

CITY PLANNING COMMISSION

Minutes of the Meeting of [September 23, 2008](#)
Beginning at 2:00 p.m.

PRESENT OF THE COMMISSION: [Chairwoman Wrenna Watson,](#)
[Rabner, Reidbord, Dick, Ernsberger,](#)
[Mistick, Garfinkel, Burkley](#)

PRESENT OF THE STAFF: [Ismail, Tymoczko, Schubert, Layman,](#)
[Hanna](#)

AGENDA ITEMS COVERED IN THESE MINUTES

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Ms. Watson chaired today's meeting and called the meeting to order.

A. ACTION ON THE MINUTES OF THE MEETING OF [June 17, 2008](#)

On the motion duly moved and seconded, the minutes of the June 17, 2008 meeting of were approved with a motion by Ms. Ernsberger and a second by Ms. Garfinkel. The minutes from the September 9, 2008 meeting are not available as yet.

B. CORRESPONDENCE (See **Attachment A for staff reports.)**

Ms. Watson stated that the Commission was in receipt of a referral from the City Clerk's office, [Council Bill #2008-0721, Ordinance Amending the Pittsburgh Code, Title Nine, Zoning, Chapters 907, 919, and 921, by revising various sections relating to Electronic Message Signs, creating a definition and requirements for Electronic Advertising Signs and Temporary Event Banners and clarifying abandonment of nonconforming advertising signs. The Commission has referred to staff for review and report.](#)

Also correspondence from the House of Representatives, Rep. Harry Readshaw, relating to number 11, the Conditional Use application for 2126 East Carson Street.

By hand delivery we received a packet from Mr. Tre Hannis, the young man that testified at the last hearing, he sent in a letter and a video of his neighborhood that the Commission members spoke about. Ms. Watson said at the last hearing the testimony for that particular hearing was closed on that date so I don't believe the letter or the tape should be made part of the record.

An electronic message was received from Kathleen Walsh, she testified at the last hearing, so this should also not be admitted unless the members feel it should be admitted. The newspaper article regarding that hearing was also received but the newspaper is public record so we are not going to make that part of the record.

Information from Tucker Arnesberg regarding that case also where they provided the staff with minutes from the Greentree Planning and Zoning meeting hearings in regards to that project.

Three letters from Robert Fadowski that were included in your packets concerning the Greentree project. Ms. Watson said to her this would fall into the same category of the evidence for a hearing that was closed.

3. Subdivision/Consolidation: Olympic Sports Complex Subdivision and Consolidation Plan, Robinson Street and Carillo Street, 4th and 5th Wards.

Ms. Tymoczko made a presentation in accord with the attached staff report. Ms. Tymoczko advised that this property is still owned by the Housing Authority and they will have the closing as soon as this is recorded. Director Ismail stated that the subdivision committee had met and recommends approval of the plan. The Chairwoman called for a motion.

MOTION: That the Olympic Sports Complex Plan of Subdivision and Consolidation, 4th and 5th Wards, City of Pittsburgh, County of Allegheny, prepared for the Housing Authority of the City of Pittsburgh, by Liadis Engineering and Surveying, Inc., dated September 10, 2008 and received by the Planning Commission September 23, 2008 BE APPROVED and the signatures of the proper officers of the Planning Commission be affixed thereto. (No improvements or monuments needed.)

MOVED BY Mr. Reidbord;

SECONDED BY Mr. Rabner.

IN FAVOR: Watson, Ernsberger, Reidbord, Rabner, Dick, Garfinkel, Burkley

OPPOSED: None

CARRIED

4. Subdivision: [Krasnow/Zell Plan of Lots Subdivision \(Hempstead Road east of Wightman Street\), 14th Ward](#)

Ms. Tymoczko made a presentation in accord with the attached staff report. Ms. Tymoczko said these are two multiple unit structures on one lot and being divided for individual sale. Variances were received from the Zoning Board to meet the requirements. Director Ismail stated that the subdivision committee had met and recommends approval of the plan. The Chairwoman called for a motion.

MOTION: That the [Krasnow/Zell Plan of Lots, 14th Ward, City of Pittsburgh, County of Allegheny, prepared for Rachel J. Krasnow and Ronna Sue Lehman Zell by Pennoni Associates, Inc., dated May 20, 2008 and received by the Planning Commission September 23, 2008 BE APPROVED and the signatures of the proper officers of the Planning Commission be affixed thereto. \(No improvements or monuments needed\).](#)

MOVED BY Mr. Burkley; SECONDED BY Ms. Ernsberger.

IN FAVOR: [Watson, Ernsberger, Reidbord, Rabner, Dick, Garfinkel, Burkley](#)

OPPOSED: [None](#) **CARRIED**

Ms. Mistick arrived.

5. Consolidation: [Union Electric Steel Consolidation Plan of Lots \(Bell Avenue and Copley Way\), 28th Ward](#)

Postponed for two weeks for additional information.

D. DEVELOPMENT REVIEWS (See **Attachment C** for staff reports.)

6. For Hearing and Action: [Revisions Historic Preservation Ordinance](#)

[Ms. Molnar](#) made a presentation in accord with the attached staff report. Ms. Molnar said the proposal extends the time frame from 90 days to 120 days, the other changes that it makes to the existing ordinance is a matter of clarification and explains what happens if the Commissions or Council fail to act in various situations.

Ms. Molnar said the Commission had questions the last time concerning deemed approvals or deemed denials of historic designations. Ms. Molnar said she did discuss this with the Historic Review Commission and with the Department of Law and everyone wanted to keep the proposed legislation as it was when it was briefed to the Commission two weeks ago. There are representatives from Councilman Burgess's office and the Law Department present if you have questions.

Ms. Mistick asked if they could hear the review from the Law Department. Ms. Molnar said they think the way the legislation is written is appropriate, there are other instances in the Pittsburgh Code where deemed denials and approvals are used.

Mr. Baumiller, City of Pittsburgh, Department of Law, the way the legislation is currently on the books, not on the draft you have before you, if City Council fails to act there is a deemed denial regardless of prior approvals from the Planning and Historic Review Commissions. In this case, if both bodies approve an historic nomination, if Council fails to act then it is a deemed approval, it protects the property more than the current ordinance.

We have also provided for deemed denials that if there is a split between the Historic Review Commission and the Planning Commission or if both give a negative recommendation. Did this because when a property is protected by the Title 11 Historic Review Code there are restricts on uses and changes that can be made, to make clear that a property is appropriate for nomination.

Mr. Reidbord said that City Council always has the final say so a deemed approval, usually it is just the opposite; it is counter intuitive if they do nothing it's approved. Mr. Baumiller said this is a slightly different circumstance but under the common law of zoning then it is a deemed approval, the Pittsburgh Code is a little different, ours is a deemed denial.

Ms. Watson said you said if the zoning board fails to act it is a deemed approval. Mr. Baumiller said that is common law but the Pittsburgh Code

it is a deemed denial. Mr. Baumiller said any where else in Pennsylvania it would be a deemed denial, this does happen in common law, I think we are doing something that is within our powers and it cleans things up in the Code.

Mr. Burkley asked about #5, if the proposed historic designation did not receive any recommendation from the Historic Review Commission or the Planning Commission, then the failure for City Council to act would be a deemed denial, when would that occur that there would be no recommendation. Ms. Molnar said she can't actually see that ever happening. In fact numbers 3, 4, and 5 we never get to the circumstance where there has to be a deemed anything and hopefully someone will always be paying attention to the legislation. Ms. Molnar said they had a nomination a couple of months ago that the Planning Commission decided not to support so I guess it would be possible that the HRC could have made the same recommendation. Mr. Burkley said he thinks that is the one he has the biggest problem with because then it takes the responsibility out of three bodies. Mr. Baumiller said that is true and that would be a complete breakdown of process, it is actually provided for under the code currently, if you look at 1101.03A2H it states that: the Historic Review Commission and the City Planning Commission shall submit the recommendations to City Council within five months of the date of the nomination, in the event that said recommendations are not transmitted to City Council by that time, Council will proceed to consider the nomination without said recommendations. There is a mechanism already in the Code that HRC and/or the Planning Commission don't act it goes to Council, and then if Council doesn't act it is a denial.

Mr. Burkley said he understands but that is troublesome to him, you could have three different bodies not take responsibility for not making any recommendation and then it is deemed denied. Mr. Burkley said he feels that citizens are entitled to see how their representatives come down on issues. Mr. Baumiller said that is more a failure of enforcement than a failure of code. Mr. Burkley said this allows bodies to just do nothing. Ms. Watson said it does tell you what will happen if that occurs.

Ms. Mistick asked if this will be the only place in which there is a deemed approval when Council doesn't act, I think having inconsistencies in the Code makes it harder. Mr. Baumiller off the top of his head he can't think of a deemed approval in the city code but title 11 is distinct from everything else.

Mr. Dick said he remembers a landfill operation going into Baldwin and that ended up in the courts being approved because we didn't do it in a timely fashion and if we don't act in a timely manner then it is a deemed approval by his understanding. Mr. Baumiller said he would take a look at

that but he isn't sure which one that is. Mr. Dick said it was upheld that their failure to act at that was a deemed approval, if the Commission did not turn them down then they were approved. Mr. Baumiller said he thinks that would be consistent with the common law of zoning.

Ms. Watson asked if we are on a timeline, she was trying to get a presentation we can all understand but we still need to move and ask for questions from the Public. The Chairwoman called for questions or comments from the Public.

Mr. Steven Paul, Preservation Pittsburgh, 223 4th Avenue, in favor, provided written testimony, [attachment](#)
Mr. Paul said he just wanted to add that in Section 5, in the event that neither the HRC or the Planning Commission recommend, I fully embrace that it shouldn't be denied if it hasn't been considered in a formal way, on the other hand it shouldn't be approved by default either, the problem with letting it go the way it is, if it is denied through all three defaults, the applicant can not reapply for another five years. A potential solution to that would be to waive the five year waiting period in that event so they could cycle back in without having been penalized for having done nothing wrong.

Ms. Watson said you are suggesting that an amendment be made to the proposed legislation and Mr. Paul said yes, this is a potential solution and given the legislation on the table we do support it we feel it is good for the HRC and the Planning Commission.

Shawn Carter, Chief of Staff to Rev. Burgess, author of the amendment. Mr. Carter said this is in response to a rather unique nomination and it was the Councilman's intention that never again because of the failure of Council to act would it poison an historic designation for an applicant.

There were questions early on concerning time limits and they referred to another section of the code where there is an eight month moratorium on exterior alterations to a building or it's demolition from the date of nomination. Mr. Carter said they think they accommodated that by this extension. In the worst scenario, it could linger, the eight months expire, and someone gets a demolition permit, and renders the nomination moot.

Mr. Carter so it is very important while extending the time limit, so someone can find this in the process, and there will still be time. Mr. Carter asked is the Planning Commission required to render a recommendation or can they send it back to Council without a recommendation. Ms. Tymoczko said they can send it without a recommendation. Mr. Carter said it is possible that a nomination could go through both processes and not receive a recommendation from either and

go to Council, Mr. Carter said when the August Wilson nomination came down no one was certain and they wanted to make certain it didn't happen again.

There being no [more](#) comments from the Public, the Chairwoman called for questions and comments from the Commission members.

Ms. Garfinkel asked is the rationale for a move from 90 to 120 days just based on a safety net. Ms. Molnar said it partially is but also because sometimes we need that time to get the developer or the property owner to work with the preservation groups as with the Working Men's Savings Bank. Ms. Molnar said she thinks the 120 days will give an opportunity to open up more dialogues.

Ms. Mistick said in the example Mr. Carter just used if we look at item 4, the negative recommendation, you are presenting the option of a no action recommendation, and if there is a no action recommendation where does that fall in the revisions. Mr. Burkley said in number 5.

Mr. Burkley said he thinks the changes are very good and commended the Councilman for bringing them forward, I do like Mr. Paul's idea because that really is the penalty, if no one takes any action you are stuck for five years, to waive that if there is a no action all the way through the course.

Mr. Dick agreed and said if you have to wait five years; the building may not still be there.

Ms. Watson asked procedurally, do we have the ability to make amendments to this presentation and submit it back with amendments instead of just approving or disapproving. Mr. Baumiller said yes, you can make amendments.

Ms. Molnar asked if the Commission members would like to see it here again in two weeks with the amendments. Ms. Watson said there are suggestions on the table.

Mr. Dick said he thinks he is hearing agreement to make that change and Ms. Ernsberger said she would agree with that. Ms. Watson said so we would be looking at regarding waiving the moratorium. Mr. Reidbord said there should be some limitations, five years seems harsh, but otherwise you could just keep coming back.

Ms. Mistick said it seems like the relief here is that you can withdraw, then you can come back in a year. Mr. Reidbord said it could be that it is your property and someone else has filed for the historic designation.

Mr. Paul from Preservation Pittsburgh said he realizes he is out of order but he has a solution. Ms. Watson asked the Commission members and they said they would let him speak again.

Mr. Paul said the problem as he heard is if a nomination filters thru without recommendation is that they could just apply again the next day and go on forever. The solution to that problem is for the bodies to do what they are supposed to do and address. Ms. Watson said certainly but we are trying to make a safety net if that doesn't happen. Mr. Paul said the likely hood of that happening on an ongoing basis is probably moot.

Mr. Burkley said the responsibility should be on one of these bodies to act as opposed to the citizen. Ms. Watson said the other side of that at least for us, own inaction wasn't really in action from the stand point of not considering it, we made full consideration and then decided. Ms. Watson said sometimes no action is a decision also. Mr. Burkley said it could be literally no action.

Mr. Baumiller said if you look at 1101.03.K, the last sentence: the restriction of this paragraph shall not apply to deemed denials under section 1101.03J 4 and 5, that means that you can reapply immediately that is a change that we put in by unfortunately in this draft it wasn't underlined so it didn't come out as being new. I don't know if that language is exactly what you want or if you want to change it a bit.

Ms. Mistick said given that clarification she would be happy to propose a motion for approval for the legislation as presented.

MOTION: In light of the Historic Review Commission's affirmative recommendation of 7 May 2008, the City Planning Commission recommends that Title Eleven of the Pittsburgh Code [Historic Preservation, Chapter 1101.03(i)(4)] be amended as proposed.

MOVED BY Ms. Mistick; SECONDED BY Mr. Rabner.

IN FAVOR: Watson, Ernsberger, Reidbord, Rabner, Dick, Mistick,
Garfinkel, Burkley

OPPOSED: None

CARRIED

7. For Hearing and Action: [Historic Designation, 340 46th Street, St. Mary's Academy](#)

Ms. Molnar made a presentation in accord with the attached staff report and illustrations included in Attachment ____. Ms. Molnar said this nomination was submitted to the Historic Review Commission on May 12, 2008 and between then and now has gone to the Historic Review Commission three times, once for a preliminary determination, once for public hearing and once for vote. Ms. Molnar said the Historic Review Commission recommended approval of the nomination.

Ms. Molnar said the property owner; the Catholic Cemeteries Association is opposed to the nomination. It was nominated by an individual, Keith Cochran, who is a resident of Lawrenceville. The Academy building which is one and half or two story Greek revival structure built in 1853 to 1854. Ms. Molnar outlined the history of the property in the packet provided to the Commission members. Ms. Molnar said the building served as a school and a place of worship for St. Mary's Parish.

Ms. Molnar said the Historic Review Commission voted that this property meets two of their points of significance outlined in the Historic Preservation Ordinance. That the building exemplifies an architectural type, style, or design distinguished by innovation, rarity, uniqueness, and overall quality of design, details, materials, or craftsmanship. The property is one of the free standing Greek revival properties that Ms. Molnar has seen in Pittsburgh.

The Historic Review Commission also said that the building exemplifies a pattern of neighborhood development or settlement significant to the cultural history or traditions of the city. Ms. Molnar said the building is significant because it is associated with the development of Lawrenceville. Finally the Commission decided that the building has significant integrity to make it worthy of preservation; that means that the building is in good enough space that it still resembles what it was meant to look like and for all of those reasons the Historic Review Commission voted to recommend.

Ms. Molnar said she has a proposed motion prepared.

The Chairwoman called for questions or comments from the Public and explained that one person is permitted to speak as the representative of the organization.

Joseph Uber, attorney Catholic Cemeteries Association, Catholic Diocese of Pittsburgh, opposed. Mr. Uber submitted a detailed packet (Attachment _____) as to why they oppose the designation. The building was only used as an academy for a girl's school for thirteen years. When they purchased

the property they agreed to preserve St. Mary's Church which is designated as an historic landmark on this property. Their intent was to preserve the Church and convert it to a Chapel Mausoleum which is adjacent to St. Mary's Cemetery. Mr. Uber said their subdivision of the property was reviewed and approved by the Planning Commission and they also had to apply for a variance because the area is zoned residential.

Mr. Uber said at no time during that process that began in 2005 no one raised the issue that this building should be designated as an historical structure. Our basic argument here is that this a religious structure and has been since it was built and therefore under the ordinance it must be nominated by the property owner. This was nominated by a private individual. Mr. Uber said you those of you not familiar with the Catholic Faith burial is a religious worship part of the church and this is an important issue that should be considered.

The original church, which is the St. Mary's Academy, was built back in the 1850's, that was the church at that time, and it was continuously used for the celebration of mass up to the year 2001. That testimony presented at the Planning Commission hearing, so our position is that it is a religious structure therefore it is inappropriately before the Historic Review Commission and the Planning Commission.

Mr. Uber said St. Mary's Church is what they are interested in preserving, not every old building can be preserved, and this complex had three structures on it: the St. Mary's Academy, the church itself, and the Lyceum, two of those structures will be preserved. The cemetery association can not afford to preserve all.

Carol Peterson, architectural historian residing in Lawrenceville, member of Lawrenceville Stakeholders which has voted unanimously to support the nomination of the St. Mary's Academy building for historic status. Ms. Peterson said she did some of the research for the nomination and the building was constructed in 1853. Contrary to what the last speaker it was used most recently as senior citizen housing, it was on the 1996 Lawrenceville house tour when its use was completely secular. Mrs. Peterson said she did tour the building and saw the apartments that were created. Mrs. Peterson said you don't see Greek revival buildings in that condition in the City of Pittsburgh and there are few if any comparable buildings in the City of Pittsburgh. Mrs. Peterson said the building was part of the mid 19th century settlement and development of the Lawrenceville neighborhood and the beginning of the Irish community.

Ms. Watson asked if the Lawrenceville Stakeholders are the same organization that Tony Ceoffe is a part of and Mrs. Peterson said he is

with Lawrenceville United. Ms. Watson asked if they were involved in the hearings process concerning the entire property. Mrs. Peterson asked if you are asking about the Zoning Hearings about subdividing the property. Ms. Watson said David Toal is present and may remember better but there were extensive hearings with many people from the community present and a lot of opposition. Ms. Watson said she agrees with Mr. Huber that there were a lot of agreements that were made because the community sat down with the Catholic Diocese and came to a lot of agreement as to what was to occur on that property weren't the Stakeholders a part of those meetings. Mrs. Peterson said the Stakeholders, Lawrenceville United, and Lawrenceville Development were part of the discussion but she doesn't think there was discussion at that time of demolishing this historic building. Mrs. Peterson said when Mr. Huber said this building being continuously used for masses up until 2001; I think he has it mixed up with another building that is on the same parcel. This building was originally a school and a church but in the early 20th century it was housing for priests and within in the last ten/twenty years, it's most recent use was senior citizen housing.

Mrs. Peterson said she would like to add that the buildings with the most significance are not always the big fancy buildings; they are the smaller buildings that you might not notice.

Keith Cochran, architect in Lawrenceville, nominator, in favor. Mr. Cochran said the reason he submitted the nomination was because there was a demolition notice on the building and he couldn't believe the owner's would tear it down. It is one of the only free standing Greek revival buildings in the City, built in 1853 when Lawrenceville was just a village before the Victorian's came and built the row houses. It is in its original setting in this complex, it was before the church and the school.

Mr. Cochran said they are hoping that the owner will consider tying it in somehow with their development. Mr. Cochran said they have talked to them about some other use for the building, it is too important of a building to demolish.

Annabelle McGannan, Executive Director Catholic Cemeteries Association, 718 Hazelwood Avenue, opposed. Ms. McGannan said they confirmed with the pastor that the building was used daily up until 2001 for daily mass. Typically a parish if they have a small building on the property they will use that building for daily mass because there are much smaller crowds to avoid heating the large church.

Ms. McGannan said under the current language of the Historic Preservation Ordinance any property used for religious worship is exempt from nomination by anyone other than the property owner, that language

seems to be conveniently being ignored both by the Historic Review Commission and by the people who spoke prior to her. This property has been used for religious worship for over 150 years and it continues to be used for religious purposes and if that doesn't exempt it under the current ordinance she doesn't know what does exempt it. The nomination should be denied, burial is a function of the Catholic faith, and it is religious act and includes services. This property has been and will continue to be used for forms of worship.

Larry Baumiller, City of Pittsburgh, Department of Law, said that this issue has come up before fairly recently with a property that was owned by the Salvation Army and the question in that case was, what exactly is a church. Under the current ordinance, any and all of the following: church, cathedral, mosque, temple, rectory, convent, or similar structure used as a place of religious worship may only be nominated by the owner, it is our opinion that has to be either the current or the most immediate use, it doesn't matter if a building was built as a church and then turned into condo's, it is not a church once a place of worship has been turned into a residence or for commercial use.

Mr. Baumiller said this is factual question in this case, how the building is being used and what has been going on with it, it seems like we might have to have a factual hearing on that.

Mr. Reidbord said if it was vacant would you go back to the previous use and Mr. Baumiller said that would depend on the intent of the vacancy, if the building was vacant waiting for a sale you could argue that is a discontinued use. Mr. Reidbord asked who has the burden of proof, how do we judge that. Mr. Baumiller said he isn't sure, the Historic Review Code isn't clear who has the burden in this case and we have actually looked at the zoning files, since it is such an old building, we don't have occupancy permits the way you would with a newer structure, so we don't have the normal level of proof, it was built eighty years before we had a Zoning Code.

Mr. Burkley asked what it is currently zoned, Ms. Tymoczko said it is residential, one unit attached, high density. Mr. Burkley said the reason he asked if it was being used as a church they would have to get an exception. Mr. Baumiller said no not if it was a prior non-conforming use which it would have been if it was built in 1860.

Customer in the audience interrupted and Ms. Watson explained that they are not permitted to speak from the audience.

Mr. Dick said you mentioned that the intended purpose could be relevant and Mr. Baumiller said he thinks it could be if there was any evidence that

the religious use had been abandoned. Mr. Dick said their intention was to use it as a chapel and part of the activities of the burial association and that could be a reason and Mr. Baumiller said yes and I think it is up to the Commission to look at the facts and to determine what exactly happened in this case.

Mr. Burkley asked if the legal department thinks this section is vague and Mr. Baumiller responded said it could be worded better but I think practically has to be what the current or most immediate use had been.

Mr. Reidbord asked if it would be proper to have a separate hearing on this factual issue or do you think we could make a decision based on the facts we heard today. Mr. Baumiller said there are two answers to that; first it is up to the Commission and second if you don't think you don't know enough to make a decision it is appropriate to have another hearing and the Planning Commission does have subpoena power so if there is someone you want to hear from.

Ms. Watson said she sees Mr. Toal from the Zoning Board of Adjustment standing and he may have some information for us from the extensive zoning hearings that we held.

Mr. Toal said the original subdivision was opposed by the 45th Street Faithful that he represented before he was on the Zoning Board and so there was an understanding between that group and the church about splitting the lot into two pieces. Mr. Toal said he doesn't recall whether demolition of this building was anticipated and he thinks it was. Mr. Toal said there was a proceeding once he was on the Zoning Board and they did grant a use variance with conditions and he suggested that you put into the record the proceedings both from the subdivision hearing and at the Zoning Board level and once you have reviewed that it might help you make a decision here.

Mr. Burkley asked what was the variance that was granted for this property and Mr. Toal said it was a use variance for a cemetery because cemeteries are not permitted in the residential zone. There was a long proceeding and we did grant the use variance with conditions, there was an understanding to save the lyceum and to make sure that it continued to serve as a programmable community space. The understanding was with the 45th Street Faithful, an ad hoc community group.

Mr. Dick said it seemed to him the question of religious organization or use for religious purpose usually would end up in court and the court would decide. If there were history here relative to the use of the property and which the attorney indicated might be pertinent from the standpoint, I would like an opportunity to review before making a decision or make no

decision. I think we should take advantage of any additional information that is there that is pertinent to the circumstances. Mr. Dick feels this should be postponed before making a decision and didn't think they were up against a time frame on this.

Mr. Baumiller said that Ms. Molnar just brought it to his attention that October 12 would be the deadline to send this to Council; you have an October 7th meeting. Ms. Watson said she was going to suggest that they hold off for information from the Zoning hearing and that most of groups from Lawrenceville participated in that hearing and there were some agreements and concessions that were made.

Ms. Watson said the other issue is if this a religious building and should it have been nominated by the owner or can someone else make that nomination.

Mr. Reidbord said he feels that is a question that the Commission should decide for the next time there is a hearing similar to this. Mr. Burkley said he feels this is something that they need to come up with a process for, one thing that he can see happening is that anyone that doesn't want their property nominated come in and say I use it for some religious use and I think we should have a procedure to analyze that and things that we ask to see from both sides.

Ms. Watson asked if anyone had a motion for postponement.

Mr. Reidbord said we need to give direction to the property owner and the nominator to come back in two weeks with specific evidence of the use. Mr. Burkley said maybe we could ask the Law Department for assistance. Ms. Watson made certain the next meeting was October 7, so they need to decide which direction to take today.

Ms. Ernsberger asked if there is anyone we would want to subpoena, is there a landlord. Ms. Watson said the property belonged to the Diocese.

Ms. Mistick said there is a different jurisdiction for cannon law and that this is the core question to answer first. Ms. Mistick said she is happy to make a motion that we postpone this for two weeks and we ask both parties to come to Ms. Tymoczko with the appropriate documentation as to the use of the facility.

Ms. Watson said and Ms. Tymoczko will get the appropriate information on the Zoning Board case as well. Ms. Garfinkel said does this mean the only information we will review in two weeks will be from the Planning Department, we are not doing anymore testimony. Ms. Watson said we will allow for a full hearing.

Mr. Reidbord said do we want to say that it is only open to the two issues we mentioned in terms of testimony. Ms. Watson said is that part of the motion.

Ms. Mistick withdrew her prior motion and restated it: Continue the hearing for two weeks until our next hearing date and limit testimony on the date of the hearing to the issues at hand, specifically the use of the building and the review of the prior zoning hearings on this property.

MOTION: Continue the hearing for two weeks until our next hearing date and limit testimony on the date of the hearing to the issues at hand, specifically the use of the building and the review of the prior zoning hearings on this property.

MOVED BY [Ms. Mistick](#); SECONDED BY [Mr. Dick](#).

IN FAVOR: [Watson](#), [Ernsberger](#), [Reidbord](#), [Rabner](#), [Dick](#), [Mistick](#),
[Garfinkel](#), [Burkley](#)

OPPOSED: [None](#)

CARRIED

Ms. Watson advised everyone present that the hearing will be continued until their next meeting date on October 7, 2008 and evidence of the use of the building will be accepted at that time.

6. For Hearing and Action: Project Development Plan #0839, 501 Grant Street, Union Trust Building

Mr. Schubert made a presentation in accord with the attached staff report. Mr. Schubert said they are doing this to seal the glass and make it more presentable for future tenants. Mr. Schubert said there is a letter in the Commission packets that the project was reviewed by the State Historic Review Commission. Mr. Schubert recommended approval of the proposal.

The Chairwoman called for public comment, there being none, questions and comments were opened up to the Commission members.

Mr. Reidbord asked if this is an historic landmark and Mr. Schubert advised that it is a state historic landmark.

Ms. Mistick said the only approval that is required is the state approval and Mr. Schubert said correct, no local approval is required.

There being no further questions, the Chairwoman called for the motion.

MOTION: .That the Planning Commission of the City of Pittsburgh APPROVES Project Development Plan No. 0839, for approval of exterior renovation and new awnings – located at 501 Grant Street based on the application filed by C. B. Richard Ellis on behalf of 501 Grant Street Associates, LLC, property owner, dated September 23, 2008

With the condition that the encroachment permit is obtained before issuance of a building permit.

MOVED BY Mr. Reidbord;

SECONDED BY Ms. Ernsberger.

IN FAVOR: Watson, Ernsberger, Reidbord, Rabner, Dick, Mistick, Garfinkel, Burkley

OPPOSED: None

CARRIED

7. For Hearing and Action: Final Land Development Plan #0843, The Chelsea, Centre Avenue between N. Dithridge and N. Craig Street, 4th Ward

Ms. Tymoczko made a presentation in accord with the attached staff report and illustrations included in Attachment __ including a traffic study, a copy of the letter from the Contextual Design Advisory Panel, and a revised motion page.

Ms. Tymoczko did a brief history of the project, it was before the Commission in the summer for a zone change and it was approved, also with a preliminary development plan, and also there were zoning code amendments and changes to the subdivision regulations. From the Planning Commission it went on to City Council and there were some changes made to the text in the Zoning Code. We had amended the planned unit development to allow for a greater density in part to allow for this development and those in the future. City Council amended, there was a desire to restrict to this development if possible so a Specially Planned District #7 was created to allow the amendment in this district and are site specific.

Ms. Tymoczko said that the changes that were approved by the Planning Commission are restricted just to the SP7 Zoning district. It can apply to anywhere in Oakland but would require another zone change to take advantage of it.

Ms. Tymoczko said this is back for approval of the Final Land Development Plan for mixed use with over 300 dwelling units, parking, and residential space.

Ms. Tymoczko introduced David Toal and said there were some questions two weeks ago when they were there as to what the changes were to the interior design, Al Filoni, the architect will present.

Al Filoni, architect with McLaughlin, Cornelius, Filoni Architects described the design of the building.

Mr. Toal said Cindy Giampole is present to answer any questions concerning the traffic study.

Ms. Tymoczko reminded the Commission that they received a set of drawings and the new elevation drawings in their packets and a copy of the revised subdivision regulations, the text is the same it's the same numbers that you approved earlier, what is different is the format. It is restricted to the SP-7 district.

Ms. Tymoczko provided a revised motion with conditions of approval and went over them with the Commission. The first motion deals with the approval of the project development plan for this specific use and included a few conditions that the environmental, geotechnical reports, and storm water management plans be reviewed and approved prior to the issuance building permit; we have received those and the preliminary review is underway but we are adding this just to insure that they will signed off prior to the issuance of a building permit.

Ms. Tymoczko said second the traffic report; contains a number of conditions including a requirement for a construction management plan and a parking management plan and all of the recommendations included in the report be incorporated as well. Ms. Tymoczko said a site plan issue that belong to 272 N. Dithridge Street, the site includes a vacated portion of Chesney Way and affects the existing parking stalls for a building, the developer has agreed to replace those stalls in the garage and that is being made a condition of approval.

Ms. Tymoczko said the second motion has to do with the revised subdivision regulations and lastly a consolidation plan that has been submitted and needs to be approved also prior to the issuance of a building. The plan will consolidate about nine lots and is included as part of the third motion.

Mr. Dick asked what other recommendations the traffic study shows. Ms. Tymoczko said the first condition has already been agreed to in full, including a traffic signal, so that will part of the conditions of approval. Secondly on approval of the City of Pittsburgh traffic engineer mechanisms shall be put into place by the developer to construct the improvements prior to the issuance of an occupancy permit and will be reviewed by our contractor for parking.

The Chairwoman called for questions or comments from the Public, there being none the Chairwoman opened the floor to questions and comments from the Commission members.

Mr. Dick said he is willing to make the motion on this since he lives in the area and hopes that the first floor commercial area is successful and Mr. Toal said that was an early commitment to the community and they feel it will be successful.

Ms. Mistick said she has a couple of questions about the Contextual Design Advisory Panel recommendations and asked where the changes were relative to the two CDAP points; one was about the scaling back of the north corner and the Plaza there. Mr. Filoni said what they did in

response to CDAP; on the corners they pulled the storefronts back so you can now walk underneath a porch on both ends of the building.

Ms. Mistick asked about the loading dock which was the second issue on the Contextual Design Advisory Panel report. Mr. Filoni said there is a pull off in the front of the building, all of the furniture move in is inside of the building and they asked that it be designed and it has all been done to their approval. Ms. Mistick asked if they have a rendering of the redesign and Mr. Filoni said yes.

Ms. Mistick said her other question is concerning LEED certification and wanted to know which level of certification they were anticipating applying for with this project. Mr. Filoni said just for LEED certification, they are doing calculations as they go along and they are not very far removed from getting LEED certification.

Ms. Mistick asked if the pedestrian signaling was ever addressed and Mr. Toal responded they are putting in pedestrian countdown around the building. Ms. Giampole said that based on comments from the Department of Public Works and the City Traffic engineer there has been an enhancement of pedestrian amenities since the Commission last saw this. The new signal will be at N. Dithridge and Centre Avenue and there will be pedestrian countdown equipment and advanced pedestrian phasing. That will also be occurring at the Craig and Centre Avenue; also Melwood and Centre, in addition there will be a north bound loop detector that will be placed on Craig Street at the approach to Baum Blvd.

Mr. Dick asked if there will still be audible signals and Ms. Giampole said there will be audible at all of the ones she just mentioned. Mr. Dick asked if there will be a four way pedestrian crossing at Centre Avenue as is currently the case and Ms. Giampole said they are not going to change that.

Ms. Mistick asked if the audible signals are comparable to the ones they currently have and Ms. Giampole said they probably are and Public Works is requiring them at every intersection that is touched at this point. Mr. Reidbord said he thinks that is great. Ms. Watson mentioned that the school for the Blind is in that area as well. Mr. Dick asked if the plans for the bus stop are the same and Ms. Giampole said yes.

Ms. Mistick said she would be more than happy to know second Mr. Dick's motion to approve, and she wanted to clarify on motion 1, point 2, includes the recommendation in the traffic study by Kimball.

Ms. Watson said she grew up in the area and asked when there will be a grocery store and Mr. Toal said they are working on it.

MOTION: .That the Planning Commission of the City of Pittsburgh APPROVES Project Development Plan No. 0843, for approval of the construction of a 16 – story, mixed use development that includes 336 dwelling units, retail use and 411 parking stalls; and based on the application and drawings filed by MacLachlan Cornelius & Filoni Architects, Inc. and Raudenbush Engineering, Inc. on behalf of Polaris Real Estate, property owner, and subject to the following conditions:

1. All required environmental and geotechnical reports including stormwater management must be reviewed and approved prior to the issuance of a building permit.
2. All conditions contained as part of the document entitled, Review of the Chelsea Development Revised Traffic, Parking, Loading, and Pedestrian Impact Study, dated September 22, 2008, shall be accepted and implemented.
3. That the six parking stalls belonging to property at 272 North Dithridge Street and lost due to the vacation of a portion of Chesney Way, be permanently replaced by six stalls to be located in the new development.

MOVED BY Mr. Dick;

SECONDED BY Ms. Mistick.

IN FAVOR: Watson, Ernsberger, Reidbord, Rabner, Dick,
Mistick, Garfinkel, Burkley

OPPOSED: None

CARRIED

Ms. Mistick recused herself from this hearing since the Carnegie Library, her employer, and the Carnegie Museum share a campus.

10. For Hearing and Action: [Master Plan, Carnegie Science Center, Sports Works, One Allegheny Avenue bounded by North Shore Drive to the west, Reedsdale Street to the north, Allegheny Avenue to the east, and the Ohio River to the South, DR-A, Downtown Riverfront, Subdistrict A](#)

[Mr. Layman](#) made a presentation in accord with the attached staff report and illustrations included in Attachment ____. Mr. Layman said they have submitted a traffic plan that is currently being reviewed by our consultants and the City of Pittsburgh's traffic engineer and there are recommendations included in the staff report. The project has also been reviewed by the Contextual Design Advisory Panel in three sessions and their major concern was addressed in the third for fourth phase of construction.

Mr. Layman introduced Ann Metzger, Co-Director of the Carnegie Science Center and Greg [Weimerskirch](#) from Urban Design Associates. Ann Metzger gave some background on the plan that goes back to 2004 when they realized they would have to move their Sportsworks facility to make room for the Port Authority rail system. They have presented the plan to the Steelers, Continental Development, the new Casino owners, Northside Leadership Conference, Manchester Citizens Corporation, Allegheny West, the Sports and Exhibition Authority, and the Urban Design Center of Pittsburgh. Ms. Metzger turned the presentation over to Greg Weimerskirch.

Mr. Weimerskirch walked the Commission through the PowerPoint presentation. Mr. Weimerskirch explained that the Miller Building that currently houses the Sportsworks will be demolished by the end of the year. There is a utility easement for Alcosan that cuts across the site from north to south and connects to a chiller building. When the original Science Center was built there was a hill added so that there were two levels of entrance into the building.

Mr. Weimerskirch said they have also been working with Riverlife Task Force with a landscape plan for the campus and provided a view of the conceptual drawing. Mr. Weimerskirch said they have developed a series of design principals: build a world class Science Center Campus, strengthen the connection between the river and the campus by moving parking away from the riverfront, and by extending Riverfront Park along

the rivers edge, integrate nature and science into the campus landscape by creating an eco experience park, sustainable design principals into the design of the campus landscape and in future buildings, preserve and enhance the use to downtown and existing buildings, involve citizen groups and adjacent business owners in the creation of a new campus plan, provide public art that supports the Science Center's mission.

Mr. Winmerskirch said with that the plan that has emerged is as follows: the Miller Building will be demolished, the Port Authority is building the new LRT and then turn over a complete parking lot to the Science Center, the Science Center will take the majority of it's parking that is currently near the river and move it to the north lot, the west lot which is currently a surface lot without landscaping will be renovated before the end of this year by the Pittsburgh Casino folks, it will be striped for school buses.

Mr. Winmerskirch said there will be a new reception center that will eventually join the Sportworks building with the existing Science Center and this would include a new ticketing center and an expanded gift shop, entry hall, that would connect the two buildings. The west addition will be added onto the Science Center. Surrounding the Science Center are a series of new parks, the discovery eco center park in front of the reception center and Sportworks. The Science Center will also take on the task of building a new riverfront park that will be in the spirit of the riverfront park that is already there. There will be some parking that will be heavily screened from the riverfront to service the Science Center building and the new addition.

Mr. Winmerskirch said they will strength the pedestrian connections, part of the north lot parking plan is to create a larger pedestrian plaza along Allegheny Avenue so that the heavier traffic coming from the LRT can funnel down. There are a number of larger pedestrian crossings and have included a new one mid-block that would take a lot of traffic from the north lot and focus it toward the Science Center.

Mr. Winmerskirch reviewed the phasing of the projects, by the end of 2008 thru 2009, the west lot will be renovated under an agreement with the Pittsburgh casino folks; the Miller building will be demolished, one half of the lot will be a gravel lot and turned over to the Science Center for temporary parking over the next couple of years; by the end of 2009 the Sportworks building will be constructed. The campus around the Science Center will stay the same for the most part with parking.

Phase 2 which will be 2010 to 2012, the Science Center receives the other half of the parking lot from the Port Authority, at that time, they will then renovate the parking lot bringing it up to standards required by the City Code and add sustainable design elements.

Phase 3 includes the discovery eco park which will be the new front to the Sportworks and Science Center building as well as the riverfront park. Phase 4 which is 2015 to 2018, the entire campus is built out with the completion of the west addition and the green space to the west of the Science Center Building.

The parking review the west parking lot holds 150 spaces, the north lot or the Miller building lot holds a 150 spaces, and the Carnegie Science Center lots hold 367 spaces for a total of 709 spaces. The proposed parking lot includes 450 spaces of consolidated parking on the north lot, the west lot has 150 spaces, most of the time it will be bus parking for 40 buses, only on rare occasions will that lot be used, and the small lot next to the Science Center has accessible parking with 40 spaces. The new parking program is for 640 spaces with the bus space. The Pittsburgh ordinance only requires 267 spaces.

Mr. Winmerskirch said they have a total of 4.5 acres of open space. Buses being staged in the west lot come down thru the driveway and drop students off and then exit. Normal guest parking will also allow for people to be dropped off at the door and then exit onto North Shore Drive. Pedestrian circulation, they are trying to strengthen the north/south connection, this was called for in the 1999 North Shore Master Plan, they are paying special attention to the connection around the Omni Max Theatre to strengthen that connection, in addition they have added a western connection to the Science Center that doesn't currently exist.

Mr. Winmerskirch then summarized their proposal and then turned the presentation over to Damon Rhodes of Wilbur Smith to discuss traffic improvements.

Mr. Rhodes said the study they did with the help of City Planning included the intersection of North Shore Drive and Allegheny Avenue; Reedsdale and Allegheny; Reedsdale and Fontella; Ridge Avenue and Allegheny. They saw no need for any recommended roadway improvements; however there are a number of improvements that were under consideration and now under implementation. The improvements and access to the west lot; the intersections mentioned above are being coordinated with the casino work.

Mr. Rhodes said there is a minor net reduction in parking but Carnegie Science Center does a good job with parking and have good coordination with the lots east of Heinz Field.

Mr. Layman recommended approval of the proposal with one condition, [that the Carnegie Science Center's commissioned traffic study be](#)

submitted for review to the Zoning Administrator, and that any recommendations based on the Department of City Planning and the City Traffic Engineer reviews be accepted and implemented.

The Chairwoman called for comments from the Public and provided instructions.

Glen Walsh, 633 Royce Avenue, Mt. Lebanon, Project Director of Friends of Zeiss, said they find an element missing in the Plan. In 2002 the Carnegie Science Center removed original artifacts from the Buhl Planetarium including the refractor telescope. The Science promised the City of Pittsburgh in a memorandum of understanding that the telescope would be installed in a new observatory of a part of their expansion. Their current proposal does not show this and asked the Planning Commission to insure the installation. See attachment _____ written testimony.

There being no more comments from the Public, the Chairwoman called for questions or comments from the Commission members.

Mr. Burkley asked if the Memorandum of Understanding mentioned by Mr. Walsh exists. Ms. Watson asked if staff was aware of this and Ms. Tymoczko responded that she isn't aware of it. Mr. Burkley said if there is a legal contract out there. Ms. Watson asked if anyone from the Science Center could shed light on this issue.

Ron Bailey, Acting Director of the Carnegie Science Center, said they do have a memo of understanding and they are maintaining three of the artifacts from the old Buhl Center that do belong to the City. They are currently in storage and they do have plans to use all three of those in the future. For some of those pieces they are currently fundraising to reinstall those as part of their operations. They are not at the level of planning for the other piece as yet. Ms. Watson asked if there was a timeframe in the MOU and Mr. Bailey said there was not.

Ms. Watson asked to have a copy of the MOU supplied to the Commission.

Mr. Dick said that since the Science Center said they will honor the MOU, I think the Commission should get a copy of it for the record and given that he is willing to make the motion recommended by staff. Mr. Layman said the way the Master Development Plan does work it allows for all future development at the site to come before the Planning Commission including the west addition so there will still be an opportunity for public input. Ms. Ernsberger asked Mr. Layman if had a copy and he said no and Ms. Ernsberger said we should get a copy. Mr. Bailey said he would provide copies to the City Planning Department.

11. Public Hearing and Action: [Conditional Use Application #713, 2126 East Carson Street, restaurant with liquor License, Local Neighborhood Commercial Zoning District](#)

This is a request by Najib and Nasra Aboud, for **Conditional Use** approval to operate a restaurant with liquor license at 2126 East Carson in the [South Side](#) neighborhood.

[Ms. Tymoczko](#) made a presentation in accord with the attached staff report [and illustrations included in Attachment ___](#). Ms. Tymoczko distributed copies of the Zoning code that restrict restaurants with liquor licenses in the Local Neighborhood Commercial Zoning District, the amendment from 2007. This covers restaurants with liquor licenses in the LNC zoning district in areas that are defined in the Code as saturated. Ms. Tymoczko said there are three districts in the City of Pittsburgh and East Carson Street is one of them. When the saturation point has been reached, and that is defined as one restaurant for every 50,000 square feet of land area, from that point on any new restaurant with a liquor license must be submitted as a conditional use. That means that Planning Commission and City Council.

Ms. Tymoczko said there is only one district in the City of Pittsburgh that has reached the saturation point and that is East Carson Street. This application is for a new restaurant with a liquor license and is shown on a map prepared by our GIS staff. There is a senior citizen hi-rise across the street. The red are existing restaurants with liquor licenses and the pink are existing restaurants without liquor licenses.

Ms. Tymoczko said in the report the specific criteria for a restaurant with a liquor license in this district; parking facilities shall be designed and located to clearly meet the demand in a way that doesn't interfere with residential uses. Off-site impact of the use, which are directly attributed to activities occurring onsite shall be controlled to avoid conflict with the surrounding residential use, and the proposed use shall be subject to site plan review procedures. Ms. Tymoczko said one correction, on #8, the existing the structure appears to occupy the entire block that is not correct; there is a walkway adjacent to it.

Ms. Tymoczko said earlier this year we did approve a restaurant at this location without a liquor license; there are currently renovations under way for that. Ms. Tymoczko said there is a representative present for the applicant and the presentation will be turned over to him.

John Backrack, representing the applicant, the use is a Middle Eastern Restaurant and his clients intend to operate primarily as a restaurant but there is a liquor license and a 13 seat bar area in the front. It is a family

owned business; they own a business in Oakland, a restaurant that does not have a liquor license. They are the owners of the building and have owned it for about two years so it is not a rented building. The plan at this point is to open before the end of the year, most of the employees will be family members. There is no additional impact on the community in terms of traffic, customers, based on the fact that there is a liquor license. There was a concern about operation, it is not their intention to operate this business to midnight, one, two o'clock. The intended hours of operation are 11:00 a.m. to 11:00 p.m. in terms of serving. If someone was eating they wouldn't throw them out but they would closed by midnight and service would stop at 11:00 p.m. and they are prepared to make that a condition.

Mr. Backrack said there is no difference here, I think between, any other restaurant and here, and again this is not going to be bar, it is going to be a restaurant. The maximum occupancy is 65 people; I don't think you will find any change there. There is room for loading in the rear and there will be six or seven employees, most of whom will be family members. I understand the change, the rationale for it, we would like do this by going through the process, we don't believe the restriction on restaurant liquor license here is authorized by state law. Would like to get the occupancy permit for this with the liquor license. Mr. Backrack said there is another restaurant down the street; they will be closer to La Pompira than bars in the area. Mr. Backrack said this use will not have a negative impact on the community.

Ms. Tymoczko said this in an historic district and it is undergoing some interior and exterior minor renovations, they were reviewed and a certificate of appropriateness was issued by the Historic Review Commission and they have been through that process.

Mr. Backrack wanted to add that they do own the property; they are as interested in maintaining its value as anyone else in the area. Ms. Watson asked if the white spot on the map was the property and the response was yes. Ms. Watson asked what is across the street and Ms. Tymoczko responded a senior citizen apartment building, Carson Towers. Mr. Backrack said if anyone is familiar with the South Side area, the former occupant was Baler's Bakery and it was there for a number of years.

The Chairwoman said at this time we are going to open the meeting to Public comment. Councilman Kraus was present at the hearing to listen to the proceedings.

Nick Kefalas, 112 S. 15th Street, Zoning coordinator Bar Task Force South Side Community Council, said that he distributed a handout to the Commission members from State Representative Harry Reads haw. Mr.

Kefalas said last July City Council passed an Ordinance regarding liquor licenses including the Carson Street LNC, this Ordinance were passed unanimously. In the first paragraph, the word saturation is mentioned three times, there is a reason for that since there are a significant number of bars on the South Side that was the purpose of the legislation. I want to talk about momentarily about the community support that we had last year, 900 signatures of people there, 70 signatures of people that do not live there but have businesses including many bars. The Mayor came to the Market House and listened to twenty people speak with 400 people in attendance and the Mayor had nine department heads to listen to what the public had to say about this problem.

As a follow-up to this, the Mayor, the Chief of Police, the Councilman, a security detail and nineteen South Side members walked thru the streets of South Side from 1:00 a.m. to 3:00 a.m. from 10th to 22nd to determine if what we were talking about was fact or fiction. It was fact, we had the Mayor's support.

Mr. Kefal said now let's bring it up to date, November 13th the Ordinance was initiated, which was a freeze on liquor licenses. Mr. Kefal said when he goes to buy a house he has a home inspector come by and that is due diligence, I don't know what was going through the owner's of the properties mind but they purchased a liquor license five months afterwards, I don't know how they have standing in this case.

Ms. Watson said that is why this is before the Commission as a Conditional Use Application; the Zoning Code permits anyone that wants to do something other than what the Code readily allows you to do to apply for it as a Conditional Use Application.

Mr. Kefal said he feels they have two options they can use; one is a BYOB (bring your own booze) or they could also purchase a liquor license from an existing bar on the South Side and transfer it to that location. The South Side is opposed to this effort because we know that businesses come and go and we know that restaurants come and go, and we also know that bars come and stay. The owner may change but the liquor license stays there forever. I think the burden of proof is on these people in determining whether they have a viable business enterprise, a business plan, economic resources, what makes them unusual, what makes them special, how are they going to fit into the neighborhood. And finally, my last comment is, I think we can always look out for the little guy that just bought the building and forget about the 5,000 people that live in South Side but I think this liquor license is really a Trojan horse, this is not about a liquor license, this is about an insurance policy, these people want to come in, make an attempt at making a successful restaurant, if it succeeds all well and good, if it does not then they sell it to someone

else and then we are at the mercy of the next owner of the liquor license and what sort of business is there. I think South Side deserves better than that and we have a lot of people to support us.

Dr. Mary Ann Sevick, South Side Community Council, I think that the decision that is made today by this body has some ramifications that go beyond this particular property. What I want to do is step back a little bit and see what the bigger picture is so that we can all understand the context of this decision.

The Federal government has ceded authority to states regarding how liquor is to be controlled and then the states in turn cede varying degrees of authority to local municipalities about the sale of liquor. In this regard, unlike most other states it controls all sales and all decisions about licensing. Dr. Sevick said this is a problem for us because decisions about the number and licensed establishments in this community is made centrally in Harrisburg while the City of Pittsburgh absorbs the costs to the community in terms of service calls, in terms of police reports, trash, and residents pay the price in terms of quality of life. Once an orange placard goes up in a storefront, residents are given the opportunity to voice their concerns at a hearing but the applicant always gets their license because residents have to prove in advance that the particular applicant will be a problem for the community. It is an impossibility for residents to do. Arguments about traffic, saturation, noise, parking, crime are irrelevant. Dr. Sevick said she has testified at the hearings, they do not allow the residents to make those arguments.

Dr. Sevick said under PLCB Code the options available to other cities for dealing with problem establishments are available to Pennsylvania residents. PLCB officers will tell you that somebody will have to be shot before they will close down an establishment. If an establishment is closed, the owner can turn around and sell the license and the merry-go-round can start again for residents. The PLCB is supposed to be the regulatory agency for controlling liquor in this state but we all have to realize that it is a legislatively sanctioned monopoly with 1.6 billion dollars in sales. The PLCB has a fundamental conflict of interest and it is not going to operate in a manner that is detrimental to its revenue stream. So we can expect more licensed establishments unless we exercise some control, we meaning the City of Pittsburgh.

Dr. Sevick said so what can we do, the only control that the PLCB gives to local municipalities appears in section 493.1 of the Liquor Control Code which reads: nothing in this act shall be construed to pre-empt the right of the municipality to regulate zoning and enforce other local ordinances and codes dealing with health and welfare issues. So the protection of this ordinance, that passed this body and City Council unanimously last year,

is important because it is the only control this community has against the uncontrolled proliferation of licensed establishments. Economic theory tells us that without some limit we can expect the number of licensed establishments to grow, since 1996 the number of licenses grew from 77 to over 100 and today in South Side Flats we have one liquor license for every 50 residents. With more places selling liquor, economic theory also tells us that the establishments will need to compete with each other on price and volume, and in fact we have seen in the past two years, three large capacity bars open their doors, one with a capacity of 750 people. It doesn't take a genius to figure out what this means to the residents of South Side, once a license comes into this location we have no control over whom it will be sold or how the establishment is going to be operated. The decision of this body today has ramifications that go beyond this establishment and we are asking you to not reopen the flood gate.

Philadelphia has enacted similar ordinances for several of its communities, in the packet that was given to you is an ordinance for Mania, and it excludes additional liquor licenses and the expansion of licensed premises and this was challenged recently in the courts and it was upheld and I have included in the packet that you have a copy of that case law.

Councilman Kraus, being that this is conditional use that will come before City Council for a vote not in favor or opposed, his position is neutral. Councilman Kraus said he received correspondence in his office from residents at Carson Towers that are concerned about another license coming in. Councilman Kraus said he felt it was his duty to make certain that he shares their thoughts with the Commission. They are all pretty much the same, but he would like to read one sentence from each.

- I live across the street and it is hard to imagine another bar in the area. I don't want another bar we have too many bars now, I can't sleep at night because the noise the drunks make
- This one from Jean Carlile, another restaurant with a bar we do not need, we have four on our block now, South Side used to be a family place
- Arthur, please we do not need another bar
- A woman named, Theresa, please don't give any more licenses for liquor, I live across from them on weekends it is hell
- Arthur, we don't need another bar on Carson Street
- Ruth wrote to say the last thing the South Side area needs is another bar, there are so many bars already
- Rita, we don't need another bar on the South Side or across from our building
- Patricia, we don't need another bar on the South Side

- Shirley writes to say the number of bars in our area is just horrible, the noise is horrible, the bars should be a fixed amount
- Robert and Jean say, another bar that makes six in one block, I thought this was supposed to stop, no one keeps their promises to the people, we want to live here in peace.

Councilman Kraus said he wanted to make certain that the Commission had these for their consideration and wanted to turn them in. On that block there are five other alcohol licenses, this would be the sixth.

Councilman Kraus said he had one other piece of correspondence that came into his office that he feels he to share with you, there was a gentleman in the district named bill that is concerned about construction debris behind their address at 2126 East Carson, and I did some research regarding this and there was a written warning that did go out about construction debris. In having a conversation with him, he was concerned that they might not have the financial where withal to bring this project to completion. The construction has been taking some time and he is concerned that there might not be financial stability to complete the project and if the project fails then does the South Side own another liquor license that someone else can come in and manage.

Duray Abud, in favor, representing parents who are the owners of the restaurant. They have been in Oakland since 1998, a small Mediterranean restaurant that his parents started. They have been in this country for twenty years, we don't just own a restaurant, we own real estate in Oakland, fifteen or sixteen apartments in Oakland and a couple of storefronts, that's my dad's assets and I also own a nine or eleven apartments and a couple of storefronts, and my brother has about six or seven apartments and a storefront. We are in business and we have the funds to complete the project. But in early 2006, we have been renting a restaurant on Forbes Avenue in Oakland for the last eight years and we pay over \$5,000 a month between rent and utilities. We decided we wanted to own a building so we could move our restaurant. In early 2006, we started to buy the building and we didn't know any of the stuff that was going on.

Mr. Abud said his mother's uncle owns Khalil's 2 that is on Baum Blvd. and they serve liquor with their food and they close at 11:00 p.m., they are not a bar, they are a restaurant, the same with Aladdin's Restaurant. That is what our intentions are, we want to open a restaurant on South Side, and our hours will be from 11:00 a.m. to 11:00 p.m. Mr. Abud said they took all of our resources and put them into this project, we have the resources to complete. They are going to open the restaurant with or without the liquor license but their business is going to be that much better if we have a liquor license. We went in front of a group of people on the South Side, everyone that was sitting around the table was in favor of us, just one person and the Councilman himself were protesting against us.

Mr. Abud said he also works on 18th Street on the South Side for a real estate office and he grew up in Oakland and he knows the area. Mr. Abud said he understands that they are against bars with the 1:00 a.m. to 3:00 a.m., that is not what they are going to be. Mr. Abud said his mother is the cook and the reason the construction is taking so long is that his father is doing all of the work himself and he broke his arm for a time. Mr. Abud said they would like to have a liquor license there so they can compete with everyone else, we are not a big chain and we are mainly a restaurant that is going to be closed at 11:00 p.m. Doesn't understand how them having a liquor license is going to affect the area.

There being no further comments from the public, the Chairwoman called for questions or comments from the Commissioners.

Mr. Dick said they have been thru a number of hearings over the past several years without enough chairs for all of the people on the South Side that have come in here complaining about the drinking and problems on the South Side. It is not an acceptable way to live. Several years were spent by the City, the Commission, and the Law Department to come up with a way to control liquor license saturation. Mr. Dick said as much sympathy as I may have for the situation it would be extremely difficult for this body to make an exception the first time the issue comes up and grant this conditional use when the very reason all of that work was done was to control the saturation, it is nothing personal. Mr. Dick he doesn't know how you were not aware of these problems and the likely hood that you may not be permitted to operate with a liquor license.

Mr. Reidbord said he wanted to clarify one thing, the legislation as its enacted provides for these conditional uses, and in our packet there are a series of requirements you need to meet for the conditional use, as a Planning Commission we are responsible for interpreting this legislation as it exists and see if the conditions are met. Regardless of the history of how we got to where we are today, we are bound to interpret what the Zoning Code says today. Mr. Reidbord said he is of the opinion, the reason these are permitted under conditional uses is that there are circumstances where a restaurant could be something that could be permitted, the real problem as he remembers are these large mega places were there is an impact on traffic, parking, the neighborhood, not enough restaurants and he isn't sure that is the case here, we need to go thru each one to determine that and rule out the fact that there are no more liquor licenses permitted on the South Side, that isn't the case, there are circumstances were it could be permitted.

Ms. Tymoczko said one of the things you have in front of you is a copy of the floor plan for the restaurant so you can see the layout and the various uses. In the staff report we are prepared to recommend approval of this application with some conditions, and we do understand the concern about the larger capacity establishments, primarily bars, based on the application that was submitted it appears to be a different type of establishment. Ms. Tymoczko said with some

conditions we believe it actually meets the criteria of a conditional use and we are prepared to recommend approval of this one.

Mr. Reidbord asked if staff's recommendation of approval includes limiting the hours and Ms. Tymoczko responded yes it does that is one of the conditions.

Ms. Watson asked if they could have some testimony on the number of people that they believe the restaurant would hold. Mr. Backrack responded that the maximum permitted occupancy is 65 people based on the plan. Mr. Dick asked if that is customers or total people. Mr. Backrack said that is a good question but he can't really answer that. Mr. Reidbord said the fire marshal said no more than 65 and Mr. Backrack responded that is what the architect has indicated.

Ms. Ernsberger said it is a three story building and Mr. Backrack said the second and third story are apartments and they are currently rented, they aren't going to be used for the restaurant. Ms. Watson said first floor only and Mr. Backrack said that is correct.

Ms. Ernsberger asked how does the Commission relate this to parking requirements for a restaurant because that was one of the big issues. Ms. Tymoczko responded that for the first floor we have approved a restaurant without a liquor license that was under 2400 square feet, there is no parking requirement at that point, over 2400 square feet, the restaurant parking requirement is one parking stall for every 125 square feet, that means that the application for the restaurant with liquor license is 2800 square feet, there would be a four stall parking requirement for that additional square footage. We have received some documentation from the Parking Authority about leased spaces but not the complete information which is why that is also a condition of approval in our recommended motion. That an executed lease or similar agreement for all required parking be submitted to our office prior to issuance of a certificate of occupancy. We would have that clarified before we would authorize release of the certificate.

Mr. Backrack said if he could clarify, his client told him that the architect made a mistake, the area is under 2400 square feet and is actually 2350 square feet and Ms. Tymoczko said we will have to have that clarified.

Mr. Dick asked if there would be a condition that could be placed on who they could sell the liquor license to, Mr. Backrack said in terms of the sale of the liquor license, no, but if the time restriction is there he can say that no bar is going to buy a liquor license at that location and be subject to the restriction that you have to close by 11:00 p.m. They may buy the license but they will have to move it to another location.

Mr. Dick asked if we can commit the new owner to those times and Mr. Backrack said whoever came in and took this would be subject to the same conditions, if

they wanted something different they would have to come back to the Commission.

Ms. Watson said the occupancy permit would have that time limit on it. Ms. Watson asked if the Planning Commission has the ability that if it were to be sold that the new owner would have to come back to the Commission for another conditional use application. Ms. Tymoczko said that any conditions that the Planning Commission places on this today stays with the property, any conditions that you are apply today will stay with the Conditional Use Approval, those will become part of the resolution that will be presented to Council. So far staying on liquor license I don't know. Ms. Watson said what she wants to know if the property or business is sold it no longer applies, they would have to come back in. Ms. Tymoczko said she is not certain and would have to get a ruling from the Law Department on that.

Mr. Reidbord said one thought that he had was that we could put a condition that they wouldn't do interior renovations that would change the number of tables or seating for the bar because with the same theory if it's a restaurant it's a restaurant, if it's a bar it's a bar. If it is a restaurant I am generally ok with it but we could put some conditions on it, interior renovations that would reduce the number of tables. Ms. Tymoczko said she believes that something like that is possible.

Mr. Burkley said he wanted to clarify one thing as well, I think that is a good idea, if somebody were to buy the liquor license and try and open up a bar at another location, they would have to come back to the Commission for a Conditional Use as well and Ms. Watson said yes. Ms. Tymoczko said it depends on where, on the South Side yes. Ms. Watson said if they fall within the designated area. Ms. Watson said to Mr. Kefal that she sees him raising his hand, but we do not let you make comments again. Ms. Watson said it is not a dialog but if the Commission wants to ask him a question they can.

Ms. Ernsberger asked what the answer was to the parking that they don't have to provide, Ms. Tymoczko said that we have clarified that they will remain under 2400 square feet so there will be no parking requirement. Ms. Ernsberger asked if that includes employees and Ms. Tymoczko said yes. Ms. Ernsberger asked for an explanation of the common table that has all the seats going around. Mr. Backrack said that is the bar area.

Ms. Watson said adding to what Mr. Reidbord said can we say not only that you can't change the configuration of the number of seats and tables, could we also say, must be restaurant, can not be changed to strictly a bar. Ms. Tymoczko said I believe you can but it is hard define restaurant virus bar. Mr. Rabner said we could limit it to the 13 bar stools.

Mr. Backrack said that condition would be fine.

Ms. Watson said regardless of what the Planning Commission does it has to go on to City Council and does our vote determine whether they need a majority or a super majority and Ms. Tymoczko responded yes if you recommend approval Council needs a simple majority to approve, if you recommend disapproval they will need seven votes to override that.

Mr. Charles Peters from the South Side said he didn't have the opportunity to speak before and would like to speak on this issue. Ms. Watson said the time before public comment was earlier.

Charles Peters, 1817 Sarah Street. Mr. Peters said he would make two observations; one of the major problems with the South Side bars is not that the occupancy is limited, as in this case, the problem is that no one enforces the occupancy. Mr. Peters said he goes to the bars and he has yet to see one where the occupancy is adhered to except on Sunday mornings. The other observation, there is on South Side now a very fine middle eastern restaurant called Kasab's, it does not have a liquor license, and it does a wonderful business. Mr. Peters said you do not need a liquor license to run a restaurant.

Ms. Watson asked for any further questions from the Commission. Ms. Watson said one of the issues she raised was whether they have the ability to limit the use just to this particular application and was there a second thing they wanted a legal opinion on. Ms. Tymoczko said that future applications at this same site would have to come back through the Conditional Use Process.

Mr. Burkley said that he saw that the motion has that 11:00 p.m. would be the closing time except for Friday and Saturday, midnight. Ms. Tymoczko said that is what we have in there now but that could be amended if the Commission wishes. Mr. Burkley asked if the testimony from the applicant was that they would be amenable to having it eleven o'clock on all nights. The applicant responded that they would be willing to do anything to show the Commission that it is a restaurant.

Councilman Kraus asked the Commission for his own clarification to take back correct information, did the Commission say that should this license leave this property and go next door where it could have a six hundred occupancy, it would have to come back to the Commission for a Conditional Use and Ms. Watson replied absolutely. Ms. Tymoczko responded that if there is a different location then they would have to reapply. Ms. Watson said it doesn't apply to the license that has mobility, it applies to the property. Councilman Kraus said an existing license that was established before the new legislation went through and wanted to move next, it would come back. Only anything granted from this point on.

Mr. Burkley said I think that a license that is existing now, say Fatheads wanted to move, they would have to come back to the Commission and Ms. Tymoczko agreed. Councilman Kraus said I know for expansion they would.

Mr. Reidbord said the license is independent of zoning, we are concerned with the property by property in zoning, we don't care where the license came from, and we care about what property we are talking about.

Ms. Watson said the legislation applies retroactively so if you had a prior license doesn't mean you don't have to be subjected to the new law. Director Ismail also asked for verification that it is below 2400 square feet. Ms. Watson asked if we are on a timeframe. Ms. Tymoczko said not that I am aware of, we were recommending approval but we can get the information.

Ms. Ernsberger asked how many bathrooms do they have. Mr. Backrack said two bathrooms, one stall in the men's bathroom and it appears to be two in the ladies room, and they are both handicapped accessible.

Ms. Watson said she has eaten at several Mediterranean Restaurants in the area and her experience has been that the patrons are not the type of people that they are trying to prohibit and limit with the legislation. They are family restaurants and not leaving there to urinate on the sidewalks, that none of the Commissioners want more of on the South Side. Ms. Watson said she thinks the hours they are willing to have also help to limit the negative aspect. Ms. Watson said she would be happy if they had the ability to make any group that would purchase the license in the future come back to the Commission, that would solve what she would see as a potential problem.

Mr. Dick asked if we can specify no drinks served after 11:00 p.m. Mr. Backrack said he thinks there would be no food or bar service after 11:00 p.m.

Mr. Reidbord said he is prepared to make a motion now to approve subject to the verification of the 2400 square feet with the condition that they close at 11:00 p.m., seven days a week, and if they make modifications to the interior to increase the number of bar stools, there are currently 13 on the plan, or reduce the amount of tables that they would have to come back to the Commission. Mr. Burkley said he would second that motion.

Ms. Watson said could it also be a condition that if the City Law Department says that we have the authority to put a condition on if it were sold or transferred that the new purchaser would have to come back for a conditional use. Mr. Reidbord agreed and Mr. Burkley seconded.

Ms. Garfinkel said there are three amendments now. Ms. Tymoczko said she would like to refer to the existing motion here, pending the clarification that the square footage is not greater than 2400 square feet, would drop the requirement

for the lease on the parking, make the change to the hours of the operation, hours of operation of the proposed restaurant are not to exceed 11:00 p.m., seven days per week. Ms. Tymoczko wanted to comment on the last proposed amendment she has here that there be no outside vending or outside retail sales of food or other items on or adjacent to the premises past the stated restaurant hours of operation. In addition, any interior modifications affecting seating and capacity must be approved by the Planning Commission.

Mr. Backrack said if he could say one thing about the conditions, it states closed, could we have it read no service, he would hate to have someone sitting there at 11:00 p.m. and have their food pulled out from under them. No service after 11:00 p.m.

Ms. Ernsberger asked if they could move into the second and third floor and Ms. Watson said that would be an expansion of a conditional use and would trigger coming back to the Planning Commission.

Councilman Kraus asked if the license moves does it come back here for conditional use, I meant under sale as well, if someone comes in and opens a night club and purchases that license, does that license come back to the Commission for Conditional Use. Commission discussion. Someone said we have no control over the license. Ms. Watson said in that specific location. Councilman Kraus said you are talking about adding a condition on that if it were to be sold; it would come back here again. Ms. Watson said let me explain that at that particular site if the license is sold with that site and someone wants to use that site for a new bar or a new site, Ms. Watson would like them to have to come back. Normally a Conditional Use application runs with the land so if you get it, if you are going to put the same thing in, you are allowed to do that and that would be approved across the counter by the Zoning Administrator.

Councilman Kraus said, Bob Smith comes and purchases the license, wants to open a three story entertainment complex; that property, that occupancy permit, is coming back before this Commission before that can be granted and Ms. Tymoczko and Mr. Reidbord responded yes. Councilman Kraus said how about somewhere else in the LNC and Ms. Watson said they would have to come back. Ms. Watson said if wanted to use all three floors in the same location that would be an expansion and that would have to come back.

Councilman Kraus said his other question is about the vending outside being a condition, but it is illegal and against the code and he doesn't understand why there is a condition in there. Ms. Watson said it seems it is an unnecessary condition. Ms. Tymoczko said there is a provision in our code for outdoor retail sales so it is possible that someone could come in and file for that. Councilman Kraus said it wouldn't be an ongoing thing; it would be a special event. Ms. Tymoczko said we could do it and it is listed in our code as an ongoing thing and someone could request it, it is usually a special exception and actually in the

LNC it is something that is permitted with conditions, so that is why that was added. Ms. Watson said it is not an automatic permitted and Ms. Tymoczko said that's right you have to file for it separately. Ms. Watson said and they are not filing for it and Ms. Tymoczko said correct.

Discussion.

Ms. Tymoczko said it is clear that a change in ownership would trigger it coming back to the Planning Commission for the conditional use according to the Law Department then that condition would be moot as well; we would be able to visit that at a later time.

Ms. Watson said it has been properly moved and seconded with multiple amendments and Ms. Tymoczko has outlined what the conditions are.

MOTION 1:

Whereas, Section 922.06 of the City's Zoning Ordinance requires that the following criteria be met before a Conditional Use be recommended for approval:

- (a) That the development will not create detrimental visual impacts, such that the size and visual bulk of the proposed development is determined to create an incompatible relationship with the surrounding built environment, public streets, open spaces and land use patterns;
- (b) That the development will not create detrimental transportation impacts, such that the proposed development is determined to adversely affect the safety and convenience of residential neighborhoods or of vehicular and pedestrian circulation in the vicinity of the subject tract, including traffic reasonable expected to be generated by the proposed use and other uses in the area given the existing zoning, land uses, and proposed land use in the area;
- (c) That the development will not create detrimental transportation impacts, such that the proposed development will result in traffic volumes or circulation patterns that exceed the capacity of streets and intersections likely to be used by traffic to and from the proposed development;
- (d) That the development will not create detrimental health and safety impacts, including but not limited to potential impacts of noise, emissions, or vibrations from the proposed development or functions within the proposed site which would otherwise affect the health and safety of others as a direct result of the operation of the proposed use;
- (e) That the development will not create detrimental health and safety impacts, including but not limited to potential impacts of noise, emissions, or vibrations from the proposed development or functions within the proposed site which would otherwise affect the health or safety of others as a direct result of the operation of the proposed use;

- (f) That the development will not create detrimental impacts on the future and potential development of parcels in the vicinity of the proposed site of the development
- (g) That the development will not create detrimental impacts on property values;

Now therefore be it resolved by the Planning Commission of the City of Pittsburgh that in the specific application of these standards to Conditional Use Application No. 738 for a Restaurant (General) with Liquor License at 2126 East Carson Street:

- (a) That the proposed use will not create detrimental visual impacts nor create an incompatible relationship with the built environment, as it is to be located in the same structure;
- (b) That the proposed expansion will not create detrimental transportation impacts as the use will not adversely affect vehicular and pedestrian circulation in the area;
- (c) That the proposed use will not create detrimental transportation impacts on land uses since the activities will be wholly contained in an existing structure and hours will be restricted;
- (d) That the proposed use will not create detrimental operational impacts on land uses since the activities will be wholly contained in an existing structure and hours will be restricted;
- (e) That the proposed use will not create detrimental health and safety impacts since it is a permitted use in a commercial district;
- (f) That the proposed use will not create detrimental impacts on future development in the area since it consists of a permitted use of an existing structure surrounded by existing development;
- (g) That the proposed use will not create detrimental impacts on property values in the area since the activity is permitted under the Code at this location as a conditional use.

Motion 2

That Conditional Use Application No. 738, for the use of the first floor of property located at 2126 East Carson Street as a Restaurant (General) with Liquor License BE APPROVED subject to the following conditions:

- (1) That an executed lease or similar agreement for all required parking be submitted to the Office of the Zoning Administrator prior to issuance of a certificate of occupancy;
- (2) That hours of operation of the proposed restaurant are not to exceed 11:00 p.m. seven days a week;

- (3) That there shall be no outside vending or outdoor retail sales of food or other items on or adjacent to the premises, past the stated restaurant hours of operation;
- (4) That a change of ownership of the facility at this location will require a new conditional use application to be reviewed by the Planning Commission.

MOVED BY Mr. Reidbord;

SECONDED BY Mr. Burkley.

IN FAVOR: Watson, Ernsberger, Reidbord, Rabner, Garfinkel, Burkley

ABSTAINED: Dick

OPPOSED: None

CARRIED

E. **CONTINUED ACTION** (See **Attachment C** for staff reports.)

12. Continued for Action: Land Use Control File #C711, Zone Change Petition No. 742, RP District No. 117, 20th Ward

This is a request by Southstar Development Partners of Pennsylvania, LLC, to **rezone** from R1D-L, Residential Single-Unit Detached, Low Density and P, Parks District certain properties located east of Greentree Road and north of McKinney Lane, 20th Ward to RP, Residential Planned Unit Development District. The purpose of the requested zone change is to allow for the development of six multi-unit residential structures containing a total of 178 dwelling units in the Chicken Hill/Ridgemont neighborhood.

Ms. Tymoczko said at the public hearing two weeks ago there was testimony an issues raised that were environmental in nature and I believe that the Commission was interested in hearing information relating to that so I am going to briefly go thru the issues I had. Dan Sentz our environmental planner is present today also for additional questions. As you recall, this is a proposed residential development located adjacent to Parkway Center currently zoned single family residential and the proposed use is for 178 dwelling units and the development is half in Greentree and half in the City of Pittsburgh.

Some of the issues that were raised last time, first of all the undermine issue, all of the environmental studies have been submitted and reviewed and in this case the methods proposed for the undermined portions of the site, the grouting is the safest and most appropriate for the site, that was the approach that was used for the construction of the Trimont, that was accepted.

Another issue that was raised was the lose of natural features at this location, in particular, the slopes, the steep slopes that are the most significant feature of the site are not going to be disturbed, they will remain wooded and vegetated. Other portions of the site will be used for the development.

Another one was the storm water management, the proposal does comply with all of the recent ordinances and regulations, it is not a wetland. There is an existing water feature but it is a manmade cement lined pond.

The status of the traffic study, the traffic study is complete. It is currently before you as a Zone Change and a preliminary development plan, this will be back before you after the Zone Change is approved for final development plan approval similar what we had earlier today with the Polaris Development and at that time, we would make any conditions of

approval based on our review of the traffic study. So that would be the time that we believe that would be appropriate to make conditions related to the specific development.

And one more thing that was discussed was the schedule for action in Greentree Borough on their portion of the site. Just wanted to note, that Greentree Borough has approved the zone change for the portion of the development that is in Greentree that happened back in June. Still need approval of their development similar to the case here. There was a public hearing on that recently.

I believe those were the major questions at the hearing that we wanted to answer for you.

The Chairwoman called for questions or comments from the Commissioners.

Mr. Dick asked if he could ask the developer questions. Mr. Dick said he did extensive research including driving around the site in the last two weeks and would like to know what will be the primary egress and ingress to the site. Mr. Firman said primarily it will be the McKinney Lane access, that is where the gate entrance is located. There is a traffic signal at McKinney and Greentree Road. Mr. Dick said there is a large parking lot in the back of the buildings that goes onto Greentree Road, was there any easement for use of that lot into the development.

Mr. Hakell showed on the plan that the primary entrance is from McKinney Lane. Commission discussion concerning the open parking lot. Mr. Dick said concerning Hamburg Street it goes right into the development. Will the configuration of the land between that development and where these people live, will that continue to be as is. The developer responded yes. Mr. Dick said the development will be lower than the homes.

Mr. Dick said his biggest concern looking at that is that Hamburg is a terrible street and it is so unsafe. It is fine to go in there but coming out there is no light onto Greentree Road. It is on a curve, you have limited visibility to your left if you want to go out there. Mr. Dick said during the time he was there, almost nobody went on Hamburg Road in a two hour period. It is a very nice neighborhood, modest housing, neat and clean, and desirable for people to live in. Mr. Dick said he doesn't think the deer and turkey come from that development, he doesn't think that property even grows good weeds. The nature part of the area isn't going to be disturbed too much by anything you do on that property. It will be an improvement to get rid of the sediment pond. Mr. Dick said his biggest concerns were getting in and out of that area, he doesn't know if there is anyway to prevent someone from the development from using that route.

Mr. Dick asked if there will be access to the property coming up Hamburg Street and Mr. Hackell said yes. Mr. Dick commented on the narrowness of the street with kids walking along here and asked if that could not be included as an entrance to the development. Mr. Firman said they felt it would be better to have two points of entrance and exit. Mr. Dick asked if there could be an easement along the parking lot, people should not be going along Hamburg.

Mr. Firman said the primary access will be McKinney but you have this as a secondary access to the site and all indications are it will be used significantly less. Mr. Dick said increased traffic on Hamburg Street is what he sees as the major problem. Mr. Dick said if you maintain the foliage you will not hear noise from the development. Mr. Firman said the intent is to retain the natural screening and leave it undisturbed.

Mr. Reidbord asked if the second entrance is required by code, do you have to have two means of entrance and exit. Ms. Tymoczko said we refer to the traffic study. Discussion among the Commission members.

Ms. Watson asked if we had a traffic person from our department look at this and Ms. Tymoczko said not yet and that is what will have to happen before it comes back to you for the Final Land Development Plan. Ms. Tymoczko said normally when we apply these conditions they are related to building permits or occupancy. This entire site plan has to come back for approval which is why we are not suggesting conditions at this time. We will come back with a full review of the traffic study when it comes back to the Commission.

Mr. Dick said we are dealing strictly with zoning now and Ms. Tymoczko said that is correct. Mr. Dick said we aren't approving that plan and Ms. Tymoczko said the zoning and the preliminary land development plan.

Mr. Reidbord said we could add a condition that we want to further study the Hamburg Street entrance to see if there are ways to mitigate the traffic. Mr. Dick said the Hamburg Street entrance is the only thing that he can see that is a conflict with that neighborhood. Mr. Dick said an upscale housing development is an improvement over a field full of weeds but I have real concern about Hamburg, one major improvement would be to put a traffic signal at the end of the road.

Mr. Reidbord asked if the intersection of Hamburg and Greentree Road is still in the city and the general response was yes.

Mr. Burkley asked who the proposed occupants of the building are, did you say they are condos. Ms. Tymoczko said they are for sale. Mr. Dick

said there was discussion at the Greentree meetings that Section 8 housing would be going in there. Mr. Firman said that was one of the issues raised at the Greentree meetings, the grouting alone on this site is cost prohibitive, and just with that alone you will have to have higher end sales. And the other issue, if you take just the 16 acres that are in Greentree and forget the City of Pittsburgh side for a moment, before this project came though, that land was zoned commercial. What would have been permitted there would have been another building for Parkway Center which would be 300,000 square feet, which would bring significantly more traffic than this development.

Mr. Reidbord said if the Planning Commission is not the place to discuss if the use is for Section 8 housing and what type of rents, who is going to live there, I feel that is inappropriate at the Planning Commission.

Ms. Watson asked if consideration had been given for infrastructure to go to Banksville Road is that is impossible. Mr. Hackett said their property doesn't connect to Banksville, this is the only public right of way to connect to and there is a grading issue.

Ms. Watson asked if there was geotechnical information to be presented. Ms. Tymoczko said she completed what she wanted to present but we have someone here to answer those questions.

Ms. Ernsberger said she raised that last time, she just didn't want us if we voted for approval to not to at least have the person on staff not to tell us that they agreed. Ms. Watson said that Ms. Tymoczko gave us a summarization that they said it is ok.

Ms. Ernsberger said that since Mr. Sentz came and sat all afternoon would he like to give them an overview. Mr. Sentz said there really isn't too much additional to present. As Ms. Tymoczko said this is the same exact treatment technology that was utilized by Trimont. Mine grouting is the safest method to address an undermined area. You don't see it too often because it is very costly, you do need a multiple family unit to make it cost effective and even at that you need a high end multi-family arrangement to make grouting cost effective. It was the method used for the Trimont, a significantly larger structure than they are planning at this location. It is a very sound method to address undermined areas.

Mr. Burkley said to Mr. Reidbord that he understands his point but I somewhat disagree. I agree that it is not necessarily appropriate to try and understand what type of person is going to be there but we at the Planning Commission, there are a number of developments across the city that have not worked and then you end up with large empty buildings. I do think it is appropriate to understand, there were some questions

raised by people in the audience previously, if this is something that is unrealistic and not going to work, we don't want to have buildings that are put up and then we have empty buildings. Mr. Reidbord said that isn't Planning, the economic analysis of whether a building is going to work or not is not the Planning Commission's jurisdiction. We have to follow the Zoning Ordinance; there is nothing in the Ordinance that requires economic feasibility. Mr. Burkley said there are other issues that relate under quality of life and traffic and those are valid questions, what it could end up being. Mr. Reidbord said when the discussion goes beyond that then he feels it is inappropriate.

Mr. Dick asked how they plan to implement it, building by building, or all at one time. Mr. Firman said that all of the infrastructure has to go in at one time, could it go in building by building, they are not exactly sure. It benefits them to building them all at once, but is it going to be built building by building no one knows the future of market but it will probably be building/completed, building/completed. Mr. Firman said it is difficult to foretell the future of the financial market. Mr. Dick said he was just going to ask if the financial market would affect the project and Mr. Firman said they are confident it is going to go forward.

Ms. Ernsberger asked if the preliminary development plans include some improvements to Hamburg Road, she remembers them saying it is going to be three feet wider. Ms. Tymoczko said our requirements would come later but she believes there was a commitment made to doing improvements to Hamburg. Mr. Firman said they made that commitment in Greentree as well as we will make it here to expand Hamburg Street.

Dan Daseroff, Engineer, Gateway Engineers, the proposal right now is to put a storm sewer on the side of Hamburg Street that has an open concrete ditch and would allow them to widen the road about three and a half feet. There is a slope that limits widening any further and a number of large utility poles that would make anything else out of realm of possibility. We also plan to overlay the street, put a new surface on the street. You are talking in the range of 150,000 worth of improvements to Hamburg as proposed with this development. Mr. Dick asked how about traffic lights at the end. Mr. Daseroff said he can't comment on those but Jeff DePaulos is present from Trans Associates and can respond.

Mr. DePaulos said all traffic signals in the state of Pennsylvania are controlled by the Department of Transportation, you need to satisfy multiple warrants for installation, none of those warrants are satisfied at this intersection so Penn-Dot would not permit the installation of a traffic signal at this intersection. Ms. Garfinkel said you mean it wouldn't be satisfied even after the development is completed and Mr. DePaulos responded correct.

Ms. Watson asked if there were any further questions.

Ms. Garfinkel said she just wanted to make a comment to the citizens that have waited for four hours today and four hours last time, I really respect the way you organized your community, the way you all came out, you are not paid to be here, you all took days off from work. Ms. Garfinkel said when I agreed to be on the Planning Commission it was this kind of back and forth and working together that was appealing as a reason to do this, this is what the Commission is about. Ms. Garfinkel said she respects the amount time you spent here voluntarily and I hope that no matter the outcome you let your voice be heard because that is what this is all about.

Ms. Watson said she thinks that Ms. Garfinkel's remarks are on behalf of the entire board.

There being no **more** questions or comments from the Commission, the Chairwoman called for the motion. Mr. Reidbord made the motion and Mr. Dick seconded and stated that since we are only dealing with zoning because he stills has major questions about other things.

MOTION 1: .That the Planning Commission of the City of Pittsburgh Recommends Approval to City Council of Zone Change Petition No. 742, to rezone certain property identified as Block No. 18M, Lot No. 35 in the Allegheny County Block and Lot system; from R1D-L, Residential Single-Unit Detached, Low Density District and P, Parks District to RP, Residential Planned Unit Development District; rezoning to take effect upon the recording of a Planning Commission approved Improvement Subdivision Site Plan for the subject property in the office of the Recorder of Deeds of Allegheny County within two years of the date of enactment of the zone change ordinance.

MOTION 2: That the Planning Commission of the City of Pittsburgh APPROVES the Preliminary Land Development Plan for RP Application No. 117 according to drawings submitted by LaQuantra Bonci Associates and Next Architecture.

MOVED BY Mr. Reidbord;

SECONDED BY Mr. Dick.

IN FAVOR: Watson, Reidbord, Dick, Garfinkel

OPPOSED: Burkley, Ernsberger

CARRIED

D. **ADJOURNMENT:**

6:15 p.m.

APPROVED BY:

Barbara Ernsberger

SECRETARY

Attachments

DISCLAIMER: The official records of the Planning Commission's meetings are the Minutes of the Meetings approved by the Commission's Secretary, Barbara Ernsberger. The Minutes are the ONLY official record.

Any other notes, recordings, etc. are not official records of the Planning Commission. The Planning Commission cannot verify the accuracy or authenticity of notes, recordings, etc., that are not part of the official minutes.