



**ARAPAHOE COUNTY
PLANNING COMMISSION
June 2, 2009**

Members

Paul Rosenberg
Arnold Hayutin-Absent and Excused
Brian Weiss
Leah Martin
Brett Larson
Kim Herzfeldt
Mark Brummel

OTHERS PRESENT

Ron Hovland
Sherman Feher
Jan Yeckes
Josh Seburn
Tom McNish
Chuck Haskins
Joleen Sanchez

OPENING COMMENTS

Ron Hovland, on behalf of Division Manager, Jan Yeckes, stated that there is another Planning Commission (PC) meeting on June 16th where there will be discussion regarding amendments to the Land Development Code (LDC). Staff has received information regarding a Planning Commissioners' workshop scheduled for Saturday, August 8th from 8:30 to 3:00 at the DRCOG (Denver Regional Council of Government) offices. Seating is limited to the first 70 registrants. Mr. Hovland encouraged the PC members to attend this workshop. The County would pay any related fees.

CONSENT AGENDA

There were no Consent Agenda items.

REGULAR AGENDA ITEMS

Item 1 – Z08-004, Heritage Electric/Rezone (Continued from May 19, 2009)

Sherman Feher, Senior Planner, stated that jurisdiction was established at the May 19th meeting. He said he would explain the difference between straight zoning and PUD (planned unit development) zoning, as this case is different from other zoning cases the PC has dealt with. He said this is a request for a straight zone from RA to B4. He said 98% of the cases he deals with are PUDs or custom zoning, but straight zoned districts are more conventional and were the original type of district that came out in the early 1900's and have specific uses and specific requirements for setbacks, height, open space, etc. They tend to be one general type of use such as residential or commercial or industrial and does not mix uses. In contrast, he said, most of the zoning cases that this PC has dealt with have been planned unit developments, which are a customized zone district where the uses can be mixed and matched, and the setbacks can be adjusted, and there could also be customized height limits and customized open space. He said some of the unique things about straight zoning is that the only uses allowed are the uses specific to that zone, which are listed in the Land Development Code (LDC). Any of the allowed uses can be on one piece of property as long as they meet the setback, parking landscaping, and other requirements of that zone district. He said a strip mall can have restaurants, shops of different kinds, hardware stores, etc, that are all within one straight zone district, and the parking, landscaping, and building footprint become the determining factors for how many different uses can be placed on the property. He said the straight zoned district specifies the particular uses, so the uses cannot be customized, altered, removed or added.

Mr. Feher stated that the property in question is located at the corner of Jewel Avenue and Dayton Street and the applicant is requesting that it be rezoned from RA to B4. He said the purpose of this request is to bring uses into compliance that were not allowed in the RA zoned district and to resolve a zoning violation. He said the primary uses that are currently on the property are an electrical contracting business and some vehicle storage, some of which are part of that contracting company and some are not related. He said these uses are all allowed in the B4 zone district. Mr. Feher distributed a letter of support.

Mr. Weiss said the report states that the lots were subdivided and asked when that was.

Mr. Feher said he wasn't sure, but thought it was in the late 1960's or some time in the 1970's.

Nancy Kerr, 450 E. 17th Avenue, Denver, representing Virgil Versteeg and Heritage Electric, said Heritage Electric has been operating as a business in this location for about 12 years and is currently zoned Agriculture, and that is an incompatible use. She said a couple of years ago it was brought to the County's attention that this was a non-conforming use, so the process to get into compliance was initiated by the County. She said the applicant met with staff who recommended that B4 would be the best zoning category for this site. She said because this is an electrical contracting company, there is outdoor storage, trucks, equipment, and trailers. She said some of the trailers go to job sites and some trailers are used for storage. She said the house is used as the office, and no one lives there. She said this is a small house that was built in the 1940's and the site is 2 acres. She said the house has been used as a day care center, and is located in the 4 Square Mile area (4SM). She said a couple of years ago there was a Comprehensive Plan created for the 4SM, and Mr. Versteeg participated in that process and served on the advisory committee. She said there was a lot of vision regarding what that area wanted to be and capital improvements. She said during that process, this site was identified as a business area and that was intentional. She said the zoning process is following up on that.

Ms. Kerr presented a PowerPoint presentation, a copy of which has been retained for the file. She presented aerial photos of the site. She stated that the areas outlined in red have commercial uses, not necessarily commercial zoning. She said there are a lot of different uses in the area such as senior living, multifamily developments and single family homes with businesses; to the south are industrial warehouses. She explained that this site has some constraints; in addition to being next to a substation, there are utility lines that go through the property. She then presented a rendering of the required setbacks in a B4 zone. She said there is a 25-foot setback on two sides and a 45-foot setback on one side and a 50-foot setback on the other, so the usable site is about 54% of the site. She said in addition, this property faces towards Dayton Street and all of Dayton right-of-way is in the City of Aurora. She said the applicant met with Aurora to find out what kind of dedications Aurora wanted and Aurora stated that there were no dedications needed at this time because the city doesn't plan on capital improvements for that now. She said Jewel is within Arapahoe County and she doesn't know if there are any improvements pending at this time. She

said Heritage Electric wants to continue to do business as it always has and no other improvements are proposed. She said the goal is to bring the site into conformance and that is why there is a request for straight zoning instead of a PUD.

Ms. Kerr explained the landscaping requirements that a B4 requires. She said 18 trees and 180 shrubs would be planted; although it is not part of this application, Heritage Electric hired a local landscape architect to do some preliminary layouts about what this site could look like, with concentration on the edges and buffers so screening would be created for the neighbors.

Ms. Kerr stated that what makes Heritage Electric unique is that it is a homegrown business, which has been operating in Arapahoe County for the past 12 years. She said this is a family-run business that employs eight people on site and most of the time the electricians have company trucks. She said they come to the office and pick up equipment and work orders and then leave. She said they come back in the evening and pick up their cars, so the vehicle storage for employees is not happening on site. She said as part of this process, a traffic engineer was hired to report on the traffic impacts, which don't even meet the County standards for an entire study. She said an abbreviated study was done and the traffic engineer estimates about 35 vehicle trips per day. She said due to the economy, those trips might be down about 20%.

Ms. Kerr further explained that about a year ago, the applicant appeared before the Board of County Commissioners for advice regarding the process. She said because this was just a zoning application, the zoning process was severed from the planning process. She reiterated that this is just a zoning request and if, at any time, Heritage Electric wants to make improvements or tear down the building, change the use of business, add a warehouse, etc, Heritage Electric would have to go through the development review process. She said the landscape architect would use native, low-water species.

Ms. Kerr said the applicant has done community outreach and has met with the Paula Dora/Greenhaven HOA as well as the 4 Square Mile neighborhood association. She said at the first meeting there were six people and there were about 12 people at the 4SM meeting. In addition to the typical mailing and posting, the applicant also knocked on the doors of adjacent property owners and Virgil made personal phone calls to reach out to understand people's needs and interests. She said the applicant has responded to written comments, which are in the PC packet. She thanked staff for their time. She presented more photos of the site. She presented a photo of the adjacent property. She presented a photo that was taken today and said it has been raining, so there has been some concerns raised about the drainage and detention and how that would work. She said the site is draining as it has historically, which is sheet-flowing north and northwest, so there is a bit of ponding. She presented a photo of the front of the site and said there is some water due to the rain. She presented a photo of the back yard on the north boundary. She acknowledged that there were concerns about debris moving off the site, but with the fence there, debris is prevented from moving. She displayed a photo of the fence line and both properties.

Ms. Kerr said B4 zoning is being requested for this site because the Comprehensive Plan had suggested that there be business on this particular location and is the best fit for an electrical contractor. She explained that several zones were reviewed and it was determined that B4 was the best fit because B4 allows outdoor storage, and outdoor storage is imperative to Heritage Electric. She said this site does not meet the traditional criteria for a PUD, as this is just a single use.

Virgil Versteeg, owner of Heritage Electric, 22857 E. Long Drive, said he has been in business for 25 years, but has been at this site for 13 years in August. He said he bought this place in 1996 from a woman who was running a day care center. He said she was struggling with this place and the property was in disrepair; the squirrels had taken over and birds were living in the attic. He said the property had been up for sale for a couple of years and she couldn't sell it. He said before that, her father ran a construction company from this site. He said since that time, it has been a great place for him to be. He said no one has made a complaint on this property in 13 years until the area went through the sub area plan process. He said he is trying to keep employment up and he's been doing okay and said he has been paying commercial property taxes for at least six years. He said he provides about \$5,000-6,000 per year in sales tax through materials. He said he employs a few people and provides a service to the community and that is Heritage

Electric's greatest contribution. Mr. Versteeg commented that many people take advantage of having an electrical contractor in the community. He further stated that Heritage Electric registers about 15 vehicles, which are also tax providers for Arapahoe County. He then discussed the drainage issue. He said he dug a hole at the low spot on the property to make sure that the water doesn't flow to the next property. He said the hole was filled with gravel and rock so that the water would have a place to drain, so that has been taken care of. He said it is very important for people to realize that the setbacks use up 46% of the property because of the high line wires. He said there is a wide easement for the wires that cross the property and said there is 45 feet of property that he can park on, but that's it. He said down the middle of the property to the back of the garage, there is another power line that runs through the middle of the property and that limits what could be built and where. He said he is trying to make the best use of the property to make it a viable piece of property that provides usefulness to the County as well as to his family. He said he would like to place trees on the north boundary, which would block the view from other properties. He said the closest house is three lots away and the other is two lots away. He said there aren't any homes adjacent to the property line. He said on Dayton, there is a fence line and it blocks the view from people trying to get onto the highway, but there can be some landscaping there. He said there is another highline wire, so the trees cannot be too tall. He added that a six foot fence was placed around the property as soon as he bought it and he keeps grass on the front of the site.

Mr. Weiss commented that this area was subdivided 40 years ago, and Mr. Versteeg has only been operating this business for 13 years on this site. He asked why Mr. Versteeg felt that he could bring in a business into a residentially zoned area.

Mr. Versteeg said he couldn't rent the property and no one wanted to live there. He said he couldn't find another use for the property and to keep it looking nice, he put a fence around it and it became useful.

Mr. Weiss asked if Mr. Versteeg knew it was a nonconforming use when he first moved in.

Mr. Versteeg said he didn't know much about it. He said there are a lot of other people in the neighborhood that are doing the same thing, so he didn't give it a lot of thought. He said there are moving companies, lawn mowing companies, and other construction companies that are nonconforming.

Mr. Brummel asked about the fence that surrounds the property.

Mr. Versteeg said the fence is around two thirds of the property; the back is 225 feet, and the front is unfenced for 75 feet from Dayton.

Mr. Brummel asked if all the outdoor storage is screened behind the fence.

Mr. Versteeg replied yes.

Mr. Rosenberg said Ms. Kerr stated that she spoke with Aurora and they didn't have anything for the applicant to do. He said the packet contains a letter that states that Aurora strongly opposes this application.

Ms. Kerr explained that the applicant met with Aurora's Public Works and traffic engineer in 2008 and at that time, Aurora stated that they had no issues with this plan. She said when this case went out to referral, they actually missed the referral deadline by almost six weeks, and when that gentleman returned from paternity leave, he wrote that letter. She said the applicant never met with that man but did meet with other Planning staff and got a letter from someone that wasn't part of that process.

Mr. Rosenberg said the letter was written from the Director of Planning.

Ms. Kerr said it is signed by the Director of Planning, but the letter was drafted by a staff planner.

Mr. Weiss said Mr. Feher mentioned that there are vehicles on the site that are not related to the business, and in one of the pictures presented, it looked like there was a moving truck there. He asked for an explanation of what vehicles are there that are not related to the business and why.

Ms. Kerr explained that the moving truck is on the adjacent property.

Mr. Versteeg said there are boats and campers stored on the site and there is a tow truck that tows company vehicles when needed, but he shares the place and parks his trucks there. He said there are a couple of cars.

Mr. Brummel asked if Xcel has any restrictions as to what can be parked along the west property line.

Mr. Versteeg answered no. He said the only thing he's ever heard from Xcel is that they wanted to buy his property at one time.

Mr. Larson said with the proposed landscaping, the outdoor storage would have to be readjusted. He asked how that would be done and where that stuff would be moved to.

Mr. Versteeg said there is nothing there now except a few vehicles that could be moved. He said he would probably put some large trees on the north edge that will block the view. He said the fence is 6 feet tall and there is no one within a couple of lots.

Mr. Larson asked how much equipment and how many vehicles are stored on the property.

Mr. Versteeg said about 25, and most are storage trailers that can be moved. He said everything on the site is movable.

Mr. Feher said in order for a B4 district to be in compliance, it must meet the specific uses and the standards and requirements of the district, including a 50-foot setback where residential uses abut, which occurs on the north side; a 25-foot setback where commercial uses abut other commercial uses, which is on the west side; a 10-foot setback of parking spaces from property lines and this occurs on the southeast corner. He said the applicant is also required to have one tree and ten shrubs per 1,000 square feet of designated landscaped area, which equates to 18 trees and 180 shrubs. He said any future proposed expansion or redevelopment of the site would require a subdivision development plan along with the engineering requirements. He also mentioned that when this process started, one of the big concerns with Aurora was whether Aurora was going to require any right-of-way (ROW) and any dedicated streets. He said that is why Arapahoe County staff directed the applicant to Aurora's Public Works instead of Planning. He said that could be why there was a bifurcated response. He stated that staff recommends approval with conditions.

Mr. Larson asked about non-business equipment on the site.

Mr. Feher said with straight zones, storage is a primary permitted use, so that whole lot could be full of storage. He said in this case, there are two primary permitted uses: the electric contracting business with the associated equipment and outdoor storage of other vehicles.

Mr. Larson said Mr. Versteeg could contract a piece of his land for storage.

Mr. Feher agreed.

Public Hearing

Lori Kennedy, 9630 E. Colorado Avenue, said her property joins at the north fence line of Heritage Electric. She described what the neighborhood looks like. She said she lives to the north on a residential street on about .87 acres. She said across the street from Heritage Electric to the south is a home on two acres and to the east there are apartment complexes. She said Dayton Place is also there and to the west is Xcel, but on the other side of the Xcel plant are residential homes. She said next to her home is another small home on one acre. She said she has already submitted a letter to the County, but she pointed out that

there is no commercial business going on in the area, although there are some home based businesses. She further stated that she and her husband bought their home in 2008, totally gutted the home, and put about \$100,000 in landscaping in the front and back. She said she and her husband are not in favor of this because it is a residential area. She said this neighborhood is in transition for the better; there is a new library and the Buckingham Mall has been remodeled and has a great facelift. She said Dayton Place built more homes, so that took care of the corner that was an eye sore; on Iliff and Dayton there would be residential. She said Heritage Electric is the last remaining eye sore in the neighborhood and is the only parcel that is in violation of zoning. She said she and her husband own a moving company and also own a warehouse that the company operates from on I-25 and 58th Avenue because they know the neighborhood is not zoned. She said Heritage Electric has operated there since 1996 and has been in violation of the zoning since that time. She said she was told when she bought her house that Heritage Electric was zoned commercial and that is why they never questioned it. She said this is not a question of grandfathering because this has been in violation the whole time. She said there is not one business operating out of this. She presented photos of the subject site taken from her bedroom window and said there is a storage business and a towing business there. She said cars are dropped in and out of there all the time. She said there is a trailer that is operating a separate business; there are commercial vehicles with Directional Drilling posted on the side plus there are boats, RVs and disabled vehicles. She said if Xcel ever had anything go wrong, it would take out a lot with all the diesel fuel sitting there. She reiterated that the neighborhood is getting a facelift and the neighbors don't want commercial business there. She said the fence is falling down and is put together with bailing wire and all the runoff comes to her yard. She said she doesn't know what is flowing into her yard but she has a family and dogs and there is enough crime in the neighborhood already without towing companies coming and going. She said this lot is not zoned for commercial.

Don Kennedy, 9630 E. Colorado Avenue, said his home is directly north of Heritage Electric. He reiterated that there are three homes on the block that people live in. He said Mr. Versteeg stated that the property would have no other use, but he said that is a residential home that is nicer than the other three. He said he counted 35 vehicles on the property. He said Mr. Versteeg said there are eight employees that come with company trucks so there isn't a lot of personal vehicle travel. He presented a photo of the north fence line. He said there is a business trailer that operates out of the lot and that could be Directional Drilling. He presented a photo of the site taken on the weekend when the vehicles are not there. He said he is often told one thing but he sees another. He said he was told that the repairs on the fence were made but the repairs were made with wire. He said the retention pond was a gravel hole. He said when heavy rains fall, his entire back yard is under six to eight inches of water. He said the subject site is packed tight with gravel and there is no absorption. He said some of the 35 vehicles and trailers aren't mobile and are broken down and whatever leaks drains into his property. He said the trailer is where the other business operates out of and employees come and go. He said this is more than just Heritage Electric; this is way out of compliance. He said yesterday the tow company dropped off a car that did not appear to belong to Heritage Electric. He presented a photo of a vehicle that belongs to Directional Drilling and said it has a VIN number and DOT number that shows that is a business called Directional Drilling. He said the property is way out of compliance and the homeowners in the area don't approve of it.

Mr. Brummel referenced a photo of the north fence and asked if the trailers and the truck in the photo belong to Mr. Kennedy.

Ms. Kennedy said yes; she explained that they own a warehouse on 58th and I-25 and said that truck does not sit there all the time. She said it just happens to be there and the trailers have nothing to do with the business. She said the trailers are something that they need to get rid of.

Mr. Larson asked if all the trailers on the Kennedy property belong to the Kennedys.

Mr. Kennedy answered yes.

Mr. Larson said it looks like a storage lot.

Mr. Brummel said it looks like there are three semi trailers and three pull trailers.

Mr. Kennedy explained that those are left over equipment. He said there is a car in one of those trailers and there is furniture and shelving in another. He said just as Virgil has in his, he would have no problem with Virgil operating as just Heritage Electric. He said one of his trailers is storage for camping equipment.

Mr. Larson asked Mr. Kennedy if his property is classified as residential.

Mr. Kennedy replied yes.

Mr. Kennedy said he has two trailers that are not being used and should be sold. He said he brings his truck home at night but he is at work during the day. He said his employees operate out of 58th and I-25. He said he doesn't have a business running out of his home.

Mr. Herzfeld asked if Mr. Kennedy purchased his property about a year ago.

Mr. Kennedy said they bought the property 10 years ago.

Ken Duleff, 9501 E. Colorado Avenue, stated that he is a landscape contractor and is licensed to do work in industrial and ROW areas. He said he was personally involved in working on this site prior to when Heritage Electric purchased the property. He said the woman that had the day care hired him to rebuild the septic system and that involved digging up the area and repairing the septic leach field; at that time, the ground cover for the entire storage area was native pasture grass, which is highly absorbent. He said after Heritage Electric moved in, a lot of gravel was put in over time and now the gravel is hard and compact; now the ground cannot absorb the water and it just runs off the land. He said the change in the absorption of water resulted from the change in the use. He said the HOA wants to see on-site detention/retention ponds so that there is not more water flowing off of the property and into adjacent properties. He said the HOA would also like to see a curb cut onto Jewel so the heavy trucks can come in and out of the property without having to come in right at the intersection where the residential driveway is. He said the HOA would also like to see screening with a 10-foot privacy fence that is setback into the property 25 feet, because the vehicles would be backed up to the fence.

Bill Vickery, owner of Vickery Motor Sports, 2231 S. Parker Road, said his company is about a block and a half from Heritage Electric and said he supports this proposal. He said the area is largely commercial and that is what it needs to be.

John Warford, 9154 E. Evans Place, said he supports the rezone with the restrictions related to future development. He said this is a small business which is really needed in this time and it is important to keep businesses going to support the County taxes. He said residential only supports 40-50% of its way and Heritage Electric has been paying commercial rates for a few years. He said a combination of uses is needed to support the economy and he strongly supports this project. He said he has property just to the west that is on hold that has been under consideration for the senior home project.

Michael Flynn, 1831 S. Dayton Street, said he is 70 years old and retired. He said Heritage Electric is the only neighbor he knows and Virgil is a good neighbor. He said he is here to support the rezoning.

Mike Douglas, 1950 S. Lansing Court, said he is a neighbor about $\frac{3}{4}$ of a mile east of the subject property. He said he has lived on Lansing Court for 25 years. He said he has been driving up and down that street for 25 years and has seen that area change from little ranches to mixed use. He said Heritage Electric is a good neighbor; the property is maintained very well and that house is nicer than some of the houses that people live in, and that is just a testimony of how Virgil takes care of the property. He said the lawn is always mowed and the snow is always pushed and Mr. Versteeg has helped him out with some of his wiring projects. He said he supports this application.

Tim Behm, 9460 E. Colorado Avenue, said he represents the Paula Dora/Greenhaven HOA, and the group is against this. He said people stated that they were quite embarrassed that this has gone on for twelve years. He said it was stated that Virgil has done a good job, but he has run a business that wasn't allowed

there. He said the problem with changing the zoning is that once it is changed, unless there are strict stipulations on this, who knows if Virgil is going to turn around and sell this property. He said he can see this property from his house and if he owned this lot and got it zoned B4, he would turn around and sell it because he could make a lot more money. He said Mr. Versteeg would do that eventually then there would be a commercial area in the HOA. He said although the substation is right there, at some point in time that substation would be put in a different place or be put underground. He said that would change the whole make up of the property. He said in the sub area plan, that property was designated for retail, not for this kind of business. He said the HOA had asked that it be set up for retail, which is a little different that a storage lot.

Mr. Larson asked about the substation.

Mr. Behm said he spoke to Xcel about twelve years ago. He said the substation is next to his property and Xcel said at some point, the station would go underground.

Mr. Larson said that was twelve years ago.

Mr. Behm said no, that was about seven years ago.

Mr. Larson asked if there would be an underground substation.

Mr. Behm said yes, they are planning to move that underground.

Mr. Larson asked if it would be at a different property.

Mr. Behm did not know.

Mr. Larson said Xcel would have to come to the County for approval, and that has not been done.

Mr. Behm said who knows when that would be done, but it is a possibility.

Mr. Larson said Xcel can't move the substation until they get approval, so that is just speculation at this time.

Mr. Behm agreed.

Jerry Atencio, 1776 S. Uinta Way, said what concerns him most about this request is that Virgil did come to a 4SM meeting last month and when he was pressed about what he was going to do with his property, his statement was that he was going to use it to the maximum profitability. He said he can understand that, but Mr. Versteeg doesn't come here with clean hands; he comes here with thirteen years of non-compliant use on this property, so he doesn't have a property right when he stands before the PC. He said this is similar to a situation in Mountain View Gardens where the neighbors were told by a landowner that he was going to build one home, then the landowner built five homes. He said Mr. Versteeg said he is operating as Heritage Electric but there has been conflicting testimony on that, as Mr. Versteeg is operating several businesses on that property. He said as soon as Mr. Versteeg gets the B4 zoning, he can sell the land and it could be a shopping mall or there could be a number of businesses if people sublease space from him and that would increase traffic. Mr. Atencio stated that the traffic study that was done did not take that into account. He requested that this application be denied unless certain conditions are met. He said the conditions need to go beyond what was stated in the staff report. He said the access to the property is too close to the intersection. He said there is a new senior citizens project that is being built across the street and this is a residential neighborhood and this is a commercial operation. He further stated that Heritage Electric is not operating as one business and would continue to do so.

Mr. Larson asked Mr. Atencio what he would change besides the access.

Mr. Atencio said there has to be better landscape barriers. He said the applicant should go to the Board of Adjustment and get a taller fence or berm the property and put a six-foot fence on top of that to create a visual barrier so that the neighbors don't have to look at the equipment. He added that much of that equipment is not electrical construction equipment.

Mr. Larson said under the new proposal, the applicant can legally put whatever he wants on his property.

Mr. Atencio said that is not his first recommendation.

Mr. Larson said that would be allowed under the proposed zoning.

Mr. Atencio said this zoning needs to require the additional landscaping and there are water drainage issues that have not been properly looked at by Arapahoe County. He said because of that this application should be denied.

Mr. Larson said if Mr. Versteeg was able to do the landscaping, work on the drainage, and build the fence

Mr. Atencio said he can't answer that.

Mr. Larson said he wants to cover that because these are the issues that many people have.

Mr. Atencio said he doesn't know if he would support this proposal if Mr. Versteeg did all that. He said he would have to look at the facts and data related to the drainage issues. He said Mr. Versteeg doesn't want to do that because of the cost; it is easier to go through a straight rezoning application than it is to go through a development plan. He said he can understand the business issues around that, but the way this case is being presented is not adequate, is improperly designed and should be denied. He said Mr. Versteeg has choices to make in terms of whether he wants to go back and redevelop the site or if he wants to go to the Board of County Commissioners the way it presently sits.

Don Hood, 1773 S. Uinta Way, said he feels obligated to share his memory, which is a little different than some of the other neighbors. He said he lives about three blocks away from Heritage Electric, but he is across Parker Road. He said he has driven by that property for almost 30 years going to work so he knows the property well. He said he was involved in the original 4SM master plan and said he attended every meeting except one. He said he recalls the meeting at the fire station where this property was discussed. He said he didn't know Mr. Versteeg at that time, but it was brought up that there was a business on that property, and with the power station near and the power lines going through it and all around it, it was mentioned that that land ought to stay a business and that was approved by the group. He said when it got to questions and answers and when it was presented to the County at various meetings, it stayed that way. He said he has driven by that site for years and the pictures didn't quite do it justice. Mr. Hood said the power lines are truly obnoxious and he said the towers are huge. He said in the front yard there is a tower that is inches from the road. He said he didn't know Heritage Electric was there because as you drive by, you see these massive things. He stated that he has used Heritage Electric at his home from local neighbors' referrals, and he didn't even know it was there. He said Mr. Versteeg helped with some work at his home and he had a positive experience. He said regarding the cars, he lives a couple blocks away from the new library, and there are 30-50 cars there every day, including trucks, U-Hauls, pickups with junk in them, and there is a liquor store across the street. He said one could get crazy about things like that or accept that it is part of the neighborhood and move on. He said the car traffic is minimal compared to everything else he sees. He said one of the neighbors stated that there are lots of home-based businesses in the neighborhood and he could rattle off 15 that have commercial vehicles parked in their driveways and in the street. He said this area is not a development and is not pure, but it is on its way up. Mr. Hood stated that this is a positive area and he supports the things that Heritage Electric has agreed to do to improve it from what it is. He said the County has been taking tax money from that site as a business for a while and it doesn't seem fair to say that you can't do that any more even though you've been there for 12 years and the master plan says there could be a business there.

Mr. Larson asked when the substation was built.

Mr. Hovland said 1959.

Mark Lampert, 9022 E. Colorado Drive, said he is here talking for ACCORD and 4SM. He said he was the originator of the 4SM subarea plan among two other people. He said the problem that they saw is that when 4SM was defined, it was part and parcel of the whole Comprehensive Plan of Arapahoe County. He said at that time the residents thought that the 4SM area was unique and for that reason, the residents wanted a specialized sub area plan. He went on to explain that moratorium was set, development stopped and there were over 3,000 invitations sent to residents; over 350 people showed up. He said there was so much demand for changes in that area. He said this is one of those areas that has yet to go through a lot of transformation. He said the PC has heard and seen pictures, there are commercial guidelines, that is not exactly correct. He said those are residential areas with homes that have a home house occupation out of it. He said when this was set up, it was set up as a commercial area for employment, not storage; employment because they felt, as a group, as they continued on, there are over close to 100 people that would meet monthly to go over. He said nobody felt that being next to the substation was going to be profitable for any type of developer, so hence this was not going to be a development residential; every other area was multifamily or single family. Mr. Lampert further stated that this area needed to be cleaned up so it was left, and Virgil was part and parcel of coming and spoke up and at that point in time we thought there would never be a problem having some type of commercial there. He thanked Mr. Versteeg for coming forth because this is one of the first straight zoning cases that everyone had to go back to learn about because the citizens always appeared before the PC with a PUD going from the PDP to the FDP and so now we're trying to clean that up. He said Commissioner Pat Noonan came to us at that first meeting and said this is a great start but there is a lot of work to do and said be careful of what you ask for because you might have your hands dirty. He said many of our residents saw that, many of our residents have voluntarily started to clean that up; moving the tractors, moving the trailers, moving the storage and debris that's stored in front there. He said 4SM is not proud of what is on the east side of Parker Road in the 4SM. He said this particular area, Jewel and Colorado, is one of the most severe impacted areas with a variety of things. He said that needs to be cleaned up. He said this is the beginning and this is our largest parcel. He said in the plan, page 7 of the ordinance states that the site needs to be compatible. He said the compatibility issue states the following: there are some surrounding residential uses that are less than compatible with the current and proposed uses on the site. Mr. Lampert said staff is already pointing that out so we need to go on that. He said a lot of things would have been done better with a PUD on this. He pointed out that this is the first time that Aurora and 4SM agree. He said Aurora admits that this is not compatible to their residential area that is on the east side of Dayton. He said he has not seen the landscape design so he doesn't know what that is. He said if this needs to go forth in a B4, which the residents are not thrilled with, but if the Board decides to go forth, there are some more conditions that the neighbors would like to make in addition to the ones that the PC has by staff. He said the applicant will need to meet the 50-foot use setback requirements on the north property line. He said that would give 50 feet between the property line of the people that the PC heard speak at the beginning, the Kennedys, and the 25-foot setback on the west side. He said people would ask why the 25-foot setback is needed. He said it is immaterial to us that that is a power station but we feel that the true sense of the setback needs to be adhered to on all sides. Then it goes on to say number six, the applicant will need to move the designated parking spaces on the site plan so that they are at least 10 feet from the east or south property lines. He said right now a lot of the employees park on Dayton and one of the photos shows the cars along Dayton and Jewel, so from that stand point you need to have that. He said the residents would ask the PC to require the applicant to seek a variance to go. He said he realizes that the PC and Planning staff cannot require an affirmative vote but the residents would require the applicant to go and apply for a variance of a 10-foot fence on top of a berm maximizing the visual interference from the street level as well as from the potential development that is going to be due south of this which is going to be a two-story Alzheimer home that will have ability to look over a 6-foot fence. He said we would rather try to visually impair any type of looking at whatever the storage is. He said there could be a shopping mall there with different types of businesses so he asked that that be item number eight of those suggested conditions that are on there. He further stated that the residents would like to see the drainage be looked at again and he asked the PC to talk to Engineering to find out exactly what that is. He said we pointed that out to Engineers to see if that petroleum runoff, because again, there is no hard surface but there are a lot of vehicles there that do allow the runoff, so its not a lot that's going to be absorbed into the soil there. Regarding access to the corner, he said he realizes

that cannot be talked about right now because that is not a PUD, but that is something that these large vehicles are tractors and tractor trailers and they impede access and it is a safety issue because the entrance to this parcel is directly at the intersection of Jewel and Dayton. He said what the residents are very much concerned with is that Virgil came to the 4SM residents in October of last year floating the idea and we thought that we're not against any business operated in our area because of the economy; however we did share the "Dirty 13" with him. He said many of the new commissioners don't know what the Dirty 13 are. He said that has been accepted by ACCORD as well as by the 4SM area. He said those are 13 uses that we would not like to see, such as gun shops, tattoo shops, parlors, that type of stuff. He said one of the biggest things that 4SM concerned with is sexual oriented businesses. He said asked for a deed restriction. He said obviously any good businessman is not going to require restrictions in what you can do, however there is one specific and that is sexually oriented businesses. He said that is allowed in a B4 zone.

Mr. Larson asked for an example.

Mr. Lampert said a massage parlor.

Mr. Larson said that is legal.

Mr. Lampert said a house of prostitution.

Mr. Larson said that is illegal in general and should not be applicable.

Mr. Lampert said there are massage parlors that are legitimate massage parlors but the Arapahoe County Sheriff has closed down four or five of them in the 4SM area. He said 4SM doesn't want to go down that path, as the area has been victimized enough. He said he would like to know if Mr. Versteeg would put a deed restriction to that and work it out with the County so that it can be worded in such a way. He said right around the corner from this was one of the best and biggest, was a Russian bathhouse which was one of the largest houses of prostitution in Arapahoe County.

Mr. Larson asked how long ago that was.

Mr. Lampert said nine years ago. He said within a mile radius there have been three others. He said this has been a sleepy area and a lot of business come looking because they don't know, but we are now motivated very strongly.

Mr. Herzfeldt asked Mr. Lampert to clarify the location of the potential berming and the 10-foot fence.

Mr. Lampert said the residents would like to see what ever maximum allowed by the berming back within the 20-foot landscape easement. He said the residents have not seen the landscape plan.

Mr. Herzfeldt asked which property line would have a berm.

Mr. Lampert said all four. He said the landscape berm for the west is not necessary but on the south, the east and the north, the landscape berm and the fence on top of that would provide the maximum visual interruption of that.

Mr. Larson asked if the neighborhood would approve if Mr. Versteeg was able to get the variance for the 10-foot fence and the berm, and follow the recommendations about the setbacks, and address the drainage issue and fix the access, and add a deed restriction on the sexual oriented business.

Mr. Lampert said he cannot speak for all 38 HOA's but he believes that the biggest concern was the blocking of the visual, the sexually oriented business and if the entrance could change from Dayton to Jewel, that would be a great thing. He further stated that if Mr. Versteeg applies for a variance on the fence, the neighbors would show up in support of that because the neighbors feel that that is a benefit to all residents that do go down Jewel because that is a major access to East Aurora.

Mr. Larson said if those four adjustments were made, Mr. Lampert would approve.

Mr. Lampert said the neighbors would stand in support as long as those issues were taken care of and agreed upon, but the neighbors have not heard that.

Mr. Larson said the residents would be favorable.

Mr. Brummel asked what specifically do the neighbors not like about the visual. He said there is a picture of the house. He asked what can be seen over the fence that is annoying.

Mr. Lampert said what the PC has not seen is that there are pickup trucks that are tractor trailers there.

Mr. Brummel said there is a six-foot fence that blocks the pickup trucks.

Mr. Lampert said no, a 10-foot fence on top of a berm would. He said what we're looking at is from the street level if someone is driving in a vehicle, you're basically four or five feet, were looking above. He said what we're trying to do is interrupt the arc that you would look over that. Obviously, if you're looking down, and we realize that we can't completely hide what a second story residence that would be built to the south would be looking over the fence, we're trying to make it a little more appealing. He said right now, one can look right through the fence, so the entire fence would have to be redone, but 4SM would like it to be done on top of the berm with the trees to soften the harshness of the fence.

Mr. Rosenberg said he is confused. He said Mr. Lampert stated that he agrees with Aurora, and Aurora says that the magnitude and intensity of truck traffic generated by the use is in sharp contrast to and incompatible with these residential uses abutting the property. He said Aurora is opposed to this.

Mr. Lampert said the site is incompatible with the neighborhood because of the fact that it is storage of vehicles. He said he doesn't think that that statement, as it states in there, it says there the goal and corresponding strategy clearly intend to limit the expansion of incompatible commercial land uses, especially vehicle and outdoor storage. He said that is the crux of what Aurora is fighting against is that the outdoor storage. He said he does not think Aurora is that concerned about the business, even though it is a business zone and it is next to the power station. He said the power station changes everything. He said if there were residential right there as there is to the west of the power station, all things would be totally different. He said there would be an island of commercial surrounded all by residential. He said the fact that we have the power station opens it up just a tad. He said the concern of all neighbors is not so much the business and the uses of the vehicles specifically for Heritage Electric; it's all the other stuff. He said the neighbors realize that if this parcel is zoned B4, that any of those businesses including the drilling rig and more can come into play there, but there is going to be a limit by enforcing that setback of 50 and 25 feet and pushing the 20-foot landscape easement, we would go ahead and restrict the number of vehicles because it has continually grown in the last year.

Mr. Hovland said regarding sexually oriented businesses, they are a part of the zoning regulations. He said the public reads that section and sees the zoning districts where it could conceivably happen but they overlook the spacing requirements. He explained that there spacing requirements from public schools, places of worship and residential uses. He said this site is 65 feet away from a residential use, so there could be no sexually oriented business on this site, no matter what the zoning might be. He said Mr. Lampert mentioned illegal uses that have happened in that area, but it doesn't matter what the zoning is with an illegal use-the Sheriff will deal with that.

Mr. Rosenberg commented that the public hearing has not been closed yet.

Mr. Feher said a few weeks ago, he spoke with the zoning administrator, Tammy King, and asked her what zoning violations were in the area; she indicated that there were two to four. He explained that some of those violations were businesses that were being operated in a residential-zoned district and some of them were vehicles that weren't operative. He said he does not have a problem with the 10-foot fence variance, but the PC cannot mandate that the applicant install a 10-foot fence. He said the PC can mandate that the

applicant go through the process with the Board of Adjustment and the PC can give a recommendation. He said a six-foot fence is allowed without a permit, but anything taller than that requires a building permit and a variance, unless it is allowed on the PDP. He added that berms are not allowed unless they are part of the natural landscape so an artificial berm with a six-foot fence on top of it is now allowed. He said regarding a deed restriction, that is usually a private matter and cannot be a condition of approval.

Mr. Brummel referred to Condition No. 7 and said any kind of building would trigger a subdivision development plan. He said any change in use on that property would put the site into a subdivision development plan and public hearings.

Mr. Feher clarified that a subdivision development plan is something that the PC doesn't normally deal with. He said in a straight-zoned district, a subdivision development plan is equivalent to the final development plan, but it is done administratively rather than in with a public hearing, but if there were any change in buildings, then the applicant would have to go through the subdivision development process with a full engineering review and public improvements related to that engineering would be required.

Mr. Versteeg read a letter of support from Bruce Peterson, a copy of which has been retained for the file.

Public hearing closed.

Mr. Larson asked what a landowner has to do if the drainage is running from one property to another.

Josh Sebern, Engineering Services, said the drainage patterns are historic and because this is a rezone only, any modifications proposed by the landowner would be voluntary, as there are no engineering requirements.

Mr. Larson asked for clarification regarding "historic" flows.

Mr. Sebern said it is the lay of the land.

Mr. Larson said before this use, the use was residential, so now the soil is packed gravel and concrete and the drainage has been altered.

Mr. Sebern said that would have an affect but it wouldn't be real large. He said the soils are mostly sandy and water infiltrates rapidly.

Mr. Larson said it looks like there is a lot of concrete and blacktop.

Mr. Sebern said the site is not paved.

Mr. Larson argued that when the soil is compacted, it's like concrete so there would be water running off.

Mr. Sebern said not near to the extent of paved concrete or asphalt.

Mr. Larson said before, there was soil content, not rock content.

Mr. Sebern said the native grasses would absorb more but not a whole lot more.

Mr. Rosenberg asked if SEMSWA's (Southeast Metro Stormwater Authority) comments are irrelevant.

Mr. Haskins said engineering has no idea how much grass was there 12 years ago, so it would be very difficult for staff to analyze that. He said the existing conditions of the site were considered. He said there may be a small increase in runoff based on the gravel that has been placed on the site, but staff has no information regarding how much grass there was. He said it is more of a function of the soils, which are high percolating and high infiltrating soils.

Mr. Larson said the term “historical” means most recent.

Mr. Haskins said that is in terms of the conveyance.

Mr. Rosenberg said SEMSWA’s comments state that the use is not in compliance with respect to detention, water quality, conveyance of flows, source controls, and nonstructural BMPs. He asked if that comment is irrelevant.

Mr. Haskins said SEMSWA was handling this like most referrals and thought that a site plan was going to be following up with this. He said staff then got direction from the Board that this was to be treated as a rezoning case. He said Engineering has the same concerns but there is no proposal for modification. He said SEMSWA could have been thinking that there would be new buildings and parking after the zoning had changed. He said if that was the case, all those drainage issues would be addressed.

Mr. Larson asked about the oil and gas and asked if there is an EPA (Environmental Protection Agency) regulation.

Mr. Haskins said it doesn’t matter if the applicant is proposing a commercial use or an existing residential use. He said the applicant still does not have the authority to illicitly discharge on neighbors’ property. He said that would be a violation of the County’s MS4 Permit with the State of Colorado. He said Engineering is usually informed about that through complaints and he has never heard of that.

Mr. Larson clarified that there is a code that covers any violation.

Mr. Haskins said yes and that would be followed up by the Environmental Crimes Division of the Sheriff’s Office.

Ms. Kerr explained that this application does not have a development component to it and is just to keep a man and his business going in these tough times. She said the applicant is prepared to comply with all the conditions of B4 zoning. She said this is a tough site that has a lot of constraints and there are not a lot of good uses. She stated that the fencing issue was raised voluntarily through the community meetings process; if there could be agreement that a taller fence would solve the issue, Heritage Electric could agree to that. She said the applicant wasn’t sure it would ever get support and if the fence would solve the issue, the applicant would agree. She said there cannot be substantial landscaping on the south side of the property because of the highline wires and the best thing that could be there is parking and pulling the highly visible items to the center of the site and the items that are below the fence line near the fence would be agreeable to Heritage Electric. She said the B4 zoning is needed for Heritage Electric to be a business and without that zoning, Heritage Electric would have to leave Arapahoe County.

Mr. Weiss asked if the applicant would be going through this process if he were not cited.

Ms. Kerr said she doesn't know the answer to that.

Mr. Rosenberg said that is irrelevant.

Ms. Kerr said this was brought to the applicant’s attention and the applicant is trying to solve it, and this is what County staff recommended. She said this is a guy that is trying to do the right thing and is trying to do what the County asked of him. She said this is the exact process and the exact zoning that has been recommended.

Ms. Martin asked if the fence gets moved to the setback point or if the fence stays at the property line.

Mr. Feher said the fence can be within a setback. He said the Land Development Code (LDC) says that vehicles would have to be moved back, but the fence could stay in the same place. He said to an extent, the PC could decide where the fence would be located. He said the PC doesn’t have control over the height of the fence, but there could be a condition of approval that a variance be presented through the Board of

Adjustment. He said it would not be practical to move the fence any further than the setbacks but that would constrain the applicant in terms of what he wants to do.

Mr. Weiss said he has an issue with this being a nonconforming use from the beginning. He said now that the applicant has been caught, he's trying to change the rules to do so. He said if this land is changed to B4 zoning, yes, there is a stipulation that any new development has to go through a hearing and a plan to do so, but it also has the B4 zone to add to it and that kind of weighs heavily on any future development, as it would be easier to build an office building. He said seven years from now, there could be a new proposal to build more.

Mr. Larson said the proposed expansion would be restricted.

Ms. Martin clarified that Mr. Weiss is saying that it would be easier to pass in the future since it is one step closer.

Mr. Larson said it would still have to go through the Board.

Mr. Rosenberg said it would not.

Mr. Feher stated that any new development would go through an administrative review, but is subject to the drainage requirements, traffic requirements, landscaping, etc. He said there would also be a referral process.

Mr. Rosenberg asked if there would be public hearings.

Mr. Feher said no, but there would be a referral process.

Mr. Rosenberg said people would never be able to talk about it.

Mr. Feher said there would be a referral process and gave the WillowMiss development as an example. He said that development is doing that now and the 4SM area has been able to give their input on that administrative case. He affirmed that there would be no public hearing.

Mr. Herzfeldt said he has many concerns. He said this site needs a development plan because there are so many issues. He stated that he wants to be fair to the land owner who has been doing this and unfortunately the County has not been on its game for 12 years because this should have been taken care of a long time ago. He further stated that he can't remember the last time the PC saw a site like this with similar setbacks and easements that restrict the use as well as the lines going across this property, which, in his opinion as a professional appraiser, give this site minimal value. He said one could stand in the front yard with florescent bulbs and they would light up under these wires. He said EMF (electromagnetic field) is just pulsing through the site and the site has limited appeal and use. He said because of all the restrictions and setbacks, there must be something done. He stated that he is also concerned about the drainage issues and the landscaping and he wants to see a better plan. He said he is confused about the berming and fencing and the road access. He said he wants to do what is right for the owner and he wants to do what is right for the neighbors and said he is not comfortable with straight zoning, as that is not fair to anyone. He said he would like the opportunity to look at everything.

Ms. Martin asked why staff doesn't have the same concerns and why staff is recommending a straight zoning instead of a PUD.

Mr. Feher said historically, the former Planning Division manager was the person who made the recommendation to go with a straight zone. He said since the applicant wasn't going to change the existing uses, the former manager may have felt that all that was needed was the zoning because the site plan wasn't going to change and to go through a two-step process would have cost double the amount of a straight zone rezoning process.

Mr. Rosenberg said the change that is recommended by the PC to the Board is permanent, and this is an area that is changing and it is becoming a true urbanized area. He said the area used to be similar to Byers or Strasburg but it has changed a lot and across the street there are apartments in Aurora and there is also lots of residential. He said Aurora's letter really got down to the roots of everything. He said he feels that this is an incompatible use and it has been allowed for twelve years and it shouldn't have been.

Mr. Brummel wondered what else could be done with that lot. He said no one wants to live there.

Mr. Herzfeldt said there is no residential value.

Mr. Rosenberg said there are people living right across the street.

Mr. Brummel said they don't have all the lines running through their lot.

Mr. Larson said the average homebuyer is not going to want to live there.

Mr. Rosenberg said to him, this is not the way to go.

Mr. Larson said the PC must figure out what would be there.

Mr. Herzfeldt said he doesn't think the lot is not compatible, he said the restrictions and easements and power lines and the fall lines are to be taken into consideration. He wondered who would want that site. He agreed that there should be some screening, but there is nothing that the PC is comfortable with.

Ms. Yeckes said there are two different issues. She said one issue is the application to rezone the property; the PC must consider the criteria built into the LDC based on the proposed use, as to whether or not that is consistent. She said the rezone itself must be evaluated against those criteria. She said the issue that is causing "heartburn" is that the rezone is typically followed up with a development plan of some sort, whether it is the type of plan that applies to this property, where it is handled administratively, or whether it is a final development plan, which usually comes to the PC in association with a PUD. She said whether staff gets to review it or whether the PC gets to review it is not the big issue; the big issue is that the PC is not comfortable rezoning the property knowing that this business is going to move forward without going through that site development process to address drainage, access, landscaping, screening of outdoor storage and all the things that typically mitigate impacts of use for the surrounding properties. She said any change in use would have some impact, and all the site development constraints are included to help mitigate those impacts. She said she does not have the full history of this site other than there was some action to go to the Board and get some sort of decision from the Board. She said even though the PC cannot condition a rezone of property on accomplishing other processes, there could be a recommendation to the Board that the PC has a concern about rezoning this property without going through the site development process to help mitigate the impacts. She said some people might feel that this is not a change in use because the business has been on this site for 12 years, but there is a change in the legal use. She said there could be a recommendation to the Board that they reconsider that decision. She said she doesn't know whether the Board would do that and she doesn't know if there are legal implications or why that decision was made. She said if the PC recommends the rezoning the PC could incorporate a separate recommendation to the Board that the Board reconsider having the site development approval process apply to this site to help mitigate some of these impacts. She said right now the County is relying on a lot of good faith effort.

The motion was made by Mr. Brummel in Case No. Z08-004 – Heritage Electric Rezone, 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 8 including all plans and attachments as set forth in the staff report dated May 19, 2009, and recommend this case favorably to the Board of County Commissioners subject to the following conditions:

1. That the applicant makes any minor modifications to plans and plats, as requested by the Public Works and Development Department.
2. The applicant agrees to address all Division of Engineering comments and concerns as identified within the attached report.
3. The applicant will need to have a 20-foot landscape buffer on the north side of the property.
4. The applicant will need to have or plant a total of 18 trees and 180 shrubs on this site. Some of these trees and shrubs need to be within the 20-foot landscaped buffer on the north side of the property that abuts residentially-zoned property
5. The applicant will need to meet the 50-foot use setback requirements on the north property line and the 250-foot use setback requirements on the west property line.
6. The applicant will need to move the designated parking spaces on the site plan so that they are at least 10 feet from the east and south property lines.
7. Any future proposed expansion and/or redevelopment of the site with allowed uses will require a Subdivision Development Plan with associated Planning and Engineering requirements and conditions of approval.
8. The applicant shall apply to the Board of Adjustment to improve the visual screening around the property.

Seconded by Ms. Martin.

Mr. Larson asked that the motion be amended to address the drainage issue.

Mr. Brummel did not accept the amendment.

Vote:

For: Herzfeldt, Martin, Brummel, Larson

Against: Weiss, Rosenberg

The motion passed 4-2, Mr. Hayutin absent and excused.

Item 2 – Consideration of amendment to the Planning Commission By-Laws

Mr. Hovland said there has been discussion about the PC by-laws since April. He said this was brought up at the last regular meeting on May 19th, and the PC wanted to talk about one outstanding item, which is the recommended attendance for the PC members. He said that is addressed at the top of page 4 of the by-laws. He said that recommendation is for 50% attendance; one of the PC members wanted that increased and there was considerable discussion during the May 19th meeting. He said there must be two weeks before the issue could be voted on in a public setting. He said that is the only outstanding issue left. He said once the PC has made a decision on that issue he would provide an updated copy of the by-laws and distribute it electronically; a hard copy would also be provided in the June 16th PC packets. He said staff is not making a recommendation on this issue as it is a PC issue, not a staff issue.

Mr. Brummel said Mr. Rosenberg requested 80% attendance and asked if 75% is acceptable.

Mr. Rosenberg said yes.

Mr. Weiss asked about the item that allows a PC member to participate via conference call.

Mr. Herzfeldt said it doesn't say if a PC member could vote via conference call.

Mr. Rosenberg said no one has ever done that.

Mr. Hovland said that could happen but he doesn't know why it hasn't.

Mr. Herzfeldt asked if a PC member could vote.

Mr. Hovland said yes.

Mr. Herzfeldt asked if a PC member on conference call is part of the quorum.

Mr. Hovland replied yes.

Mr. Brummel said the PC member must listen to the public hearing in order to vote.

Mr. Weiss asked about visual presentations.

Mr. Hovland said those would not be visible.

Mr. Herzfeldt said he would like to think that there would never be more than one member on a conference call per meeting.

There was discussion regarding how many meetings the PC has per year.

There was discussion regarding exceptions.

Mr. Rosenberg stated that the PC members do not serve at the pleasure of the Board, but serve per state statute and cannot be fired for three years.

Mr. Hovland said this is not a public hearing, but there is a citizen that would like to speak at the pleasure of the PC.

Jerry Atencio, 1776 S. Uinta Way, said he hasn't read the bylaws. He said he is a former assistant United States attorney and used to represent federal agencies. He said he was in court all the time with cases. He said what concerns him about having a board member be present and vote on a matter that involved the public when they haven't have the opportunity to see all the evidence, weigh all the evidence, is a problem from a citizens point of view because the PC is giving power to a board member who hasn't reviewed all the evidence. He said if there was video conferencing capability there wouldn't be a problem but if the only option is voice, there are many things that come up such as the photos in the last case, that the member would not be able to see and would not have the same evidentiary basis that present members have and that is not appropriate.

Mr. Herzfeldt asked if that person should be allowed to participate.

Mr. Atencio said no because that could affect the PC's decision.

Mr. Weiss asked if the County has video conferencing capability now.

Mr. Hovland replied no, but it could happen in the future.

Mr. Larson said web conferencing or Skype could be utilized. He explained the capabilities of web conferencing and said the only question he has is if there was a handout, which could be scanned. He said it is simple to set up and he can't believe the County doesn't have something that.

Mr. Rosenberg said that would cost money.

Mr. Weiss suggested that "conference call" be removed from the by-laws.

Ms. Martin said she doesn't see any problem with a conference call because the only things a person can not review are photos that were presented. She said PowerPoint presentations could be emailed. She said any materials that could be provided to the PC ahead of time could be provided by email.

Mr. Weiss asked how much of a burden that would put on the staff.

Mr. Larson said five minutes. He asked who submitted the PowerPoint presentation.

Mr. Hovland said that was submitted by the applicant for use as part of their public hearing. He said a hard copy is required for the permanent record.

Mr. Larson asked about electronic copies.

Mr. Hovland said the County is not required to have an electronic copy.

Mr. Larson said that rule should be changed.

Mr. Hovland said the County is required to have a copy.

Mr. Larson said that recommendation should be added.

Mr. Hovland said as technology allows, the County would not allow the PC to fall behind but right now the County has not moved ahead.

Mr. Larson said it is simple and has a minimal cost, if any.

Mr. Hovland explained that each PC member receives a PC packet with everything that was submitted and that is mailed prior to the PC meeting. He said during a conference call, the absent member would not have access to the items that are submitted during the course of the public hearing.

Mr. Larson said that happens often.

Mr. Hovland said the applicant usually does not have the PowerPoint ready until the afternoon of the meeting.

Ms. Martin said the PC should use the technology it has.

Mark Lampert, 9022 E. Colorado Drive, said there are two things that concern him. He said not only is it the visual of seeing the maps, the pictures, but what would be missing is the intensity of the audience. He said that is not seen; not that we would encourage people to applaud and be vocal. He said the PC needs to see when people talk. He said he's always felt that that was a very crucial part of the public process. He said the PC sits there, looks at the public and the public looks at the PC. He said during tonight's hearing, he moved over because he was being blocked by the easel and podium. He said by video conferencing the way Mr. Larson said, is he believes that you can see that and obviously that requires somebody. He said when one watches the public access channels, they are not always focusing on the speaker or the board, but the audience and the board would be scanned so that everyone that is not present has the ability to see who is sleeping, who is paying attention, who is tying their shoes, who's drinking water, those type of things. He thinks that is a crucial process that the PC would be denying any person that comes before the PC. He said it is so crucial that people at the last minute at 5 o'clock is going to come to the PC and present as the did the photographs tonight. He said the PC cannot have that days before and submit so that it can go out in an email that somebody long distance can see it. He said the PC cannot restrict the public from bringing things here and he would be very upset from the standpoint that he would question any vote that would be made without seeing, not hearing, seeing all the documents that are presented. He said it doesn't say that the public is restricted to bring everything forward 24, 48 or 72 hours before the public process begins. He said he would hate to see that, as that is denying the public the right to come before the PC and he is always

looking out for what the public is being served. He said anything that takes away right of the public to address a public official or a public hearing is wrong. He said what the PC is doing is wrong.

Mr. Rosenberg said that item has been in the bylaws and is not new.

Mr. Herzfeldt suggested that conference calling for a public hearing be removed from the bylaws.

Mr. Hovland said if the PC determines that conference calling is to be removed, the bylaws must be presented again at the next meeting, as the PC cannot make that decision tonight because that is part of the bylaws. He explained that the two-week interval allows the PC to consider and deliberate individually before they vote.

Ms. Martin said Mr. Lampert's argument would deny someone with a visual impairment from being on the commission.

Mr. Lampert disagreed and said the ADA (Americans with Disabilities Act) requires any public process that there must be procedures in place to accommodate that. He said there is a citizen in 4SM that doesn't verbally speak; that person got elected to the Cunningham Fire board. He said how can a person that does not speak participate in there. He said there is a process that that agency went through to purchase, with citizen dollars, to put a laptop together that she types out and it speaks. He said the computer has six or seven different voices and the same is true for blind people.

Ms. Martin said a commissioner who may have a visual impairment can necessarily accommodate all the public request such as seeing if someone is sleeping without someone telling them.

Mr. Lampert said if there was a member, the County would have to supply an interpreter, a translator, or someone like that, and it's the same for someone who does not speak English as their first language.

Mr. Larson said that is like a blind person driving.

Mr. Lampert agreed.

Mr. Rosenberg suggested that this issue be discussed again in two weeks.

Mr. Larson said in theory, conference calling is a good thing because materials have been made available.

Mr. Rosenberg said the question is what if the public submits materials during the hearing.

There was further debate.

Mr. Hovland recalled that the Heritage Electric case was scheduled for two weeks ago, but was continued at the request of the applicant due to the absence of the County Attorney. He said that is always an option as well and the PC must decide whether the case is continued or not.

Tom McNish, assistant County attorney, said this is a policy decision and said it may very well be that the PC wants people present for the meetings, but it is up to the Planning Commission.

The PC members agreed to change the attendance requirement to 75%.

Adjourned at 9:10 p.m.

Paul Rosenberg, Chair

Joleen Sanchez, Asst Clerk to the Board