

THURSDAY, November 19, 2015

**CITY HALL COUNCIL CHAMBERS
107 NORTH NEVADA AVENUE
COLORADO SPRINGS, COLORADO 80903**

CHAIRMAN PHILLIPS CALLED THE MEETING TO ORDER AT 8:30 A.M., ADJORNED AT 9:41 A.M.

PRESENT:

Markewich
Henninger
Gibson
Donley
Phillips
Shonkwiler
Walkowski
McDonald
Smith

ABSENT:

ALSO IN ATTENDANCE:

Mr. Peter Wysocki, Planning and Development Director
Mr. Marc Smith, City Senior Corporate Attorney

RECORD OF DECISION

Moved by Commissioner Henninger and seconded to approve the October 15, 2015 meeting minutes.
Motion carried 9-0.

COMMUNICATIONS

Mr. Peter Wysocki reported that the Downtown Master Plan Update Community Forum was held Tuesday at the Pikes Peak Center Studio B. It was well attended, over 100 attendees. A good presentation by the consultant team MIG and PUMA; there were positive responses to that presentation.

CONSENT CALENDAR

ITEM NO.	PROJECT DESCRIPTION
<p>ITEM NO.: A CPC CU 15-00066 (Quasi-Judicial)</p> <p>PARCEL NO.: 6427111070</p> <p>PLANNER: Michael Turisk</p>	<p>A request by John Nelson of John P. Nelson Associates on behalf of Ms. Desiree Toller of "Colorado's Car Connection" for the approval of a Conditional Use Development Plan to establish an auto sales lot at the south portion a 1.21 acre property zoned PBC/CU/AO (Planned Business Center/Conditional Use with an Airport Overlay). The property is located at 1794 S. Academy Blvd.</p>

NEW BUSINESS CALENDAR

ITEM NO.	PROJECT DESCRIPTION
<p>ITEM NO. 4.A-4.B CPC CU 15-00097 (Quasi-Judicial)</p> <p>CPC R 15-00098 (Quasi-Judicial)</p> <p>PARCEL NO.: 6327209034, 6327209034</p> <p>PLANNER: Hannah Van Nimwegen</p>	<p>A request by Classic Consulting on behalf of Front Row Properties, LLC for approval of the following development applications:</p> <ol style="list-style-type: none"> 1. A conditional use to allow a fast food use within the OC (Office Complex) zone district. 2. An administrative relief to City Code Section 7.4.203 to allow for 31 parking stalls where 32 parking stalls are required. <p>The subject property consists of 0.89 Acres and is located at 3220 Austin Bluffs Parkway.</p>

CONSENT CALENDAR

DATE: November 19, 2015
ITEM: A.
STAFF: Michael Turisk
FILE NO.: CPC CU 15-00066
PROJECT: Colorado's Car Connection

DECISION OF THE PLANNING COMMISSION

Moved by Commissioner Henninger and seconded by Commissioner Gibson to approve **Item A., File No. CPC CU 15-00066** the conditional use Development Plan for an auto sales lot for "Colorado's Car Connection" based upon the findings that the conditional use development plan complies with the three (3) criteria for granting of conditional uses and complies with the development plan criteria as set forth in City Code Section 7.5.704 and 7.5.502, with the following technical modification:

Technical and Informational Modifications to the Conditional Use

1. Any automotive repair on site shall be accessory to the principal auto sales activities.

November 19, 2015
Date of Decision

Eric Phillips
Planning Commission Chair

NEW BUSIENSS CALENDAR

DATE: November 19, 2015
ITEM: 4A-4B
STAFF: Hannah Van Nimwegen
FILE NO.: CPC CU 15-00097 AND CPC R 15-00098
PROJECT: Austin Meadows Business Center – Taco Bueno

STAFF PRESENTATION

Ms. Hannah Van Nimwegen, Planner II, presented PowerPoint slides (Exhibit A).

APPLICANT PRESENTATION:

Alicia Rhymer with Confluent Development concurs with Ms. Van Nimwegen's presentation. The Dunkin Donuts Conditional Use and Development Plan that was previously approved by Planning Commission on 2/20/14 established the two right-in/right-out access points and a restaurant use on Lot 2. Following the approval, cross-access agreements were established and were recorded against the property and the seller and the developer (when Lot 2 was developed) have an obligation to Dunkin Donuts to ensure that those cross-access drives go in along with the access-drive.

The present plan is consistent with the previously approved plan with the exception that they are asking for the drive-thru because Taco Bueno will be looking to develop on the property. The applicant completed a traffic study to verify the safety, functionality, and the benefit of the access point due to a resident's concern. They did a very conservative traffic analysis where they looked at all three uses together but did not apply any of the pass-through traffic credit that these uses would get to ensure that it was a conservative analysis. The analysis showed the access points function well together; they disperse traffic very well with the uses and reduce delays in other areas. Asking for the Administrative Relief on one parking space because they agree with staff that it doesn't adversely impact the surrounding development but if that becomes an issue with the Commission they can reduce the patio size which will get them in the parking requirements but they are asking they not have to because they feel that would limit the customer experience and the ability to sit outside during good weather months.

To mitigate any impacts to the northern property there is an existing 6-foot fence on the northern property line, there are existing large mature trees in the northwest corner that serve as significant buffering as well and they are adding 11 additional trees to the north on a 15-foot landscape buffer and nine of those trees will be Evergreens. They are only supposed to provide six Evergreens but are providing nine because those serve the best type of buffering. Lighting is full cutoff. They lowered the light so there is no spillover off the property. The photometric plan shows there is spillover to the property and that doesn't take into consideration the existing trees and everything else that is there.

Questions of the Applicant:

Commissioner Walkowski stated the applicant had stated that the access agreements or easements are in place, is that also with the Diamond Shamrock to get out to that road as well? Ms. Rhymer stated that was correct. There is cross access between the Dunkin Donuts and Lot 2 and both lots have access to get to Meadowland.

Commissioner Walkowski also asked about the 6-foot wooden fence if it was this property's fence or the neighbor's fence. Ms. Rhymer stated it was a fence that was put up by the seller during the Dunkin Donuts development, so it's right on the property line.

Commissioner Gibson asked Ms. Rhymer if she could address the odors from the restaurant. One of the concerns brought up was concerns that there weren't exhaust fans. Ms. Rhymer stated would have Mike Linger with Taco Bueno answer that question.

Mike Linger with Taco Bueno stated they do have exhaust fans required to mainly handle steam from their bean kettles. They also have a small grill. Other than for this, that's really all they exhaust fans are for.

Questions of Staff:

None

Citizens in favor of the application:

Ron Walthausen owner of Front Row Properties state that the two businesses that are coming into this area are fine with each occupying the property. Each business has different drive times for customers. He feels that it is a good project and will improve the neighborhood.

Citizen in opposition of the application:

John Bolt stated he is against the rezoning of the property for use of a Taco Bueno for a several reasons:

1. Hours of Operation: Taco Bueno's open from 6 a.m. to 2 a.m. Monday – Sunday. This business is being placed with property lines adjacent to residential homes. These homes have families that go to work and school and he did not see how these business hours can be a benefit to his neighborhood. This is not the standard business hours for businesses in his neighborhood.
2. Traffic: October 7, 2015, he emailed Colorado Springs Traffic Engineering questions as well as Ms. Van Nimwegen for city to reach out to engineering about his comments. He has not received any responses from Colorado Springs Traffic in any way. Mr. Bolt stated it only takes three vehicles in the Dunkin Donuts to block the secondary entrance/exit for Meadowland customers wanting to get to the proposed Taco Bueno. These blacktop areas are only 17'8" wide at Dunkin Donuts. Dunkin Donuts treats these areas as one-ways where Taco Bueno blueprints show two-way traffic; these widths are not designed for two-way traffic. Confluent development was paid by Taco Bueno and hired SM Roadcheck to do the traffic study. The study shows no negatives; it's all in favor of Taco Bueno. Mr. Bolt asked why Colorado Springs Traffic doesn't do their own study to include the traffic on Meadowland, Fireweed and Goldenrod Drives and to include the negatives.
3. Smells/odors: Mr. Bolt stated he had email Ms. Van Nimwegen who forwarded his concerns to Ms. Rhymer of Confluent Development. He has a concern about fast food restaurant smells. Mr. Bolt stated Ms. Rhymer emailed him that Taco Bueno restaurant will not smell. Mr. Bolt stated you cannot run a restaurant without smells.
4. Maintenance of the Swale: It took a personal meeting with Mr. Walthausen of Millennium Development to mow the grass and weeds and pick up trash on the swale. Mr. Bolt has concerns that the swale will not be properly maintained. There is currently an inch ½ of water in the swale 3 ft. 12 ft. with cattails and living bugs in the water. Swales are potential areas for mosquito breeding.

This swale is not drying out or being maintained. Maintenance of the swale is up to the property owner. The City states that if it is a hazard or a nuisance either Code Enforcement or Land Use Enforcement. No other Taco Buenos are within ½ mile of a residential neighborhood. Mr. Bolt asked if any of the Board Members had been by the Dunkin Donuts or the property within the last two months. He does not want a fast food restaurant in his backyard as his neighbor.

Commissioner Walkowski asked Mr. Bolt to identify his lot. Mr. Bolt stated he is in the neighborhood but not directly behind the site.

Susan Parker had some Google maps that were handed out by staff to the Commissioners. She stated that she lives on Fireweed directly north of the area in question. She stated that the only way traffic can get to Fireweed for residential purposes is to turn onto Meadowland. She stated the right now there are many U-turns at that intersection because they are still allowed. There are accidents at this intersection. There is a stack up on Meadowland as well as on Austin Bluffs due to the Diamond Shamrock and Dunkin Donuts now. She stated this is their way to get home and as mentioned it is a right hand right turn only from these properties once entered into; then anyone wanting to go east bound has to circle around to Goldenrod and back down Fireweed unless they take the very small way that is behind Diamond Shamrock. So there is an entrance there at Diamond Shamrock when it was only that business along with its car wash along with the Dunkin Donuts. Ms. Parker stated that people coming out of Diamond Shamrock onto Austin Bluffs and then people are coming in off Austin Bluffs to Diamond Shamrock and then people exiting Dunkin Donuts and it is an entire mess. Now you will be adding Taco Bueno to this small entrance/exit as well as the small entrance/exit behind Diamond Shamrock. Ms. Parker stated it just didn't make sense in real life just looking at it because it is such a mess. Ms. Parker asked that traffic has an unbiased look at this and that the Commission would just table this until traffic looks at this for further consideration.

Additional Comments/Questions of Staff:

Commissioner Henninger asked for Ms. Van Nimwegen to address the traffic situation. Ms. Van Nimwegen deferred to Kathleen Krager to address that question.

Kathleen Krager Transportation Manager for the City of Colorado Springs; Ms. Krager stated that because of neighborhood comments or rather when they received traffic comments on a project that is up for their review rather than handle those comments individually which would not end up in the project file those comments are handled through the Planning Department and they ask the applicant to provide a traffic impact study and then review the traffic impact study for its adequacy which is what they did here. It was a well done traffic impact study by a well-known traffic engineering firm. Ms. Krager stated she had no problems with the study. The level of service at Meadowland and Austin Bluffs with the full Taco Bueno traffic and Dunkin Donuts traffic at trip ration levels meaning no reduction for pass-by traffic shows that that intersection will operation at level of service operation C in the morning a level of service B in the afternoon which is a level of service that indicates they would not be doing any level of improvements at that intersection. There are some concerns with that intersection and they have made some recent changes. With the improvement of Austin Bluffs Parkway they restricted a left turn out at Brenner Drive which is to the west of this site and on the south side of Austin Bluffs Parkway.

That restriction has left the neighbors that live in that neighborhood coming out to Austin Bluffs making a right turn because they cannot make a left turn coming to Meadowland and making a U-turn if they were previously making a left turn. U-turners were having trouble with conflicts from right turn on red turners from Meadowland that the right turns on red are supposed to yield to all traffic on Austin Bluffs but they were not yielding to the U-turns and causing numerous conflicts. So Ms. Krager stated she did have to restrict right-turn-on-red at Meadowland which is something she doesn't like to do but it was necessary in this case to cut down on those conflicts and cut down on accidents at the location. This makes it all the more important to have direct access to Austin Bluffs from these sites so they reduce the amount of traffic at Meadowland and Austin Bluffs. Ms. Krager stated she had visited the site a couple dozen times and it's a typical fast food site. There are times when it's busy and times when it is not but it's always on site and there is not a problem with offsite traffic.

Commissioner Henninger stated that he had been by the site and the traffic flow has improved with the improvement to Austin Bluffs but the concern is the traffic flow onsite and if it's onsite it might be a little slow but you cannot always drive up to the drive up window; so yes there is a little bit of confluence of a little bit of merge challenge in the back and he can see where that is possible. But for designing the property within the norms that is business and he thinks that is alright.

Ms. Krager stated that traffic engineering does not get into the business of traffic flow on private property that is up to the private property owner to manage his business accordingly and the truth of the matter is if they do not do a good job of it they will lose customers and it remains their problem as long as that traffic does not back out onto city streets.

Commissioner Markewich asked Ms. Krager that if the site was approved and they are in full operation what is the procedure that the city has to go back and double check to make sure that things are doing well. Or is it a matter of when complaints come in, accidents rise, at that point you would reevaluate whether additional restrictions need to be made, could you describe how you come to re-evaluating a situation once traffic patterns get established around a new business.

Ms. Krager stated that first and foremost she stated she gets numerous phone calls and emails every day from citizens that are letting her know of a traffic concern. One way or another they visit that site or look at that site by aerial photograph if it's one that they know well and try to determine if there is something that needs to be done. That tends to be where they hear the most of whether or not there is a traffic problem. Besides that Ms. Krager stated she tries to spend at least four hours a week driving the city and looking at traffic conditions. Whenever she has a break in her calendar she drives everywhere in strange configurations just to look at various things. If there is an area that is of concern to her, she will ask that area be on her watch calendar for accident reports so they have a fairly good accident reporting system, those reports will come directly to her as soon as they are entered so she can keep track of those reports. She does this at several signalize intersections that she considers to be a problem or driveways that she may be worried about. If she has an area of accidents she is able to take what is called traffic police actions. Some of those are they can restrict turning movements; they can

close those access points, they can change situations and she has adequate funding through the PPRTA to make safety improvements when any of those types of situations come up.

Commissioner Donley stated that it seems like there had been some investment in Austin Bluffs and PPRTA did a project in that area. Ms. Krager agreed. Commissioner Donley asked Ms. Krager to describe what it was and the value. Ms. Krager stated that PPRTA widened Austin Bluffs in a number of restricted areas from four lanes to six lanes. Where they didn't need to widen they improved the curb and gutter, put in missing sidewalks where they needed to, improved signalized intersections, those types of things and now the Austin Bluffs project is now complete to Old Farm Rd. Commissioner Donley asked what the value of the investment was. Ms. Krager stated she didn't remember but it was a fairly high investment because of the number of retaining walls and special things that needed to be built in front of UCCS and the hill that is there. Commissioner Donley stated in his research it looked like it was \$26 million and in the past we've done other substantial investments. This street did not go through 40 years ago, it's important to east/west corridors, could you talk in terms of about why that is important. Ms. Krager stated it is an east/west corridor and unfortunately it doesn't continue all the way east but it at least goes east as in making a connection to Barnes which continues east all the way to Marksheffel. It also has an interchange via Garden of the Gods at I-25 and continues west. Ms. Krager stated they have very few east/west corridors actually in the city. So this is an important one. It's one of their higher volume ones and it's well used.

Commissioner Donley stated his comments then come back around to protecting the quality of this both in terms of safety and in terms of traffic flow and the implications of having yet another curb cut on to this when we already have cross easement agreements that can allow access without having an additional curb cut.

Ms. Krager stated there is logic to her reasoning on this. Ms. Krager stated she would answer it in two ways. First off it's crucial to have right-in/right-out access from Austin Bluffs because of potential traffic problems on Meadowland if you didn't have that right-in/right-out access. When you are talking fast food types of restaurants that right-in/right-out access can handle a lot of the traffic for those uses rather than left turns. The state highway access code which is sort of the ultimate in our restrictive access even allows for additional right-in/right-out on state highways if it is helping a known traffic problem at an adjacent intersection which would be the case here. So if Austin Bluffs were to be a state highway this is an access that would be allowed under state access code.

Now we have the issue that they have two access permits. The first access at the gas station was a previous access it was put in by PPTRA and rebuilt again when the roadway was improved at this location. If she had her druthers if there was only going to be one access along this stretch of highway she would want it to be at this location as far away from Meadowland as possible particularly because of the number of U-Turns that occur at Meadowland it just creates less conflict if she has the access farther away. That is why she will look at the accident history here for a number of years to make sure that they aren't having accidents with these right-in/right-outs. If they are having accidents at the right-

in/right-outs she will evaluate which ones they are and why they are resulting and chances are she would close the access closest to Meadowland and leave this one open.

Commissioner Donley said if they took the uses that were allowed without a conditional use and the logical example is an office building, would that have a beneficial impact on the amount of traffic coming out of this site. Ms. Krager said it would not because with an office use that is a destination use so it's likely to have a greater amount of traffic that needs to make left turns coming into the site or leaving the site than if it were fast food. So she would undoubtedly increase the traffic at Meadowland and Austin Bluffs and increase the traffic to the site coming off Meadowland which is her critical location in all of this. Fast food restaurants typically have between 75% to 85% of their traffic is right-in/right-out traffic. So it makes it easier for the people to get in and off of Austin Bluffs and not have to use Meadowland for their access to the site.

Commissioner Walkowski stated he was just following up on the neighbor of the issue about getting into their neighborhood off of Meadowland, so with the traffic study, was the level of service for just Austin Bluffs? Ms. Krager said no they took existing traffic counts at the intersection of Meadowland and Austin Bluffs and at the driveway at Dunkin Donuts and then added new traffic on to that. So the traffic study atomically considered as part of the background traffic all the traffic that exits in that neighborhood and is using it today.

Commissioner Walkowski said that intersection has the level of service of B and C but for Meadowland, getting into it and taking a left off of Austin Bluffs, what would be your impression of the difficulty of that or the increased difficulty. Ms. Krager stated that you are living in a city and should expect congestion levels; B and C are good but they would allow levels less than that before they stepped in to do any work because they simply don't have the financial ability or the environmental where-with-all to build roads big enough that you can travel and never have any congestion or have to stop. So you might occasionally have a time when you sit through one green cycle and you don't make it into your neighborhood and you have to wait and that is pretty typical city urban living.

Commissioner Walkowski stated that one of the senses he's getting from the neighbors is that they are concerned about the left-in at the Diamond Shamrock because as you take a left and that backs up you can't through the intersection. Ms. Krager stated that the consultant did an analysis of that left turn going into the Diamond Shamrock and Dunkin Donuts and Taco Bueno assuming that some of Dunkin Donuts and Taco Bueno would enter that way, according to the computer simulation the average queue time there was 7-feet which doesn't really happen because a car is about 20-feet long, so they would assume the average queue there is 20-feet. However there is room there for several cars to stack if need be. Ms. Krager stated she had been there several times and there have not been problems with stacking out on to Meadowland and Austin Bluffs. Commissioner Walkowski said with Ms. Krager's previous conversation with Commissioner Donley are you suggesting the right-in/right-out will relieve some of that left turn on Meadowland. Ms. Krager said absolutely.

Commissioner Donley said he had one follow up question; if they were to close the east right-in/right-out would they make changes to the design of the west right-in/right-out the one accessing directly into Taco Bueno. Ms. Krager said no. It is a fine design; she would not change it at all. Ms. Krager stated that she should point out that she can't change that east driveway based on her looking at it and saying I'd like to change it. It's an existing driveway and if the Planning Commission say let change it, they cannot, it's an approved driveway. The only way she can change it is if there becomes an accident history and Ms. Krager takes the stand that it would need to be closed or modified for the safety of the traveling public.

Commissioner Smith asked in a heavily traveled thoroughfare like Austin Bluffs, Union, and Garden of the Gods Rd or any of these kinds or arterial roadways in the city, if someone was driving east and they need to stop at a fast food restaurant or gasoline or whatever are they more likely to continue on so they can turn right into one of these facilities or would they turn left and crossover, get their gas or food and then have to come back and get across and continue on east. Ms. Krager said that is exactly why fast food and gas stations have such a high percentage of pass-by traffic; with gas stations it's up to 90% and are strictly a right-in/right-out turn because the truth of the matter is we tend to not have that much loyalty to a particular location or brand, those are considered convenience items and if it's not convenient we go on down the street and chances are there is a site that is convenient. Dunkin Donuts is not necessarily a convenience item; Taco Bueno is a specialty fast food restaurant. If people want to go to a Dunkin Donuts on their way into work, they will probably plan their trip so that it is a right-in/right-out.

Rebuttal:

Commissioner Donley asked for the applicant in their rebuttal to specifically address the drive-thru and its relationship to the adjacent neighbors and associated hours of operation that they are going to have traffic turning in that area.

Ms. Rhymer stated they provided a response to Mr. Bolt through an email and also met with him on site and at that time they talked using the traffic study they provided him with their revised development plan to talk through the modifications that were made to address his concerns and they went through all of his issues at that time. They walked away from the meeting with the understanding that they had addressed all of his concerns with the exception of operating hours. If you can see from the previous development he had the same concerns with Dunkin Donuts that he submitted through email and he also acknowledged with her that he had no concerns with Dunkin Donuts in their operation and they feel he will likely feel the same way once Taco Bueno is open and can prove themselves as an operator. But to address the operating hours and that concern, it's consistent with what Dunkin Donuts is doing. Dunkin Donuts is currently operating from 4 a.m. to 10:00 p.m. and it is most likely that Taco Bueno will operate from 6 a.m. to 12:00 midnight but they want the option to operate from 6 a.m. to 2 a.m. in case the customer demand is there and needed and they can service the customer in those hours but it is most likely they may operate from 6 a.m. to 12:00 midnight basically. If they are open from 12:00 a.m. to 2:00 a.m. it's only for drive-thru only. As far as the drive-thru component, stacking is accommodated; the ordering board is angled in a way from the residents and as you can see with the

significant buffering with the Evergreen trees and the actual fence itself and the sound from the drive-thru doesn't emit further any further than 10-15 feet. She also stated that if you go out to a Taco Bueno when you sit right next to the drive-thru and they have actually gone out and sat at a Taco Bueno you can't even hear individuals ordering. There is significant mitigation with the 15-foot landscaping buffer and they do not feel it will cause any issues and is consistent with the Dunkin Donuts drive-thru as far as distance from the north property and the mitigation techniques they are actually using more as far as trees and clustering those trees to help with that and adding additional Evergreens that Dunkin is not and so they do not think they will have any issues with the drive-thru just as they have no issues with the Dunkin Donuts currently.

As far as the swale when they do the development they will clean up the swale and the actual detention in water quality will be put in per their construction plans so it will operate as its intended to operate and there is a maintenance agreement that is established with the City of Colorado Springs and Taco Bueno will maintain that. She stated she thought they would see significant improvement when that happens from what they are seeing today.

DECISION OF THE PLANNING COMMISSION:

Commissioner Markewich said he felt comfortable with the proposed plan, the loss of one parking spot and giving them an exception for that doesn't seem to be too out of the ordinary. So based on the concept plan and various development review criteria he felt it met city code and he thought issues with the swale should improve significantly when there is a development there because you will actually have somebody there that is on site, able to pick up trash, and make sure that is maintained properly and they do have code enforcement if something gets out of hand and that is the normal avenue that can be taken for those type of issues. He will be supporting both applications.

Commissioner Henninger stated he would be in support of the applicant. He felt that with the adjustment for the one parking spot it doable. He thinks it's a good PBC area and will finish a part of Austin Bluffs as far as business opportunity which has been needed for quite some time. He stated he felt traffic will always be a challenge in this town but it could always be worse but the town does a great job with it. So he will be in support of the request.

Commissioner Gibson said she would be in support of the project. She said she was there at the site this morning and looking at the traffic and making a left turn on Meadowland. She said that she feels the traffic has been looked at appropriately and so she will be in support of it. Just as a side note she is watching Taco Bueno go up at another location near her home and they have been good neighbors as well so far.

Commissioner Donley said he has serious concerns with Colorado Springs investing millions of dollars in Austin Bluffs Parkway and then providing excessive access onto it which slows and affects it. He recognizes these lots were created years ago but he also recognizes these two lots were consolidated as one just two years ago and now we're creating two access points on to that street. He thinks it affects capacity; it also affects safety because you've got multiple cars that are coming out onto that concurrently and trying to organize themselves and creates a safety issue in his mind. He also concerned about the general use. He thought it was important to remember that there will be a speaker on that drive-thru that will be talking back over the noise of an engine to the individuals and it

will face within 50-feet probably less than that from the houses that are behind it. From a practical standpoint he saw this as problematic as a land use and in addition pointing out the hours that 2 o'clock in the morning and in the evening when you are trying to keep the windows open to try and get some cool air in you are going to have the noise of that speaker talking right into your ear. Whether it happens at 11 o'clock or 2 o'clock doesn't matter it's an impact on those adjacent neighbors. Screening from trees and fences has a minimal impact benefit. The noise of that is going to be there regardless. From that standpoint he is opposing the conditional use and he wanted to emphasize to his Planning Commission members they are also approving a development plan so we need to be sure that they got that into the motion that it's not just a conditional use it's a development plan as well that goes with it he was not sure that was totally clear in the motion and he does not have a particular problem with the additional parking space he understands the layout limitations that are there in trying to make that work. So from that standpoint he is going to be opposing it. It has as much to do as with anything else as investing millions of dollars in a street and then giving that back in effect to the landowner through this kind of an approval.

Commissioner Shonkwiler said says these infill kind of developments are always kind of difficult and he wanted to see if there was any sentiment on the board to reduce the operating hours to perhaps midnight. See if anyone else has any one else has thoughts about that. He would certainly be in favor for something to that effect if somebody wants to make a motion in that direction otherwise he is reluctantly going to go forward with this.

Commissioner McDonald said she was in favor of the application. She felt like everyone had done their due diligence on this project and it's not a lot different than a lot of the things along Austin Bluffs. It's very similar to Dunkin Donuts which has already been approved and she will be voting in favor of both requests.

Commissioner Walkowski said he wanted to thank the neighbors for coming out and voicing their thoughts on this because it caused them to delve into it a little bit deeper into the traffic issues and they got a little bit better understanding of how we all came up with the right-ins and right-outs and the impact on Meadowland. He thinks with the explanation by the traffic engineer he is pretty comfortable with the traffic issues. He hears Commissioner Donley on the potential noise issue with neighbors but he did not feel the impact is significant and so as he reviews the criteria for conditional use the impact isn't significant on the neighborhood, it's in conformance with the intent of the zoning of the area, and conformance with the master plan. As far as the reduction of the parking space if you could look at the exceptional circumstance of the utility easements it made sense so he will be in favor of that as well.

Commissioner Smith said he would be supporting the application. He is satisfied with traffic issue he doesn't think you will get any additional or very little additional traffic from the east that will be able to come into that facility. He went to the site and drove around and watched it and he thought the additional right-in and right-out at Taco Bueno is not only good but is necessary so he doesn't have any trouble with the traffic issues as they have gone through them. So like he stated previously he will be supporting this application.

Commissioner Markewich asked for a point of clarification from Mr. Marc Smith as Mr. Donley mentioned the packet does mention in the analysis "applications under review" conditional use development plan and then in the item 4A it just says conditional use is that just a typographical error or should it say conditional use development plan.

Mr. Marc Smith stated, basically under your review criteria for conditional use is says that the conditional use is consistent with the comprehensive plan of the city and the approved conditional use and development plan is going to be binding so there is absolutely nothing wrong saying that. If you want to put as part of your motion in approving the conditional use and the attached development plan, it meets the criteria. Commissioner Markewich said OK.

Motioned by Commissioner Markewich and 2nd by Commissioner Smith to approve **Item 4A CPC CU 15-00097** conditional use and development plan for the Austin Bluffs Meadows Business Center Taco Bueno based upon the finding that the conditional use complies with the review criteria in City Code section 7.5.704 and 7.5.502.E subject to the compliance with the technical modifications and/or informational plan modifications:

Technical and Informational Modifications to the Conditional Use:

1. *Revise the Landscape Plan to reflect the new light pole locations as shown on the Site Plan sheet.*
2. *Label the north boundary as a 15' Landscape Buffer.*

Commissioner Shonkwiler said he wanted to propose an amendment to that motion to add an item 3 which would be to limit the hours of operation to midnight. He wanted to see if anybody would second that motion. Motion was not 2nd.

Original Motion passed 8-1.

Motioned by Commissioner Markewich and 2nd by Commissioner Smith to approve **Item 4B CPC R 15-00098** Administrative Relief to for the Austin Bluffs Meadows Business Center Taco (Bell is what Commissioner Markewich said) Bueno based on the finding that the administrative relief complies with the city review criteria code section 7.5.1102

Motion passed 9-0

November 19, 2015

Date of Decision

Planning Commission Chair