



**ARAPAHOE COUNTY  
PLANNING COMMISSION  
TUESDAY, JULY 7, 2009**

**MEMBERS**

Paul Rosenberg, Chair  
Arnold Hayutin, Chair Pro Tem  
Brian Weiss  
Leah Martin  
Brett Larson  
Kim Herzfeldt  
Mark Brummel, Absent and Excused

**OTHERS IN ATTENDANCE**

Jan Yeckes  
Ron Hovland  
Carol Kuhn  
Sue Liu  
Bill Skinner  
Chuck Haskins  
Joleen Sanchez

**ADOPTION OF MINUTES**

**The motion to adopt the minutes from the June 2, 2009 Planning Commission hearing was made by Mr. Hayutin, duly seconded by Mr. Larson.**

**The motion passed unanimously.**

**OPENING COMMENTS**

Ron Hovland, on behalf of Division Manager, Jan Yeckes, stated that he emailed the adopted by-laws and the copy the Planning Commission (PC) has now is current. He said he included background regarding the changes that were made. Mr. Hovland then stated that the County photographer would be present at a future hearing to photograph the PC for the awards ceremony in the fall. Mr. Hovland stated that there are two cases tonight. He said Case W09-001 will have to be opened and closed and will not move ahead.

Mr. Rosenberg asked why.

Mr. Hovland explained that after all of the discussion, the issue is no closer to a resolution, so staff determined that it would be better to continue to use the current definition for enforcement purposes.

Mr. Rosenberg asked specifically what the PC must do for case W09-001.

Mr. Hovland said the chair must open the continued public hearing, close the public hearing and someone must make a motion to withdraw this case at this time, although it may come back in the future. He said that would require new notifications. He said a vote is necessary.

## **CONSENT AGENDA**

There were no Consent Agenda items.

## **REGULAR AGENDA ITEMS**

**Item 1 – W09-001, Land Development Code Amendments #1 (Continued from June 16<sup>th</sup>, 2009). Withdrawn and will not be considered at this time.**

There were no public comments.

**The motion was made by Mr. Hayutin to withdraw this case, duly seconded by Ms. Martin.**

**The motion passed unanimously.**

Mr. Rosenberg introduced the Planning Commission members.

**Item 2 – P08-021, Saddle Rock Highlands/Lot 6/Block 23/First Bank/Final Development Plan**

Bill Skinner established jurisdiction. He said not to long ago there was a PDP (preliminary development plan) and an FDP (final development plan) for the Tallgrass Commercial Center. He said this is one of the FDPs that would be in that area. He said the PDP established the zoning but each individual lot must go through the FDP process and be heard by the PC. If there are no significant issues, then the application would go on the Consent Agenda to the Board of County Commissioners (BOCC). He said if there are significant issues, there would be a full notice and BOCC hearing. He said cases that go to the Board on Consent generally are approved. Mr. Skinner presented a copy of the Tallgrass plat map and said the application for First Bank is on the southeast corner. He referenced the map and said the area in orange is the subject site; the blue areas are the internal roads, which are relevant to this case. He said in the staff report discusses the sole outstanding issue, which relates to the orientation of the building, specifically the main entrance. He said the second amendment to the PDP was approved some time ago and it has a line under the building design standards that says, “Main entrances will face the main streets”. He said it is ambiguous because “streets” isn’t defined. He said the street isn’t called out by name even though the name of the Quincy and Picadilly alignment were known at that time. He said there have been a lot of internal discussions

regarding this issue; when this PDP was established it looked like there was going to be a King Soopers on this site. He said this line in the PDP was placed there to keep this large, single installation store from turning its loading docks onto the major public frontage of Quincy. He said the site didn't develop as a single anchor site and has more of an equally spread multi-pad site. He said the site now has an internal street network instead of a large parking lot. He said it is fair to call the streets internal roadways and because of that staff doesn't have a problem with the fact that the entrance is faced towards the internal streets. He said although that is listed as an outstanding issue on the staff report, it is no longer a problem for staff.

Mr. Skinner said First Bank has been responsive to the County and have made a good attempt.

Mr. Hayutin asked if something like this would be happening more and more.

Mr. Skinner asked if Mr. Hayutin is referring to the multi-pads and internal street network.

Mr. Hayutin said yes.

Mr. Skinner said he isn't sure about planning in the entire Denver area, but there is a trend to tear down existing single structure shopping malls and to replace them with a main-street design where there are small shops that face on to an internal drive.

Mr. Hayutin asked how something like this should be addressed.

Jan Yeckes, Planning Manager, wondered if Mr. Hayutin is asking about this project specifically or in general.

Mr. Hayutin said the PC can handle this case, but these types of cases would be coming up more often.

Ms. Yeckes said this case had an older PDP and developed much later than anticipated and the design of the project had changed significantly. She stated that there can be a real advantage to having an internal street network. She said this case is not like Aspen Grove or like a shopping center; this is a commercial complex that has a bank and a 7-Eleven and a preschool, and there has been interest from some type of medical facility but it is not known what will be on each individual lot. She stated that these types of developments can be easier to work with if they are more of a single management-type project rather than the individual lots. She reiterated that this project was complicated and one thing the owner did was to come up with a cohesive landscaping that would go around the boundary, which carries some elements around the project to keep it from looking too disjointed; each lot would add landscaping and other building features on to that. She said there was an effort to try to deal with the fact that this project had turned inward rather than facing out on the arterial streets. She mentioned advantages such as walk-ability and more appealing pockets of land and the orientation of the buildings rather than a strip mall. She said Tallgrass, as a whole, had some challenges.

Mr. Hayutin said he is referring to the main entrances facing main streets. He asked if that is an error.

Ms. Yeckes agreed that it can be a challenge for smaller businesses if the parking is inward and there are multiple entrances because someone has to watch both doors. She said some of the larger businesses can be challenged because they usually need a loading dock, but these are small enough businesses that they don't need a loading dock. She said staff can work with each business on four-sided architecture and can make the front of the building attractive.

Kathy Harris and Michelle Hedrick, 950 17<sup>th</sup> Street, Denver, representing Burkett Design presented this case to the PC. Ms. Harris presented the site plan and said the project is on the southeast corner of the property. She said the building was turned into the complex in order to address all the cars driving into the complex. She said the front door is on the northeast side of the building and it faces the main site plan. She referenced Picadilly and Quincy. She said the entrance to the site would be on the north; the circulation would be counterclockwise to the drive through, which is on Picadilly. She said often a drive through on a main thoroughfare is an issue so First Bank has addressed four-sided architecture. She presented a material board and said brick, smooth cast stone, and rough cast stone would be used on all four sides of the building. Ms. Harris presented a rendering of the proposed building. She said there would also be windows on all four sides. She explained the beacon concept; there would be a higher point on the building that is softly lit at night. She clarified that the light would not interfere with the neighbors, but the lights would remind people that this is First Bank's icon. She referenced the location of the lights. She said there would be three signage locations on this building, but those locations have not been confirmed yet. She presented the landscape design and said there would be lots of color and trees to compliment the adjacent properties and to hide utility equipment.

Mr. Weiss asked if the Automated Teller Machine (ATM) is external, and if so, if it is part of the drive through.

Ms. Harris said the ATM night deposit drop is external and is stuck on the building and is not part of the drive through, but it is accessed through the drive through lane. She said the actual location is beyond the drive through.

Mr. Weiss stated that people wouldn't have to get out of their cars.

Ms. Harris agreed. She said there is an internal light in the shroud over the ATM that will light that exact area. She said the last page of the application includes the photometric plan.

Mr. Skinner recommended approval of this case. He said there are no outstanding issues.

### **Public Comments**

Jay Darymple, 4070 S. Odessa Street, stated that he lives in the Tallgrass area and is the president of the Tallgrass Home Owners Association (HOA) as well as a member of ACCORD (Arapahoe County Citizens for Responsible Development). He said the bank

falls in line with the things that the neighborhood has worked on with Mr. Miller. He said the neighborhood recommends approval. He said the fact that the doors are facing inward is a benefit to the community because it gives the neighbors easy access and better visibility and the neighbors would not see the back of the building. He said regarding the lighting, it is far enough away from the homes so the signature lighting at night would not have a significant impact to the homeowners to the north or to the east in Saddle Rock. He said the HOA would like to see this project proceed because the community is excited about having a bank close by.

The Public Hearing was closed.

Mr. Weiss asked if there also would be an internal ATM.

Ms. Harris said no.

Mr. Weiss said people would walk up to the drive through ATM and he is concerned about safety.

Ms. Harris said she would bring that issue to First Bank, but typically, First Bank has either an internal ATM or an external ATM but doesn't have both because of the coordination, loading the machine, and the cost to keep the money on site and security issues regarding delivery.

Mr. Weiss asked about the location of the ATM.

Mr. Rosenberg wondered if that is an accident waiting to happen.

Ms. Harris referenced the location on the site map.

Mr. Rosenberg agreed with Mr. Weiss's concern. He said if the goal is to create a community with walk-ability, the neighbors would walk over and he wondered if that is an accident waiting to happen.

Mr. Larson asked how many lanes there would be.

Ms. Harris said there are three driveways and vehicles can "squeeze" around the third driveway as an emergency exit. She said there is quite a bit of auto traffic through there.

Mr. Larson asked if the lane for the ATM is a dedicated to the ATM or if it is a shared lane.

Ms. Harris said it is just for the ATM.

Mr. Weiss said that alleviates some of his concern.

Mr. Rosenberg expressed concern about people walking up to the ATM.

Ms. Harris stated that she would speak to First Bank.

Mr. Skinner said if the PC feels strongly about that issue, the PC could add a condition of approval. He said he doesn't know if it would be possible for the drive through for the ATM could turn the corner of the building but the customer would have to drive up and get out of the car, which creates other risks.

Mr. Weiss asked if the PC were to approve this case, and First Bank were to make minor changes to the site plan to address this issue, would the applicant have to come back to the PC?

Mr. Skinner said as long as the changes address the PC's concerns, the case could move on to the BOCC; if the changes were not related to something the PC had put forth as a concern, then that would have to come back to the PC.

Mr. Rosenberg said if the drive through is moved to the other side of the building, that was not discussed and would have to be brought back to the PC for a hearing, but if the ATM was moved, then that would be okay.

Mr. Skinner said yes, as the applicant would be responding to the PC's concerns and trying to find a solution.

Mr. Weiss asked if this is a typical design for First Bank.

Ms. Harris said yes. She said every First Bank has been slightly different regarding materials and the layout, but the ATM on the outside of the building in the drive through lane is definitely First Bank's prototype. She said there is much more drive through traffic than there used to be and many First Bank locations don't have a drive through. She said First Bank is moving ATMs from lobbies into ATM drive through lanes because it is easier. She said the goal is to get people to walk more, but the reality of our culture is driving.

Mr. Larson asked where the two lanes are for the drive through banking, not ATM.

Ms. Harris said there is no direct adjacency to the teller and the ATM is closest to the building. She referenced the location of the lanes.

Ms. Martin said her bank has an ATM on the outside lane that is accessible to vehicles and pedestrians. She said there have been no problems or dangerous situations, but she agreed that the bank would want to cater to vehicle traffic.

Ms. Harris said if the ATM were to be placed in the far lane away from the building, the bank would be burdened with servicing that ATM machine which is a very large fee for an armored truck to load and unload the machine and there are also security issues for those people.

Ms. Martin said dedicating this lane to the ATM is safer.

Ms. Harris commented that the 7 Eleven will have a walk-up ATM.

Mr. Herzfeldt asked if there would be a commercial lane.

Ms. Harris said no.

Mr. Hayutin asked if this ATM would be loaded from inside the bank.

Ms. Harris replied yes.

Mr. Weiss said he feels better about this project knowing that there is a dedicated ATM lane, but he asked that the walk-up issue be brought up with the bank.

Mr. Rosenberg agreed.

Mr. Weiss asked if there is a landscaped area near the ATM. He said it looks like there would be pavement right up to the building.

Ms. Harris said there would be a sidewalk in front of the building, but not in front of the ATM.

Ms. Martin felt that there could be more of a safety issue if the ATM were on the southern side of the building. She said there is plenty of space for a driver to see a pedestrian standing at the ATM.

Mr. Weiss asked about the light at the ATM.

Ms. Harris stated that the light is built into a pre-manufactured shroud.

Mr. Weiss asked if there is any other lighting in that area.

Ms. Harris stated that there is lighting under the drive-through canopy.

Mr. Larson asked about the lighting at the ATM regarding safety.

Ms. Hendrick said there are lights on the building and the light levels around the ATM look low, but First Bank has done this many times and this shroud has been studied. She offered to do some research and double check that.

Mr. Weiss said he agrees this is a safety issue, but he is more concerned about whether or not a driver could see a pedestrian at the ATM.

Mr. Larson said at night the lights are shut off at 10 p.m. and he wondered how much external lighting would be shut off as well.

Ms. Hendrick said she doesn't know but she would find out.

**The motion was made by Mr. Weiss in Case No. P08-021, Tallgrass Commercial Center, First Bank Final Development Plan, that the Planning Commission has read the staff report and received testimony at the public hearing. The Planning**

**Commission finds itself in agreement with staff findings 1 through 3 including all plans and attachments as set forth in the staff report dated June 30, 2009 and recommend this case favorably to the Board of County Commissioners subject to the following three (3) conditions of approval:**

- 1) Prior to signature of the final mylar copy of these plans, all minor modifications shall be made as required by the Arapahoe County Public Works and Development Department.**
- 2) Prior to signature of the final mylar copy of these plans, the applicant agrees to address the Division of Engineering's comments and concerns as identified within the Engineering Staff Report.**
- 3) Prior to signature of the final mylar copy of these plans, the Final Plat currently known as Saddlerock Filing No. 2 must be recorded with the Arapahoe County Clerk and Recorder.**

Mr. Weiss asked the applicant to speak with the bank regarding the lighting issue and the drive-thru ATM issue.

**Seconded by Mr. Hayutin.**

**The motion passed unanimously.**

**Item 3 – P09-002, Saddle Rock Highlands/Lot 2/Block 1/Final Development Plan**

Mr. Skinner established jurisdiction. He said this project is similar to the last case, as it is an FDP within the Tallgrass commercial center. He referenced the plat map and said the pink area is where the proposed 7 Eleven store would be built. He said the same issue with the internal roadways and orientation with previous case applies to this case. He said the internal roads satisfy the 'main streets' language in the PDP. He further stated that staff has no problem with the entrance location. The 7 Eleven case has moved through the review process. He said staff doesn't have issues with the hours of operation. He explained that the PDP was amended to allow for the 24-hour use and the owner spoke to the property owner to the west who may eventually build residential. He further stated that setbacks have been agreed upon, so in this situation, a 24-hour store is not contentious. He stated that there were two letters of positive support from the neighbors; one letter is included in the staff report, the other is not, and that letter was read into the record.

Mr. Skinner stated that there were two outstanding issues. He said one issue was the roads, and that has been resolved. He said the other issue is the proposed signage. He explained that 7 Eleven has proposed a sign package that the Planning Division feels does not comply with the Land Development Code (LDC). He said staff is aware that there are more specific code sections for retail signage, and that section specifies that there can be a freestanding monument sign and three fascia signs. He said the 7 Eleven representatives would like to discuss that with the Planning Commission. He said the Planning Division is bound by the LDC, just as the public is bound by the LDC. He said his hands are tied on this matter but there could be a different solution. He said the Planning Commissioners are also bound by the LDC. He said if the PC can find a solution, a recommendation for approval would be in order. He said if there is no

conclusion on this case tonight and the PC doesn't want this case to stall, there could be a fifth condition of approval that could be added.

Mr. Rosenberg said the LDC says what would be allowed. He asked Mr. Skinner to show the PC what that is.

Mr. Skinner said the two sections of code that he is concerned about both specify three fascia signs on the building. He said it also allows a freestanding monument sign that is assumed to be two sided. He said that is not a problem. He said one section of the code goes into greater specificity, but is more generalized and doesn't pertain to retail signage and talks about single tenant situations with multiple structures. He said Planning considers the store and the canopy. He said in that particular section of the code, which has been included in the staff report, it is clear that if there is one tenant, there can only be signage on one or the other. He said that issue has tripped up this case. He said he doesn't have an ideal solution that he can propose at the moment.

Mr. Weiss clarified that the issue is that there are signs on the store and signs on the canopy.

Mr. Skinner agreed. He referenced a rendering of the building and said there are proposed signs on the back of the building, on the side of the building facing Quincy, in front of the building facing the internal street network, and there would be signs on three sides of the canopy. He said there is also a monument sign. He said there might be concerns about the location of the monument sign and if the applicant wants to move that sign, that would be a minor change.

Mr. Weiss said there has to be another situation in the County where there is a gas station with signage on the canopy and the building.

Mr. Skinner said he has not seen one personally, but there are some previous cases that the applicant wants to discuss.

Mr. Larson clarified that the code says one structure, three signs maximum.

Mr. Rosenberg said yes, but the applicant is asking for six signs.

Mr. Hayutin added that the applicant wants to make the canopy a separate structure so it could have three signs. He asked what the applicant would have to do to make the canopy a structure.

Tom McNish, Assistant County Attorney, explained that there is a difference of opinion. He said in his opinion, there are three signs allowed, and they can be on the canopy or the building. He said the specific provision is 137.09, which he read into the record. He said that provision does not prohibit signs on a canopy. He said that section pertains to retail uses otherwise the section on retail uses is rendered meaningless by the other section. He said the code is not written as he would write it as an attorney and is in need of revision, but it is clear that this specific provision over-rides the general provision that talks about no signs on canopies. He said in the past there could have been some interpretations

where you are allowed three signs on the building and three on the canopy. He said he doesn't see that plain language and this provision doesn't seem to allow that; it just says three signs on a building. He said a canopy is a building.

Mr. Hayutin asked if the canopy could be considered a separate building.

Mr. McNish said that has been an interpretation in the past.

Mr. Hayutin said there are really two buildings.

Mr. McNish said the code doesn't say if you have more than one building and a single tenant, you get three signs on each building.

Mr. Hayutin said the code doesn't prohibit that either.

Mr. McNish said that is a matter of interpretation, as that is not clear. He said it is clear that a retail use with a single tenant is allowed three signs and one monument sign.

Mr. Rosenberg said the three signs can be anywhere.

Ms. Martin asked if there could be two signs on the building and one on the canopy.

Mr. McNish said yes, that is how he reads it.

Mr. Weiss asked if there are any legal ramifications if there is precedence where there are a total of six signs.

Mr. McNish said that could be an error but he doesn't know the history of how that was approved.

Mr. Skinner said he didn't mean to infer that the signs were limited to the building.

Mr. McNish said the provision that Mr. Skinner referred to talks about general provisions.

Mr. Skinner said the discussion about the specific retail signage came up after the staff report had been published.

Peggy Friesen, Galloway & Company, Inc. 5350 DTC Parkway, said she is the consulting engineer for this project. She thanked the PC for allowing this presentation and she thanked staff for working with Galloway, as there as a very aggressive schedule. She said the project is on Lot 2, Bock 1, Saddle Rock Highlands, Filing No. 2. She said the lot is 39,005 square feet or .895 acres and the land is zoned MU-PUD, which does permit a convenience store with fuel and 24-hour use. She said the PDP requires 10% landscaping and the applicant is providing 23%; parking regulations require 11 spaces but the applicant has provided 23 spaces-14 of those spaces are standard 9'x18', eight are for parking at the dispensers, four multiple product dispensers, and the handicap and bicycle parking requirements have been met. She said the building height of the store is 19 feet

and the canopy is 19.5 feet. She said the store is 49.7' x 61' and has 3,030 square feet and the canopy is 1,800 square feet (90' x 20'). Ms. Friesen then discussed setbacks. She said this lot is almost an internal lot; the access is from the internal drive; the setback is 144' from Quincy and the canopy setback is 137' from Quincy. She said regarding the lighting, the applicant is matching the overall development. She said the sight lights would be 25' tall and match the entire development, which was a requirement of the PDP. She said this would be a 24-hour operation and would employ 9 full-time employee equivalents.

Ms. Friesen referred to the site map and pointed out the access, which has not changed from the original PDP. She noted the location of the public access and the emergency access and said the shared access behind the store would be used by the tanker. She said the front of the lot is landscaped which presents an additional feature for the entry to the Tallgrass commercial center. She then discussed the architecture of the building. She said the applicant was asked to match the Lot 10 retail. She said the materials are a smooth face and a split face block cut in four inch brick. She said the design was reviewed and approved by the Architecture Review Committee. She said the project conforms to the overall master drainage plan and the concept is to sheet flow to the existing swales; the flow would then be routed to the designated outfall. She said the developer is installing a system that this project would eventually connect to.

Ms. Freisen discussed the outstanding issues. She said one of the reasons the building was oriented this way was because usually vehicular drive-through traffic does not face the public right-of-way. She said the canopy and dispensers would circulate the flow customer traffic parallel with Quincy so the residences would not be impacted by the vehicles' headlights. She further stated that there is quite a grade on this site and this is a good entry feature. She said there is also a drainage swale on the south side, so everything worked together well for an attractive entry.

Ms. Freisen then discussed signage. She said the Planning Division has determined that the proposed signage does not meet the County's sign regulations, but the applicant is aware of a precedent that may contradict that determination. She said the applicant was very shocked and surprised to receive Planning Division's determination on the third round of comments. She explained that there was a very aggressive contract on this site and there was an aggressive schedule that mandated an opening by the end of this year. She said to accomplish that, the applicant met with staff on December 18, 2008 and asked if this plan would work. She said 7 Eleven had committed to full construction documents out of the chute and the applicant presented full CDs as well as planning documents. She said the potential deal stoppers were the orientation of facilities and the signage; there were no preliminary comments and the first review was completed with no signage comments. She said it wasn't until May 2009, after the third review and referral comments, that the County suggested that the signage would not be in compliance; the applicant was shocked, as \$100,000 had been invested at that point. Ms. Freisen stated that the project was ready for permits at that point and ready to go to the Planning Commission until this issue came up. She asked how can an interpretation that has been applied differently for years now be re-interpreted, especially in light of the current economic situation, when businesses are struggling to be profitable and survive. She said the same sign code that is in effect today was adopted January 19, 1999 and became

effective February 16, 1999. Ms. Freisen commented that Galloway has worked with almost all the oil companies over the years on 2,306 fueling facilities since 1997 and more before that; said many of those were approved and permitted through Arapahoe County, and most of those are operating today. She said the one thing that has remained consistent in Arapahoe County until now was the application and interpretation of the sign code for fueling facilities. She said she worked on almost every one of the past projects. She said the staff report cites Section 1-3706.04, but for some reason did not mention the section that the attorney mentioned a moment ago (Specific Provisions for Retail Uses). She said it was that section that the past determinations from the Zoning Administrator led to consistent application and approvals of three signs per tenant, which they then defined as convenience stores as one tenant, fuel canopy as one tenant, and car wash as another tenant. She said there is case after case that allowed three signs for convenience, three signs for the canopy, and three signs for the carwash. She said there was a zoning administrator ruling available for the Potomac Park case and there are many other cases that have all been consistent. She wondered if the County really wants to be in the business of determining how business operations are structured. She referenced the bottom of page seven in the staff report where tenant is defined and said she wonders if the County wants to get into determining how business operations are structures, that is, single tenant versus different tenant because whatever the business structure is, the branding of the fuel is critical to the marketing and the sales of the fuel, therefore, signage is also critical to the success of that business. She said the fuel component absolutely needs its own signage. She said examples are everywhere and she encouraged the PC to look around on their way home tonight. She said just outside the window there is a Circle K store with a Circle K sign on the store and car wash and a Shell sign on the fuel canopy. She said everywhere you go, there is a different combination. She said it is 7 Eleven's business on how the structure the company; the problem is if there is a different branding, the branding must be noticeable for everyone. She said a personal example is that if she needs gas and has no cash, she would look for the credit card brand on a canopy. She said this is a critical component to restrict. She said right now this is a new interpretation that would prohibit canopy signage and that would put this specific business and this particular project at this particular location at a severe disadvantage. Ms. Freisen said this site has to rely on the maximum amount of signage due to the unusually large setbacks. She said the structures are removed from the public ROW by almost one lot. She said the monument sign in this case is on site and is past the entry on westbound Quincy and the motorist would have to pass it before they see it. She explained that the posted speed limit on Quincy is 40 miles per hour and 7-Eleven needs the visibility to allow motorists to safely enter the development for services. She said regarding the sign code calculations, if the signs were on the east and west elevations of the building, 101.7 square feet would be allowed. She said the proposal is for one sign on the east and west elevation at 98.7 square feet. She said the north and south elevations are allowed 82.8 square feet but the applicant is proposing 77.1 square feet with one sign on the south elevation of the building. She said the applicant would be allowed 150 square feet on the east and west elevations of the canopy, but the proposal is for 27 square feet. She said the north and south elevations allow 33.3 square feet each but the proposal is for 27 square feet on the south elevation only. She said the request is not for prolific signage but to advertise the product and it is indeed a different product. She said one freestanding sign is allowed with 48 square feet per face, but the applicant is only requesting 32.3 square feet. She said the signage request is less than the allowance based

on past interpretations. On behalf of 7 Eleven she respectfully requested that the County not reverse the interpretation and applications of the sign code that have been consistently enforced for the past ten years with the same exact sign code that is being referenced tonight. She asked that the PC continue the precedence by recommending approval of the FDP with the signage as proposed. She reiterated that the applicant is not asking for excessive signage, just the standard signage that the PC has historically granted and approved. She said it was stated that the Planning Department and the Planning Commission are bound by the Land Development Code, and she said the PC has been bound by the LDC over the past ten years as well, but there was something far different approved.

Mr. Weiss said he doesn't think the PC's decision tonight is based on the market research or marketing of 7 Eleven. He said he hopes the PC is not swayed by the marketing aspect. He asked if there would be digital signage on the canopy.

Ms. Freisen explained that the price of gasoline would be in LED numbers.

Ms. Martin asked if the sign on the canopy would not be a 7 Eleven logo and would instead be a Shell or Texaco.

Ms. Freisen said that would be a 7 Eleven sign at this time, but it may not always be that brand; if any signage is prohibited on the canopy, this client would be at a disadvantage at this location. She said if 7 Eleven wants to contract with a different brand next year, then 7 Eleven would be at a disadvantage because 7 Eleven would have to sign that. She said the staff report reads that if the canopy is branded with 7 Eleven, then there cannot be canopy signs, but if the canopy is branded with Conoco, there could be a canopy sign.

Ms. Martin asked Mr. McNish if that is how he reads the staff report.

Mr. McNish said the issue is that there is a building for the convenience store, then there is a canopy. He said Ms. King has regarded those as being two structures entitled to three signs. He said the question to the PC is whether that is a reasonable interpretation and if that makes sense. He said this is a gray area and isn't specifically addressed as it should be. He said the question is if each structure should be allowed to have its own signage. He said historically the County has done that and has allowed three signs on each structure.

Mr. Hayutin stated that the canopy is one building and the store is another building and each is allowed three signs.

Mr. McNish said yes, and said he understands that that interpretation has been arrived at. He said it is not expressly stated but it is not prohibited.

Mr. Herzfeldt said historically the County has done it that way.

Mr. McNish agreed.

Mr. Rosenberg said potentially a carwash would have had three more signs.

Mr. Herzfeldt asked about the banding on the canopy.

Ms. Freisen said it is a decal.

Mr. Weiss asked if this issue would go away if it is just banding and a logo that is not lit versus an architectural feature. He asked if the entire façade considered a sign or is it part of the architectural colors of the structure.

Ms. Yeckes clarified that the question is whether or not the striping on the canopy is part of the sign.

Mr. Weiss said if not, then what makes it a sign.

Ms. Yeckes said some places would interpret the striping as part of the sign because of the corporate colors, but that can interpretation can get extreme and the County hasn't been that strict. Ms. Yeckes said she is comfortable with the County Attorney's review of the different sections of the sign code if he feels that the other section is more applicable to this project. She said the logo would be part of this sign as is the pricing. She said the PC might interpret this so that each structure on the site should be signed independently, but she reads it differently and to her it is business signage. She said she could have a different interpretation from some of the planners. She said she is looking at the sign package for a business and whether the gas was being sold by 7-Eleven or being sold by Conoco. She said some staffers would say that the signs are allowed if it were Conoco and not 7 Eleven because those are different businesses. She said she doesn't know why a Conoco sign would be allowed but not a 7-Eleven sign. She said if the interpretation is that each structure gets its own signage then that should be treated the same regardless of the business name. She said she would defer to the County Attorney's interpretation and opinion. She said this is a gray area and the PC is making a recommendation to the Board. She said a gas canopy is a gas canopy and who is selling the gas is irrelevant.

### **Public Comments**

Jay Darymple, 4070 S. Odessa Street, said he submitted a request from the community for approval of this 7 Eleven. He said the signage thing is the County's issue and he doesn't want to get into that. He said there is similar signage around and this would give a standard look and feel. He said the neighbors have no concerns regarding the lighting or visibility. He said the neighbors appreciate the fact that the site is set back from Quincy so that pedestrians can get into the area safely. He said Tallgrass would love to have the 7 Eleven approved because a challenge for the residents has been driving a couple of miles at 10 p.m. for a gallon of milk. He said this convenience factor is huge for the community because there aren't any stores nearby. He thanked the PC for their time and he recommended approval.

Rick Miller, 4725 S. Monaco Street, St. 330, Denver, said his entity, PNQ, LLC is the developer of this site. He said the signage is consistent with what he had presented to the neighborhood during the PDP amendment. He said the neighbors understood from day one that this would be a typical 7 Eleven prototype with similar signage and the

neighbors were supportive. He said he has a vested interest in seeing this application approved tonight and if it is not approved, there would be discussions between himself and 7 Eleven regarding whether or not 7 Eleven wants to proceed with the application. He said when he met with the County there was discussion about signage not breaking the deal. He said there were discussions regarding how many structures there were going to be and listening to the interpretations leaves room for some gray area and there has been precedence set in the past. He urged the PC to vote in favor of the application with the signage as submitted based on the previous interpretation and based on the precedence that has been set.

The Public Hearing was closed.

Mr. Skinner said aside from the signage issues, staff recognizes that a convenience store and a gas station would be a positive benefit for the neighborhood as a part of the commercial center. He said the staff position on this was that if something could be worked out to the satisfaction of the PC, and the County Attorney, the case would move forward. He said aside from the signage issues, staff recommends approval. He said he would not change that recommendation. He said he has had a lot of input from other members of the Planning staff and he would like to give Jan Yeckes or Ron Hovland an opportunity to make closing comments.

Mr. Hovland said there are two things that come to mind. He said the price signs on the canopy are a bad idea for a neighborhood center. He said they are 17 feet in the air and are going to shine on a regular basis all night long and this location would not attract traffic from E 470 based on the availability of gasoline from three quarters of a mile away. He said if this is truly a neighborhood center, the price on the monument sign is fine. He said he doesn't care about a product sign on the canopy and he had no problem whether it says 7 Eleven or Conoco. He said the other issue is that the idea of allowing a commercial developer to create an irregularly shaped lot isn't going to happen on his watch again.

Ms. Freisen said the lights on the canopy would be LED lights and the light would not go off the lot. She said the canopy is 137 feet away from the road where the store would get most of its traffic. She respectfully requested that the canopy sign remain. She said the applicant is at a disadvantage in this area because of the setback and would like that to be shown so the motorists can stop and turn in. She said the monument sign is four feet high on a 2-foot base. She reiterated that the property is sloping downhill and there is a drainage ditch adjacent to Quincy. She said the monument sign would have little impact comparatively to what the applicant would like to utilize off of the canopy price sign.

Mr. Rosenberg asked if the canopy sign would be visible from Quincy.

Ms. Freisen said the applicant believes the sign would be visible.

Mr. Rosenberg asked if motorists would be able to see the pricing.

Ms. Freisen said motorists might not be able to read the numbers until they get closer, but that would alert people who would see the price sign as they approach the entry.

Mr. Hayutin asked Mr. Hovland what he meant by an “irregular shaped lot”.

Mr. Hovland said having half of the frontage of the northern portion of a lot on the street is a very bad idea, as it pushes the structures away from the street, not closer to the street.

Mr. Rosenberg asked why it is like that.

The developer stated that there was a grade issue.

Mr. Weiss commented that the interpretation of codes is always a strange thing and he often sees a building code one way and someone else sees it a different way. He said when that happens, the intent of the code must be considered and not necessarily what is written in the code. He said he doesn't think the intent of the code is for a situation like this where there are multiple structures. He said the intent is more towards having five or six signs on a single structured building. He said the trend in gas stations these days is to have the pricing on the canopy. He also agreed that the person that would have to make the final decision is Tammy King (Zoning Administrator) and if, in the past, she has decided that this is allowable, then that is how she has seen the intent of the code.

Mr. Herzfeldt said he agrees with Mr. Weiss. He said this is a part of the code that should be cleaned up but this is a single user with two buildings. He said if the County has done this in the past consistently the PC must follow those lines. He said he feels that the signs are substantially understated. He said there would be three on the main building and two on the canopy.

It was clarified that there would be three signs on the canopy.

Mr. Herzfeldt said the County has set a precedent by approving these applications in the past. He said the setbacks come into play as well. He said the design is acceptable, but the key to him is that there are two structures.

**The motion was made by Mr. Hayutin in Case No. P09-002, Tallgrass Commercial Center, Seven-Eleven Final Development Plan, that the Planning Commission has read the staff report and received testimony at the public hearing. The Planning Commission finds itself in agreement with staff findings 1 through 3 including all plans and attachments as set forth in the staff report dated June 30, 2009 and recommend this case favorably to the Board of County Commissioners subject to the following four (4) conditions of approval:**

- 1) Prior to signature of the final mylar copy of these plans, all minor modifications shall be made as required by the Arapahoe County Public Works and Development Department.**
- 2) Prior to signature of the final mylar copy of these plans, the applicant agrees to address the Division of Engineering's comments and concerns as identified within the Engineering Staff Report.**

- 3) **Prior to signature of the final mylar copy of these plans, the Final Plat currently known as Saddlerock Filing No. 2 must be recorded with the Arapahoe County Clerk and Recorder.**

Ms. Martin clarified that this motion allows the signage as the applicant has proposed.

Mr. Hayutin said yes, that is correct.

Mr. Rosenberg asked staff if another condition is necessary.

Ms. Yeckes said the motion takes care of everything because the signage is in the application as proposed, and the PC is approving that application.

**Seconded by Ms. Martin.**

**The motion passed unanimously.**

**The meeting was adjourned at 8:15 p.m.**

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**Paul Rosenberg, Chair**

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**Joleen Sanchez  
Asst. Clerk to the Board**