



Date December 7, 2015

**RESOLUTION CLOSING HEARING ON APPEAL BY THOMAS WONG OF THE CONDITIONS FOR APPROVAL OF A SITE PLAN FOR AN EXPANSION OF A VEHICLE DISPLAY LOT AT 852 E. 25th COURT AND DENYING SAME**

WHEREAS, on November 5, 2015, the City Plan and Zoning Commission voted 10 to 1 to approve an application by Thomas Wong for approval of a Site Plan titled "Tom's – Denny Murray Lot" pursuant to City Code Sec. 82-214.3 - Design Guidelines for Vehicle Display Lots, to allow a 2,925-square foot expansion of the adjoining vehicle display lot onto the property at 852 E. 25th Court, subject to the following conditions:

1. Provision of a 6-foot wide sidewalk along East University Avenue frontage in compliance with the East University Avenue Design Guidelines.
2. The parcel currently known as 852 East 25th Court shall be combined with the north, unaddressed parcel on the site by the Polk County Assessor to form one tax parcel.
3. Provision of parking lot/display lot plantings in compliance with "C-2" district set forth in the landscape standards and in compliance with all comments contained in the administrative review by the Permit and Development Center.
4. Reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or are relocated
5. Compliance with all administrative review comments by the Permit and Development Administrator.

WHEREAS, Thomas Wong has timely appealed to the City Council pursuant to §82-210 of the Des Moines Municipal Code, seeking relief from the requirement to construct a 6-foot wide sidewalk along the E. University frontage in compliance with the East University Avenue Design Guidelines; and,

WHEREAS, on November 23, 2015, by Roll Call No. 15-1961, the City Council scheduled a public hearing on the appeal, to be held on December 7, 2015, at 5:00 p.m., in the Council Chambers; and,

WHEREAS, notice of the hearing has been provided to the applicant's representative, and published in the Des Moines Register on November 27, 2015; and,

WHEREAS, all persons appearing at the hearing and desiring to be heard regarding the said appeal have been given the opportunity to be heard.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:



46A

Date December 7, 2015

1. The public hearing on the appeal by Thomas Wong is hereby closed.
2. The City Council hereby makes the following findings of fact:
  - a) The proposed Site Plan allows a southerly expansion of an existing vehicle display lot along the south side of University Avenue to include an additional parcel along E. 25th Court.
  - b) The applicant seeks relief from the requirement to provide a 6 foot wide sidewalk along E. University Avenue in compliance with the East University Avenue Design Guidelines.
  - c) The East University Avenue Design Guidelines were adopted on August 28, 1995, by Roll Call No. 95-3349, with the goal of improving and enhancing the appearance and value of properties along the East University Avenue corridor.
  - d) The required 6 foot sidewalk can be constructed entirely on the existing E. University Avenue right-of-way without impacting the existing vehicle display area, or any of the existing trees and landscaping.
  - e) While the construction of the required sidewalk is an inconvenience and expense to the applicant, such factors do not warrant relief from this general requirement applicable to all other development along E. University Avenue.
3. The appeal by Tomas Wong is hereby denied.

MOVED by \_\_\_\_\_ to adopt.

FORM APPROVED:

*Roger K. Brown*

Roger K. Brown, Assistant City Attorney  
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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
MOORE				
TOTAL				
MOTION CARRIED	APPROVED			

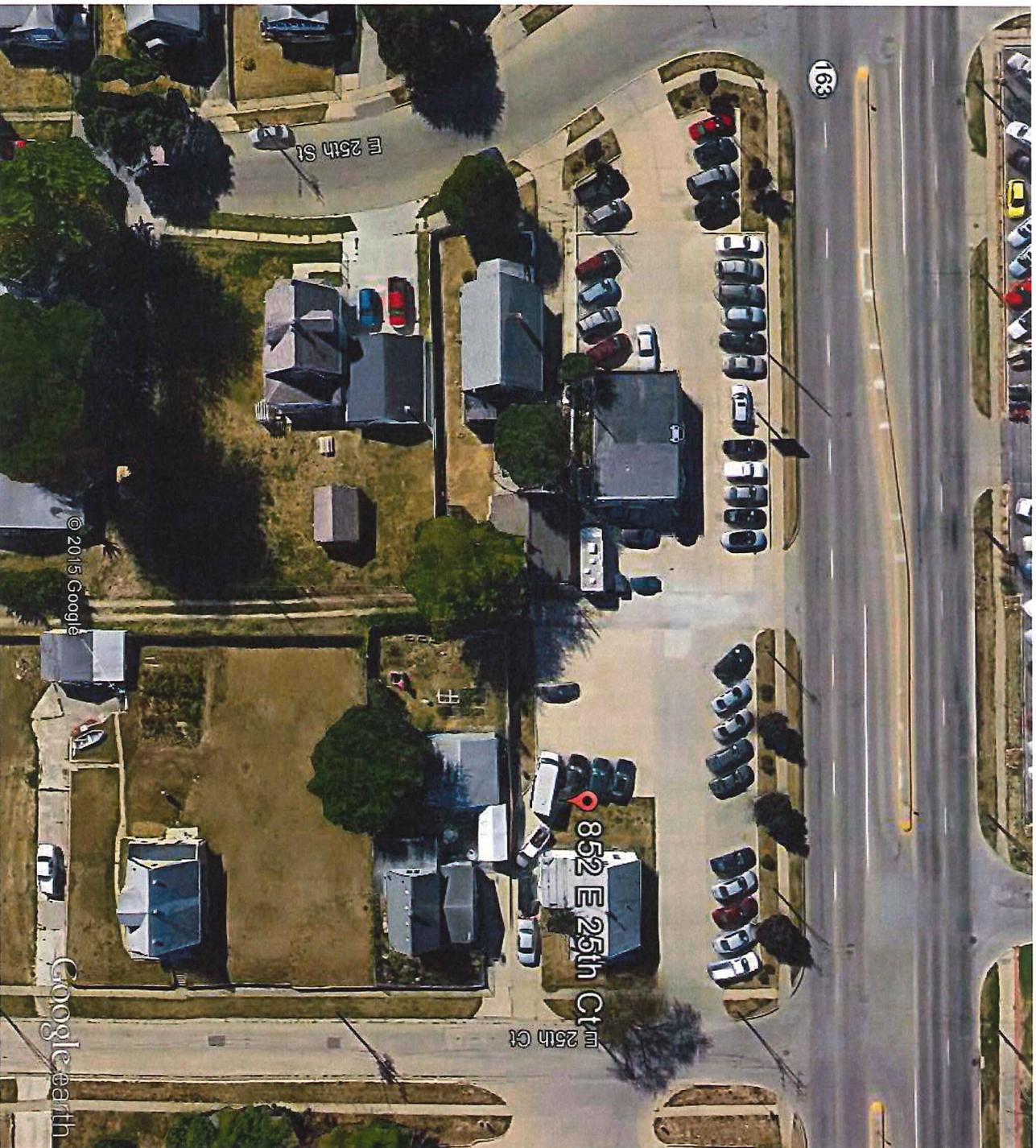
CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



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Google earth

feet  
meters



200  
60



Google earth

**Excerpts from the Plan and Zoning Commission Minutes  
Meeting of November 5, 2015**

**PRESENT:** Dory Briles, JoAnne Corigliano, Jacqueline Easley, Tim Fitzgerald, Jann Freed, John “Jack” Hilmes, Greg Jones, Sasha Kamper, Brian Millard, CJ Stephens and Greg Wattier

**ABSENT:** Will Page, Jonathan Rosenbloom and Mike Simonson

**STAFF PRESENT:** Mike Ludwig, Jason Van Essen, Glenna Frank, and Cathy Whitfield

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**Item 6**

Request from Thomas Wong (owner) 852 East 25<sup>th</sup> Court, for review and approval of a Site Plan “Tom’s – Denny Murray Lot” under design guidelines for vehicle display lots; to allow a 2,925-square foot expansion to the display area. (10-2016-7.32)

**STAFF REPORT TO THE PLANNING COMMISSION**

**I. GENERAL INFORMATION**

1. **Purpose of Request:** The proposed Site Plan would allow expansion of an existing vehicle display lot to include an additional 2,925 square feet (0.067 acres) for an overall site of 0.607 acres. The proposed expansion would be located along East 25<sup>th</sup> Court on the southeast corner of the existing vehicle display lot.

The subject site is located along the East University Avenue commercial corridor. This area currently contains a mix of retail, industrial and commercial uses.

2. **Relevant Zoning History:** On September 27, 2004 by Ordinance No. 14, 372 the City Council rezoned property in the vicinity of 2501 East University avenue, from “C-1” Neighborhood Retail Commercial District to a Limited “C-2” General Retail and Highway Oriented Commercial District with the following conditions:

- A. The following uses of land and structures shall not be permitted upon the Property:

1. Adult entertainment businesses;
2. Tavern or nightclub;
3. Off-premises advertising signs;
4. Package goods store for the sale of alcoholic beverages.

- B. Any commercial use of the Property shall provide the residential district protection required under the Site Plan policies along the south line of the Property, until such time as the land immediately south of the south line of the Property ceases to be used for residential purposes.

3. **Size of Site:** 2,925 square feet (0.067 acres) addition, 0.607 acres total.
4. **Existing Zoning (site):** Limited "C-2" General Retail and Highway Oriented Commercial District, "FSO" Freestanding Sign Overlay District.
5. **Existing Land Use (site):** Vacant lot. The subject property will be part of an overall site that contains and existing vehicle display lot (Tom's Auto Sales).

6. **Adjacent Land Use and Zoning:**

**North** – "C-2"; Uses are East University Avenue right-of-way, auto sales and McDonald's fast food restaurant.

**South** – "C-1"; Use is single-family residential.

**East** – "C-1"; Uses are East 25<sup>th</sup> Court right-of-way and Aldi's grocery.

**West** – "C-1" and Limited "C-2", Uses are alley right-of-way, single-family residential and Tom's Auto Sales.

7. **General Neighborhood/Area Land Uses:** The surrounding area contains a mix of commercial, residential and retail uses.
8. **Applicable Recognized Neighborhood(s):** The subject property is located in the Fairground Neighborhood and within 250 feet of the ACCENT Neighborhood. The neighborhoods were notified of the Commission meeting by mailing of the Preliminary Agenda on October 20, 2015. A Final Agenda was mailed to the neighborhood associations on October 30, 2015. Additionally, separate notifications of the hearing for this specific item were mailed October 26, 2015 (10 days prior to the hearing) to the Fairground and ACCENT Neighborhood Associations and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood associations to the City of Des Moines Neighborhood Development Division. The Fairground Neighborhood Association notices were mailed to Sharon Cooper, 2838 Logan Avenue, Des Moines, IA 50350317. The ACCENT Neighborhood Association notices were mailed to John Avery, 2328 Hubbell Avenue, Des Moines, IA 50317.

9. **2020 Community Character Land Use Plan Designation:** Small Scale Strip Development.
10. **Applicable Regulations:** In acting upon any Site Plan application that includes improvements to property used for display, hire, rental or sales of motor vehicles in a commercial zoning district, the Plan and Zoning Commission shall apply the design standards in City Code Section 82-213 and the additional standards listed below

which are in consideration of the criteria set forth in Chapter 18B of the Iowa Code. The decision to approve, approve subject to conditions or disapprove a proposed Site Plan must be based upon the conformance of the Site Plan with the design standards:

- 1) The construction and use of the site will have no significant detrimental impact on the use and enjoyment of adjoining residential uses, if any.

*The site is located along a major commercial corridor to the north and adjoins a single-family residence to the south. Ordinance No. 14,372 requires adequate screening be provided to protect the single-family residence until such time as the land immediately south of the south line of the subject property ceases to be used for residential purposes. The submitted Site Plan proposes a privacy fence on the south and a 10-foot setback. Staff believes that the applicant's proposal would have no significant detrimental impact on the adjoining residential use so long as any site improvement is constructed with bufferyard plantings in compliance with the City's Landscape Policies.*

- 2) The proposed development shall satisfy the open space and bufferyard requirements for development in the "C-2" district set forth in the Landscape Standards in the adopted Site Plan policies.

*The Site Plan indicates a 10 foot setback with a note stating landscaping shall be provided to match the existing landscape along the south property line. The Site Plan must demonstrate a mix of plantings around the perimeter of the proposed parking expansion in compliance with the City's Landscape Policies as described in Section II of this report.*

- 3) Any portion of the property to be used for outside storage, display or parking of vehicles shall:
  - a) Contain at least one-half acre of land.

*The proposed expansion would add 2,925 square feet (0.067 acres) for an overall site of 0.607 acres to an existing vehicle display lot site.*

- b) Conform to the parking lot/display lot requirements for development in the "C-2" district set forth in the landscape standards in the adopted Site Plan policies.

*The Site Plan indicates a note stating landscaping shall be provided to match the existing landscape along the south property line. It must provide parking lot perimeter plantings of one (1) overstory tree and three (3) shrubs per 100 lineal feet along the south bufferyard area, one overstory tree along East 25<sup>th</sup> Court and a total of one (1) overstory tree and three (3) shrubs per 50 lineal feet along East University Avenue.*

- c) Be surfaced with an asphaltic or Portland cement binder pavement as shall be approved by the city engineer, so as to provide a durable and dustless surface and shall be so graded and drained as to dispose of all surface water accumulation within the area.

*All parking and display areas would consist of concrete or asphalt pavement.*

- d) Incorporate curbs or other substantial permanent barriers to prevent encroachment of the vehicles into the required setback and landscape areas. Precast wheel stops and other barriers that can be readily moved are not acceptable.

*The Site Plan must demonstrate the appropriate curbs as required by the comments contained in the administrative review of the City's Permit and Development Center.*

- 4) There shall be no elevated display of motor vehicles in any required front yard.

*The Site Plan includes a note stating there shall be no elevated display of motor vehicles.*

- 5) The employee and customer parking area shall be clearly designated and shall not be used for the parking, storage or display of motor vehicles for sale, rental or hire.

*The site plan identifies separate parking and display areas.*

- 6) All portions of the property used for the outside parking, display or storage of motor vehicles for sale, rental or hire shall be identified on the Site Plan and the perimeter shall be striped or otherwise conspicuously marked on the parking surface.

*The proposed display areas are separated from the parking with both having proposed pavement marking. Staff believes the submitted Site Plan meets the intent of this guideline*

## **II. ADDITIONAL APPLICABLE INFORMATION**

1. **Street Network:** The site is bounded by the existing vehicle display lot to the north and west, East 25<sup>th</sup> Court to the east and a single-family residence to the south. The proposed vehicle display expansion would be accessed from an existing drive entrance along East 25<sup>th</sup> Court.
2. **Landscaping and Buffering:** The Site Plan is subject to the Landscape Standards as applicable to the "C-2" District since it would be for a vehicle display lot use. The Site Plan must provide parking lot perimeter plantings of one overstory tree along East 25<sup>th</sup> Court and a total of one (1) overstory tree and three (3) shrubs per 50 lineal feet along East University Avenue.

It is also subject to conditions listed in Ordinance No. 14, 372 that requires adequate screening be provided to protect the single-family residence until such time as the land immediately south of the south line of the subject property ceases to be used for residential purposes. The Site Plan indicates a note stating that bufferyard plantings along the south property line would match existing landscaping on site. It does not specify type of plantings. The Site Plan must provide one (1) overstory tree and three (3) shrubs per 100 lineal feet along the south bufferyard area.

3. **Utilities:** There is an existing 5-foot wide sanitary sewer easement running east/west adjacent to the north property line of the parcel north of the subject property. Easements must be reserved for any existing utilities until such time that they may be abandoned or are relocated.
4. **Urban Design:** The proposed Site Plan is subject to the East University Avenue Design Guidelines which require a 10-foot clear zone and a minimum 6-foot wide sidewalk scored in 2 feet by 2 feet sections.

### **III. STAFF RECOMMENDATION TO THE PLAN AND ZONING COMMISSION AND BASIS FOR APPROVAL**

Staff recommends approval of the submitted Site Plan under design guidelines for vehicle display lots, subject to the following conditions:

1. Provision of a 6-foot wide sidewalk along East University Avenue frontage in compliance with the East University Avenue Design Guidelines.
2. The parcel currently known as 852 East 25<sup>th</sup> Court shall be combined with the north, unaddressed parcel on the site by the Polk County Assessor to form one tax parcel.
3. Provision of parking lot/display lot plantings in compliance with "C-2" district set forth in the landscape standards and in compliance with all comments contained in the administrative review by the Permit and Development Center.
4. Reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or are relocated
5. Compliance with all administrative review comments by the Permit and Development Administrator.

### **SUMMARY OF DISCUSSION**

Jason Van Essen presented the staff report and recommendation.

Brian Millard asked if this site is going to be brought into compliance wouldn't that include landscaping along the entire frontage.

Jason Van Essen stated yes that is what was intended by condition #3. If desired the Commission could include additional language.

Brian Millard asked if the site plan would come back to the Commission.

Jason Van Essen stated no, it would just be reviewed administratively. That is why condition #5 is added.

Brian Millard asked the Planning Administrator if normally the Commission sees used car lot site plans.

Mike Ludwig stated yes the Commission reviews and approves vehicle display lot site plans. This would be an approval with conditions. The final landscaping would just be approved by staff. It is described in the landscape standards how many trees, how many shrubs are required.

Brian Millard stated his interpretation is that the entire site would have to be in compliance.

Jason Van Essen stated the staff recommendation is the perimeter plantings. So there would not necessarily be any interior plantings. The perimeter of any parking lot display area along a street frontage.

Corey Sharp speaking on behalf of Thomas Wong stated they are planning to conform with all of the perimeter plantings staff has recommended. The only exception the owner has taken is widening the sidewalk to 6 feet. The reasons is all of the existing plantings, all the mature trees, all of the mature bushes along that frontage would most likely need to be taken out and or would die along with that construction, which would cause them to have to replant new immature plantings in those areas, as well as, add additional cost to the owner for a small area being paved which is already leveled. Another reason for adding this paving was to take a way a house in the neighborhood that was deteriorating.

Mike Murray 3224 E. Douglas stated he has been on this site for going on 19 years. He and Thomas Wong bought the property together. They are trying to expand. He presented pictures to show if they set that sidewalk back 2 feet, they would have to remove a pole sign which would be a cost and they would have to remove a parking lot curb that already sits 1 foot inside the sidewalk. To navigate in and out of their two front garage door bays and to get traffic to flow they are just not going to have the room.

Greg Wattier asked the width of the existing sidewalk.

Mike Murray stated it is 4 foot wide.

Greg Wattier asked if the applicant would provide additional landscaping in lieu of the wider sidewalk.

Mike Murray stated yes but he does not know what more they can do than they already have.

Brian Millard asked staff if there is leniency in providing the additional sidewalk width toward the street instead of coming across the landscaping.

Mike Ludwig stated staff would have to look at the existing impediments within the right-of-way and consult with Traffic and Transportation. He believes that due to the speed along University Avenue they would not want an attached sidewalk to the curb at that location.

Brian Millard asked if staff could work with the applicant to determine if it was possible.

Mike Ludwig stated yes.

Sasha Kamper asked to see the picture and for Mr. Murray to point out where the trees and sign are that he noted would have to be removed.

Mike Murray pointed out the sign and trees.

Sasha Kamper asked how many trees and how old are they on the subject lot.

Mike Murray pointed out the places there are already trees and evergreens and where they will be adding more. They will be adding 3 trees and evergreens across the back to match the evergreens already in place.

Sasha Kamper clarified that there are already 3 or 4 mature trees on the proposed lot.

Mike Murray stated yes and the age of the trees, he believes they were installed in 2006 or 2007.

#### **CHAIRPERSON OPENED THE PUBLIC HEARING**

Greg Jones asked if anyone was present to speak on this item. None were present or requested to speak.

#### **CHAIRPERSON CLOSED THE PUBLIC HEARING**

Brian Millard moved staff recommendation with provision of staff work with the applicant on condition #1 to explore other solutions than having to move the landscaping to achieve the streetscape plan.

Mike Ludwig clarified that if they are not able to extend it towards the street side then Commissioner Millard will be comfortable with a 4 foot walk along the frontage.

Brian Millard stated he defers to staff to make the administrative decision.

Greg Jones stated that this plan was worked on a long time ago and it is grief to get 6 feet. This is the opportunity for it to happen. Therefore, he is not going to support Commissioner Millard's motion for fear a 4 foot walk will end up there.

CJ Stephens concern is if a 6 feet walk is required, it will take away planting area for the streetscape trees also.

Tim Fitzgerald stated he is in agreement with Commissioner Jones and will not be able to support Commissioner Millard's motion because the south side is struggling to get the used car lot up to par and he would not be able to say it was allowed on University but can't allow it on SE 14<sup>th</sup>.

Sasha Kamper stated she would have been more concerned has the trees been older.

CJ Stephens stated 10 years is when a tree starts bringing value to the environment.

**COMMISSION ACTION:**

Brian Millard moved staff recommendation with provision that staff work with the applicant on condition #1 to explore other solutions than having to move the landscaping to achieve the streetscape plan.

**THE VOTE: 1-10 Motion Failed (CJ Stephens, John "Jack" Hilmes, JoAnne Corigliano, Dory Briles, Jacqueline Easley, Greg Jones, Jann Freed, Sasha Kamper, Greg Wattier and Tim Fitzgerald)**

Tim Fitzgerald moved staff recommendation approval of the submitted Site Plan under design guidelines for vehicle display lots, subject to the following conditions:

1. Provision of a 6-foot wide sidewalk along East University Avenue frontage in compliance with the East University Avenue Design Guidelines.
2. The parcel currently known as 852 East 25<sup>th</sup> Court shall be combined with the north, unaddressed parcel on the site by the Polk County Assessor to form one tax parcel.
3. Provision of parking lot/display lot plantings in compliance with "C-2" district set forth in the landscape standards and in compliance with all comments contained in the administrative review by the Permit and Development Center.
4. Reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or are relocated
5. Compliance with all administrative review comments by the Permit and Development Administrator.

**THE VOTE: 10-1 Motion Passed (Greg Wattier voted in opposition)**

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