

March 24, 1994

Greg Struve
Rosa Development
2424 North Federal Highway, Suite 459
Boca Raton, Florida 33431

RE: Case 9250AB-94

Dear Mr. Struve:

At its regular meeting of March 21, 1994, the City Council approved the revised preliminary development plan for a phased office tower and structured parking facility at 3700 and 3750 East 80th Street (Case 9250A-94), subject to the following conditions:

- 1) A development agreement be executed by the applicant and the City including all conditions of approval prior to the issuance of any building or grading permits for the parking structure;
- 2) The office tower is subject to final development plan approval;
- 3) A minimum of 157 spaces shall be made available to the Hilton Hotel, subject to the agreement between the Hilton Hotel and Rosa Development dated December 19, 1985;
- 4) **The City agrees to grant permanent approval status to the surface parking facility upon the completion and issuance of an occupancy permit for the parking structure;** ★
- 5) As a permanent facility, the surface parking lot shall be modified to meet all City Code requirements, and a program shall be established to assure compliance prior to the issuance of an occupancy permit on the parking structure;
- 6) No parking, driveway or service areas shall occur in the yard areas abutting East 80th Street;
- 7) The applicant shall be responsible for amending the Minnesota Pollution Control Agency's Indirect Source Permit (ISP) 92-1 prior to the issuance of a building or grading permit for the parking structure;
- 8) Prior to the approval of a final development plan for the office building, the developer shall show the following:
 - a) That 157 parking spaces shall be provided for use by the Hilton Hotel;
 - b) That a minimum parking ratio of four parking space per 1,000 square feet of gross leasable area, exclusive of the 157 space provided to the Hilton Hotel, shall be provided;
 - c) That the minimum parking ratio be maintained either by reducing the size of the office building or by increasing the number of parking spaces;
- 9) **If the developer has not begun construction of an office building, or other development subsequently approved by the City Council, on the site prior to April 1, 2004, the conditional use permit for remote airport parking use of the premises shall expire, and the operator shall cease use of the premises for remote airport parking by July 1, 2004;** ★
- 10) Floor area ratio calculations for the total site area shall be based upon the land area of both parcels in this planned development (parcel 1 (451,303 square feet) plus parcel 2 (128,980 square feet) equals 580,283 square feet);

9250 AB 94

- 11) If the developer has not begun construction of the parking structure prior to October 1, 1994 and substantially completed construction by June 1, 1995 this conditional use permit for remote airport parking and approval of preliminary and final development plans shall expire and cease to be valid;
- 12) If the developer has not begun construction of the parking structure prior to October 1, 1994 and substantially completed construction by June 1, 1995, the developer agrees to forfeit any and all claims to unused parking spaces subject to the Indirect Source Permit 92-1;
- 13) If the developer has not begun construction of the parking structure prior to October 1, 1994 and substantially completed construction by June 1, 1995, the developer shall provide space to accommodate 157 parking spaces for the Hilton Hotel within the area of this planned development, and when constructed these parking spaces shall fully comply with City Code development standards, as approved by the Planning Manager and City Traffic Engineer.

Also, on March 21, 1994, the City Council approved a final development plan for a structured parking facility at 3700 and 3750 East 80th Street (Case 9250B-94), subject to the following conditions being satisfied prior to the issuance of any building or grading permits:

- 1) Exterior building materials be approved by the Planning Manager;
- 2) An interior trash storage room be provided as approved by the Manager of Environmental Services;
- 3) A 6 foot sidewalk be installed along East 80th Street in the existing easement at the developer's expense;
- 4) Grading, drainage, utility and erosion control plans be approved by the City Engineer;
- 5) A SAC questionnaire be completed and submitted to the Department of Public Works;
- 6) Access, circulation and parking plans be approved by the City Traffic Engineer;
- 7) Erosion control measures be in place prior to issuance of grading permits;
- 8) Exterior lighting plan and building security plans be approved by the Chief of Police;

and subject to the following conditions of approval:

- 9) Alterations to utilities be at the developer's expense;
- 10) Lower level of enclosed parking structure be sprinklered as approved by the Fire Marshal;
- 11) Signage should be as follows: 1) one wall sign on the west elevation consisting of individual letters and trademark bands not to exceed 134 square feet; and 2) one wall sign on the south elevation consisting of individual letters and trademark bands not to exceed 58 square feet. Sign specifications and locations to be approved by the Planning Manager;
- 12) NURP drainage pond not encroach within 20 feet from the street right-of-way;

Greg Struve
March 24, 1994
Page Three

and subject to the following Code requirements:

- 1) Landscape plan be approved by the Planning Manager (Sec 19.52);
- 2) Utility plan showing location of existing and proposed water main and fire hydrant locations be approved by the Fire Marshal and Utilities Engineer (Sec. 6.20, Uniform Fire Code Ch. 10.301-C);
- 3) Building be provided with an automatic fire sprinkler system as approved by the Fire Marshal (Mn Bldg Code 3802; Uniform Fire Code Ch 10.306);
- 4) Utility plan showing location of existing and proposed water main and fire hydrant locations be approved by the Fire Marshal and Utilities Engineer (Sec. 6.20, Uniform Fire Code Ch. 10.301-C); and
- 5) Disabled access be provided to the building (Mn Bldg Code Chapter 1340).

Should you have any questions regarding this action, please contact Robert Sharlin at (612) 887-9636.

Sincerely,



Clark Arneson
Planning Manager

L9250.doc

9250 AB 94

8. 20-foot drainage and utility easement be provided along the north property line; and
9. Planting easement provided along Lyndale Avenue except where the two driveways are shown on the plan.

Adopted an Ordinance
Rezoning Properties at
3700 and 3750 East
80th Street
Case 10000C-02
Item 4.5A
O-2002-33

Motion was made by [redacted], seconded by Abrams, and all voting aye, to adopt an ordinance rezoning the properties at 3700 and 3750 East 80th Street, Case 10000C-02, from CS-0.5(PD), Commercial Service (Planned Development) to CS-1(PD), Commercial Service (Planned Development) for the City of Bloomington.

Lee explained that this rezoning request is simply to correct an inaccuracy in the official zoning map.

No public testimony was received.

Directed Staff to Prepare
a Resolution of Partial
Denial for Case File
#9250AB-94 for
Rosa Development
Case 9250A-02
Item 4.5B

Motion was made by Fossum, seconded by Wilcox, and all voting aye, to direct staff to prepare a resolution of partial denial for the October 7, 2002, Regular Council meeting approving the revised final development plan to change the date in Condition #9 in Case File #9250AB-94 from 2004 to 2009 at 3700 and 3750 East 80th Street for Rosa Development and to clarify the three conditions listed in the staff materials, including the revised Condition #1 as read at the meeting, and denying an additional five year extension based on market conditions.

Lee explained that this parking was previously approved by the Council with the expectation that it would be temporary and would eventually become parking for an office building. He stated that one of the conditions of approval set forth in 1994 would require the parking for the Park-n-Fly would cease in 2004. The applicant has applied for a revision of that condition and the Planning Staff and the Planning Commission recommend approval of revising the Development Plan, changing Condition #9 to have that use cease on or before 2009. He stated that the applicant has requested a change in the wording of Condition #1 for this revision proposal. He proceeded to read the wording of Condition #1 as was approved by the Planning Commission: "At the request of staff, a report detailing efforts to market the property for development be submitted to the Director of Community Development on or after July 1, 2005. This report shall include but not be limited to any agreements with brokers, contacts, inquiries with potential developers or potential users, and copies of all marketing materials prepared and distributed to promote development of the property."

Ornstein inquired of Lee if the three conditions recommended by staff were approved by the Planning Commission also, as the Planning Commission minutes only indicated two conditions of approval.

Speaker #1: Bill Griffith, Larkin, Hoffman

He stated that staff deleted Condition #2 relating to ceasing all marketing and stated that his client agrees because if the property is going to be run well, they will continue to market it. He stated that it was understood that they would provide one report during the new term and that would be on or after July 2005 and that it was agreed to by staff, the applicant, and the Planning Commission. Therefore, he agrees with the condition as read by Larry Lee.

Peterson stated that the parking use could be so lucrative that in the future that the owner may decide that it may not be economically viable to transition to another use that would be more in line with what the City had envisioned for the site. He inquired if staff sees parking here in the foreseeable future due to the economics of the situation.

Lee confirmed that the return on investment for a remote airport parking use is exceptionally good and few development opportunities would give the same return on investment. Therefore, it is likely, unless the office market or the hotel market in this area gets very active by 2009, that remote airport parking will still be the best return on investment for the owner.

Abrams stated that 8½ years ago the Council gave the owner a deadline to put up an office building and so far nothing has happened, therefore, he is reluctant to give him another five years. He stated he doesn't see the benefit of requiring the annual report and doesn't see anything preventing them from coming back in another five years asking for more. He stated that he didn't think he could support giving them another five years to run the property as it has been if the City wants to see more development and less parking lots along 494.

Griffith stated that this property is essentially a permanent use as fairly significant improvements have been made to it. He stated that the parking facility generates \$400,000 in taxes each year for the City and was designed to carry an office, which it is intended to do someday. He agreed that while the return is good on this property, it is not as good as it would be if there was 750,000 feet of potential office development. He pointed out the differences between the intent of the temporary conditional use permit at the Park & Go facility and that of the Park-n-Fly with its significant improvements. He stated it has been a good use of the property on an interim basis as it returns \$400,000 in taxes annually to the City, supports the airport, which is part of the purpose of the Airport South District, and also provides for a good interim use while waiting for the market to return. He commented that East Bloomington has not shown itself as a strong multi-tenant office sector. He stated that they requested a 10-year term due to necessary arrangements with their management company beyond one or two years. He added that the Twin Cities market has a three-year supply of office space even without any new construction during that time, therefore, it is not feasible to build new office in that market based on today's rent.

Winstead inquired if a parking ramp only use would be viable for someone within Bloomington if the Council denied this application request.

Lee replied that it could be used by automobile dealers for new car storage, which would require a use permit.

Winstead stated he would not be comfortable supporting a 10-year term but supports five years.

Wilcox agreed with Winstead that the office market is soft over on the east side.

Speaker #2: Kelly Doran, On Behalf of Rosa Development

Regarding Rosa's agreement with Park-n-Fly, Doran stated that there is an out clause that would allow them to sell the property before the end of the term if the office market becomes ripe in 4-5 years.

Fossum stated that he could support the five-year extension because it's a permanent structure, a nice looking parking ramp and proceeded to make a motion.

Motion was made by Fossum, seconded by Wilcox, to direct staff to prepare a resolution of partial denial for the October 7, 2002, Regular Council meeting approving a five-year extension of the deadline to April 1, 2009, but denying an additional five year extension based on market conditions with a clarification of the conditions of approval.

Elkins stated that he would like to see the Council reopen this development in approximately three years to reassess market conditions, as this service is popular and lucrative, and that without some motivation this use could stay as it is for a long time.

Motion was made by Abrams, seconded by Elkins, to amend the motion to replace five years with three years. Motion failed 2-4-0 (Winstead, Fossum, Wilcox, and Peterson opposing).



Mayor then called the main motion requesting a resolution of partial denial approving the five-year extension to April 1, 2009 but denying an additional five-year extension. Motion passed 6-0.

...to clarify her remark about the lights being left on the main building, and for the Council to have a verbal commitment from the Park District that they would try not to have them on so much.

Winstead requested the Park District include all the required elements in their annual reports.

Motion was made by Wilcox, seconded by Nordstrom, and all voting aye, to close the public hearing on an application by Three Rivers Park District for Final Site and Building Plans for a 748-square foot utility building for a pump house for snow making at 8800 Chalet Road, Case 8046A-09.

Elkins, commenting on the merits of the proposal, stated while this will improve the situation, the City should continue working to try and mitigate the existing problems.

Winstead requested the Park District work to keep the lights at a minimum.

Motion was made by Axtell, seconded by Nordstrom, and all voting aye, to approve the Final Site and Building Plans to construct a 748-square foot upgraded replacement pump house utility building as an accessory use at the Hyland Ski and Snowboard area, for snow making during the ski and snowboard season at 8800 Chalet Road, Case 8046A-09, for Three Rivers Park District, subject to the following 4 conditions of approval and 3 Code requirements being satisfied prior to the issuance of any grading or building permits, as set forth by the Planning Division Staff and the Planning Commission:

1. The Grading and Erosion Control plans shall be revised for approval by the City Engineer prior to the issuance of any permits;
2. A Nine Mile Creek Watershed District Permit shall be provided if required.
3. A National Pollutant Discharge Elimination System (NPDES) construction site permit and a Storm Water Pollution Prevention Plan (SWPPP) shall be provided;
4. Erosion Control Bond shall be provided;

and subject to the following City Code requirements:

1. All construction stockpiling, staging, and parking take place on-site and off of adjacent public streets;
2. All loading and unloading occur on site and off of public streets; and
3. The snow making noise levels are maintained or reduced from the approximate noise levels indicated on applicant's noise modeling for proposed Scenarios 1 and 2 (Table 2, page 29, 2009 Technical Memorandum from HDR Engineering, Inc. noise consultants); and the conditions attached to the permanent noise exemption granted December 7, 1992 continue to apply.

Directed Staff to Bring Back Resolution of Partial Denial, Partial Approval for Rosa Development at 3700 & 3750 American Boulevard East Case 9250AB-09 ITEM 5.2C

Planning Manager Bob Hawbaker provided the staff report on an application by Rosa Development, owners of Park N' Fly, for an Interim Use Permit (IUP) for a Remote Airport Parking facility and for a variance to extend the IUP period from five years to ten years. He indicated the Interim Use Permit is recommended for approval by staff and the Planning Commission with three conditions but they recommend denial of the IUP extension. He stated five years is the maximum length a permit can be considered interim and that Remote Airport Parking is inconsistent with the City's long-term vision for Airport South. He stated the goal in the Comprehensive Plan is to transform the district's density and character from suburban to urban. He stated Remote Airport Parking contributes less to the economic vitality of the City and the neighborhood than uses such as office, hotel, residential, restaurants, retail and entertainment in the densities envisioned for the site. He stated staff's analysis of the applicant's reasons for requesting the variance reveal that they are primarily economic, estate planning, financing availability, and normal maintenance. He stated Minnesota statutes state that, "the economic considerations alone shall not constitute an undo hardship if a reasonable use of the property exists under the terms of the ordinance."

Wilcox commented if five years is the longest length for an Interim Use Permit, why has the Council continued to approve this since 1988.

ITEM 5.2C continued

Grady questioned Finding #6 requiring the owner sign an agreement.

Ornstein explained that the agreement requirement shouldn't have been in there, as it was pulled out of the Council's latest ordinance version.

Speaker #1: Bruce Malkerson, Representing ROSA Development Company and Robert Muir, General Partner of ROSA and Owner of Park N' Fly

He stated the laws and the facts support granting the variance and the Interim Use Permit. He referenced the City Attorney's memo that was provided to the Planning Commission at the meeting stating that nowhere in that opinion did he state that the Council can't grant the variance. He stated the memo does not say that the applicant has failed to meet the legal tests. He stated whether granting the variance is good for the City is not a legal test. He disagreed with staff that a five-year time frame constitutes a reasonable use of the property. He stated not granting the variance because there is a reasonable use of the property without it, is not the law. He cited the Raul case and stated the court said, "the statute is clearly intended to allow cities the flexibility to grant variances in cases where the constitution does not compel it." He stated the first part of undue hardship reads, "as requiring a showing that the property owner would like to use the property in a reasonable manner that is prohibited by ordinance." He believes the courts would say that granting a variance for Remote Airport Parking for ten years is a reasonable use. He requested the Council grant the variance for the reasons he outlined.

In response, Ornstein referenced his memo stating he cited the same case as Malkerson and that the issue is whether or not the City Council can make the relevant findings for the granting of a variance. He stated one of which is economic considerations alone cannot constitute a basis for granting a variance. He stated the Council can't deny it based on the fact that they already have a reasonable use of the property but they do have a wide discretion in granting a variance and if they can't make the findings, they are justified in denying it.

Grady stated the Council can't make the finding that the reason the applicant is asking for the variance is not the result of the actions of the applicant. She believes the ten years is a request or need of the applicant, Mr. Muir.

Malkerson referenced page 12 of his letter citing the Raul case, which he says meets the test.

Bernhardson stated if Council agrees with the Planning Commission recommendation, it should request the City Attorney bring back a resolution on August 3 of partial approval, partial denial.

Grady wanted assurance that the applicant could come back and submit a new application in five years. Staff reassured her they could.

Motion was made by Grady, seconded by Axtell, and all voting aye, to request the City Attorney bring back a resolution on August 3, 2009, denying the variance to extend the Interim Use Permit period from 5 years to 10 years and approving an Interim Use Permit for Remote Airport Parking at 3700 & 3750 American Boulevard East, Case 9250A-09 and 9250B-09, expiring July 1, 2014, for Rosa Development.



Application for renewal of a Temporary Conditional Use Permit at 8520 Emerson Avenue Case 8274ABC-09 ITEM 5.2D1,2,3

for renewal of a Temporary Conditional Use Permit (TCUP) for the parking and storage of a Class motor home. He stated this item was continued from the June 22 meeting and reported the property has been inspected by the City's Building & Inspection Division and Environmental Health Division and it's in compliance with the conditions of approval and Building and Environmental Health codes. He recommended the TCUP be approved subject to the modified conditions presented adding TCUPs are still being used for Recreational Vehicles (RVs).

Ornstein stated it's debatable whether Temporary Conditional Use Permits are variances.

~~ITEM 5.2A continued~~

- ~~1. The Conditional Use Permit is limited to the 3,000 square feet of floor area as shown on the plans approved in Case 6190A-09;~~
- ~~2. All applicable building, electrical, plumbing, and related permits necessary for alteration, renovation, or modification of the building space for the intended use shall be obtained; and~~
- ~~3. All body art licenses shall be obtained as required.~~

~~and subject to the following Code requirement:~~

- ~~1. All business and temporary signage shall be in compliance with the Sign Code; and~~
- ~~2. The applicant must submit a code-complying lighting plan.~~

~~No staff report was provided and no public testimony was received.~~

**Adopted Resolution
Approving a
Conditional Use
Permit at
10800 Lyndale Ave. S.
Case 7089A-09
ITEM 5.2B
R-2009-81**

Motion was made by Nordstrom, seconded by Elkins, and all voting aye, to adopt a resolution approving an athletic club/fitness studio business in an existing office/warehouse building at 10800 Lyndale Avenue South (tenant address: Suite 75), Case 7089A-09, for Free Sprit Fitness, subject to the following condition of approval and I Code requirements set forth by the Planning Division Staff and the Planning Commission:

1. All business licenses shall be obtained as required;

and subject to the following Code requirement:

~~1. Signage shall comply with the Sign Code and Uniform Sign Design~~

**Adopted Resolution of
Partial Approval and
Partial Denial for Rosa
Development at 3700 &
3750 American Blvd E
Cases 9250AB-09
ITEM 5.2C1,2
R-2009-82**

Ornstein directed staff to adopt the resolution denying the variance request by Rosa Development to extend the Interim Use Permit for Remote Airport Parking at 3700 & 3750 American Boulevard East, Cases 9250A and 9250B-09, from five years to ten years.

Speaker #1: Bruce Malkerson, Representing Rosa Development

He requested the Council approve the Interim Use Permit and the variance to extend it from five years to ten years.

Motion was made by Grady, seconded by Wilcox, and all voting aye, to adopt a resolution approving an application by Rosa Development for an Interim Use Permit for five years to operate a Remote Airport Parking facility at 3700 & 3750 American Boulevard East, Cases 9250AB-09, and denying an application by Rosa Development for a variance to extend the term of the Interim Use Permit from five years to ten years, subject to the following 3 conditions of approval as set forth by the Planning Division Staff and the Planning Commission:

1. The Interim Use Permit to use the site for Remote Airport Parking expires on July 1, 2014;
2. The applicant must sign an updated development agreement for the site between the applicant and the City incorporating all conditions of approval;
3. Physical changes to the site must not be made prior to approval by the Planning Manager and the issuance of necessary permits.



**Adopted Resolution
Amending Fees &
Charges
ITEM 5.5A
R-2009-83**

~~Motion was made by Grady, seconded by Wilcox, and all voting aye, to adopt a resolution amending the fees and charges for services provided by departments and divisions of the City of Bloomington (greater than those otherwise established by ordinance) as follows:~~

~~Ice Garden (Ice Rental) \$170/hr. + tax (current fee) to \$175/hr. + tax (amended fee)~~

**City Council Policy &
Issue Update
ITEM 6.1**

The City Manager reminded Council of the work session scheduled ahead of the Regular meeting on August 24 and that there will be no study meeting on August 31. He stated Council members participating in National Night Out should meet in the Haag Conference Room at 5:30 pm on Tuesday.

Nordstrom commented on the Izaak Walton League of America - Solar Power Truck that occurred over the weekend. Staff and citizens well attended.

ments. The Mayor asked the staff to make a copy of the map for Ms. Dahl showing the area of discussion.

Vote was called on the motion to approve the handicapped parking with the conditions; to postpone the parking lot expansion until the April 27 meeting; and to refer to the Traffic and Transportation Advisory Commission the matter of a study of traffic problems in the area for recommendation to the Council at the April meeting. All voted aye, and the motion carried 7-0.

Johnson asked the Police Chief to increase the Police Department's patrol effort in this

Ordinance Rezoning
Property and Preliminary
Development Plan
Case 92508-91
Item 4.9
0-92-19

The Council was requested by Rosa Development to adopt an ordinance rezoning property at 3700 and 3750 East 80th Street from CS-1 to CS-1(PD) and to approve the preliminary development plan for a phased parking structure and office development.

The Planning Commission, at its meeting of January 23, recommended denial of the rezoning and of the preliminary and final development plans. The Planning Division staff recommended approval of the rezoning (for a planned development and conditional use permit for remote airport parking) and approval of the preliminary development plan for the parking ramp and office development subject to the following conditions:

1. a preliminary plan development agreement be executed by the applicant and the City including all conditions of approval,
2. up to 157 spaces shall be made available to the Hilton Hotel subject to the agreement between the Hilton Hotel and Rosa Development dated December 19, 1985,
3. the City agrees to grant permanent approval status to the surface parking facility upon completion of the parking structure,
4. as a permanent facility, the surface parking lot shall be modified to meet all City Code requirements, and a program shall be established as part of the final development plan to assure that compliance,
5. final development plans for the parking structure shall include, in addition to those drawings and submissions required by the City Code, the following elements:
 - a. elevation drawings at a scale of 1/4 inch = 1 foot,
 - b. service areas, trash and recyclable storage areas and mechanical areas,
 - c. Building Code analysis for separation of the parking structure and office uses,
6. no parking, driveway or service areas shall occur in the yard areas abutting East 80th Street,
7. the developer shall be responsible for amending the Minnesota Pollution Control Agency's Indirect Source Permit ISP 91-6 by July 1, 1992 as follows (this condition of approval replaces condition of approval No. 6 of the City Council's November 18, 1991 approval of a temporary conditional use permit for remote airport parking):
 - a. the existing 1,330 remote airport spaces shall be counted at a ratio of one per six (222 spaces),
 - b. 653 permanent spaces created by the parking structure shall be counted as 653 spaces,
 - c. 81 parking spaces created by the parking structure which will be removed by the future office addition and which will be used in the interim as remote airport parking shall be counted at the reduced one per six ratio (13 spaces) while they are used as remote airport parking,
8. At the time the office building is developed the developer shall show the following:
 - a. that 157 parking spaces shall be provided for use by the Hilton Hotel,
 - b. that a minimum parking ratio of four parking spaces per 1,000 square feet of gross leasable area, exclusive of the 157 spaces provided to the Hilton Hotel,

- shall be provided,
- c. that the minimum parking ratio be maintained either by reducing the size of the office building or by increasing the number of parking spaces,
 9. if the developer has not begun construction (obtained a building permit) of an office building, or other development subsequently approved by the City Council, on the site prior to April 1, 2002, the conditional use permit for remote airport parking use of the premises shall expire, and the operator shall cease use of the premises for remote airport parking by July 1, 2002,
 10. floor area ratio calculations for the total site area shall be based upon the land area of both parcels in this planned development (parcel 1 (451,303 square feet) plus parcel 2 (128,980 square feet) equals 580,283 square feet),
 11. if the developer has not begun construction of the parking structure prior to April 1, 1994, this conditional use permit for remote airport parking and approval of preliminary and final development plans shall expire and cease to be valid. (However, the temporary conditional use permit for remote airport parking approved November 18, 1991 by the City Council shall remain in effect until its expiration date of August 8, 1994),
 12. if the developer has not begun construction of the parking structure prior to April 1, 1994, the developer agrees to forfeit any and all claims to unused parking spaces subject to ISP 91-1,
 13. if the developer has not begun construction of the parking structure prior to April 1, 1994, the developer shall provide space to accommodate 157 parking spaces for the Hilton Hotel within the area of this planned development, and when constructed, these parking spaces shall fully comply with City Code development standards, as approved by the Director of Planning and City Traffic Engineer.

The Director of Planning explained that since the last meeting at which this matter was discussed by the Council, the Planning Division staff and City Attorney's office met with the attorneys for the developer and revised conditions 7, 8 and 9 as stated above. He said it is believed these conditions will clarify the situation and build in protection for the City should the developer fail to go forward with his plans. He said the development approval would lapse and the additional parking spaces would be returned to the City. Andrews said he had a problem with the wording in condition 2 of "up to" 157 spaces being provided to the Hilton Hotel because this could mean the developer could provide less than that amount. Mr. Geshwiler said the terms of up to 157 spaces are up to Rosa Development and the Hilton Hotel. Andrews said he would like to see the words "up to" removed from this condition as he has understood this amount of space was to be made available on a permanent basis, including during the construction.

Andrews distributed pictures of the Park 'n Fly facility, which is adjacent to the Hilton Hotel, showing cars parked in the aisles and questioned whether that was allowed. Mr. Geshwiler said that facility cannot legally park cars in the aisle ways and if it is being done, the operator is in violation, and the City can take enforcement action. Before that is done, he said the City would have to actually count the striping of the lot and observe where the cars are being parked. The City Manager said this is an issue of compliance for this operation, and the construction of the parking ramp will make more spaces available for use.

Following discussion, motion was made by Peterson and seconded by Mahon to close the hearing, to adopt an ordinance rezoning the property to CS-1(PD), and to approve the preliminary development plan with the conditions, as revised, set forth by the Planning Division staff with an amendment of condition 2 to strike out the words "up to." There was no immediate vote because of further discussion.

Johnson asked in condition 9 if this would mean the ramp would have to be taken down.

Mr. Geshufler said it was not the intent that the parking ramp would be removed because if the office building wasn't constructed, this parking ramp could be used by other office buildings in the area.

Robert Hoffman, attorney for the developer, said there would be no disagreement with the removal of the words "up to" relating to the 157 parking spaces for the Hilton Hotel, which he said would be provided to the Hilton during the construction period.

Andrews said the parking spaces are needed immediately by the Hilton Hotel, and if they were provided, they would be paved. An amendment to the motion was made by Andrews and seconded by Johnson to include that within 60 days 157 parking spaces be made available to the Hilton Hotel. The vote on the amendment was aye, Andrews, and nays, Schuler, Mahon, Spies, Houle, Johnson and Peterson, and the motion failed 1-6.

Mr. Hoffman returned to the podium to say the developer will have to come back with a final development plan if the motion for the rezoning and preliminary development plan approval was adopted, and there could be a condition of that plan approval relating to the parking spaces for the Hilton Hotel. He said it is the obligation of the Hilton Hotel to pave the spaces, not the developer who will be providing the spaces.

Vote was called on the original motion to adopt the ordinance rezoning the property and to approve the preliminary development plan with the conditions as revised. All voted aye, and the motion carried 7-0.

* * *

Councilmember Spies left the meeting at 9:40 p.m.

* * *

I-35W State Environmental Impact Statement Item 7.3

The Council has requested to approve the Environmental Impact Statement to be transmitted to the Minnesota Department of Transportation and the Metropolitan Council, which have prepared the DEIS which contains preliminary designs for highway expansion, transit needs and interchange modifications as well as evaluating the environmental and social impacts of the expansion alternatives. The DEIS analyzes the expansion plans for I-35W over the 18 miles between Washington Avenue in Minneapolis near the Metrodome and I-35E in Burnsville near the Burnsville Shopping Center. As part of the State and Federal review process, the City of Bloomington has the opportunity to comment on the DEIS and the various design alternatives prior to the final EIS preparation and selection of a final design alternative.

The Director of Public Works said the City has been working for a number of years on this environmental impact statement, and the letter of comment contains recommendations from various City advisory commissions which have held hearings and taken public comment on the proposed plans. Included were the Planning Commission, Natural and Historical Resources Commission and the Traffic and Transportation Advisory Commission. Public information meetings were also held in Bloomington which were televised, and those programs rebroadcast a number of times.

Mr. Honchell said the next step in the process will be a public hearing to be held by MnDOT on May 14 at the Richfield High School, and the City's letter of comment can be read at that meeting, or it can be forwarded to MnDOT prior to that time for inclusion in the record. Following this public hearing and taking of testimony, he said the Commissioner of the Minnesota Department of Transportation would make the final design decision for the Metropolitan Council, and it is hoped that will occur this