



MINUTES

Planning Commission Meeting: February 26, 2024

Application:	<p><i>On December 5, 2023 the City Council remanded the following application to the Planning Commission.</i></p> <p><u>RZ23-0008:</u> Request for approval of a rezoning from the CP-2 (Planned General Business) District to the C-3 (Regional Center) District for B Street Collision Center on approximately 3.43 acres; located northeast of W. 151st Street and S. Pflumm Road.</p>
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Chair Taylor Breen introduced the item of Old Business. This item is the remand of the application for the B Street Collision Center. This is currently pending rezoning case RZ23-0008. The public hearing for the rezoning was held and closed on November 13th of last year and a remand was made by the City Council on December 5th.

Chair Breen reminded attendees that the public hearing closed, and no public comments will be taken this evening. All public comments are still part of the original existing record, and any additional public comments were provided in tonight's meeting packet. Chair Breen continued that this is a discussion only of the Planning Commission regarding the proposed development plans and recommended stipulations. The action required this evening before the Commission is a motion on the acceptance or modification of the stipulations as presented by staff.

Ms. Schuller introduced the proposed site which is located northeast of 151st Street and Pflumm Road on an undeveloped lot within the Executive Plaza Commercial Center. The applicant proposes to rezone the existing CP-2 Planned General Business District to the C-3 Regional Center District to support a collision repair center. Ms. Schuller continued that Executive Plaza is in a commercial center originally approved for an anchor tenant and attached inline tenant spaces on the subject property, surrounded by pad site commercial developments along 151st Street and Pflumm Road.

Ms. Schuller presented the application's history. The rezoning application for B Street collision was originally heard by the Planning Commission on November 13th, 2023, and the Commission recommended denial. The application was then heard by the City Council on December 5th, and the City Council voted to remand the application back to the Planning Commission following a full review of the development plans and preparation of recommended stipulations.

Ms. Schuller continued that as directed, staff has collaborated with the applicant to revise the site plans and building elevations, and the applicant has agreed upon a list of recommended stipulations.

Ms. Schuller stated that the task of the Planning Commission this evening is narrowed to only a review of the plans and stipulations and to make a recommendation on them. She continued that the Planning Commission will not be considering a vote to approve or deny the zoning application as a whole, as that recommendation has already been made. When the application returns to City

Council on March 19th, the Council will be considering both the rezoning and the preliminary site development plans.

Ms. Schuller presented the site plans: The collision center includes over 28,000 square feet of building area with a front facade facing west and 152 parking stalls which wrap the building on all sides. The stalls are designated for customer, employee, storage, and parking uses. Storage areas are on the east and north ends of the site. The composite wood fence with masonry columns is proposed along the north and part of the east property lines to screen those storage parking areas. The applicant has noted that salvage vehicles will be parked along the east until they are taken from the site and as such, staff has included a stipulation that that eastern fence be extended along the south to further screen that storage parking area. Staff has also stipulated that vehicles being brought to the site on transport vehicles would be unloaded and stored on the east side and if delivered overnight, which the applicant has indicated occurs on occasion, that those vehicles would be relocated the next day. This is to prevent any long-term storage of vehicles outside.

Staff also recommends a stipulation that all other vehicles awaiting repair would be would not be stored outside overnight; instead, they would be brought indoors. The applicant has communicated that is already their standard business practice to bring those vehicles in overnight.

The site is over-parked per UDO requirements by 67 parking stalls. The applicant is requesting a waiver to this maximum parking requirement of the C-3 District to allow 152 parking stalls to accommodate 50 employees as well as customer parking and the vehicle storage areas.

A landscape plan provides buffers around the perimeter of the site. On the north, east and south, the applicant's proposed landscaping exceeds the minimum 10-foot width to provide 25-feet of landscape areas. The applicant proposes a staggered row of evergreens to the east for screening, landscaping on the north side of the proposed fence to soften the fence row, and off-site landscaping along the larger perimeter of the Executive Plaza area. This landscaping is to be installed by the property owner, but it is stipulated to be installed prior to certificate of occupancy for this building.

The elevations meet UDO requirements for commercial and retail buildings, and no waivers are being requested. The building also meets additional requirements of Ordinance 99-109, which governs the larger Executive Plaza; it requires the building to be faced with brick in color tones that blend with the neighboring buildings. The buildings also include awnings and pedestrian scale elements as required.

Ms. Schuller summarized that the applicant is requesting one waiver for consideration to allow the parking to be increased from 85 stalls to 152 stalls.

Ms. Schuller indicated that staff's recommendation to deny the rezoning application remains unchanged. However, if the rezoning application is approved, staff recommends eight stipulations for the rezoning to the C-3 District, which Ms. Schuller reviewed:

1. The following uses are prohibited:
 - a. Recycling Centers and Drop-Off; and
 - b. Mini-Warehouse; and

- c. Cemetery; and
 - d. Parking Lots, Surface, as Principal Use.
2. This property is subject to the site design, building material, and building design criteria of Ordinance 99-109 (Sections e, f, and g).
 3. The rezoning to the C-3 District must be approved by the Johnson County Airport Commission and Board of County Commissioners prior to the publication of the zoning ordinance.
 4. Installation of the offsite landscape buffer, along the northern limits of the Executive Plaza commercial center, shall be approved and installed prior to issuance of a Certificate of Occupancy for any buildings on the subject lot.
 5. Hours of operation for the Vehicle Painting and Body Shop use are limited to Monday-Friday from 7:00 am to 5:00 pm.
 6. No outdoor overnight storage of vehicles awaiting repair is permitted, except for vehicles delivered after business hours, which must be stored on the east side of the building and relocated the following day.
 7. Salvage vehicles must be stored along the east property line, and may not be stored beyond the northern or southern limits of the building.
 8. Unloading of vehicles from transport vehicles must occur on the east side of the building.

Similarly, if the Council votes to approve the preliminary site development plan for B Street Collision Center, staff recommends the following stipulations for the preliminary site development plan, which Ms. Schuller reviewed:

1. Proposed fencing must be a durable composite material with decorative masonry columns. Wood and chain link fencing are not permitted.
2. The proposed fence on the east side of the site must be extended south to the "Limits of Vehicle Storage Area" as identified on the site development plans dated February 14, 2024. In addition, the proposed double row of evergreens must be retained.
3. Building mounted signage is not permitted on the north façade.
4. All new on-site wiring and cables must be placed underground.
5. Exterior ground-mounted or building mounted equipment including but not limited to, mechanical equipment, utilities' meter banks and coolers must be screened from public view with three (3) sided landscaping or an architectural treatment compatible with the building architecture.

Ms. Schuller stated staff has discussed all stipulations at length with the applicant, and they are amenable to these stipulations.

In summary, the rezoning recommendation of denial made by staff and the Planning Commission on November 13th remains unchanged. The Planning Commission is tasked with accepting or amending the project stipulations as recommended by staff.

Commissioner Creighton stated he understands the Commission is not looking at the rezoning tonight. He stated, instead he understands that if Council were to choose to reverse what the Commission's recommendation is, tonight's task is how to ensure that this project remains as high quality as possible. Commissioner Creighton asked, related to the fence, what the height would be and what the City would require. He also asked about the quality of the composite because he would want to make sure it meets the highest standard.

Ms. Schuller answered the renderings show a six-foot tall site-obscuring fence. The Executive Plaza requires decorative fencing types. Ms. Schuller continued that for a site obscuring composite material, it would be a Trex-like material that's very durable and weather resistant. Paired with masonry columns, staff believed this was a good compromise to enhance the look of that fence while still making sure the storage areas are screened.

Commissioner Creighton asked if the applicant was amenable to extend the fence further along the eastern part, and Ms. Schuller confirmed.

Commissioner Creighton asked, regarding outside storage of vehicles, how that would be enforced with drop-offs occurring after hours. Ms. Schuller answered staff maintains regular communication with our Community Enhancement group (ie City staff who drive the city every day to monitor compliance). When there are sites with specific requirements like this, Planning staff communicates those stipulations to Community Enhancement staff. Further, City staff can also use internal software to place a flag on this property, and whenever Planning staff is out, can and do also note site compliance. Finally, City staff is very responsive to any residents who report stipulation violations.

Commissioner Brown stated he had questions about the stipulations: Stipulations #6 and #7 seem conflicting. Stipulation #6 says no outdoor overnight storage, and then Stipulation #7 says salvage vehicles must be stored in a certain location.

Ms. Schuller confirmed there are salvage vehicles and explained the distinction is vehicles that will be repaired by the business (vehicles awaiting repair) versus the salvage vehicles (vehicles that are too far gone to be repaired and are going to be picked up by a transport vehicle and taken off the site). Ms. Schuller confirmed staff is aware the applicant would have salvage vehicles parked on the east property line, which are not considered as part of those vehicles awaiting repair.

Commissioner Brown asked if there was a time limit on the salvage vehicles, and Ms. Schuller answered staff did not place the time limit on those.

Commissioner Brown stated regarding parking places, that if the applicant has 50 employees, then 152 parking places seems to be a lot to ask for and he requested further explanation. Ms. Schuller stated the applicant may also need to answer during their presentation, however, staff categorized parking by what the applicant anticipated for customer parking, employee parking, storage areas, and vehicles that are being dropped off or brought into the building at various times

of the day. Since the applicant has other existing locations, they know their operations pretty well and what their needs are.

Mr. Curt Peterson, Polsinelli, on behalf of the applicant, presented their application. He stated on November 13th, the Commission discussed the rezoning, but not the plan because of the way Olathe procedures happen. Thus, this is the first time the Commission is seeing this plan. The applicant appreciates that the Council has provided the opportunity to present a plan and specifically a robust set of stipulations that were worked out collaboratively with staff to ensure that the operations, if this project is able to move forward, happen in a positive way for the community. Since the comments and recommendation of the Council are about the plan and the stipulations, Mr. Peterson stated he would refrain from getting into the broader use topic but was happy to answer any questions regarding that at the end.

Mr. Peterson began with the development plan and presented two images. He pointed out the northern privacy fence and the south façade. Setting aside the parking waiver, Mr. Peterson directed the Commission to note that there is not a single critique of the development plan in the staff report. Mr. Peterson stated that staff did their job, and B Street and their architect tried hard to accommodate all code requirements and every suggestion staff made. Whether it's building materials, building designs, setbacks, or landscaping, Mr. Peterson stated the applicant has either met or exceeded the code requirements. He gave the example of the landscaping which they exceeded in quantity, size, width on three sides of the building.

Mr. Peterson continued that the applicant is asking for one waiver, to parking, and offered justification for why the amount of parking is necessary. The applicant proposes 152 parking stalls in the entire lot, which makes a waiver necessary because that exceeds the 85 stalls that the code would allow. However, Mr. Peterson stated that 70 of the parking stalls are needed for storage of cars, which means 82 true parking stalls are for regular parking. Those 82 stalls – for employees, customers, etc – are less than the 85 maximum.

Mr. Peterson continued that the excess stalls are used for storage that is not visible. The storage stalls are oriented so they're either blocked by the building on the east side or they're blocked on the north side and northwest corner by a fence with landscaping. Mr. Peterson expanded that on the master development to the north, there is landscaping, and on the east side, there is landscaping and the fence. Staff recommended and applicant agreed to extend the fence with extra landscaping in the southeast corner. The goal is to ensure the storage was not viewable to the public. Mr. Peterson restated that yes, they are requesting a parking waiver which will require Commission feedback and Council approval, but it's not "parking" per se, but rather storage and to that end, only B Street employees will interface with that storage area.

Mr. Peterson answered Commissioner Brown's concern by adding that true retail parking and employee parking is within the code allowance (85 stalls); the storage stalls are the ones that cause the number to jump so a waiver is required. Mr. Peterson added that the owner of B Street (a second generation family business) has explained to him it takes a long time presently to receive parts. From the time they take in the car, diagnose the problem, order the parts, receive the parts, complete the repair and ship it out, several weeks may pass depending on the type of car parts. Thus, that requires B Street to constantly keep cars moving through with inventory and the storage lot. B Street has approximately seven facilities, with decades' experience in operation. The applicant knows exactly what they need without having a situation where they wouldn't have enough space for the employees or for a retail person. This waiver request was very calculated and not in excess for their business.

Mr. Peterson continued that in addition to the development plan, tonight's task includes the stipulations. From first meeting with neighbors and with staff, the applicant has been asking for stipulations and very willing to keep the stipulations, knowing the site will always be restricted by those stipulations. Mr. Peterson provided that Ms. Schuller covered the stipulations well, so he would not replicate. However, he added there are four additional items he wanted to touch on and why there aren't particular stipulations for those items.

First, regarding the concern that traffic will be increased, Mr. Peterson stated B Street is a very low traffic generator. Thus, inserting a stipulation about traffic doesn't make sense because the proposed collision center is objectively a really low generator of traffic.

Second, regarding pollution, there are zero emissions. Mr. Peterson said nothing comes out of the business that doesn't come out of your house or any other building. There are triple, different scrubbers and cleaners from the paint booth as they go out at the top of the building, which are included at all B Street facilities. B Street complies with all regulations.

Third, regarding noise, B Street has to comply with the city's noise ordinance and certainly will. In addition, from the property line in the north to the residential property line to the north is over a football field. From their building to buildings on the north is even farther, and they will have a privacy fence with two layers of landscaping.

Fourth and finally, regarding the size of the building, there's nothing the applicant could do to create a stipulation around that. Compared to the depth and dimensions of a strip retail building, this building isn't different per se than a normal shopping center. Taking into considerations their operation, Mr. Peterson stated they didn't see a way they could make adjustments to address this complaint.

Mr. Peterson summarized that the plan before the Commission was a collaborative effort that was well thought out, and – other than the hopefully justified parking exception – meets or exceeds all of what Olathe expects and requires of its great developments. The applicant worked hard on the stipulations and Mr. Peterson hoped he provided clarity on the reasons certain items didn't make it into the stipulations.

Mr. Peterson asked Commissioner Brown if he could answer the question about salvage.

Commissioner Brown answered that Ms. Schuller had answered, but he had another question and asked the applicant to confirm that of the 150 stalls, 70 of those stalls are for vehicles that are in process. Mr. Peterson confirmed.

Commissioner Brown continued, that Stipulation #6 says those cars can't be stored outside at night which **Mr. Peterson** confirmed. **Commissioner Brown** asked to confirm that if the 70 stalls are all full, B Street will bring 70 cars indoors at night and then take them back out in the morning.

Mr. Peterson confirmed, yes, with one exception: The 70 stalls on the north and down the east includes roughly 10 salvage vehicles, which are vehicles that need to be picked up roughly every three days. Other than the salvage vehicles (which don't get put in every night), everything else does go indoors at night.

Commissioner Brown objected that the parking space seems to be larger than the size of the building. Mr. Peterson confirmed “100% positive” that all those cars will be pulled in. He stated emphatically that he has seen it and has photographs of other facilities where they do that. It’s unbelievable and B Street does it every single day.

Commissioner Brown asked about the vehicles that aren’t drivable but aren't salvage.

Mr. Peterson stated that if there are any of those, they have a forklift that they could pull it in. He agreed that the stipulation says is if it's something awaiting repair and it's not salvage, they would put it in the building. He stated he doesn't think it's very typical, but they would because that's what the stipulation says.

Commissioner Bergida asked to confirm his understanding of the concessions that the applicant made since the application was remanded back: The applicant is adding the fence and additional buffering, and the applicant was very proactive on the stipulations that staff and applicant collaborated on.

Mr. Peterson confirmed and added they also worked on building undulations where there are doors.

Commissioner Bergida asked if any other B Street locations are in residential areas or not. **Mr. Peterson** answered that the Lenexa location is next to residential properties and by Commanche Elementary School. The Legends location is across the street to the east to single family and a little farther to the north. The downtown Omaha location has an elementary school across from it and is close to residential homes. The Lincoln facility is across the street from residential. This is not new for B Street, and they have no ongoing issues.

Commissioner Bergida asked whether any line-of-sight studies were conducted whether someone from their home in the neighborhood would look out and see salvage cars in the parking lot. **Mr. Peterson** answered, yes, he believes a line-of-sight drawing was conducted. He added that due to the elevation change, fence, and landscaping, a person could not see the storage. He stated he believed his professional staff could answer further. Mr. Peterson restated again, that no one can see it unless they go to the back of the building, because it is tucked behind the building, backed by the airport area, behind a fence and against the trash enclosure.

Commissioner Bergida asked to confirm that if he were to drive to Lenexa this evening, whether he would see tires out and cars in the parking lot. **Mr. Peterson** answered perhaps an employee may be there late to clean up. Otherwise, you would see Lenexa has a fenced area in the back, and if you went back there you would see they park their salvage vehicles. B Street in Lenexa isn’t required to move the cars the same way Olathe’ stipulations are directing so there could be an exception. However, B Street still lines up their salvage vehicles and generally moves all the other cars inside their building in Lenexa. On the front of the building, the only way you would see a car after hours is if an employee was there or if there was a car dropped off after hours. If there was an ice storm (ie a “big” night) there may be three cars dropped off. When you pull in, off to your right is where the tow trucks would place a car that was dropped off overnight. The very first thing, an employee gets there at 6:30, before they open at 7:00 AM, they immediately take those cars into the building and do something with it.

Commissioner Bergida asked, if on a Sunday morning, there would be a reason for 20 cars to be parked outside there. **Mr. Peterson** answered that there’s zero possibility of that.

Commissioner Bergida, asked to confirm again there is 100% absolutely no possibility, and **Mr. Peterson** agreed.

Commissioner Terrones asked for clarification whether the row of proposed evergreens, looking east to the airport approach, is three rows or just one row or staggered. **Mr. Peterson** referenced the landscape plan that would definitely say, but he believes it's two staggered or one row zigzagging, as evergreens are often planted.

Commissioner Creighton referenced the fence that staff stipulated be required on the east side extend to the end of the building on the south and asked whether it was going to be gated or open. Mr. Peterson answered it would be open to allow tow trucks to drop off.

Commissioner Bergida asked staff when Council remanded the application back to Commission, what rationale the Council provided for the remand.

Ms. Schuller answered, that first and foremost, the remand was to have staff do a full site plan review and work with the applicant to draft stipulations since staff had not done so previously [When staff recommends denial, staff does not review the associated site plan]. Second, **Ms. Schuller** believes the intent was also to narrowly tailor the application to make this use work on this site or to be a better neighbor.

Commissioner Bergida stated that last time an application was remanded back to the Commission, it seemed it was a pretty split vote. This application was remanded by a vote of six to one. Commissioner Bergida stated, he didn't recall the reason the other application was sent back. Commissioner Bergida asked staff whether the impression was that the Commission was supposed to, with the site plan, come up with something that would best work? Or whether the Council wanted more information so that they could decide whether they wanted to proceed against the Commission's recommendation? Or to better evaluate it?

Ms. Schuller answered, she believed it was to obtain more information so the application can be better evaluated.

Commissioner Brown asked, since the Planning Commission previously recommended denial of this application 8 to 0, when this goes back to City Council, whether it would take a supermajority to pass it.

Ms. Schuller deferred to Ms. Hollingsworth.

Ms. Kim Hollingsworth, Planning and Development Manager clarified that Commissioner Brown was referencing the supermajority vote that's typically required to overturn the Planning Commission's recommendation. She continued that after the remand process, it switched back to just a simple majority (ie four members of the City Council approving the development) which is consistent with UDO and state statute requirements.

Commissioner Bergida asked Ms. Hollingsworth, if the Commission were to deny the site development plan, whether it would then require a supermajority by the Council to approve.

Ms. Hollingsworth answered that that's linked to the rezoning decision, the supermajority. Thus, the Commission's task this evening is just to recommend acceptance of the stipulation as

provided by staff. She clarified, the task is not an approval or denial, it's acceptance of the stipulations or any amendments to them.

Chair Breen stated the Commission's initial recommendation is unchanged, which Ms. Hollingsworth confirmed.

Commissioner Bergida asked, if the stipulations fail to pass, two to four or something like that, whether the threshold for five votes still remains.

Ms. Hollingsworth answered, that she is not aware of that; that has already happened in the process. With the remand, it switched back to a simple majority. Staff is looking for feedback from the Commission and action tonight to give feedback to the Council.

Chair Breen added the Commission needs to give feedback to the Council. If the Commission isn't agreeing, then alternatives should be proposed as replacements. Chair Breen continued he'd like to remind the Commission that both staff and the applicant have reached stipulations that both are amenable to. Based on that, Chair Breen asked for any additional discussion or opened the floor for a motion.

Ms. Hollingsworth added, she would like to defer to Deputy City Attorney, for any additional guidance.

Mr. Chris Grunewald, Deputy City Attorney stated he wanted to echo and maybe clarify for Commissioner Bergida what Planning Manager Kim Hollingsworth was saying. Mr. Grunewald continued that as this matter returns to City Council, it will not require a supermajority regardless of the action the Commission takes tonight. Mr. Grunewald stated the action in front of the Commission is acceptance of the stipulations; he restated that regardless of what the outcome of that decision on those stipulations as recommended by staff will not require a supermajority to do something different on that particular stipulation request. Mr. Grunewald stated he hoped that clarified the Commissioner's question.

Commissioner Creighton asked to confirm that, under proposed Stipulation A(1), staff is not making a recommendation on the parking waiver and so the Commission would need to take an action to accept that waiver or recommend it or not. **Ms. Schuller** confirmed that was correct.

Commissioner Creighton asked if a similar situation was for letter C(1) and (2), referencing fencing material and the quality, the height, the storage area, limit of site or limit of vehicle storage. **Ms. Schuller** confirmed that all stipulations under Sections B & C would be need to be included in a motion as well.

Chair Breen called for any final discussion.

Commissioner Brown indicated he had concerns and would like to propose amendments. First, Commissioner Brown stated he had pulled up an aerial shot from the Johnson County Assessor's Office dated February 19th, which is a Sunday morning. He stated there are 17 cars parked in the parking lot. The business was closed, but yet there were 17 cars out despite being told B Street does not leave cars out – zero percent of that ever happening. Commissioner Brown said he was concerned about that.

Commissioner Brown continued that he also had a Google photo pulled up also which showed on one side, B Street has a 22x12 foot salvage bin full of fenders, hoods, doors and other metal parts. There's a stack of tires and a stack of wooden pallets, in addition to a 40 foot long compacting unit in the parking lot.

Based on these factors, **Commissioner Brown** said he had additional stipulations he wanted to suggest by a motion:

1. Prohibit the short term outside storage of all salvage metal parts, including but not limited to vehicle doors, fenders, hoods and trunks.
2. Prohibit the short term outside storage of any shipping pallets.
3. Prohibit short term outside temporary storage of tires
4. Prohibit the compacting equipment from being outside in the parking lot

Commissioner Bergida seconded the motion.

Chair Breen acknowledged the motion and second. Chair Breen asked Commissioner Brown to reiterate whether he was recommending approval of the stipulations that are presented by staff plus his modifications this evening.

Commissioner Brown answered he was not ready to move that the stipulations [the staff's recommended stipulations] be passed. Instead, he said he wanted the amendments to be added on to what might be voted on.

Ms. Hollingsworth stated to Commissioner Brown that she understood that the discussion now was about these two specific additions right now. First, Ms. Hollingsworth stated Commissioner Brown listed several items that would be prohibited from being stored outside and asked whether it were possible to capture those under topics that relate to the UDO. She continued, if the Planning Commission desired to make that recommendation about those items being stored outside, perhaps it could be captured by something like "outdoor storage of material supplies and equipment are not permitted," to use wording that is typical out of the UDO. Second, Ms. Hollingsworth stated she needed more clarification about what compacting equipment means. There is a compactor proposed behind the building, tucked up close to it that would have screening and be completely behind the building. Ms. Hollingsworth asked if Commissioner Brown was concerned about something different than that.

Commissioner Brown answered that in the aerial photos from Google and from the County, there is a 40-foot compactor outside, set up at an angle to make it easy for whoever is that comes to pick it up, which is what he was referring to.

Ms. Hollingsworth stated she would defer to **Ms. Schuller** who could provide more clarity about what is proposed, and Ms. Hollingsworth added that, according to staff's understanding, the compactor is an essential piece of the business for the applicant.

Commissioner Brown stated he wanted to add that he first believed the compactor was a tractor trailer rig due to its size. It was only by zooming in at different angles that he was able to determine it was instead a compactor.

Ms. Jessica Schuller, Senior Planner answered the applicant does have a compactor proposed on their site plan at the northeast corner. It is fully enclosed with a masonry screen wall as is required by the code. **Ms. Schuller** asked if Commissioner Brown was trying to prohibit that enclosure on the site or instead saying anything in addition to that would not be permitted.

Commissioner Brown answered he personally would not object if it was totally enclosed by masonry. He confirmed he was still concerned about the other three categories he had listed in his motion.

Mr. Chris Grunewald, Deputy City Attorney, proposed a short recess for process. He acknowledged the Commissioners were very focused on stipulations. A short recess would allow him to confer with planning staff on what the UDO might already require at a minimum, in case that addressed some of the concerns raised by Commissioner Brown and then to present to the Commission the staff's recommendation of wording that might best accomplish what the Commissioners are trying to do, before a final vote is taken on the stipulations.

Chair Breen agreed.

Ms. Hollingsworth interjected that although she appreciated Mr. Grunewald's suggestion, she believed the planning staff could provide that feedback immediately without a recess.

Ms. Schuller answered that municipal code 6.06.040 currently regulates against the storage of any nuisance items, which would include tires and debris.

Ms. Hollingsworth added that pallets or other equipment are not specifically regulated under that nuisance requirement of the municipal code, so if Commissioner Brown wants more a encompassing amendment to the stipulations, she suggested the addition along the lines of "outdoor storage and material supplies and equipment are not permitted" whereas the municipal code would capture tires and similar items.

Commissioner Brown asked who would enforce that.

Ms. Hollingsworth answered the City's Community Enhancement team handles violations or resident complaints, in addition to staff's standard observations around the city, to enforce regulations.

Commissioner Bergida asked whether Commissioner Brown wished to include the parking waiver issue or not.

Commissioner Brown said he was personally objecting to 150 spaces, but that would take a different proposal. He didn't wish to include the parking waiver in his stipulation amendments.

Chair Breen asked Ms. Hollingsworth to summarizing the motion on the floor and subsequent discussion thus far.

Ms. Hollingsworth summarized she was not sure there was a formal motion yet, but through discussion there were several items listed by Commissioner Brown which staff recommended could be captured in one stipulation (although staff understands any of those items would be in the compactor unit themselves). If the Commission wants extra reassurance, then it could suggest the following stipulation:

1. Outdoor storage and material supplies and equipment are not permitted.

Ms. Hollingsworth confirmed there was an understanding the compactor unit would be screened by masonry, which Commissioner Brown deemed acceptable, so there would not need to be a stipulation to prohibit the compactor unit. Ms. Hollingsworth added more feedback was still needed on the waiver and the remainder of the stipulations recommended by staff.

Commissioner Creighton stated he would be supportive of the waiver as requested by the applicant as he believed the numbers in the UDO would not be adequate.

Commissioner Creighton continued that he would not be supportive of the additional prohibited items suggested by his fellow Commissioner because the UDO already captures the majority of those items. Further, he believes it would set an excess burden on the business.

Chair Breen echoed Commissioner Creighton's thoughts. He continued that based on the proposed use and project, the waiver makes sense. Further, he stated he was comfortable the UDO as outlined would be sufficient and enforcement through the city would be adequate to address the other issues.

Commissioner Bergida expressed concern. He recounted that the Commission had already recommended denial of this rezoning application, because the Commission did not believe it complied with the Comprehensive Plan. He recalled that at the time of that vote to recommend denial, he was personally about 50-50. However, after further due diligence, he is now 75-25 in congruence with the prior Commission's decision [to recommend denial].

Commissioner Bergida further stated that at the last joint meeting with the City Council, clarity was brought up. Commissioner Bergida recounted he was reminded of the last case the Commission had remanded back from Council, where the Planning Commission recommended denial of that case. It went to City Council, and the Council has the full right to send it back to the Commission. Once the Commission provided recommendations, the Council decided to go a different route. However, Commissioner Bergida stated that when it was presented to City Council it was mentioned that in the past the Planning Commission had voted against this, but when it came down to summary of what the Council was voting on, it was presented that the Council had the option to approve it with these stipulations as recommended by the Planning Commission.

In summary, Commissioner Bergida stated it's his concern in terms of clarity that even though the Commission has recommended against this project, by voting on the stipulations then it could be sending a mixed message in terms of what the Commission believes is actually best and in alignment with the comprehensive plan.

In closing, Commissioner Bergida urged staff, regardless of what stipulations resulted from tonight's meeting, that when it's summarized and presented to City Council that it is clearly outlined, the Planning Commission does not recommend the rezoning of this project. And if the Council does rezone the property, this is the way the Commission would go about it.

Chair Breen stated if there were no further comments, he would entertain a motion on RZ23-0008.

Commissioner Creighton began to make a motion.

Ms. Anna Gourley, Administrative Assistant interrupted that she believed a motion on the amendment was required first.

Mr. Chris Grunewald, Deputy City Attorney clarified there was a motion on the floor by Commissioner Brown to add stipulations, which was seconded by Commissioner Bergida. Ms. Hollingsworth had clarified that one stipulation would be sufficient. One additional stipulation is being moved to amend, before considering the full package. A vote is required first to determine whether the additional stipulation should be considered. Then, consideration of a final motion on the matter would proceed next.

Chair Breen called for a roll call vote on Commissioner Brown's motion, seconded by Commissioner Bergida, with modification by Ms. Hollingsworth to add the following amended stipulation:

1. Outdoor storage and material supplies and equipment are not permitted.

The motion failed by a vote of 3 to 3.

Commissioner Creighton then moved to accept (referencing the staff report's Conclusion) Section A, the waiver, and further moved to accept Items B through C (again referencing the staff report's Conclusion):

- A. In summary, the applicant is requesting the following waiver for consideration by the Planning Commission and City Council:
 1. UDO 18.20.150.C, requiring that no more than 150% of the required parking for a use may be provided on site.
- B. If approved, Staff recommends the following stipulations for the rezoning to the C-3 District:
 1. The following uses are prohibited:
 - e. Recycling Centers and Drop-Off; and
 - f. Mini-Warehouse; and
 - g. Cemetery; and
 - h. Parking Lots, Surface, as Principal Use.
 2. This property is subject to the site design, building material, and building design criteria of Ordinance 99-109 (Sections e, f, and g).

3. The rezoning to the C-3 District must be approved by the Johnson County Airport Commission and Board of County Commissioners prior to the publication of the zoning ordinance.
 4. Installation of the offsite landscape buffer, along the northern limits of the Executive Plaza commercial center, shall be approved and installed prior to issuance of a Certificate of Occupancy for any buildings on the subject lot.
 5. Hours of operation for the Vehicle Painting and Body Shop use are limited to Monday-Friday from 7:00 am to 5:00 pm.
 6. No outdoor overnight storage of vehicles awaiting repair is permitted, except for vehicles delivered after business hours, which must be stored on the east side of the building and relocated the following day.
 7. Salvage vehicles must be stored along the east property line, and may not be stored beyond the northern or southern limits of the building.
 8. Unloading of vehicles from transport vehicles must occur on the east side of the building.
- C. If approved, Staff recommends the following stipulations for the preliminary site development plan:
6. Proposed fencing must be a durable composite material with decorative masonry columns. Wood and chain link fencing are not permitted.
 7. The proposed fence on the east side of the site must be extended south to the "Limits of Vehicle Storage Area" as identified on the site development plans dated February 14, 2024. In addition, the proposed double row of evergreens must be retained.
 8. Building mounted signage is not permitted on the north façade.
 9. All new on-site wiring and cables must be placed underground.
 10. Exterior ground-mounted or building mounted equipment including but not limited to, mechanical equipment, utilities' meter banks and coolers must be screened from public view with three (3) sided landscaping or an architectural treatment compatible with the building architecture.

Chair Breen seconded the motion:

The motion failed with a vote of 3 to 3.

Ms. Hollingsworth asked for clarification on what feedback the Commission desires to be presented to the City Council as a result of those motions. Ms. Hollingsworth asked if the Commission had any further clarification they could provide or if staff can answer any further questions.

Commissioner Bergida asked if the main objection to the amendment, was that the stipulations would be onerous to the business owner or whether there were other objections.

Commissioner Creighton answered he had two reasons: First, much of the proposed amendments are already covered in the UDO and then second, some of it, he felt was excessive.

Commissioner Corcoran and **Chair Breen** echoed Commissioner Creighton's assessment.

Commissioner Creighton answered Ms. Hollingsworth that staff may straightforwardly present to Council that there was a motion to approve and on a split vote, it was denied.

Ms. Hollingsworth confirmed she understands. She asked if there was any further feedback because this item is more an open discussion of what the Commission can provide to City Council when this is passed back to the Council. If there's not interest in further discussion, then staff will take that forward to City Council that it came out a split vote.

Chair Breen stated he was hopeful the Commission may be able to come to some terms based on discussion. He continued that the Council has remanded this back to the Commission for a reason and the Commission needs to give them some guidance. Chair Breen stated the Commission's initial recommendation to Council is unchanged, but if the Council decides to go a different route and approve this, the Commission needs to give them guidelines to help this project move forward. Chair Breen again encouraged the Commission to come to a consensus if additional dialogue may be had so that we can walk away with some sort of guidance for our Council.

Commissioner Brown stated, it is his understanding that no matter how we vote, City Council can override it.

Chair Breen directed that the Commission's only task this evening is a recommendation on the stipulations that staff has outlined. If the Commission feels there's a modification that needs to be made, Chair Breen recommended the Commission make that so that we can give the Council proper guidance.

Commissioner Bergida stated that the items that were already covered by the UDO were the trash or the tires predominantly. He asked whether the part that would be onerous on the business would be specifically regarding the crusher, with requiring the fence and the masonry. Commissioner Bergida continued he was trying to see if there was a solution to have the same effect by making a small adjustment.

Commissioner Creighton answered that understanding the business' operation, he doesn't see how B Street can avoid having something stacked by a trash container when they're going to come forward, and so he could not support the prohibitions.

Commissioner Brown answered, regarding tires, etc. that it was his opinion that if B Street can move 70 cars indoors, then they can also put spare and salvage parts or other supplies inside.

Chair Breen said he doesn't disagree, but since Ms. Hollingsworth has indicated those already covered by unified development ordinance, he doesn't believe having a stipulation repeat that is necessary. Chair Breen asked staff to correct any misstatements in his answer.

Ms. Schuller clarified that the municipal code would not allow anything to be stacked outside anyway. The applicant is already proposing a masonry wall around the entire compactor and anything that they would have in that compactor, is going to be within that wall, so they are not planning to store anything outside anyway. Regardless we're covered under the code, it's going to be screened, and the City's enforcement officers will make sure it's going to be that way.

Commissioner Terrones thanked the Commissioners for the discussion. He noted a photograph of this compactor, with more detail on the location and size, would have been helpful and asked if there was such a picture.

Ms. Schuller brought up a site plan and rendering and demonstrated where the compactor enclosure was planned on the northeast against the building with a screen wall around it and also where the trash enclosure with fencing and landscaping was located on the east side facing the airport.

Chair Breen and Commissioner Corcoran stated the enclosure would have fencing with masonry.

Ms. Schuller confirmed that at the final site development plan review, further detail would be provided. The applicant has agreed to meet code requirements with masonry and attached to the building.

Chair Breen asked if the Commission had reached a consensus on another motion tonight, pertaining to making sure the compactor is fully enclosed and that whether the Commission is satisfied that the existing UDO as it pertains to parts and equipment being left on site will be sufficient.

Commissioner Brown stated he still objected and would vote no.

Chair Breen asked to which part he objected, and **Commssioner Brown** answered he objected to the motion to advance it or not.

Chair Breen asked Commissioner Brown which part he was looking to modify or revise. After clarification, **Commissioner Brown** confirmed he had already made recommendations, which were not passed, and he was not changing his proposed amendment.

Commissioner Bergida moved that the Commission advance forward to the next application.

Chair Breen acknowledged the discussion would close, and **Ms. Hollingsworth** confirmed staff understood the motions and would pass them along to the Council.