

**PLANNING COMMISSION REGULAR MEETING MINUTES
December 17, 2024 – 6:00 P.M.**

CALL TO ORDER

The regular meeting of the Planning Commission of the City of Highland was called to order at 6:00 p.m. by Chair Hamerly at the Donahue Council Chambers, 27215 Base Line, Highland, California.

Present:	Chair	Randall Hamerly
	Vice Chair	Chandra Thomas
	Commissioner	Jarrold Miller
	Commissioner	Nicole McCance

Absent:	Commissioner	Craig Graves
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Staff Present: Lawrence Mainez, Community Development Director
Kim Stater, Assistant Community Development Director
Matt Wirz, Building Official
Gary Chambers, Code Compliance Officer
Barrie Owens, Sr. Code Compliance Officer
Justin Ramirez, Code Compliance Officer
Camille Duarte, Administrative Assistant III
Kevin Ennis, City Attorney

Chair Hamerly led the Pledge of Allegiance.

COMMUNITY INPUT (ITEMS NOT ON THE AGENDA)

None.

PUBLIC HEARING

1. A Public Hearing to consider the appeal of Administrative Citation No. 15255 issued due to land use violations related to the unpermitted parking and storage of trucks and tractor-trailers in accordance with Chapter 2.56 of Title 2, of the Highland Municipal Code, at the property generally located at 27356 5th Street, Highland, CA 92346, Tax Assessor Parcel Number 1201-301-16. Cited: William Graham 1, LLC. Continued from November 19, 2024, Planning Commission/Appeals Board Hearing

Community Development Director Mainez administered the oath to all parties testifying on the agenda item.

Code Enforcement Officer Chambers presented the staff report.

Commissioner Miller stated on June 3rd, the analysis by Planning Department determined that the nonconforming trucking company Matheson Trucking had been discontinued for more than 180 days. What does that analysis consist of?

Community Development Director Mainez stated what we look for is, for example, did they leave the property? Does the city have evidence that the lease has been terminated?

Commissioner asked is there documentation or pictures to support the no use for the discontinued use for 180 days?

Community Development Director Mainez stated yes, during this proceeding, the Applicant did submit a letter with attachments showing leases and the termination. The Applicant can present that this evening.

Chair Hamerly stated what was the use that was discontinued specifically?

Community Development Director Mainez stated Mathesons Trucking is a contracted company with the US Postal Service and delivers mail such as bulky items. That what was discontinued and that is when we issued the citation.

Chair Hamerly stated I will be more specific for the purposes of elaborating on how that is relevant to this hearing. Which portion of the use was discontinued and how is that relevant to this appeal tonight?

Community Development Director Mainez stated the use that was terminated was Matheson's Trucking Company. They are no longer at this location and the citation was issued to a business that was illegal storing their tractor trailers.

City Attorney Kevin Ennis stated there was a business license application granted to Mathesons Postal Services to hold mail for US Postal Service. In the Highland Municipal Code, the industrial zone allows for Postal Service as a use allowed in the industrial zone. When that principle use of Postal Service operations ceased in September of 2023 it only had these accessory truck parking and storage uses instead of the principal Postal Service use. That is how the property's been used since then. The property owner has granted license agreements to two entities in March 2024 and one to AJR trucking for a few spaces. The principal uses now are truck parking and storage, Postal Service uses as it was with Mathesons was there so that distinction made it become from a principal use allowed by the zone to a use that is not allowed by the zone when it became just truck parking or truck repair.

Chair Hamerly asked did they have a business license already stated primary use that have been permitted by the city?

City Attorney Kevin Ennis stated I'll defer to staff and the answer is no. I think that staff has indicated that they need to bring their property into compliance in order to obtain a business license and go through the Planning Department process to get their use permitted. As the code indicates, truck parking and storage is not a principally permitted use. It would be difficult to approve that use and obtain a business license for those new uses.

Chair Hamerly stated if either of those two subleased uses were their primary business as a repair facility that was a legally permitted use then the ancillary use could be considered an ongoing support?

City Attorney Kevin Ennis stated the truck repair uses is not a permitted use in the Industrial Zone, so they could not get a planning approval for a use that is principally truck repair. The property owner needs to have a use that is consistent and permitted by the zoning.

Chair Hamerly asked ok, so the management of the mail service contract was considered the primary use that was on site, not the storage of trucks that were used for hauling mail correct?

City Attorney Kevin Ennis stated right. I believe that in order for staff to have allowed that use to continue and to grant business license for that use, they had to determine that it was a principal use so Postal Service use is allowed on that zone. They determined that the operation was related to Postal Service uses.

Appellant Michael Johnson stated I am with William Graham 1 LLC, owner of the property. My co-owner Brad Yates, Monica Byes, our tenant at Sugar Creek Transportation and our attorney Eoin McCarron. I am here to answer questions from the Commission and staff about our tenant. I would like to just give a very brief overview and history of the property or at least from our ownership. Brad Yates and I purchased the property in Fall 2021, and we engaged a company called Planning and Zoning Resource Company that is known for their zoning reports. In this particular case, the PZR report that we received stated that our property had legal non-conforming use. For the existing use, Matheson, and Postal Services, and in that report there are multiple instances of communication between the PZR Company and city staff about what the uses were and what were approved. We have multiple instances of staff stating that the property had legal non-conforming use and grandfather status was checked and the Community Development Director Mainez signed off on the document stated that the property had legal non-conforming use. Once received that information, Brad Yates and I felt comfortable with closing escrow on the property, and we have owned it ever since. Matheson's was a third party contract provider for the U.S. Postal Service, they were operating on that site at least since 2016, they did not provide what you would think of as postal support on that site. The site is 2.8 acres, of which there is roughly a 2500 square foot office building where Matheson had employees conducting administrative tasks. The rest of the property was a yard for parking tractor and trailers. Unfortunately, in May 2024 that Matheson did not renew its business license on September 30 2023, and we were not made aware from the city or the tenant. We had no idea, there was not a formal e-mail, phone call or otherwise that Matheson lost the business license. With that said, Matheson did not vacate the property until March 1, 2024. Matheson had gone bankrupt twice, once in 2022 and they ratified their lease and continue paying us rent and in February 2024 we found out that they were liquidating their business. Both Matheson and William Graham 1 agreed to terminate Matheson's lease effective March 1, 2024. We received rent payments every month up until March 1, 2024. June 2024 is when we were notified that Matheson had not renewed its business license and roughly this around the same time is when we received the first notice of violation. There has been a lot of back and forth between our Attorney and the City Attorney. The property has never been vacant. In June 2024 we signed a lease with Sugar Creek Transportation, they do exactly what Matheson did on the property which is storing tractor trailers and office building use.

Commissioner McCance stated is AJR still operating business on the property?

Appellant Michael Johnson stated yes.

Tenant Monica Byes stated I am the owner of Sugar Creek, and I did have a lease that began in June 2024. We also do Postal Service work; we lease out trucks to the post office. Our business is very similar to Matheson's, whether it is US Postal Service, Home Depot, Kohl's, and Chewy. AJR probably has about 10-15 trucks plus our trucks. There is about 88 spaces on the property.

Chair Hamerly asked when did your lease initiate?

Tenant Monica Byes sometime in June 2024. We did go to the Planning Department; they did not deny us. We applied for the business license and the city came to inspect our property, they came three times, and it was not until the third time when they said we have a problem. We are doing the exact same thing as Matheson.

Chair Hamerly asked did they provide any documentation or findings as to what the problem was?

Tenant Monica Byes stated the first problem they had was the exit sign was a few inches too high. They wanted a plan of the office space; the fire extinguishers were five inches too low. They were minor and someone came again, and that is when they notified us we needed fire extinguishers outside, but did not specify where. Once I contacted the city again that is when they said we have a problem, but I did everything to comply.

Chair Hamerly asked was this the Building or Fire officials?

Tenant Monica Byes stated Building and Safety.

Vice Chair Thomas asked when did you apply for the business license?

Tenant Monica Byes stated at the end of June or July 2024. I do not have the exact date.

Vice Chair Thomas asked if the business license was issued?

Tenant Monica Byes stated no it was not, it actually hurting me because being a woman in trucking is not common and I could be eligible to get more Postal Service freight if I could get my women in business certification, which I need a business license for.

Chair Hamerly stated when you were informed that there were problems, did you meet with the Planning Staff or was it through Building and Safety officials?

Tenant Monica Byes stated it was Building and Safety Department. I did not meet with anyone else.

Commissioner McCance asked when the last time you spoke to the city and tried to further the business license?

Tenant Monica Byes stated I do not recall, maybe two months ago.

Commissioner McCance asked why did you stop?

Tenant Monica Byes stated just because they said they had a problem, and so I contacted the property owner.

Appellants Attorney Eoin McCarron stated I want to delve into the legal issues and speak about the history of what you have heard. I think we can really focus in on two distinct issues, the first issue relates to the properties ongoing use which is legal non-conforming use. I just want to address the original violation related to the abandonment or loss of a legal nonconforming use. The second item is to address whether that legal non-conforming use was ever properly established at the site and that issue is discussed at length in the city attorney's letter in the staff reports. In November 2024, the Notice of Violation was received was the first time ownership was made aware of any issues with the property since they acquired it. The November violation stated the ownership had lost the legal non-conforming use of tractor trailer parking and storage. At that time in June 2024 the city had classified the use, and the notice stated that Matheson had abandoned the use for six months and as a result they we had lost the ability to continue trucking at the property. In response to that letter, we had submitted documentation demonstrating that Matheson, while they were no longer the tenants at the site they had engaged in two subleases with other trucking companies who continued to use the site for the truck and trailer parking. In response to that letter, received the August letter from the City Attorney it gives a good sort of succinct summary at the bottom of page 2 that described the history of the tenants on the site. It stated the city was unable to identify any issues with the continuation of the trucking use and that the evidence demonstrates that. The timeline and the original June Notice of Violation states that the trucking use had been abandoned at the property or Matheson had ceased operating for six months. The evidence that we previously submitted and that the city attorney reviewed demonstrates that throughout this time and to today with our current tenant this trucking and trailer parking has been continuous at the site. So that leads me to the second issue, which was raised for the first time in the letter in August 2024 from the City Attorney, which was that notwithstanding the fact that trailer and truck parking had been occurring at the site that was the use. That use could never have been legally established in the city because it is not permitted as a principal use in the Industrial Zone. The key issue is looking at when the use was established, and when they acquired the property in 2021, they hired the company to complete due diligence and reach out to the city to determine what the status of the truck and trailer parking use on property was. At that time, city staff noted the correspondence both in an e-mail and a zoning verification letter that the existing truck and trailer use was illegal non-conforming. It had been established legally in the city prior to incorporation in 1987 and prior to adoption of the city's own zoning code in 1994, and as a result it hadn't been discontinued that period of time it could be continued. There was an investigation Code Enforcement investigation back in 2020 where it addressed this very same issue. It submitted a violation stating that Matheson was operating onsite. The Planning Department and Code Enforcement investigated the violation was closed and we have a confirmation that we got at the time of acquiring the property that that was resolved. So basically in 2020, Planning and Code Enforcement investigated this same permitted use issue and determined that the truck and trailer parking use was a valid legal nonconforming use. We received the citation earlier that stated the use is not permitted and cannot use truck and trailer parking as a primary use at the property and as a result, Monica Byes cannot continue her operations. Based on the city's representation in the past and the prior communication we had from staff is not the case. The key point is that these truck and trailer outdoor storage notwithstanding, the fact that may or

may not be permitted under the code now was legally established and has been continued since prior to the city's incorporation. We were asking you to respectfully grant our appeal of the citation and give us an opportunity to work with Code Enforcement and Planning to clarify these permitted use issues.

Commissioner McCance stated you mentioned a Code Enforcement investigation in 2020, is that in the staff report?

Appellants Attorney Eoin McCarron stated that is attached to my letter, which was printed out and distributed. It is exhibit C.

Community Development Director Mainez stated I am trying to get a copy of their business license that the speaker had indicated, and the license has been submitted, it has been routed, and the staff had gone out and done some inspections. All the departments get involved and it was a paper trail, well now it is online through our database. I have a copy application here and the type of business being conducted was haul mail for the US Postal Service. Normally do is look at the code and Postal Service is a specific use allowed in that area. Based on what I am seeing here was the premise for us approving a business license and subsequently Code Enforcement close that initial operating without business license code case.

Chair Hamerly stated that is two separate things, because if you said that they were operating with a business license, which is one thing, but the legal vs. non legal conforming use is kind of Part B.

Community Development Director Mainez stated one of the speakers indicated there is information in the attachments that they submitted stating that the city determined that they are operating a legal nonconforming "use." The documentation that they submitted does not say that they are incorrectly characterizing that, and it is misrepresenting. The documentation indicates that their use is still illegal non-conforming. All of the zoning affidavits that they reference is a consultant that contacted us to check on what the zoning is. We are referencing the site, not the use. The legal non-conforming site would be correct because that site was developed under county jurisdiction, not city. One email from our staff indicated that the use is not legal and furthermore storing trucks is also illegal. The information that they provided indicates that the use is illegal.

Chair Hamerly stated it said the opposite. The email said it was a legal non-conforming use, not illegal. The language of the affidavit was do your records show any unresolved zoning code violations in the response was no, there are no open violations on file in our records. So, if it didn't say that there was no legal versus non legal, they just said there are no open violations at the time. For part 2, to the best of your knowledge, your records show any unresolved building code violations and/or complaints, and the affidavit is no, there are no open violations in our records, it did not make any findings about land use.

City Attorney Kevin Ennis stated exhibit A to the appellants letter, attached an e-mail from Angela Tafolla that is cited in the letter and that e-mail speaks to the site. The site is legal non-conforming and in discussing that with Staff, they indicated that that was an indication of whether or not, let us say the paving, the building etcetera, the site was legal non-conforming. The second sense of the e-mail stated our current code does not support trailer parking in

any zone, so you will not find parking requirements. They were not saying that the use was conforming, it was the site. The next issue is the exhibit B, a statement from Planning Department dated August 9, 2021 and that statement on the top of the second page speaks to whether the subject structures were developed, and the box is checked prior to adoption of the zoning code, grandfathered legal non-conforming which goes for the structures, not the use. Finally, an exhibit C, which is another document from the Planning Department that was signed by Mr. Mainez on July 26, 2021 when Matheson was occupying the site. Are there any open violations? No. Are there any violations of building codes? No. That would be consistent with the determination that this was Matheson's Postal Service operating as a Postal Service operation. The distribution of mail is integral part of Postal Service. So not only is it the sorting, but there's also delivery and that was part of that. I think staff could reasonably interpret the code as saying at that time the property was not in violation of the zoning. Now we also said in our letter to the Appellant that there was an office use in conjunction with Matheson, so that was occurring on the site in addition to the truck parking of this postal use.

Chair Hamerly stated yes, it was establishing the use.

City Attorney Kevin Ennis stated right. It appears that the office might have been used in the organization and operation of the trucking portion of the Postal Service use. The issue is the 88 spaces Sugar Creek is using and now it is being used for a variety of different trucking purposes, it is no longer solely operated by an entity that seemed to be connected to a Postal Service use. If there is Postal Service trucking it is rather an incidental part of the 88 spaces because the licenses that were issued were only for a very small number of spaces, not the full 88 spaces.

Chair Hamerly stated the property owner gave a verbal representation that Matheson had operated at that location since the 1960's. The city has had an active business license since 2001, and they documented that trucks have been parked on the site since 1994. Has the property always been zoned Industrial even when it was a part of San Bernardino County?

City Attorney Kevin Ennis stated correct.

Community Development Director Mainez stated that is correct.

Chair Hamerly asked has the permitted uses by right of zone and conditionally permitted uses for industrial properties have not changed in the duration that the General Plan has been in existence as it pertains to trucking?

Community Development Director Mainez stated no it has not. We always have interpreted trucking to be associated with warehousing or logistics, not a standalone use. That has not changed.

Chair Hamerly stated that is what I am trying to establish. That finding would have been established regardless of the timeline, specifically within this appeal. Those uses that would have been permitted in the circumstances in which they would have been permitted have not changed predating even the earliest due diligence or the report that they received from the Planning Department.

City Attorney Kevin Ennis stated the zoning in General Plan, if I understand correctly, has not changed in and it was not as if truck parking and storage was a use previously permitted by the zoning, and then you changed the zoning and it no longer. It has been a non-permitted use for the duration of the city zoning code.

Chair Hamerly stated right, it would not have changed the due diligence finding, because that interpretation would have been consistent had somebody researched industrial properties in the City of Highland dating all the way back to 2001.

City Attorney Kevin Ennis stated correct.

Vice Chair Thomas asked what did the tenant list on her business license application?

Community Development Director Mainez stated this was submitted online. The tenant checked yes to speaking to the Planning Department, read the attachments, and the business type was called transportation/vehicles as the type of business being conducted. They stated Sugar Creek Inc. there are no attachments that go into detail for the exact use activity. There must have been further discussion with the Planning Department.

Chair Hamerly asked what defines a primary use? If 45 spaces out of 88 were dedicated to mail hauling or be greater than 50.1% of gross revenue for mail hauling? Would that meet the threshold of mail delivery?

City Attorney Kevin Ennis stated I would defer to staff, but certainly staff is able to determine the predominant use in a couple different ways. Certainly, looking at gross revenue is one way and looking at the square footage of the site and what activity is involved in that site is another way.

Chair Hamerly asked would it be square footage or revenue as a factor?

Community Development Director Mainez stated there is several factors, case by case. We would look at physical constraints, intensity of the use, and I am not going to conclude tonight what we would do for this particular case or business application. It is stated that it is a staff review permit.

Chair Hamerly asked does staff have the list of permitted uses relating to trucking as an exhibit?

City Attorney Kevin Ennis stated cited the Highland Municipal Code sections relating to the trucking.

Community Development Director Mainez stated we have been dealing with these issues for several years. I have been here for over 25 years and the Planning Commissioners have dealt with many warehouses along 5th and 3rd Street and many code enforcement cases where there has been outside storage of tractor trailers. We did a code interpretation that stated the semi-truck trailer storage on the outside on a developed site without warehouses not permitted. Tractor trailer storage and use shall only be part of a warehouse or distribution use as approved by the Planning Commission.

City Attorney Kevin Ennis stated commercial parking facilities are not allowed in the Industrial Zone. There was an issue about when Matheson's actually ended their operation on the site, there is some dispute about. I understand that they might have paid rent up until February or close to March of this year, but staff has information that they actually were informed by Matheson's that they were leaving the site as of the end of September 2023, which is when their business license expired. This is some dispute as to whether or not there is a continuation of Matheson's use passed September of 2023.

Chair Hamerly stated Matheson was not issued under a Conditional Use Permit, so it was a business license issued permit which is a staff level review at that point.

City Attorney Kevin Ennis stated correct.

Community Development Director Mainez stated if it is determined Matheson's had been vacated the site more than 180 days, somebody else comes along and asks to use the site the same way would fall under the same provision of the code. I would sit down and by right, with a staff review permit, which is a discretionary entitlement would be allowed onsite. However, we would fall back on that nonconforming ordinance that technically will need to upgrade that site to meet the existing code standards. We have not had this discussion with a new tenant yet. There is the use of the property and the non-conforming site use. The non-conforming ordinance talks about both use and site. The distinction between legal non-conforming use and an illegal non-conforming site, it is two things. The city put that six month timeline for a purpose when the city was incorporated.

Commissioner Miller asked what constitutes that discontinuance of that non-conforming use? Is it when that business license expires or is it when the activity associated with that use ends?

Community Development Director Mainez stated that is being debated tonight. It sounds like we have some dates that were thrown out by the Appellant and the attorney kind of alluded to that. We have not settled that yet. It is case by case; it depends on a lot of factors such as a lease or business license.

City Attorney Kevin Ennis stated Matheson's terminated their use, they sent the city a letter on December 1, 2023, and they are required under the Worker Adjustment and Retraining Act to inform the city when a certain business is going to terminate their employment and have layoffs/facility closures. They stated the expected date of employment separation for this site was going to be January 31, 2024. So again, we have September 30th, January 31st, and March 1st as some of those potential dates.

Appellants Attorney Eoin McCarron stated it is very important that we are distinguishing between non-conforming site and non-conforming use. I just want to point out that our interpretation of the various exhibits and sort of the discourse with the city is colored by the June 2024 Notice of Violation. I want to remind every that this whole issue started because we got a Notice of Violation for discontinuance of non-conforming use and it stated that tractor, trailer, parking, or storage is no longer permitted on the property due to the loss of the legal non-conforming use. That is what we have been responding to, and our position has always

been that the use of the property for tractor, trailer, parking or storage was the use identified by the city as being the problematic issue that predates the city's adoption in 1994 of its General Plan. In Exhibit C, the confirmation from the Community Development Director that there is no outstanding zoning code so when you look at that in conjunction with the attached documentation, but when I read that it is an open use investigations similar to what we are doing today and that is from 2020 and then we have confirmation in 2021. I am sort of curious how the city got to yes back in 2021 after a similar investigation of Matheson operating as an illegal non-conforming use.

Chair Hamerly asked do you recognize the distinction between Matheson being a legal postal carrier and that being considered the basis for granting the business license and making that a permitted use on the site vs. just a trucking entity or storage of vehicles?

Appellants Attorney Eoin McCarron stated absolutely. The Notice of Violation from June of this year states that the use is tractor trailer parking or storage.

Chair Hamerly stated that was the source of the violation because in June, Matheson was no longer an entity that was operating on the site; therefore, the use of the site was no longer postal carrier, it was now trucking, storage, and general. What your hauling seems to have a very significant impact on the findings of what we are trying to determine here, and it is that is where we get the use capital U, if your postal carrier that is one thing. So, we have to make that distinction because it is in the Highland Municipal Code and if it is in the table, you are good as gold and if it is not, we have an issue.

Appellants Attorney Eoin McCarron stated 100%. What confuses me is that the violation from November, not just for an unpermitted use, it necessarily implies that there was a valid legal non-conforming use. [INAUDIBLE] I would just reiterate that our position is basically that the site has always been used for this tractor trailer, parking, and storage use. [INAUDIBLE]

Appellant Michael Johnson stated the business license that we have for Matheson Postal/Matheson trucking, they went by two different names, and it stated trucking on their business license. Maybe there is a code that mentions Postal Service, but actually on the PDF that Brad and I have from Matheson stated the business is trucking period. It does not say postal services, postal carrier, anything like that. Another thing I want to mention is that Matheson was not 100% dedicated to the United States Postal Service. I remember looking at Matheson's website back when we were regular, currently paying tenants of ours to see what Matheson did and you can see there are other customers. That is not 100% dedicated to carrying the mail. Thank you very much for your time and your consideration of our matter.

Chair Hamerly closed the public hearing.

A MOTION was made by Vice Chair Thomas and seconded by Chair Hamerly to conduct the required Public Hearing and uphold Administrative Citation No. 15255 and adopt Resolution No. 2024-____. Motion carried, 2-2 with Commissioner McCance and Miller voting no and Commissioner Graves being absent. We have a draw.

Community Development Director Mainez stated the motion fails as a tie vote. Please state your reasoning why the vote was no.

Commissioner Miller stated the reason I voted no was because looking back at the use, it involved trucks and trailers. Certainly, there was the postal hauling that was going on that was found in the table, but for me the use was still trucks and trailers. I feel like I can squint my eyes a little bit and look at use discontinuing in March even though the business license had expired. The violation and the new tenant came in June which is three months which is not six months. It is in a grey area; those 180 days and the new tenant has trucks and trailers very similar to what the previous tenant was doing which also had trucks and trailers independent of what was in the trucks and trailers. The use seems to be very similar and when we get into looking at what is inside the trucks I do not know if that is as important. We are making it really important here, but I do not think it should be. That is why I was unable to support it.

Chair Hamerly asked what would you see as being the remedy that would cure the violation?

Community Development Director Mainez stated good question. I appreciate the dialogue; what we can do tonight is to direct staff on how to settle this. A citation was issued on a certain date where an activity did or not occur, and that is really what is being appealed tonight, not how we go forward and resolve it.

Commissioner Miller stated I do not have a recommendation to resolve it. I am drawing a conclusion based on the evidence I have been provided.

Commissioner McCance stated I am going to seem very redundant with Commissioner Miller here, but if we are splitting hairs on the trucking Postal Service is in allowed use and Sugar Creek has a lease with USPS, they are doing the same thing as Mathsons. Trucking use never ceased at the property, and I do not think the 180 days ever occurred and was always trucking at the property. I think some part of it was always storage for USPS. For the second part of the question, I think if we can verify that part of their business is still postal, then that would check the box for that zone.

Chair Hamerly asked is it a part or a majority part?

Commissioner McCance stated that would be up to staff to decide how we determine that, whether it's parking, is it 50%? Even Matheson if we go back to what they said, they clearly had other customers. So, I do not even think Matheson was 50%..

Chair Hamerly stated that was primarily why I asked the staff, what did their original application state? They stated on the original application postal carrier. If they would have said trucking, I am sure that staff would have drilled down on that said no, you have to come back and try again.

Commissioner McCance stated Sugar Creek could have put postal carriers as well and got approved.

Chair Hamerly stated if somebody said on their application postal carrier, staff would make the same findings that they made for Matheson. It all falls onto what did the person state when they were making their request for a business license? What were they going to do? There is no business until they have a business license, so staff has to believe them to. If evidence

comes up to the contrary and someday they end up with a violation then staff investigates that the company is producing this, you are not hauling mail.

Chair Hamerly stated so you are verifying that activity, the use never expired.

Commissioner McCance stated correct. The second part would be the business license when we get to that.

Vice Chair Thomas stated I do not think there could change my mind. With Matheson they may have discussed, but they are a predominant business that use of the mail carrier type work. With managing business licensing before, people will submit their application, they are honestly saying this is kind of what I do or they can also have some knowledge to come forward for example, if they had put mail sorting. She did state that they do mail type work, and it is a small portion of her business, not the predominant of her business. So, if she had come forward and stated I have a similar business. Also, for the use being trucking and storage, which is not permitted, and we need to enforce that. With trucking it is very dirty, and you can see a previous tenant was a trucking repair business, which is very dirty. There's different waste contaminants with that too. This is why it is an easy no because we do not have trucking permitted. I do not think Highland residents want trucking, and we have seen code cases since I have been on the commission. It is not a surprise we had a change in code.

Chair Hamerly stated one of the things that Sugar Creek stated was in addition to USPS, they were also hauling for DHL and one other type personal carrier if I recall correctly. To me, that's still distribution of mail like things. Is DHL, UPS, FedEx postal carrier or does it have to be USPS only?

Community Development Director Mainez stated if somebody were to come to the counter and ask that same question, I would say yes. I would make a determination that under our code the Postal Service would include those other businesses.

Code Compliance Officer Chambers stated I believe Sugar Creek also mentioned that they were allowing truck parking storage for Home Depot and other type companies like that.

Chair Hamerly stated I am a yes on this because I have to support the code as well, which puts us at an impasse. There are solutions here and that is why I keep drilling down on the finer points of what is the code stating and the intent. That lead us to the 2-2 vote. Do we give you some sort of a directive to start examining their business records, find out what they are really hauling and who is it for so we can say it either is or is not a parcel carrier?

Community Development Director Mainez stated there was a there was a motion made to uphold the citation and deny the appeal that failed 2-2 vote. This happens when we do not have the fifth Planning Commissioner in attendance. We would just make a note that the motion fails, no action taken. This would mostly be deferred to City Council.

Commissioner Miller asked are there any other cases that have defined when the 180 days begins when that non-conforming use has been discontinued?

City Attorney Kevin Ennis stated we have been focused on when Matheson's stop their use and has it been more than 180 days? It is clear that the predominant use of the site, but it seems to be truck parking and storage. As indicated by the Appellant that that has occurred for decades on the site. Once Matheson began its operation as a Postal Service use that ended the principal use of this site as truck parking and storage, and it became Postal Service use. A trucking related but staff could regard that as being the permitted use at that point in 2016.

Commissioner Miller asked even though it still consists specifically of trucks, trailers, and storage?

City Attorney Kevin Ennis stated yes, but I would say staff could have decided that the predominant use was truck parking and storage, however when they approved a business license in 2001 for mail hauling, it was reasonable that they could regard that as being a Postal Service type use. During that period when it was Matheson's, the prior use was discontinued, meaning the principal use of truck parking and storage stopped and it became a Postal Service use. The discontinuance of the principal use of truck parking and storage stop as early as 2001, which has been more than 180 days. Can they recommence a Postal Service use or has that been discontinued for 180 days? Kind of a different issue, right as to whether they would not have to go through certain procedures to recommence that use as a postal use. Truck parking and storage as the principal use ended in 2001. That is another way to look at it.

Chair Hamerly stated would the findings be correct when the Planning and Zoning Resource Company made the determination and even staff made the determination that it was a non-conforming use if it was legally permitted and conformed to the zone? It seems like it would be a legal conforming use. Now the site is a completely different matter because the site is Part B. It was not a legal site because it does not conform to current code. Until there is a change of use you do not have to upgrade to current code. That is the part that is grandfathered in, and the site improvements are where it becomes the 180 days and becomes relevant. It seems in this discussion because as long as they maintain the same activity for the same principal client, it did not matter it could be parking on dirt or gravel. They would not have to comply with any current code or environmental standards because the use had never ceased. So, the site could become non-conforming because it does not comply with current code, but the use has always been conforming since 2001 when they had the contract that made them legal by the general code, and they had the business license that they maintained until September 2023.

City Attorney Kevin Ennis stated correct. I understand what you are stating.

Community Development Director Mainez stated all no votes well would require putting it in the record the reasons why you would vote no and uphold the appeal. We would have to revise our resolution to codify those findings. If you say no, you determine that the property based on the dates never met the definition of vacating the site, so we should honor a similar use that would come to the counter and apply for a land use permit and then a business license which would happen next. Alternative you say yes, we would start fresh with the new tenant. If you vote yes you are upholding staff's recommendation to deny the appeal. The

citation stands and they can appeal that to City Council within 10 days. If you vote yes, then we would have to ask to continue the item and come up with a new resolution to bring back for a formal adoption.

Chair Hamerly stated in the absence of having our fifth Commissioner to break the tie, it seems like the cleanest resolution from the Planning Commission standpoint is to allow the appeal to progress to the City Council with a pretty regularly have five members and would have a tie breaker.

Community Development Director Mainez stated the City Council appointed the Planning Commissioners to do the job of holding up the ordinances, municipal codes, general plan, and policies, right? I really implore you to give us a yes or no. We will follow through with the process and it is unfortunate that the fifth member is not here. Assistant Community Development Director Stater is reminding in past we did have a similar situation there was a motion to continue the item when we have five Planning Commissioners.

City Attorney Kevin Ennis stated yes, it is a possibility for that Commissioner to come back and be available for a continued hearing date and in the meantime to have listened to the entire proceedings of this meeting.

Chair Hamerly asked would that be a supervised listening? There was a lot of technical information we went over.

Community Development Director Mainez stated I think it would be best if we provide him the audio and then we can certainly talk over the phone if he has questions.

Chair Hamerly opened the public hearing.

Appellants Attorney Eoin McCarron stated I would like to inquire as to the correct procedure here because my understanding based on the code the board has already rendered its decision.

Chair Hamerly stated it is a no action. The vote was 2-2, it is as if it never existed. We do have a fifth commissioner, and our remedy is internal.

Appellants Attorney Eoin McCarron stated it seems strange that we are getting a decision without any finding.

City Attorney Kevin Ennis stated as noted there was no motion made; it was not passed. The 2-2 tie means the motion is not approved and until there is an action that has a majority vote, there is no action taken yet. The Planning Commissioners does have the opportunity to open and continue the meeting to a date certain. In this situation it would also provide an opportunity for that fifth member to come back and be present. So, until the Commission has acted by adopting a resolution, there is no decision yet on the matter.

Chair Hamerly closed the public hearing.

The vote still stands 2-2.

A MOTION was made by Chair Hamerly and seconded by Commissioner Miller to continue this item to January 21, 2025. Motion carried 4-0, with Commissioner Graves being absent.

ANNOUNCEMENTS

The next Planning Commission Regular Meeting is scheduled January 21, 2025.

ADJOURN

There being no further business, Chair Hamerly declared the meeting adjourned at 8:01 p.m.

Submitted by:

Approved by:

Camille Duarte, Administrative Assistant III

Randall Hamerly, Chair

