

**LAYTON CITY PLANNING COMMISSION WORK MEETING MINUTES
APRIL 24, 2012**

MEMBERS PRESENT: Brian Bodily, Sharon Esplin, Gerald Gilbert, Wynn Hansen, Tim Pales, Dave Weaver

ALTERNATE MEMBERS PRESENT: Jeremy Davis, Dawn Fitzpatrick

MEMBERS ABSENT:

ALTERNATE MEMBERS ABSENT:

OTHERS PRESENT: Staff Members: Bill Wright, Peter Matson, Kem Weaver, Andrew King, Clint Drake, Julie Jewell

PUBLIC REVIEW:

1. QWEST CORPORATION/CENTURY LINK – CONDITIONAL USE FOR A TELEPHONE SWITCHING STATION

This property is located at approximately 45 South 2200 West in an A (Agriculture) zone. The property owner is Stephen McGee represented by Rob Vigil from Century Link.

Planner I, Andrew King, said Century Link had purchased an easement on private property to install a series of utility boxes. A clear view issue was resolved by a reconfiguration of the layout of the utility boxes. He said the six-foot vinyl coated fence screening the boxes will also be out of the clear view area.

Mr. King listed following conditions to be required for this conditional use permit:

1. The business shall comply with all Fire Department, Building, Planning and Engineering Division requirements.
2. A six foot vinyl coated chain link fence shall be installed and maintained around the utility boxes on the permitted easement. Fencing shall be set back from the east easement line far enough to be out of clear view and parallel to the front property line. The fence shall be slatted with a colored slat which complements the vinyl coating.
3. Any utility box or structure taller than two feet shall not be in the clear view area.
4. Curb and gutter shall be installed along 2200 West along the frontage of the easement.
5. A pre-construction site plan shall be reviewed and approved by Planning and Engineering.

Commissioner Fitzpatrick asked about the telephone pole with the speed limit sign on it and about the easement location. Mr. King said the easement will be behind where the future side walk is planned. Community & Economic Development Director, Bill Wright, said that curb and gutter is required so that drainage won't be impeded, however, the sidewalk will be installed when the entire lot is developed.

Commissioner Fitzpatrick asked if utility boxes on the north end of the property would be vacated, and Mr. King responded that the boxes would not be vacated because they serve several subdivisions in the area.

There was a discussion regarding fencing of the utility boxes currently on the property and also regarding the easement acquisition which was between the property owner and Century Link.

Mr. King said there had been no public comment regarding the conditional use.

2. SHADYBROOK SUBDIVISION PHASE 4 – FINAL APPROVAL

This 1.82 acre property is located at approximately 850 North 2475 in an R-S zoning district. The applicant, Ed Green, proposes five single family residential lots.

Planner II, Kem Weaver, mentioned that Shadybrook Subdivision Phase 4 was requesting final approval.

3. WINCO FOODS – CONDITIONAL USE FOR BIG BOX RETAIL

The applicant, WinCo Foods, is proposing a supermarket at 250 South Fort Lane in a CP-2 (Planned Community Commercial) zoning district. WinCo is represented by Mark Lavin and Jeff Kochever.

Mr. Weaver recounted the history of the conditional use approval for WinCo Foods and said the current six-month extension would expire on April 26, 2012. He said WinCo Foods had applied for a new conditional use permit for the site. The conditions for the new application mirror the original conditions except for condition #10 which required the mountain of dirt to be removed and this removal has taken place. A new condition #10 deals with having WinCo Foods bond for and install utility infrastructure improvements in the subdivision, which was required when the preliminary plan for the Fort Lane Village Subdivision was approved at approximately the same time the first conditional use permit for WinCo Foods was granted by the Planning Commission.

Mr. Weaver reported that WinCo Foods is still uncertain as to when they will start construction on the site. The current request for conditional use, if approved, will be for one-year with a six-month extension possible. Mr. Weaver said there are other builders and developers considering development in this subdivision, but development isn't possible until the infrastructure is completed. Mr. Weaver then pointed out the utilities that would be required and explained the importance of the installation of these utilities. He described the location and landscaping possibilities for the detention pond.

Mr. Weaver said WinCo Foods would be required to bond for these improvements by May 25, 2012, with a cash or escrow agreement, with improvements to be installed by October 31, 2012. He said that if the May 25, 2012, deadline is not met, then the conditional use would be void. If improvements aren't completed by October 31, 2012, then the conditional use would become void.

Commissioner Fitzpatrick asked if when the other tenants develop parcels if they would be reimbursing WinCo Foods. Mr. Wright responded that WinCo and the Fort Lane Village Associates have an agreement between their two entities to decide who pays for improvements. He said the City's responsibility is to make sure there is no negative impact to the adjoining properties and that the good of the public has been observed. He said the City is confident that condition #10 is a rational and reasonable condition consistent with City Code. He said the City is of the opinion that the infrastructure should be completed rather than waiting for WinCo Foods store to be built. He pointed out the ownership of the parcels in the Fort Lane Village Subdivision.

Commissioner Davis asked what the City had done to get WinCo Foods to reapply for the conditional use. Mr. Wright explained the history of the WinCo Foods conditional use process and said there had been discussions on keeping the entitlements in place without knowing when the project would start.

There was a recommendation from Chairman Esplin and Commissioner Fitzpatrick that condition #10 should read as follows:

If these deadlines are not met by May 25, 2012 for the executed cash escrow agreement, and/or the installation of the required subdivision improvements by October 31, 2012, then the conditional use permit for *WinCo Foods* becomes void.

There was a discussion regarding the bond and the City completing the work, using the approximately \$800,000.00 bond, if WinCo Foods fails to complete the improvements. Mr. Wright said there would be a

decision in six months from the bond date whether or not to foreclose on the bond and complete the improvements; however, if WinCo Foods is making progress on completing the improvements, then the bond would not be foreclosed.

Commissioner Fitzpatrick asked if WinCo Foods could not install the infrastructure if other development would have to do so. Mr. Wright responded that there is a development agreement between Fort Lane Village Associates and WinCo Foods to complete the infrastructure and that the City would not get involved in who manages that agreement. He said the City could, however, require WinCo Foods to install the infrastructure in order to receive the conditional use permit.

Commissioner Bodily asked about the meaning of condition #1 about light leaving the site and Mr. Wright explained that ordinance.

Mr. Wright said the architecture, landscaping and design of utility systems are the same as previously approved.

There was a question about the memo from Parks Planner, Scott Carter, with regard to the damage of landscaping and if there should be a condition to require the replacement of any damaged landscaping. Mr. Wright responded that any construction would not come near the landscaping to which Mr. Carter refers. He said there is a large grade change and a detention pond between the landscaping and the proposed development.

Commissioner Bodily confirmed with Mr. Wright the items for which WinCo would be escrowing.

Mr. Wright introduced Jeff Kochevar from Galloway in Denver and said Mr. Kochever, who represents WinCo, would be given opportunities to comment in the regular meeting.

PUBLIC HEARING:

4. LAYTON CITY – ORDINANCE AMENDMENT – TITLE 19 CHAPTER 6 AND TITLE 19 CHAPTER 14 ADDING REGULATIONS FOR RETAIL TOBACCO SPECIALITY BUSINESSES

Mr. Wright said that after consulting with City attorneys, the opinion of Staff is that the proposed ordinance amendment is rational and reasonable and recognizes that there are tobacco retailers that should have the opportunity within the law to be accommodated within the City and that there should not be the assumption that every tobacco retailer will break the law. However, he said there are good causes and secondary effects that make it rational and reasonable to put restrictions on retail tobacco specialty businesses.

Mr. Wright said Mr. Matson has mapped the spacing between these businesses according to State law and Staff recommends that these businesses should be allowed only in the C-H (Highway Regional Commercial) zones with definitions and distances the same as State law. Mr. Wright explained the map plotted by Planner I, Brandon Rypien. He said the ordinance has the provisions for the typical non-conforming use for a business that started before the regulations. He then overviewed the proposed ordinance amendment.

Mr. Wright said the Legal Department recommended that a background check not be accepted if it indicates a felony or crime of moral turpitude with the last seven years and/or a Class A misdemeanor or crime involving a controlled substance within the last five years, and/or a Class A misdemeanor within the last 3 years related to tobacco or alcohol related products. If any of the crimes are committed while the person is in business, they would be in violation of the requirements of their business license.

Commissioner Fitzpatrick thanked the Staff for their work on the ordinance. There was a discussion on the sale of tobacco to a minor, and Commissioner Fitzpatrick said she would get the contact information for the Health Department, which has requested a copy of the ordinance amendment.

There was a discussion on the monitoring of convenience stores so they don't become smoke shops. Mr. Matson responded that sales are monitored by the State based on the collection of sales tax. Mr. Wright said uses would also be monitored through Business Licensing.

Commissioners Hansen and Fitzpatrick remarked that Staff had done a great job on the ordinance amendment.

There was a discussion on the time period for the revocation of a business license for violating the law.

Mr. Matson said that with each application the buffers will be mapped since businesses such as day cares may have moved from the last time of the buffer mapping.

Commissioner Fitzpatrick asked approximately how many more retail tobacco specialty businesses could locate in Layton, and Mr. Matson said most likely a maximum of three.

Mr. Wright explained that it was important that the Planning Commission come to a vote that evening on the item and not table the item so that it can go the City Council for review on May 3, 2012.

5. BARLOW CORPORATION/KROGER COMPANY – REZONE – A (AGRICULTURE) TO M-2 (HEAVY MANUFACTURING/INDUSTRIAL

This 9.56 acre property is located at 275 North King Street. The applicant is The Kroger Company and the property owner is the Barlow Corporation represented by Duncan Barlow.

Mr. Matson presented an overview of the area and surrounding property ownership. He reviewed the General Plan recommendations for the area. He said a draft of a development agreement for the property had been done before the user was identified. He said the same template and language were used in the new development agreement with modifications after talking with Kroger, now identified as the user and Great Basin Engineering, the civil engineering company for the project.

Mr. Matson then reviewed the development agreement with the Commission including uses that will not be allowed as possibilities on this property and discussed basic site design.

Commissioner Bodily asked about the height of the tallest existing Kroger buildings. Mr. Matson responded that the buildings were approximately 45 feet high but that the M-2 zone allows for 100-foot high buildings.

Mr. Matson said the citizens wanted a meaningful buffer, which is being required under the development agreement. The exit on 275 North would be an emergency only exit with truck traffic exiting on King Street and required to go north from there.

Commissioner Hansen said it was his opinion that Kroger should keep traffic in the confines of their property and not exit on King. Mr. Wright said it was reasonable to allow Kroger to explore opportunities for ingress and egress on their property.

Commissioner Hansen said it would be important not to have traffic go beyond 500 North. Mr. Wright said that restriction would prevent trucks from going to WalMart. There was continued discussion of the route of truck traffic.

Mr. Matson reported that in the most recent correspondence with Kroger, they agreed with the development agreement.

It was pointed out that "salvage yards" was listed twice. Staff will make the correction.

OTHER:

Mr. King reported on his follow up on the CAL Ranch conditional use permit and said CAL Ranch will have met all the conditions and be in compliance by May 24, 2012.

Mr. Wright reported that Ben Hart, Economic Development Specialist, would be leaving his position at Layton City for another employment opportunity.



Julie Jewell, Planning Commission Secretary

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ALTERNATE MEMBERS PRESENT: Jeremy Davis, Dawn Fitzpatrick

MEMBERS ABSENT:

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OTHERS PRESENT: Staff Members: Bill Wright, Peter Matson, Kem Weaver, Andrew King, Clint Drake, Julie Jewell

Chairman Esplin called the meeting to order at 7:09 p.m. The Pledge of Allegiance was recited and an invocation was given by Commissioner Hansen.

APPROVAL OF THE MINUTES: Chairman Esplin called for a motion to approve the April 10, 2012, Planning Commission and Work Meeting Minutes. Commissioner Bodily moved to approve the minutes as written. Commissioner Pales seconded the motion, and the voting was unanimous.

PUBLIC REVIEW:

1. QWEST CORPORATION/CENTURY LINK – CONDITIONAL USE FOR A TELEPHONE SWITCHING STATION

This property is located at approximately 45 South 2200 West in an A (Agriculture) zone. The property owner is Stephen McGee represented by Rob Vigil from Century Link.

Planner I, Andrew King, said Century Link is in the process of expanding and upgrading their telephone communication services. He described the dimensions and location of the site and said this is the first of several utility projects to be located and upgraded throughout the City.

Mr. King said Staff recommends that a six-foot vinyl-coated slatted fence be placed around the utility boxes to screen them from existing home and future residential developments. He described the easements on the property, explained the clear view triangle and stated that Century Link submitted a new plan that moves the fence out of the clear view area. Century Link will also be improving the curb and gutter in front of the site.

Mr. King said Staff recommends conditional use approval be granted subject to the applicant meeting the following conditions:

1. The business shall comply with all Fire Department, Building, Planning and Engineering Division requirements.
2. A six foot vinyl coated chain link fence shall be installed and maintained around the utility boxes on the permitted of the easement. Fencing shall be set back from the east easement line far enough to be out of clear view and parallel to the front property line. The fence shall be slatted with a colored slat which complements the vinyl coating.
3. Any utility box or structure taller than two feet shall not be in the clear view area.
4. Curb and gutter shall be installed along 2200 West along the frontage of the easement.
5. A pre-construction site plan shall be reviewed and approved by Planning and Engineering.

Rob Vigil, representative from Century Link, 1425 West 3100 South in Salt Lake City said he had received a copy of the conditions. He said Century Link approved of the conditions. He had no questions of the Commission.

Chairman Esplin called for a motion on the item. Commissioner Pales moved that the Planning Commission grant conditional use approval for the telephone switching station subject to the applicant meeting all the conditions set by Staff. Commissioner Hansen seconded the motion, and the voting was unanimous.

2. SHADYBROOK SUBDIVISION PHASE 4 – FINAL APPROVAL

This 1.82 acre property is located at approximately 850 North 2475 in an R-S zoning district. The applicant, Ed Green, proposes five single family residential lots on 1.82 acres.

Planner II, Kem Weaver, gave a review of the history and phasing of the Shadybrook Subdivision. He said the five lots proposed on 1.82 acres has a density of 2.7 units per acre. The lot sizes range from 12,750 to 14,200 square feet, which meets the area requirements for the lot averaged subdivision.

Mr. Weaver said there will be a future phase to the north of this phase, which will eventually connect 2550 West to Gordon Avenue.

Commissioner Weaver asked about the requirement for a Davis Weber Canal Company approval letter mentioned in the Engineering memo. Mr. Weaver explained that dry lines are required by ordinance. He said Davis Weber Canal Company has extended services lines and is offering the opportunity for secondary water.

Mr. Weaver said Staff recommends the Planning Commission forward a positive recommendation to the City Council to grant final approval to Shadybrook Subdivision Phase 4.

There were no questions or comments from the Commission or the audience.

Chairman Esplin called for a motion on the item. Commissioner Bodily moved that the Planning Commission forward a positive recommendation to the City Council to approve the final plat for Shadybrook Subdivision Phase 4 subject to the applicant meeting all Staff requirements. Commissioner Gilbert seconded the motion, and the voting was unanimous.

3. WINCO FOODS – CONDITIONAL USE FOR BIG BOX RETAIL

The applicant, WINCO Foods, is proposing a supermarket at 250 South Fort Lane in a CP-2 (Planned Community Commercial) zoning district. WINCO is represented by Mark Lavin and Jeff Kochevar.

Planner II, Kem Weaver, presented a history of the project stating that in October 2010 the Planning Commission granted conditional use approval for the WinCo Foods store. In October, 2011, the Planning Commission granted an extension to this conditional use permit to expire on April 26, 2012. Since this extension is expiring, WinCo is applying for a new conditional use permit. He explained that since the property is zoned CP-2, any building over 80,000 square feet in size requires conditional use approval. Staff met with the Design Review Committee (DRC) to discuss architectural elevations and landscaping on the site. The architectural features and the landscaping plans have not changed, so there is no need to for a re-review with this conditional use request. Mr. Weaver gave an overview of the landscaping, detention and parking requirements.

Mr. Weaver said that one of the main issues with this conditional use request is based on the utilities and infrastructure on the site. He said Zion's Bank is the only new development because they were able to connect utilities to Fort Lane. The interior parcels can't be constructed until the utilities are installed per the development agreement between WinCo Foods and Fort Lane Village. WinCo has no frontage on a public street but has access at Wasatch Drive and Gentile and on Fort Lane. Layton City Engineering Division has identified the infrastructure that must be installed. Condition #10 requires WinCo Foods to install these utilities as a

requirement of this conditional use. The conditions are as follows including changes in wording recommended for condition #10 noted in bold type below. Mr. Weaver said Staff's opinion is that it is reasonable and rational to add condition #10 to the nine conditions approved with the original conditional use permit in 2010.

1. All parking lot and building lighting shall not leave the site. The foot candle measurement shall be at zero at the property lines. If light glare is an issue for vehicles on I-15 then shields will need to be added to the pole lights.
2. The *WinCo Foods* building shall be constructed per the approved architectural elevations, which were approved and recommended by the City and the DRC.
3. Provide access to grassed landscape areas to place snow storage. Prevent damaging designed landscape areas in the winter.
4. All landscaping shall be installed and inspected before receiving a certificate of occupancy.
5. All HVAC equipment shall be screened from public view from Fort Lane.
6. An eight foot minimum screen wall shall be built behind the building to hide trash compactors, truck docks and temporary storage areas.
7. Outside storage shall not be allowed unless it is placed in designated areas behind screened walls.
8. The approved landscape plan shall be followed regarding installation of trees, shrubs, grasses and plants.
9. All subdivision signage shall be architecturally integrated with the overall development and meet the sign ordinance.
10. *WinCo Foods* shall provide to Layton City an executed cash escrow bond agreement for the required subdivision improvements, as outlined by the City Engineer, by May 25, 2012. In addition, the installation of the subdivision improvements shall be completed by October 31, 2012.

If these deadlines are not met by May 25, 2012 for the executed cash escrow bond agreement, **and/or** the installation of the required subdivision improvements by October 31, 2012, then the conditional use permit for *WinCo Foods* becomes void.

There were no questions or comments from the Commission.

A member of audience asked when construction would start if all conditions are met and if WinCo had agreed to the conditions. Mr. Weaver said WinCo had not set a timetable for construction. He said WinCo's representative was present and would address the conditions.

Jeff Kochevar from Galloway and Company representing WinCo Foods, said in general WinCo doesn't necessarily agree with condition #10. They have every intention to go forward with the project and have opened several locations in the region. When the economy turned down, sales slowed down, and Mr. Kochevar said it doesn't make sense economically to build this WinCo store right now, but they still have every intention to go forward. With these conditions, he said he is of the opinion that the Planning Commission is trying to entice development to happen at that site. The way the condition reads, WinCo needs to put up approximately \$800,000.00 for these improvements by the end of May whether or not they know when they are going to go forward. He felt a better approach would be to get additional development to go forward. The \$800,000.00 is for infrastructure that allows the entire development to progress. He asked that the Commission give WinCo a month to work with the City Staff and the engineers to determine what needs to be done to allow development to go forward and perhaps agree to reduce the subdivision improvement plan requirements so that it wouldn't cost so much rather than full build out of the water line and storm system.

Mr. Kochevar said that the way it stands now, with the agreement with Fort Lane Village Associations, there is a sharing that goes on between WinCo Foods and Fort Lane Village Associates to do the improvements. With the

requirement of \$800,000.00 in improvements, it doesn't make sense for someone else to come in because they would have to share in the development costs such as a pad development. What he would recommend would be to change the language in the section regarding the improvements to be completed from "as outlined by the City Engineer," to "as negotiated by WinCo Foods and Layton City" and have that agreement done by May 25, 2012. He asked what would happen if there is a lesser agreement for the scope of work what would happen with condition #10.

Mr. Wright responded that City Staff has been in contact with Mr. Goens of WinCo Foods and have made him aware of the concerns on this subdivision that has been approved and recorded. There was a request by WinCo for the City to move forward and get the plat recorded. For a variety of reasons WinCo has not moved forward. Staff had informed Mr. Goens of the infrastructure that would be needed for development approvals to go forward. This would apply to WinCo Foods or any of the pads wanting to develop. WinCo Foods wanted to keep their entitlement for a conditional use in an active state and submitted for a new conditional use. Staff kept inquiring of WinCo as to when they were going to go forward. He said if the conditional use is brought back to the Commission with a request to keep the entitlements in place, the Commission may question if there is a reason to approve the conditional use if it is unknown when WinCo will build. He said WinCo had said they didn't know when they would move ahead with development and even used the word "if". Mr. Wright said Staff informed WinCo some time ago of the infrastructure that would need to be installed as a requirement of the conditional use.

Mr. Wright said there are adjacent properties that are being affected by the improvements that have not been installed. He said the City is allowed to protect adjacent properties as a requirement of a conditional use.

Mr. Wright said Staff feels it is appropriate to place the condition for the installation of the infrastructure at this time. He said the Engineering staff has analyzed the situation and is of the opinion that these improvements should be made. He said there is a natural drainage site where the detention pond would be installed and could possibly be left natural until more buildings are added. He said the Planning Commission could direct Staff to explore the possibility of letting the pond remain natural for a time.

Commissioner Bodily asked if they knew of the need for the escrow agreement to be put in place. Mr. Wright said they knew of the need for the infrastructure and requiring an escrow is common.

Commissioner Fitzpatrick mentioned that Zion's Bank had built on Lot 3 and asked if any other developments could go forward. Mr. Wright explained that Zion's Bank was able to connect utilities to Fort Lane, but they are dependent on the storm drainage system that was to be built. He said curb cuts for the development were put in per the agreement between Fort Lane Village and WinCo Foods.

Commissioner Fitzpatrick asked if Lot 4 on the corner could be developed by connecting to existing Fort Lane or Gentile Street utilities. Mr. Wright said there is an opportunity for that to occur, however a right turn lane would be required and reconstruction of Gentile Street and the utilities on that corner.

Commissioner Hansen asked if when WinCo Foods agreed to become the anchor for this development, if they fully understood the commitment to become the anchor and install the utilities for the entire project.

Mr. Wright responded that they absolutely were aware of the requirement. They took the lead in the development and accepted the responsibility to install the utilities.

Mr. Hansen asked about the proposal for WinCo to provide a partial completion of the utilities and if Staff would consider that. He asked if it was necessary to install all the utilities at this time.

Mr. Wright said there had been conversations with WinCo and Staff regarding this and said Staff is of the opinion that it is good from public policy perspective, for a conditional use to be granted requiring the install of all the utilities.

Mr. Kochevar clarified that he was of the opinion that WinCo was never under the impression that they would have to install the off-site and other improvements in advance of their store. He said because there is no Utah Department of Transportation (UDOT) approval for the widening of Gentile Street, no civil drawings were completed. He was concerned about the timelines because of UDOT's involvement and felt there should be further discussion before setting a timeline.

Commissioner Bodily asked if the UDOT issue had been addressed recently. Mr. Kochevar said it had not because there was a power pole issue and formal approval has not been received.

Mr. Wright said there was a recorded subdivision plat that allocates the land for the right turn lane widening and that he would make sure that UDOT meets the time frame.

Commissioner Bodily asked what demand there was for other development. Mr. Wright pointed out two parcels where there was interest and also an interest for an office use. He said retailers need to know what the anchor plans, and the office building is dependent on the infrastructure.

There were no further questions or comments. Chairman Esplin called for a motion on the item. Commissioner Weaver moved that the Planning Commission approve the conditional use request subject to the 10 conditions which are now adopted as requirements. Commissioner Gilbert seconded the motion.

Commissioner Weaver restated the motion to include the correction in the verbiage in condition #10 to change "or" in the second paragraph of condition #10 to "and/or". Commissioner Gilbert accepted the correction and seconded the motion. The voting was unanimous.

Chairman Esplin called for a motion to close Public Review. Commissioner Gilbert moved to close Public Review. Commissioner Bodily seconded the motion, and the voting was unanimous.

PUBLIC HEARING:

4. LAYTON CITY – ORDINANCE AMENDMENT – TITLE 19 CHAPTER 6 AND TITLE 19 CHAPTER 14 ADDING REGULATIONS FOR RETAIL TOBACCO SPECIALITY BUSINESSES – ORDINANCE 12-16

Based on recommendations from the Planning Commission and City Council to create regulations for retail tobacco specialty businesses, City Planner, Peter Matson, presented the ordinance amendment to add regulations for these businesses referred to in the past as smoke shops or hookah stores. He said House Bill 95 was signed by the Governor in March 2012 outlining the minimum regulations if a City is going to provide such regulations.

Mr. Matson then reviewed the ordinance with the Planning Commission. He showed a map with all the locations that must be buffered from retail tobacco specialty businesses and explained the buffering requirements. He identified the areas outside the buffer but said that the ordinance focuses on allowing the businesses only in the C-H (Highway Regional Commercial) zone. He pointed out the areas outside both the buffer and in the C-H zone.

Mr. Matson said Staff is of the opinion that the areas identified provide reasonable opportunities for these businesses to be located in the City and in traditional areas where they have previously been. He said one smoke shop currently in business could continue to operate under a non-conforming use. However, if there became a new owner, the new criteria would apply. If a license is terminated or a business relocates or re-opens, the business would have to abide by the new criteria.

Mr. Matson reviewed the language changes added by the City Attorney's office.

Mr. Matson said Staff is recommending that the Planning Commission forward a positive recommendation to the City Council to approve Ordinance 12-16 with the noted changes, which are consistent with recently approved State law and allow reasonable opportunity for location and re-location. He asked the Planning Commission to make a motion allowing the ordinance amendment to move forward since a City Council hearing has already been set.

Chairman Esplin called for a motion on the item. Commissioner Hansen moved that the Planning Commission forward a positive recommendation to the City Council to approve Ordinance 12-16 subject to all Staff input and specifically recommendations from Legal that have been added into the ordinance. Commissioner Fitzpatrick seconded the motion, and the voting was unanimous.

5. BARLOW CORPORATION/KROGER COMPANY – REZONE – A (AGRICULTURE) TO M-2 (HEAVY MANUFACTURING/INDUSTRIAL)

This 9.56 acre property is located at 275 North King Street. The applicant is The Kroger Company and the property owner is the Barlow Corporation represented by Duncan Barlow.

Mr. Matson presented the rezone request with a development agreement. He gave an overview of the subject area including zoning.

Mr. Matson said the property has been the subject of many rezone proposals, most recently a request to rezone from A (Agriculture) to M-2 (Heavy Manufacturing/Industrial). At that time, it was not known that the potential user would be The Kroger Company. The Planning Commission forwarded a positive recommendation to approve the rezone with a development agreement. The applicant withdrew the petition prior to the City Council hearing. Mr. Matson said the basic agreement has been amended given the specifics of the potential expansion of the Smith's facility. He said the City's General Plan recommends that the property be zoned to a manufacturing zone and use.

Mr. Matson said that the highlighted uses in Tables 6-1 and 6-2 (Exhibit B in the development agreement) are not allowed or removed as uses in the M-2 zone are highlighted. He explained the code on the tables.

He said that in addition, issues such as access, buffers, landscaping and building setbacks are addressed in the development agreement in Exhibits C-F. Landscaping buffer possibilities and setbacks for buildings according to height were discussed with the property owner as well providing an adequate buffer on the south property line as well as along King Street. Mr. Matson outlined the possible design alternatives for the buffers.

Commissioner Hansen asked if curb and gutter would be required on King Street. Mr. Matson responded that curb, gutter and sidewalk would be required.

Mr. Matson said it is reasonable to allow one access out to King Street with the traffic going north to the signal at 500 North and Main Street. Any access on 275 North would be for emergency purposes only as stipulated in the development agreement. There was a discussion of access possibilities.

Mr. Matson said Staff is recommending the Commission forward a positive recommendation to the City Council to rezone the property from A to M-2 and to approve the development agreement.

Commissioner Fitzpatrick asked about previous concerns with an ice cream plant being in the area. Mr. Matson said the concern would be if it was a stand-alone plant rather than an expansion.

Commissioner Fitzpatrick asked about the additional chemicals. Mr. Matson said that ammonia is a common part of ice cream production but it seemed reasonable to allow them to expand.

Mr. Wright said there would also be a separation of 100 feet from the large manufacturing building to the property line and then across the street to the residences. The previous proposal for multi-family would have been even closer to the dairy processing use and the concern of the Fire Department was of increasing the conflict of residential use and industrial use.

Mr. Matson reported that Kroger sent out invitations and hosted a meeting on Wednesday, April 18, 2012, for the neighbors. He said buffer concepts were discussed at that meeting.

Commissioner Hansen remarked that the owner, Duncan Barlow, was not present. Mr. Matson said the representative from Great Basin Engineering was present and would be able to comment.

Resident, Julie Hager, 275 North 727 West said she was okay with the buffers and visual enhancements, but expressed concerns about any environmental impact such as a chemical hazard. Resident, Heather Robbins, 175 North 700 West spoke regarding traffic and any access on or off King Street.

There were no other questions or comments.

Commissioner Hansen said that since it was unclear as to what the exact use would be, that the maximum buffer should be required. He asked that an 18-wheel tractor trailer not be allowed to go farther north than the back side of Walmart.

Brett Wallin, Kroger representative from Great Basin Engineering, 2010 North Redwood Road, Salt Lake City, said Kroger has no imminent plans to develop the site and they are trying to protect their investment and continue to provide services to the customers. He explained that the buffer on 275 North would have a six-foot berm with landscaping and an eight-foot wall with a potential for trucks behind the wall. His opinion was that the buffer would provide substantial benefit to the homes and said he has found that buffers can be constructed so that land uses could thrive together. He said the proposal provides an opportunity to buffer residences from what is already there on Smith's property. He said 275 North was constructed after the facility was constructed but Robins Drive was existing and a buffer was installed.

Mr. Wallin said that accesses are important and it would make it difficult if the property was landlocked. He said there may not be truck traffic because they may not move the security point, but they would like the option for an access to be left open. He said Kroger was working to make sure the neighbors' concerns were addressed.

Mr. Wallin said he hoped to resolve issues prior to the City Council meeting and said that they could request that loud speakers be silenced. He said they were supportive of the Staff's current recommendations.

Commissioner Fitzpatrick asked if when a site plan is submitted if there would be an opportunity to restrict truck traffic on King Street if there is another alternate pattern on Sugar Street. Mr. Matson responded that the Planning Commission would not review permitted uses but would review a use that was conditional on that property. He said that the City Engineer and Fire Marshall would review a specific proposal when submitted, but Staff feels that in the meantime, it would be good to retain the opportunity for a King Street access.

Commissioner Fitzpatrick said she was not so concerned about the chemicals used by an ice cream plant but the decision to add an ice cream plant back in as a use after it was taken out. She felt the previous discussion did not match this discussion. She had more concern about possible hazards involving the railway.

Mr. Matson explained that when it was not known what would be on the property, a free standing dairy processing plant was a concern. When there could have been a playground facility right there as in a previous proposal, it was a concern. The Fire Marshall said that the chance of an accident is very slim, but it's best not to push residential uses right up to the facility.

Commissioner Hansen asked to what extent the Staff considers hazardous materials that may be used in a site like this to determine if it is safe. Mr. Matson said those issues are addressed at length with the applicant during site plan review stage by the Fire Marshall and at the building permit review stage, they are addressed by building and fire code.

Heather Robbins commented that the statement, "we were there first," should not be considered from here forward, nor should being landlocked be a concern. She said the safety of others is more important. She said she trusted that the Planning Commission made good decisions but the landlocked issues shouldn't be part of the decision.

Chairman Esplin called for a motion on the item. Commissioner Brian Bodily moved that the Planning Commission forward a positive recommendation to the City Council to adopt the development agreement and approve the rezone from A to M-2 subject to the applicant meeting all Staff requirements and the requirements of the development agreement. Commissioner Pales seconded the motion, and the voting was unanimous.

Chairman Esplin called for a motion to close the Public Hearing. Commissioner Weaver moved to close the Public Hearing. Commissioner Fitzpatrick seconded the motion, and the voting was unanimous.

Chairman Esplin called for a motion to adjourn the meeting. Commissioner Weaver moved to adjourn the meeting. Commissioner Bodily seconded the motion, and the voting was unanimous.

The meeting adjourned at 8:58 p.m.



Julie Jewell, Planning Commission Secretary