors to relocate here. When the air quality index exceeds 100, all people are advised to curtail even moderate outdoor activities and certainly heavy exercise. And while the increased population and more vehicles are contributing to AQI alerts in the Twin Cities, we have even more special factors in Minneapolis related to public and private large scale industrial facilities and a May 11, 2005, press release indicated that Xcel's Riverside plant held the top spot for Nitrous Oxide emissions…

President Martin: Ms. Schutz, Xcel has nothing to do with this project. I would like you to please talk about this project.

Linda Schutz: Great. Finally, I would hope that the TDM and the concurrent air quality emissions study would also include 10 additional toxic pollutants known to be problematic in urban centers of Minneapolis and St. Paul. I will not go through them, but several of them relate to mobile sources, high traffic areas and incomplete combustion. So, in conclusion, we request that the TDM address the air pollutants comprehensively for this project site and the area in which it's located. Secondly, we want the city to assess the cumulative air pollution in this lakes and Uptown area to include announced real estate developments, projected ones and likely land use changes. And in support of everything I've said, I will give the clerk, which I had to assemble today because I didn't know I was testifying until last night, the documentation behind each and every statement I have made here today. Thank you very much.

President Martin: Thank you. Others who wish to speak.

Anna Mathes (3121 Dupont Avenue S): I wanted to address the aesthetic impacts of this project on the surrounding property and the pedestrians who use the public streets. First of all, let's look at the impact of the proposed view. The Minneapolis Plan states that it will preserve and enhance the quality of living in residential neighborhoods and

the requirements for conditional use permit are that it will not be injurious to the use and enjoyment of other property in the vicinity. The project will impact the view of the horizon for many. Why is there not a value given to view? The enjoyment of looking at the sky and the horizon; [and] the enjoyment of sitting on one's front porch and watching the sunset or the sunrise. With a 13-story, 148 foot tower, this would be the view from one's porch. This would be the view which people see from their backyards. Uptown has a unique skyline which is distinct from downtown. It is not comprised of towers. As our Mayor said, Uptown is not downtown. Keep the towers downtown. We also need to look at the plaza and the streetscape. The Minneapolis Plan states that it will support urban design standards that emphasize a traditional urban form in commercial area. The Pedestrian Overlay District states that buildings shall be oriented so that at least one principal entrance faces the public street rather than the interior of the site. The proposed plaza is not a gathering place for everyone. It is more related to suburban office park plazas and courtyards. This is a semi-private plaza located in the interior of the block for those using the restaurants of the complex, the office space and for those queuing for the entrance into the theater. A theater whose entrance is not on the street. The plaza eliminates the street presence by turning itself inwards. The Minneapolis Plan states that it will support development in commercial corridors where it enhances the street's character and fosters pedestrian movement. The Pedestrian Overlay District states that it wants to encourage street life and activity by regulating building orientation and design. That placement of buildings reinforced the street wall. The street wall is what pedestrians sense as they walk down the street. Is it friendly, inviting, interesting? Or are they faced with blank, inhospitable walls. What will pedestrians sense as they walk down Fremont Avenue looking? Obviously people have addressed this before into the windows of the parking garage. When the entrance to the theaters is in the center of the block away from Lagoon Avenue, what will pedestrians sense as they walk down the street? Currently, one can look into the theater lobby and see people and activity. Now they will face mostly a blank wall. Why arrange the 8 theaters in such a way that it gives us a blank wall on the street. It should continue to provide the theater lobby and entrance on Lagoon Avenue rather than the interior of the site away from Lagoon. Can I just… I have an old plan, but you were addressing the continuation of the street and streets are usually when you want to get from someplace to another place, not when you want to end up at a destination site. [copy of site plan given to Ms. Mathes] Thank you. I have a new one. But, you walk down the street, there's buildings, there's entrances on either side of the street, there'd be trees, there'd be boulevards, there'd be something. And here, it is, you know, glass walls here and according to the perspective that I have, this seemed to be an enclosed – although I'm not sure – covering over this parking. This is the interior. You know, this is hardly a street. It's a destination spot for the restaurants and to enter into the lobby of the theater. And they've taken away a lot of the entrance. Anyway, I just sort of wanted to address that. What is appropriate scale? The Minneapolis Plan states that it will support the development of residential dwellings of appropriate form and density and that the scale and form of new development is most compatible with the surrounding area. This most definitely is not. A 13-story, 148 foot tower is inappropriate and incompatible in scale. Its modernistic glass encased tower is unrelated to the surrounding area. It will loom above the historic Carnegie Walker Library, loom above the historic houses – both during the day and the night – and will forever change the character of Uptown and its neighborhoods. Please do not start a precedence. I also have some information regarding a West Lake Street urban village charette that was

done in 1998 which addressed the Lake Street corridor. And in that charette, it stated that building scale should relate to pedestrians. It said that the Lake Street corridor should relate to the pedestrian scale. It stated that new construction along Lake Street – that's pretty close to Lagoon – should respect the scale, proportion and architectural character of existing… I'm sorry, I can't read the next word… buildings. There was also a Hennepin Avenue strategic plan done in 1995 and in that there were 7 general objectives, one of which, the requirements for development to correspond to the setbacks, heights and masses [tape end]… character, allowing expansion to the east, the west and the north where 2 and 3 story buildings predominated. CARAG – I live in CARAG – had a resolution and that resolution stated that one block beyond the CARAG neighborhood, that the project would be located approximately beyond the CARAG neighborhood, but would have a significant impact on the CARAG neighborhood in terms of traffic and views and all four neighborhoods surrounding Uptown have a keen interest and stake in Uptown development. It also stated that the project would have numerous positive attributes and public benefits. It stated that although the project has a number of public benefits, ultimately, these are significantly overshadowed by the height proposed: 148 foot tall condominium building. The tallest building in the heart of Uptown is the 4 ½ story Uptown City apartment building. The existing buildings around the proposed site are two and three stories tall. The scale, the height and massing of the proposed condo building would overwhelm surrounding buildings and it is not in keeping with the character of the area. Indeed, it would change the area's essential character. The building would be visible in a wide area around Uptown. The amount of sky view that the condo building would occupy is simply too great a public and community asset. The extent of the other public benefits of the project is not really relevant. This scale and height are simply inappropriate for Uptown. Due to the height and mass of the proposed condominium building, the proposed project would be detrimental to the general welfare of the community and would have a significant adverse impact.

President Martin: Ms. Matthes, you're reading us something that we have in our packet.

Anna Matthes: OK, so you want me to not read this.

President Martin: You don't need to read it. It's already a matter of the public record.

Anna Matthes: Alright. The Minneapolis Plan states that it will support the development of residential dwellings of appropriate form and density and that the scale and form of new development is most compatible with the surrounding area. I think I read this. Sorry. So, thank you.

President Martin: OK, by my calculation, everybody has had at least 30 minutes to talk about the pros and cons of this. In order for us to be able to still be alert when we have to make a decision, I'm going to ask for new information and I'm going to limit people to 2 or 3 minutes and I want to hear things we haven't heard before please.

Jack Cann (Attorney representing the residents' association at 3540 Hennepin): I'll give you a couple things you haven't heard before.

President Martin: And we have your letter too.

Jack Cann: You have my letter. I won't repeat what's in the letter. The point of the letter though was that the applicant has not met their burden of demonstrating consistency with those elements of the comprehensive plan addressing affordable housing. I don't want to repeat what's in the letter. What I do want to do is address two issues that probably occurred to you. One is, so what? Is it even legal for us to tie zoning to affordable housing? And I'd simply quickly direct your attention to the Metropolitan Lad Use Planning Act, section 473.878, subdivision 1, which not only permits but requires cities in the metro area to have a land use plan which shall include a housing element providing adequate housing opportunities to meet existing and projected needs including, but not limited to the use of official controls to promote the availability of land for the development of low and moderate income housing. Official controls means the zoning code and the subdivision ordinance. So not only do you have the legal authority to do so, I believe you're required to do so. The second thing you may be thinking about is what the ordinance requires is consistency with applicable provisions of the comprehensive plan. The provision cited by the applicant and in fact by the staff in arguing that it's consistent with the housing elements you say area the applicable ones and all of this other stuff about housing affordability simply aren't applicable. The problem with that is that the provisions of the plan that the staff and applicant cited are the same ones that I cited. And for example, and this will take about a minute, the staff cites section 4.11, Minneapolis will improve the availability of the housing options for its residents. And they cite the implementation step: provide and maintain moderate and high density residential areas. Well, the implementation step immediately before that is: increase the variety of housing styles and affordability levels available to prospective buyers. And my challenge to you is to find some sort of logical, logically, legitimate basis for differentiating the implementation steps in the comprehensive plan I pointed to from the ones that the staff and the applicant have pointed to. To argue that theirs are applicable and the affordable housing ones aren't. If you can't do that, then you can't make the finding that you're required to make about consistency. Thank you.

Aaron Rubenstein (3249 Emerson Avenue South): I'm the Chair of the CARAG neighborhood zoning committee and I intended to speak at some length about the height issue, but I'm not going to do that. I just want to speak briefly to two points in the staff report. On page 8, there's a finding related to the conditional use permit for the height about whether the project will be detrimental to the general welfare and the staff finding is that it won't be detrimental to general welfare, but could impact the general comfort of the public. I would suggest that the proposed height would indeed be detrimental to the general welfare. And on page 17 of the staff report, there's a required finding about granting the variance will be in keeping with the spirit and intent of the ordinance and will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity and the findings for the 3 variances below that on the lower half of page 17 address the first and last of those three things, but don't say anything about the fact that the project would indeed alter the essential character of the locality. Thank you.

Thatcher Imboden (3411 Hennepin Avenue #11): I'm going to talk about character about a different perspective than has already been talked about. For example, the height issue – people are saying that it is out of context with the area and I think

something that we need to consider is how the intensity of uses has changed over time in that while we've talked about traffic and we've talked about character from the height perspective that there's character of intensity and use that's just as important. For example, at 28th and Hennepin where West High School used to be now is a[n] 8-story high rise building. And that I think has been more detrimental from not the height, but the change of use and the intensification to Uptown as it's completely moved a lot of traffic and a lot of activity on Hennepin away. And to bring that to the Lagoon site, which is now a parking lot and before that it had houses on it and things of that [nature], which was an active use. This is really bringing back an active use to something that is pretty much a parking lot and I think, a really negative impact on the area. The thing I wanted to show is a picture of Uptown from the 1930's in that there are a lot of intense uses in Uptown. For example, West High School, there Calhoun School, the Buzza card factory which was a tall building at the time and then also the sports arena that was there. Another thing that I think is really critical is that when all these big, intensive uses went into Uptown, they had really intensified what was there. Next to the Buzza card factory, there were single family houses. Now, people today talk about buildings like this, they talk about West High School and what it brought to the community and when they were implemented, there was a big change. I think that this project, while 12 stories is a big change in height, it is not necessarily a big change in intensity and a big change in character if you look at it from not a…well, it's 3 stories or 8 stories or 12 stories, so that's really I guess my point is that we really need to look at intensity of uses and what has happened since it used to be a very intense period back in the 1920's to 1950's and now with the McDonalds is the Arby's, the Rainbow, all these less intensive for pedestrian I guess I should say. Thank you very much.

President Martin: Hold up your award-winning book Thatcher.

Thatcher Imboden: I didn't want to use it as…

President Martin: No, he's the author.

Cindy Fitzpatrick (Executive Director, Uptown Business Association, 1406 West Lake Street): We approve this. We would like to give our support to the project. Uptown desperately needs employers bringing in employees for daytime use. We need more mixed-use, we need more residents, [and] we need to keep the business area going. Uptown, if you've been there, does not come alive until after 4. We can't get retail if we don't have the population to support it. Also, it's a surface lot on Fremont Avenue. I think a parking lot where there's some activity that you can look through would be better than a surface lot. The Lagoon Theater entrance is offset right now and people walk down there, but there's not as much energy and diversity. It's not as safe and this will help with that issue. Thank you.

John Nolde (Winthrop & Weinstein on behalf of Walker Uptown LLC, the owner of 2901 Hennepin Ave, commonly known as the Walker Library): I stand here in strong support of the project and ask you to approve the developers' request for what they're looking for. Walker Uptown firmly believes in what's good for the area and they believe that this is good for the Uptown neighborhood and they like to see a considerable reinvestment in the Uptown area. I think it will be good for everyone involved. Thank you very much.

Jeff Rosenberg (2220 Emerson Ave. S.): I'm speaking in favor of approving all of the applications, I'd like to suggest that the staff's basis for denial of three of those applications is based on a flawed assumption. The denial of those three applications is recommended based solely on the worries about the project's proposed height. I think the most important statement on page 9 of the state report says, "Six to eight stories could be accommodated on site without negatively affecting future development of nearby parcels". The corollary of this is that this project at 12 or 13 stories will negatively affect future development of nearby parcels. Not only is this assumption incorrect, I believe the project will aid future development and revitalize Uptown's character. It will spark quality urban design throughout Uptown. A strong center is so important. Currently, Lake and Hennepin and Lagoon and Hennepin are the center of Uptown, not due to intensity of use, but intensity of auto traffic. At the heart of Uptown, we have 2 and 3 story buildings. Without following the traffic, you'd never know where the center is. This is not a well designed model. The proposed development will help to create a true center due to intensity of use and a step up in height. By approving the urban design of our center, we'll grow Uptown and create quality urban design throughout the Uptown area. The model of centrifugal forces can be seen so easily right now with so many levels. You can look at the downtown riverfront where a compact, attractive beginning has spawned movement outwards to 3rd and 4th Streets. Or look at Minneapolis as a whole where the success of downtown is the leading cause of new development in Uptown. Good development has strong centers [to] inspire the growth of quality design at all levels. So to return to the staff report, will this development negatively affect future development? Not only is the answer no, but the approval of this project is the Commission's best opportunity to encourage quality growth throughout Uptown in the future.

Tim Springer (Executive Director, Midtown Greenway Coalition, 118 East 26th Street): The Midtown Greenway Coalition Board of Directors is extremely grateful to the developers for engaging with us in a discourse over a period of months and responding effectively to our concerns. And so we would like to commend them. I believe you have a resolution that was passed by the Coalition Board. I'd like to commend them on planning to use private dollars to improve the public realm and provide an additional entrance into the Midtown Greenway, a walkway and bike bridge across the Greenway going through this plaza and this will likely be the front door to Uptown from the Midtown Greenway. So individuals who are using the Greenway in Uptown as their origin or destination are likely to take this route. It's very exciting and we're pleased about that amenity. In terms of shading the Midtown Greenway, there's two buildings – there's an office building. Yes, it will have some additional shading compared to a no-build scenario because you've got the bus feeder lane that goes to the transit hub there but only by one or two additional months in the year. In terms of the office tower, you also know I believe that the Midtown Greenway Coalition has been proposing city adoption of a Midtown Greenway Zoning Overlay district to protect the public's interest in the Greenway, so it's treated more like a parkway than an alley. In that proposed zoning overlay district, there is an opportunity for developments on parcels adjacent to the Greenway to go above the proposed height limit on the south side of the Greenway to an extent that does not exceed 15 percent of their Greenway frontage. And the condo tower does not exceed 15 percent of their Greenway frontage. And so the condo tower itself would be in compliance if the proposed zoning overlay district were law at this time. That tower would cast a relatively narrow shadow on the Greenway which would

sweep across the trails throughout the day. Whereas if you do not allow the height and a similar number of square feet are developed on site, we would end up with a shorter, wider building that may shade the Greenway much or most of the day instead. Regarding the issue of… Another response that the developers have made to recommendations from the Midtown Greenway Coalition is to remove temporarily for construction and rebuild the bus lane that feeds the Uptown transit hub and in so doing they would create a cavern underneath it that could be used as a future station location for the Midtown Greenway streetcar or other rail transit line and that's a very exciting change to correct a design faux pas in the transit hub that did not allow coming and going from that transit hub to the future Greenway rail transit line. The issue of density: the Coalition focuses mostly on form and whether or not it improves the aesthetics, access, and safety of the Midtown Greenway, but we are starting to engage with this issue of density along the corridor and I'll just share a thought for your pondering – if some of the concerns about density are traffic and pollution, long term, the answer is for density to be concentrated along transit lines and of course the Midtown Greenway is owned by the Hennepin County Regional Railroad Authority for the purpose of future mass transit. Studies are ongoing at this time. So, we once again have been through a number of discussions and we're excited about the connections to the Greenway as well as the developers' commitment to do public art as part of the plaza and the Greenway connection and we are encouraging moving forward. And if there's a way – Council Member Schiff brought up a very important concern – how can we guaranty that the Greenway related improvements are done if they're outside the City's purview? Let's keep noodling on that. It's a really good question. But we encourage you to respect the delicate balance of this building and the fabulous open space created along side it and connecting to the Greenway that has been achieved through detailed discussion and negotiation over time between the developer, the local neighborhood and the Midtown Greenway Coalition. Thank you.

Commissioner Tucker: In your March 24 resolution, you had a number of conditions, the first was about the platform going to 270 feet from 60. Has that been met?

Tim Springer: We believe that it has. That was a comment in response to a drawing in the first iteration of their proposal to the city. We understand that they were responding to directions from the Hennepin County Regional Railroad Authority regarding the length of the platform that would be needed and we think that condition has been met. Maybe someone from the developer team can answer that question.

Commissioner Tucker: And a second condition that I'm curious about is the no exhaust fans, generators venting towards the Greenway. Is that going to be true as well?

Unidentified speaker from development team: Yes, Council Member that will be true. And in fact if you look at the north elevation from the Greenway plaza, there's a shaded portion that extends 270 feet from the transit station to the east. Venting will not be allowed to vent on to the Greenway with our proposal.

Durant Imboden (3325 Dupont Avenue South): I'd just like to say that I've lived in Minneapolis in Uptown since 1978 and I've worked and been in Uptown all day since 1986 with occasional trips abroad. And I'd just like to say that it really is dead in the daytime. We are really in trouble in Uptown and I've seen the Fairview Uptown clinic go

out, we've seen Lakeland Academy go out, we've seen so many jobs, so many businesses, so many organizations leave the neighborhood. This is really needed economically, I think. Something we desperately need. Also, as a development, having traveled a lot and seen a lot of developments in a lot places, when I come back and I see things like the little police garage site with a parking lot behind it and Chipotle, I can't help feeling a little depressed. This is an exciting project, a creative project, one that actually I think will have really positive impact on Uptown and I think it will be the kind of signature building that years from now, like the Buzza building and the old West High School and the Uptown Theater will be remembered and still enjoyed.

Michael Nelson (2445 Aldrich Ave. S., #5): I'm here as a representative from the Lowry Hill East Neighborhood Association. Real quick, there were several things in our letter dated April 26th.

President Martin: We've got it.

Michael Nelson: If I could click on one thing in particular that hasn't been mentioned yet, besides the fact that the Lowry Hill East Neighborhood Association supported this project, the one thing primarily was a request that a permanent public easement be granted across the plaza and Greenway connection so that the plaza will truly remain open for pedestrians and not have limited use by other pedestrians. So we need to get that worked into the planning process, we're hoping you can get that worked in there. There were other people here tonight. One thing that the neighborhood association wanted to adamant about was that this does not set a precedent for the neighborhood association in terms of other projects of similar proportions and magnitude. This is a one off project, it has several mitigating conditions to it that make it acceptable to the neighborhood association. So that being said, thank you very much.

President Martin: Thank you. OK, at this point, we've been doing this now for almost two hours and I'm going to ask for absolutely new information that we have not heard before. I'm really getting very inclined to close the public hearing unless we hear things that we do not know.

Lisa Greene (3540 Hennepin Avenue S): I'm a tenant at the Greenhouse Apartments that Clark Gassen's business is now developing into condominiums. I'm here to represent the people who are looking for the affordable housing in the neighborhood. It's being destroyed at a quick rate. And the reason we're going after this project is because Mr. Gassen is part of it and he has been a key instrument in raising the prices of homes in the neighborhood and making it difficult for people like me and others to live there. I happen to be on disability. I earn less than 30 percent of the metro median income, $10,000 a year. Basically, there was an article in the Southwest Journal about people who are child abusers and that's basically why I'm on disability is because that's my history. Without affordable housing, I can't finish healing, I can't provide taxes to the tax base. I can't do what I would like to do to do my part as a citizen. I'm doing everything I can now, but it's limited. We really need affordable housing. Between me and the senior citizens who are in our building, other people who are low income and just people, students, single people, people who are preparing to buy a home but don't want to be forced into it – they would like to save up, people who like a little bit of discretionary income and don't want the housing to be so high that they have absolutely

no discretionary income… People from the Uptown Business Association are concerned about their businesses, well with no discretionary income, I know what that's like and that's hitting people at a much higher income than me with the increase in housing costs and lack of affordability. I grew up in the Fulton neighborhood. My father's business was in Uptown, my synagogue was in Uptown, and this is my home. And it's being taken away and that's all.

President Martin: Thank you.

Shana Sturla (3221 Irving Ave. S; not on sign-in sheet): I would like to say a lot of things that have already been said about adequate assessment of air quality, traffic…

President Martin: We're not going to listen to any of that because we've already heard it.

Shana Sturla: …But since you're not going to listen to any of that because you've already heard it, I'd like make one comment that hasn't been made in terms of this construction project not being in line with the character of Uptown, I'd like to also state that this is not in line with the character of the Chain of Lakes. And a 13-story building would become a major part of the experience of being around the lakes. You'll be able to see that from certainly Lake Calhoun, from Lake of the Isles and I don't feel that the structure will be in line with the character of that area or of the area of Uptown.

Erin Kelly (3549 Dupont Ave. S.): I wanted to respond mainly to the point that this creates a public space. And I think actually what we're creating here is what will feel like a corporate space. This is a vibrant area with vibrant streets, vibrant lakes, vibrant area parks, vibrant community centers in those parks that are used every day and every evening and I think that this will really change the character, not only because of the height, but because this will feel so much more like a downtown area. I came here from Hell's Kitchen in New York City and we had a largely empty corporate plaza on the next block whereas the stoops and the streets were lively just like Uptown is now. I don't think it's needed and I think that although the developers have tried to respond, they're fundamentally adding something that doesn't fit in here.

President Martin: Thank you. OK, I am going to close the public hearing because I think pretty soon we're going to not be able to make any decisions. Commissioners, we've got rezoning, we have conditional use permits, we have many variances and a site plan. And as before, I think we're going to need to do these in some sequence.

Commissioner Tucker: I will move the staff recommendation on the rezoning (Krause seconded).

President Martin: Any discussion of that? Just makes sense.

The motion carried 7 – 0 (El-Hindi not present).

Commissioner LaShomb: I'm going to move approval of the conditional use permit, item B (Tucker seconded). Well, the reason I'm going to push this, and I'm assuming that this would permit a 6 story building and a 13 story building. I've heard a lot of

testimony. I was trying to make notes and I started writing on top of my previous notes. There's a lot of information and I thank people for that. I think what this all really comes down to [for] me is a couple of things. One is we need to have in all parts of the city a certain degree of density and we need to put that density where there is sufficient transit, where there is the potential of additional transit, that's one of the reasons. We need to recognize the value of height in situations where we want to achieve density, especially when we can trade height against public space. We could take the position basically that we should build 112 townhouses on this site and that would be a wonderful townhouse community, but it doesn't really give anybody any public space. And I happen to believe that these kinds of public spaces are really valuable and my experience has been in Minneapolis where we have those kinds of public spaces and I always think of St. Anthony Main as a massive public space in addition to buildings. I think there's a value to making that trade-off. What I would be afraid of here is that if we don't allow height, what we're going to get is a development that starts to diminish public space. And as a walker and bike rider, I don't really like that very much. Someone made the point about density along transit lines. I totally agree with that. As long as I've been on the transit commission, I've been just sometimes madder than blazes because I don't think we're appreciating the value of light rail. We have a major bikeway here, we have a major transit orientation here, we have a possibility of light rail, we have Commissioner Schiff's streetcar, probably going to start here. That's a very important factor. The third thing I would say about this whole project is that we always talk about things should fit into the character of the neighborhood. I think that's a wonderful idea if we could always define character, but there are a lot of times in Minneapolis when things don't quite fit into the character of the neighborhood, but we do them because we think they add a great deal to the quality of the city. And the example I use continually because I see it every Sunday morning is the Walker. The Walker does not fit into the character of the churches across the street or the buildings behind it. But the Walker is the Walker. And I think this project is unique in one respect, but it isn't necessarily bad to have something unique in a community and I don't think that violates the character, I think it makes the character of the community more interesting. So, for all of those reasons, there are a lot of other things you could say about a lot of these issues, but I just basically think this is a good project, it's a good project for Uptown, and it really does achieve some of the things that are really important to me as a Planning Commissioner and the big one is to use resources like transit by allowing the densities necessary to make those systems work. They don't work by themselves. They need the support of density. They need the support of public mobility and movement. So I think this is a good project and I think this conditional use permit really needs to be approved because it is important. Finally, I would say with all respect to the staff, I don't think 13 stories is out of line in an area outside of downtown. Let me tell you, walk up Lake Street a little bit farther, you can see the Sears Tower sitting there, that's more than 13 stories. We built public housing in Minneapolis in very tall buildings all over the city and they have sometimes single family homes across the street. So I think this one is actually fairly isolated and whether you'll see it when you're walking around Isles or Calhoun – I've walked around Isles and Calhoun for years and I never saw Lake Point. Someone had to point it out to me one day. Maybe I'm just obtuse and watch where I'm walking. So anyway, that's my logic.

Commissioner Schiff: I'm going to move a substitute motion based on the staff report of approving a conditional use permit. The staff, clearly in their staff report, said they

believe 6 to 8 stories would be appropriate without negatively affecting future development, but they overall recommended a denial of the conditional use permit. So, I'm going to move a… see if, Madame Chair, if this in order, move a substitute approval of a conditional use permit with a cap at 10 stories for the residential building (Krueger seconded).

Commissioner LaShomb: Commissioner Schiff, let me ask you a question then. Assuming you take 3 stories off of this building, I was doing a calculation based on taking 5 stories off this building, but that probably means 25 units are not going to be put into this building, so I guess the fundamental question is are we trading development of those units in what is currently designated as public space or are we just simply saying to the developer well it's OK – we think height's an issue, so therefore we don't care if we lose 25 housing units.

Commissioner Schiff: Commissioner LaShomb, I think you made a good statement about when height can be seen as appropriate if it is as the Sears building, surrounded by lower level buildings, but I think all the talk about precedence setting in this case ignores the fact that this is simply the first surface parking lot – the largest area of square footage surface area that's available to be built on in this area and after people build on the vacant lots, then they assemble land and they tear down the existing buildings and continue to build. That's the economics of growth. And so we see that in our residential lot supply throughout the City of Minneapolis, people build on the vacant lots and then they start tearing them down. Like today, we saw two single family homes being torn down for 6 cluster unit are being built. So, I don't think this is a unique circumstance. I think we could approve it today and then we'll see something similar being popped up in a couple of blocks radius. And I don't think we've got anything in the comprehensive plan to suggest that Uptown should become that high density of an area. So, with an eye to precedence, I am saying yes, slice off 3 floors.

President Martin: I'd just like to interject that there are cities in this country that would be really happy to have the problem that we're talking about here.

Commissioner Schiff: I know, if we had a streetcar, we wouldn't think twice.

Commissioner Tucker: I wanted to talk about the whole project. I think the addition of daytime activity is certainly a big plus, as is more density near a transit station. Putting Girard through, assuming the bridge can be built across the Greenway is a plus in terms of healing the grid. Public space added where Girard had been vacated is another plus. And I think if the bridge is built, and it has to be built, then that space does become active and not just corporate space – it is a public space. On the negative side, I don't think this project truly embraces the pedestrian notion that we're trying to get in this area. It gets pedestrians in that extension of Girard, but it doesn't make it easy for pedestrians to get from the transit station to the plaza to the restaurant, to the office, to the movies. I think it's possible, but it's not obvious, it's not welcoming - that needs to be improved a great deal. Similarly, the northern edge of the property, the pedestrian movement across to Fremont is not easy or encouraged. It might be possible, but it's not good. And I think if this project wants to be truly pedestrian oriented, then it should be doing these sorts of things. Similarly on Fremont, it should be activating the street as staff has suggested because this development area is not going to stop at Fremont.

It will continue to the other side and we don't want to just have everything on Girard going on down to the expansion of Calhoun. So, I think the height really wouldn't matter if they actually had a plan that was truly pedestrian oriented.

Commissioner Motzenbecker: Where to begin? How about with Kevin Lynch who says that a good city must specifically make the connection between human values and the spatial physical city. I think we've seen tonight and heard from both sides of the values that are wanted to be seen in the physical city. That being said, the city is going to grow. That's right up front as one of the themes in the Minneapolis comprehensive plan. It's going to be a growing city, they want new stuff, they want new housing, new commercial, new retail built around mixed use, built around neighborhood commercial areas which [the] activity center of Uptown is one. Associated with growing as we all know are growing pains. And while I have some concerns and questions about the height as well as the travel plans, some of the particulates and the environmental issues there, I do think that these things can be worked out and they can be addressed. Specifically, be resolved for a compromise for everyone to enjoy this space. Looking at the height issue, I think it was only mentioned once tonight which I find interesting in that the Kenwood Isles building, a mere block away, clocks in at about 7 stories. If you count the 2 mechanical stories on top, that's 9. And if you move around as I did this morning to the back side, where it is lined with townhouse developments, the grade sinks away to add an additional story for 10 stories. That being a precedent a mere block away, I think Commissioner Schiff's proposal for 10 stories is very appropriate. I'm not convinced one way or the other if it should go to 13 or 10. I'm willing to listen to more discussion on that. Regarding interior space, this space historically as precedence, not necessarily in the City of Minneapolis, but historic precedence in Europe and other places, public plazas are in most or in a lot of cases I should say, interior focused spaces. Streets that are very tight and narrow will open up on to a public plaza where all the buildings focus inward. And those are very highly energized and vital spaces. So I think that there can be a case made for this interior space being energized and vitalized, especially with the idea of how the public uses are going to be funneled into the space and through the space via the Greenway and towards Calhoun Square as well. With all these programmatic issues, I think it defeats the purpose to force things out to the edge when the purpose of the entire development is to draw people in and create a gathering space. I think I only have one more. The idea of the corporate plaza versus the public plaza was also a point that I want to address. In that corporate plazas are very different than a public plaza and oftentimes I would agree with the person who made the statement that they are cold and empty and sometimes not designed as well to create that activity. I would refer back to the idea of the public plaza that I just mentioned in differentiating that. And a street does not have to be focused on cars – it can be a pedestrian street and an interior street. Thank you.

Commissioner Krause: Madame Chair, obviously some of the comments tonight were about the building but an awful lot of them are about the cars and the pollution impacts and others. Frankly, I think long term, the way we addressed the fact that we all drive too much and that we drive cars that are too big, is we create projects and have development in this city that's mixed use and has sufficient density to support not only the transit that's there today, but the transit that's coming in the future. So, in a… I agree that there needs to be a larger area studied for traffic in this area. I don't think this developer should bear the responsibility for it solely – I think it's really a city

prerogative to do that, so I do think that that's something we should try to find the funds for and try to put on our already very crowded work plans. In terms of the height, I actually look for, having kind of gone to other cities and looked around, how does it work – I think it has to be a function of very high quality design. If you want to build a larger building than the other buildings in the area that other people are going to look at, it has to look good. It has to be well done. I think this building meets the criteria. I think it's one of the most interesting buildings I've seen before us in a long time. The other criteria is that I want to know how it interacts at the street level, the way the pedestrian experience – the people who don't necessarily live there, they go up in the elevators to something, but how they experience it at the street. There again, I think this building does a very good job of that. It's created a very pedestrian oriented mixed use kind of environment at the street where people experience it. And the last one is the context. What's around it. And in that sense, I think it was the Faegre memo that referred to this as a unique infill site. There aren't a lot of other sites like this where you're going to leave the perimeter shell buildings around it and build on this large expanse of parking that's back behind it, next to a Greenway. It really is a fairly unique parcel. And its context is such that I'm not as concerned about the height that's been proposed because I don't see it towering over residential areas. I think you could make this fit into this area quite nicely. My only concern with the substitute motion is if what that means is we got… because I don't want to confuse density with height because they're not the same thing. If what we're going to get is the same level of density, but in a 10 story building and the building footprint simply gets larger and maybe squeezes some of the space out of the plaza, I'm not sure that's a better result. And I think it was Tim Springer that spoke to the fact that this is a fairly tall, fairly slender building – and that might be preferable with those extra 3 stories.

President Martin: On the south side of the Greenway.

Commissioner Krause: Yes.

Commissioner Schiff: Just to answer that, Commissioner Krause, we still have actions before us tonight including a site plan so if we want to avoid a short, fat, squat building, we can do that in the site plan process.

President Martin: OK, the motion that's before us is the substitute motion…

Carol Lansing: Excuse me, Madame President, may I address the Chairmanship? Commissioner Schiff's question to me earlier?

Commissioner Schiff: About the bridges? Yes.

President Martin: Sure.

Carol Lansing: I believe it would be appropriate for you to do a condition of approval on the CUP that requires us to submit those letters of agreement to engage with…for Hennepin County to work with us on the bridge. It's not surprising for government that it's a chicken and egg thing – they're not going to [tape unclear] those. But if I may, with respect to taking 3 stories off the building and then suggesting that you will limit the development, it's effectively a denial of this project. It's a redesign of a major

component of the project and probably would not be feasible and allow us to do the plaza and the bridge and the other amenities without those top 3 floors.

Commissioner Schiff: OK, thanks.

President Martin: So the motion that's before us is the substitute motion to approve the CUP with a limit of 10 stories on the residential tower.

The motion failed 2 – 4 (Tucker, Krause, LaShomb, and Kummer opposed; Motzenbecker abstained; El-Hindi not present).

President Martin: Alright, so we're back to the original motion. Your original motion, Commissioner LaShomb was to approve the CUP for all the reasons that you so eloquently stated.

Commissioner Tucker: Could you add that condition about the…

President Martin: That will be site plan… Carol, CUP is the best place to put this [response off microphone].

Staff Wittenberg: If the Commission was comfortable with the language Ms. Lansing stated in general, we could certainly flesh that out further in more detail.

President Martin: Right. It was about having clear agreements with Hennepin County about things as they would go forward, right? Or that you would work toward those or present them [response off microphone].

President Martin: So that's the motion that's now before us. All those in favor of that motion, please signify by saying aye.

The motion carried 5 – 2 (Schiff, Kummer opposed; El-Hindi not present).

Commissioner Schiff moved item C (Tucker seconded).

President Martin: That's the CUP for the expansion of the theater. Discussion?

Commissioner Tucker: Findings.

President Martin: That one, they were recommending approval.

The motion carried 7 – 0 (El-Hindi not present).

Commissioner LaShomb: Given the height of this building, the variances must be approved, is that right?

Staff Wittenberg: If the intent is to approve the building as is at the height proposed and the location proposed, then you would need to approve the variances that have been requested.

Commissioner LaShomb: OK, well I'll move D and E and F (Krause seconded).

Commissioner Krause: I'll second that motion, but just a quick comment on this. Again, which I think really relates to the unique nature of this site in the fact that we are creating lots of… for purposes of this analysis, creating lots of front yards, side yards, you have a site that really has some unusual configurations because it is an interior site. And I think that's also what's driving some of the need for variances on this. And so you could create an alternative kind of analysis with Girard as a street that I think might change that analysis.

Commissioner Tucker: Just a question. What is the actual remaining setback after this variance would be granted. In other words, how wide is that sidewalk on the Greenway side?

Staff Farrar: The applicant believes that it's 5 feet, but again, these setbacks are from the property line.

Commissioner Tucker: My question really is – how much room is there for pedestrians to walk between the buildings and the bus lane?

Staff Farrar: 5 feet.

Commissioner Tucker: That seems a little tight.

President Martin: That does seem awfully tight.

Bill Baxley: If I may, I believe that does sound a little tight. What we're struggling with here with the MTC is their desire to have no pedestrians on the back side of the building. So I think what we'd like to work out – something more of an 8 foot range on the back side to allow, facilitate as much movement as we can, understanding that this will be a discussion with the MTC folks and their traffic and safety concerns.

President Martin: So it's MTC that's driving this rather than the developer.

Bill Baxley: They really don't want any extra traffic…

President Martin: They don't want anyone back there.

Commissioner Tucker: Can I suggest we do this variance allowing for an 8 foot pedestrian way on the north side of the PUD? I'm not sure quite how that works out.

Staff Wittenberg: Commissioners, the appropriate place likely would have been in the CUP for the planned unit development given that the variances are specifically for the residential building…

President Martin: We'll have to do it in the site plan.

Staff Wittenberg: You could do it in the site plan.

Commissioner LaShomb: We're coming to it. We'll try.

Commissioner Schiff: I'm just asking if the motion could be re-argued and just clarify what the hardship is here. In the staff report, it's pretty clear that the variances are needed because of the height. And all of this has to rest on the premise that this site is not economically feasible with any other use. And I'm just wondering where the hardship is for these variances.

Commissioner Krause: Madame Chair, this is kind of a complicated issue and I think we're all maybe too exhausted to discuss it thoroughly. But it seemed to me that the site plan – the point at which we start measuring the setback was somewhat strange in this case because it was an interior site. So it's unclear to me exactly on this site what is the front yard, what is the side yard, is there more than one? And because of that, it's hard for me to get a handle on what might be an appropriate setback. There's only one side of the site that's actually is fronting on to the public street and that's the Fremont side. So, perhaps the Fremont side is a little more clear cut, but on the other ones, I can't really tell if we're proposing a setback from what is a public plaza, sort of a quasi-public street. Or, what is the point at which we're measuring the start of that setback. And that actually is a characteristic and part of this unique infill site - that's a characteristic of this site that's unique and unusual and does create a hardship for purposes of applying the setback.

President Martin: You know, it strikes me that there's some sort of irony to this discussion because you think of the ways that we twisted ourselves in all sorts of different directions to get liner development around the parking ramps downtown. And here we have something that's got already sort of the liner stuff there and we're trying to put something in the middle of it that isn't just a parking ramp. Just a little ironic, that's all. We need irony late at night. OK, so everybody clear? The proposal, Commissioner LaShomb, is to approve the 3 variances. And it was seconded. Let's get the vote and then we'll see what sorts of findings we can manufacture at this point. All those in favor of the motion approve D, E and F, please signify by saying aye.

The motion carried 5 – 2 (Schiff, Tucker opposed; El-Hindi not present).

President Martin: Findings. And I think the findings Commissioner Krause was stating are – the hardship really is in the curious shape of this site and the fact that there are not sufficient front, back, rear side or front entrances in any conventional sense that we normally deal with them.

Commissioner Krause: The fact that there is an interior orientation to the design; because of the desire to maintain that outer set of buildings on the liner. Perhaps even the proximity to the Greenway and the bus corridor that runs along it.

Commissioner Tucker: I would add the bus corridor in itself a buffer. In terms of setbacks from other uses, that does the job and I'm hoping we'll get to the pedestrian later on.

Commissioner LaShomb: And I would add to this that granting the setback in general for this development is not injurious to the use or enjoyment of other property in the vicinity. There's no damage to anybody by granting these variances.

President Martin: So now we're down to site plan.

Commissioner LaShomb: I will move the site plan review and if people have amendments, glad to hear them.

President Martin: Commissioner Krause, you're good on amendments for site plan. And we had some conversation earlier about green roofs. This would be a good place to put the linkage to the Greenway and all of…

Commissioner Krause: It would. And I'll let someone else maybe start making that list. I have two things I would like to change on the site plan. One of which, I think the developer will like and one I don't think they will. But I really have been persuaded that there needs to be an entrance to the theater off of Lagoon. And I think it's going to require them to re-do the interior flow and function of that lobby area. But I think they can do that without a great deal of damage to their plan and there really should be a front door to the theater on Lagoon. It's the Lagoon Theater. And if they have two entrances into the lobby area, one from the plaza that accommodates the people coming by bus to the transit center, or the people parking their bike, that's fine by me too, but at least one of those entrances should be on Lagoon. The other one is the incorporation of active uses along Fremont – I'm not sure that that's what the neighborhood - that LHENA neighborhood bargained for necessarily. I don't know if anybody's really thought through what that means to now extend down active uses – does that mean a restaurant, does that mean something that's now creeping closer, kind of encroaching into what is really…? Actually I would prefer the parking lot with the design elements that they've proposed to give us a little bit more security. A parking lot can be fairly active if there's a lot of people coming and going from this site as I suspect there will be. And I'm not sure we want to have that encroachment of other kind of an active use that direction into the neighborhood. So I'm not comfortable with that condition. I'd pulley it out.

President Martin: You consider that a friendly amendment? OK. Other site plan issues.

Commissioner Schiff: Commissioner Krause, you want to add in the theater marquee issue just to be safe?

Commissioner Krause: I don't want to steal your thunder.

Commissioner Schiff: Well, I'll just move consistent with the applicant's statements here tonight, that the movie names and times will be displayed outside, visible from the street.

President Martin: They finally did it on the Crown. It took 3 years.

Commissioner Tucker: Yes, I wanted to add a condition that the pedestrian connection from the transit plaza to the Girard plaza be expanded and made more direct. We'll

leave that to staff to work it out. And that's the second part is the sidewalk width on the northern edge.

President Martin: At least 8 feet?

Commissioner Tucker: Be at least 8 feet, yes. Notwithstanding variances going to zero.

President Martin: And this is also the place where we put in the little request that Hennepin County be negotiated with for…

Commissioner Schiff: Already did that as a condition of the CUP.

President Martin: So this is where the developer does handshake agreements with Hennepin County about all the…

Commissioner Schiff: I'm going to ask Tina Sanz to clarify [Sanz responded off microphone that the agreement with Hennepin County was conditioned as part of the conditional use permit].

President Martin: Couldn't hurt to ask them twice. You know how Hennepin County is. You often have to ask again, right [laughter]?

Commissioner Schiff: I'm still astounded only 30 bike spaces here is sufficient for something of this magnitude, so I'm going to propose that gets doubled to 60.

President Martin: Is that a friendly amendment, Commissioner LaShomb [affirmative response off microphone]. Anything else about the site plan? All those in favor of the site plan as amended with condition 6 removed and several additional conditions added in. I got that reversed – 6 stays in, 8 goes away. Jason, you've got 4?

Staff Wittenberg: I've got movie names and times shall be displayed on the marquee; pedestrian connection between Fremont and the plaza shall be expanded to at least 8 feet in width; and accommodate no fewer than 60 bikes. Is there another? More direct as well.

President Martin: OK, all in favor of that motion, please signify by saying aye.

The motion carried 7 – 0 (El-Hindi not present).

Commissioner LaShomb: I'll move the plat (Tucker seconded).

President Martin: Discussion about the plat? How do you divide up a parking lot, how many ways? OK, all in favor of that motion, please signify by saying aye.

The motion carried 7 – 0 (El-Hindi not present).