

February 5, 2009

Mr. William J. Mueller,
Village President, and
Board of Trustees
Village of Lombard

**Subject: PC 08-32 Remand; 215 and 220 S. Lincoln Street (St. John's
Evangelical Lutheran Church & School)**

Dear President and Trustees:

Your Plan Commission transmits for your consideration its recommendation regarding the above-referenced petition. The petitioner, Creative Day Learning Center, requests that the Village take the following actions on the property located within the R2PD Single Family Residence Planned Development District:

1. Pursuant to Section 155.504(A) of the Lombard Zoning Ordinance (major changes to a planned development), amend the conditional use for the St. John's Evangelical Lutheran Church & School Planned Development, as established by Ordinance 5665, to allow a private day care center to be operated within the old school building;
2. Approve a use exception, pursuant to Section 155.508 (B) of the Zoning Ordinance, for a private day care center; and
3. A further variation from Section 155.602 (C), Table 6.3 of the Zoning Ordinance, as approved by Ordinance 5665, to not require additional parking spaces to be constructed as part of the petition.

After due notice and as required by law, the Plan Commission conducted a public hearing for this petition on November 17, 2008. The Plan Commission recommended approval of the petition at that hearing subject to the following conditions:

1. The petitioner shall occupy only two classrooms and one office on the first floor the St. John's Lutheran old school building, making periodic use of the kitchen and gymnasium in that building.
2. Should the petitioner seek to make a substantial change the proposed use such as, but not limited to, expanding the proposed day care center by

- occupying other rooms on the subject property or increasing the number of children accommodated at the facility beyond forty (40), a conditional use amendment will be required.
3. Any portions of the existing school building not indicated in condition one (1) shall be used exclusively for capital plant, storage purposes, offices and/or meeting space. Should any additional use be proposed beyond these uses, a conditional use amendment will be required.
 4. The petitioner and property owner shall agree upon a location within the southern parking lot to designate four (4) parking spaces for Creative Day drop-off/pickup, subject to the review by the Director of Community Development. Signage shall be installed at these parking spaces indicating that parking is reserved for Creative Day drop-off between 7:00 a.m. and 8:30 a.m. and pickup between 4:00 p.m. and 5:30 p.m. on Monday through Friday.
 5. Previous to occupying the old school building, the petitioner shall meet all requisite code compliance and life safety issues. Also, the petitioner shall apply for and receive a building permit for any interior building improvements.
 6. The petitioner shall bring any portion of the subject building, which is to be occupied by or ancillary to the subject day care facility, into full compliance with the requirements set forth by the Americans with Disabilities Act and the Illinois Accessibility Code.

At the December 18, 2008 Village Board meeting, the Village Board remanded PC 08-32 back to the Plan Commission for further consideration and discussion related to the following seven items:

1. The introduction of a commercial enterprise in a residentially zoned district;
2. The impacts of providing for a use exception for a separate commercial establishment within the confines of an institutional planned development;
3. How establishing the commercial use will enhance the previously approved planned development and would be within the public interest;
4. Consideration of precedent this action could have, for other commercial entities or uses not associated with St. John's, if they were to seek to operate on the premises;
5. How can further parking variations be granted and how traffic flow can be adequately handled between the various use operations;
6. Additional discussion regarding day care operations throughout the day, in addition to the drop off and pick up periods noted by the petitioner; and

7. Additional discussion and testimony by St. John's as to why they are authorizing a request to amend their planned development, contrary to the conditions or limitations set forth in the 2005 approval.

The petition was heard at the January 26, 2009 Plan Commission meeting. William Heniff opened the discussion by mentioning that this item was remanded back to the Plan Commission. He stated that there is no need to repeat any testimony that was given in November as it is part of the public record. He referenced the seven items that the Board of Trustees remanded back for discussion and further recommendation. He stated that any comments should be related to these items.

Commissioner Burke stated that he was not at the November 17 meeting and that he had reviewed all the materials and would participate in the process tonight.

Stuart Moynihan, Associate Planner, presented the staff report. At the December 18 Village Board Meeting, the Village Board discussed PC 08-32 related to the evidence presented and the testimony given at the November 17, 2008 Plan Commission hearing. The Village Board determined that a complete evaluation of the petition requires further discussion regarding specific land use considerations.

As the Village Board has determined that additional testimony is necessary and that any new information should be reviewed with the Commissioners as part of the public hearing process, this petition was remanded back to the Plan Commission.

In the Village Board's remand back to the Plan Commission, the Board specifically directed the Plan Commissioners to review only seven items which will be reviewed following the meeting format.

The format of the Plan Commission meeting will be as follows:

1. Staff Presentation – staff will outline the reason for the Special Meeting and will note the actions to be considered as part of the meeting. Staff will provide a very brief history of the petition and will summarize the zoning actions and development regulations associated with the petition. Once completed, an opportunity to cross-examine staff by anyone in the public will be provided. The cross-examination will be limited to the items as set forth by the Village Board.
2. The petitioner (Creative Day Learning Center) will be given an opportunity to review their petition to the Village as it specifically relates to the Village Board remand. Once completed, an opportunity to cross-examine the petitioner by anyone in the public will be provided. The cross-examination will be limited to the items as set forth by the Village Board and shall relate specifically to the petitioner's presentation.
3. Upon completion of petitioner's cross-examination, the public will be offered the opportunity to speak. Once completed, an opportunity to cross-examine by anyone in the

public will be provided. The cross-examination will be limited to the items as set forth by the Village Board and shall relate specifically to the presentation.

4. After completion of the cross-examination, the public participation period will be closed. The Plan Commissioners shall then be given an opportunity to discuss the petition. Questions may be asked to staff, objectors or the petitioner. The Plan Commission should provide a response to each of the seven questions raised by the Village Board.
5. The Plan Commissioners shall then vote to deny, approve or approve the petition subject to conditions. The Commissioners do have the ability to add any conditions they deem appropriate should they recommend approval. However, these conditions should be related to the items that were remanded back.
6. The recommendation will be forwarded to the Village Board for consideration at their February 5, 2009 meeting.

Staff has reviewed each of the items identified by the Village Board and offers the following corresponding comments:

1. *The introduction of a commercial enterprise in a residentially zoned district;*

Staff expressed their initial concerns regarding this item within the staff report. The majority of parcels near the subject property are residentially zoned. With the exception of some properties to the east and the northeast, these properties are residential in use as well. Residential properties are particularly sensitive to other uses that draw additional traffic and activity to the vicinity. It is staff's opinion that the introduction of a commercial entity at the subject property does have the potential to adversely affect residential properties within the neighborhood. As stated within the Comprehensive Plan, "Commercial operations, including traffic, parking, loading, and business activities should not be allowed to affect neighborhood quality."

If the Plan Commission deems that this commercial use is appropriate and compatible with the adjacent residential zoning districts, it should make a finding as to how it is compatible.

2. *The impacts of providing for a use exception for a separate commercial establishment within the confines of an institutional planned development;*

But for the granting of a use exception, the proposed use is prohibited in the R2PD zoning district. The Comprehensive Plan identifies the subject property for Public and Institutional uses. The establishment of a commercial entity on the property would be contrary to the intended usage for the property established by the Comprehensive Plan.

The Plan Commission should make a statement noting how the commercial use is compatible with an institutional planned development.

- 3. How establishing the commercial use will enhance the previously approved planned development and would be within the public interest;*

Staff stated that the proposed use may diminish the overall quality of the planned development as the proposed use has the potential to interfere with the operations of the existing uses. The petitioner and St. John's have stated there will be areas shared by Creative Day and other uses on the property including indoor/outdoor play areas, the gymnasium, the kitchen, lunchroom, and a downstairs bathroom. St. John's has stated that the school use on the property would take precedence over the day care center should overlapping use of these areas arise.

If the Plan Commission deems that this commercial use would be beneficial to the public interest, it should make a finding as to how it is within the public interest.

- 4. Consideration of precedent this action could have, for other commercial entities or uses not associated with St. John's, if they were to seek to operate on the premises;*

If the requested relief is granted, another commercial day care operator could make use of the relief in the future, provided that they operate under the conditions of approval. The Village may have little control over who this operator might be. Further, the presence of this relief would strengthen the arguments of other commercial entities wishing to occupy space within the old school building.

Staff has researched day care operations within Lombard that are registered with the Department of Children and Family Services. Of the ten such operations in Lombard, seven were given Conditional Uses. One operation, The Growing Place, was issued a Certificate of Occupancy as a legal non-conforming use. Another operation, Creative Montessori Learning Center, was issued a Certificate of Occupancy for a school and day care center as a continuation of the previously established Edgewood School use. Lombard Park District Kiddie Campus has not been issued a Certificate of Occupancy as a day care center. As it operates as a state licensed preschool, it would not fall under the Zoning Ordinance definition of a day care center.

Of the ten day care centers, three are located within residentially zoned districts. Creative Montessori Learning Center and The Growing Place were issued Certificates of Occupancy for the reasons stated above. The Nursery School of Congregation Etz Chaim was established following the approval of a Conditional Use for a Religious Institution including an associated nursery/day school operated by the religious institution itself as an ancillary use.

- 5. How can further parking variations be granted and how traffic flow can be adequately handled between the various use operations;*

The Village's traffic consultant, KLOA, prepared a report detailing an analysis of parking and traffic circulation between the existing and proposed uses on the subject property. Within that report, KLOA stated that they did not foresee a problem with the

drop off and pick-up plan proposed by Creative Day. They also suggested that the provision of some parking spaces on the south lot will ensure that no additional vehicles queue on Ash Street.

At this point, I would like to give Chris Stilling an opportunity to discuss his own observations.

Chris Stilling stated he went out that morning to observe drop off at 7:45 a.m. He indicated that stacking was occurring along Lincoln Avenue and the eastbound leg of Ash. The queue extended approximately for one half of the block between Lincoln and Main Street.

Stuart Moynihan continued, if the Plan Commission deems that additional traffic flow and parking demand can be adequately managed, it should make a finding that this additional demand will not adversely affect the subject property and the surrounding properties.

- 6. Additional discussion regarding day care operations throughout the day, in addition to the drop off and pick up periods noted by the petitioner; and*

Creative Day's daily activities would be within the scope of normal day care operations and would include: teaching and educational activities, indoor and outdoor play, lunch preparation and service, and occasional field trips to nearby establishments.

The petitioner is present to further discuss the operation of the day care center and the trip generation throughout the day.

- 7. Additional discussion and testimony by St. John's as to why they are authorizing a request to amend their planned development, contrary to the conditions or limitations set forth in the 2005 approval.*

A representative from St. John's is present to provide testimony regarding this item.

Chairperson Ryan asked if there were any questions or comments of the staff report. Hearing none, he called upon the petitioner.

William Dennis, husband of Cheryl Holtz-Dennis (owner and operator), 442 N Park Ave., Lombard, discussed the petition. He stated that most of this was previously discussed and he would go number by number. He stated that with respect to the concern about commercial enterprise it has preschool credentials and is considered a day care center. He stated that any operation with three kids that aren't of the same parentage would be considered day care. The proposed use would be regulated by state and county entities. He stated that with respect to the residential zoning of the area, the area is not what you would traditionally think of a residential area. You have 2 homes across the street. He stated that across from the property in question are a library, churches, the new school that acts as a buffer and the condos across the street. The only true residential area is west of the property in question. He mentioned traffic concerns at

Parkview School as well as traffic problems in other areas caused by school drop-off and pick up. He stated that with St. John's there might be some slight overlap but there will not be forty kids dropped off at the same time. The parents bring them as they go to work as other schools would do. That is a red herring in that you won't have a concentrated mass. The parents will drop off and pick up with little conflict once traffic patterns are learned. The only people that park are staff and volunteers, only a few spaces by Creative Day staff during working hours. The pick up in the afternoon is after St. John's has let out. He asked the Plan Commission take into consideration what the old building was used for. It is a school and they teach kids there and it is a compatible use. St. John's doesn't have day care and cannot accommodate all children and families. They are compatible uses in that they both teach kids.

With regard to item two, he stated that it's the same use, teaching kids and having kids stay for the day. Number one and two are tied in together.

With regard to item three, he stated that if you go by the church, the parking lot it is not fully used all the time. It is only full for special gatherings and Sunday services. He stated that Creative Day will not be operating during those times. It wouldn't be in competition with peak uses. He stated that he takes exception to the statement that it would not be an enhancement. He thinks a daycare and a school can be compatible and complement each other. So, it will enhance the serviceability of the school. He noted that staff said it was a "potential" conflict. He questioned if staff had hard evidence of conflict. He mentioned again that other schools have traffic issues and referenced Glen Westlake. He stated that Creative Day will not add to this.

He stated that this would not set a precedent. Staff already mentioned other entities that are already in residential areas. He made the distinction between a commercial endeavor and the use of the building and use across the street. Several daycares are already in operation and he doesn't see any difference. He mentioned the Growing Place. He stated that they are using the same parameters and operate in an area with more houses across the street than this area.

He stated that with regard to the parking variation, the parking area would see no more use than a typical time. The traffic study states that St. John's traffic works well as a whole. St. John's and Creative Day will not be adverse to each other. Creative Day will rely on four spaces in the parking lot. KLOA stated that even if they used the front spaces they would have the ability to back in and out of those spaces. So it shouldn't tie up traffic any more than it is.

With regard to item six, he stated that use of shared spaces is flexible. There have been meetings between St. John's and Creative Day about scheduling, and there is no problem. Creative Day can utilize other areas to do what they need to do. He indicated it has been worked out and that it seems like micromanagement for the Village to state something about that. Creative Day has worked out times and schedules and has been doing so for twenty six years. He questioned why couldn't they do it now. The gym and outside play area are the only areas that might cause conflict. However, you can be creative to get around that by using nearby parks within walking distance and other options.

Mr. Dennis stated that he had no comments regarding item seven. He stated that he has looked over the document that was the 2005 agreement and believes St. John's is not doing anything

contrary to their agreement. They told us we needed to go through the process and that is what we are doing. He stated that he did not think the church was deliberately going against the agreement.

He stated that he thinks Creative Day will be a valuable asset and a good use of the building. Having children in the building might not be deterrence to crime. However, if there are people around and activities, it is less likely there will be graffiti or damage to the building if someone knows its being used. He also referred to previous discussions why the building is good enough for kids. He felt that the building is outdated but they have talked with Fire Marshall and Building Department about the necessary upgrades. What needs to be updated for the first floor and for fire prevention in the entire building are two different issues. Creative Day would only need to install strobes and warning lights. If anyone where to occupy the third floor, the whole building would have to be sprinkled. The cost would be several hundred thousand dollars and they would also need bathroom access.

Chairperson Ryan asked if there were any questions of the petitioners.

William Heniff asked if the petitioner could clarify some issues related to item six. He asked if they could make clear for the record about midday activities or trips as how it relates to traffic.

Mr. Dennis indicated that most of the drop-offs and pick ups would occur during the morning and evening hours indicated. However, if a child needs to be picked up for a doctor's appointment or another reason, a parent could do that. As for field trips, the students would walk to the train station which would take them to the aquarium. This would create no additional traffic.

Mr. Heniff asked if there would be morning and afternoon classes which might cause a midday rush.

Mr. Dennis stated that some children may do half days. However, some may come directly from St. John's and would simply walk across the street. If the students come from another school, there may be some small number of additional vehicles.

Commissioner Cooper asked if there would be any food delivery.

Mr. Dennis stated that there may be food delivery for a short period until the kitchen is fully functioning. However, all meals would be prepared onsite.

Mr. Heniff asked for a representative from St. Johns to provide testimony related to item seven.

Dave Freese, 569 Brewster Avenue, stated that he is the Chairman of the Congregation at St. John's. He then introduced Joe Jaruseski as the former Chairman. Mr. Freese stated that Creative Day came to the church looking for space to rent. He stated that the church never hung out a for rent sign. St. John's council met on the issues and decided that because it was a daycare center it would be compatible with what they were doing as it fits on their campus. The church indicated to them that they would have to go through the process with the Village. He addressed

what has changed since 2005 and indicated that it is the economy that has changed. He stated that the church thought that if this is an opportunity to have income and if it fits into that campus, then why not.

Commissioner Olbrysh stated that in 2005 the church agreed to use the old school for storage and office space due to a substandard building. He had taken a look at the website calendar. He stated that for January, every Tuesday at 9 a.m. and 6 p.m. there is a quilter meeting. He asked if there are any other meetings like that.

Mr. Freese mentioned a room for Boy Scouts once a month. The lady quilters do use a room on the third floor on a regular basis and there is a room being used as storage for the food pantry.

Joe Jaruseski, 1107 Michelle Lane, stated that he wanted to clarify some items. He mentioned the traffic concerns and asked that be taken into consideration that the weather is bad right now. It takes longer to get out of the car and drop off children than normally. He also stated that food delivery should not interfere with traffic as there is an area at the rear of the old school building where such deliveries have taken place in the past.

Chairperson Ryan asked what other commercial interests would fit into St. John's.

Mr. Freese stated that he didn't think any would. This was a unique situation and he thought that God brought Creative Day to them as it was such a good fit. He stated that he doesn't see any other commercial use that would fit in, and they don't want an outside commercial use in that building especially with all the children nearby.

Chairperson Ryan referred back to what they said in 2005 when it was agreed to it couldn't be used for kids.

Mr. Freese indicated that the building was not adequate for 233 students which would require retrofitting the entire building. Creative Day would only have to retrofit certain areas. He stated that he did not see anything within the wording of the 2005 Conditional Use that would prohibit St. John's from making a petition for a daycare center. There was discussion about a daycare related to whether St. John's wanted to open up its own day care. Again, the opportunity came before them and they thought it was a good fit.

Commissioner Olbrysh asked if there were plans for the old school building beyond two years.

Mr. Freese stated that there were not, in part because of economy. They found that groups within the congregation like to use it for storage, the second gym is used for occasional basketball practice, and the stage might be used for the fall play. He estimated that they use about fifty percent of the facility.

Chairperson Ryan asked for the general public to ask questions or comments related to the seven items remanded back.

Janet Imbrogno, 14 Lincoln Court, referred to the seven items and wanted to comment on them. She stated that numbers one and two interact and contradict each other. With regard to commercial enterprises in residential districts and having commercial in an institutional planned development, she thought it is a commercial establishment that fits into an institutional development. A daycare is like a preschool and would fit into education of children. She did not think it's truly a residential area. With regard to item four, it is obvious that other uses would be put under the same scrutiny and that everything would be considered. With regard to items five and six, she mentioned that the traffic study found everything acceptable. As far as traffic and children, she doesn't think that is an issue. She stated that items three and seven complemented each other. With regard to item seven, she stated that she did not think the intent was to shut down the building completely. It would be such a waste to let it sit and rot. With regard to item three, she did not know any better use for the property than to have children in it.

Karen Ness, 219 W Ash St., recapped her letter that she sent to the Village. She stated that this is a for profit business that would be paying rent to St. John's, a not for profit institution. She also stated that there should not be children in a building with such inadequacies as were previously represented. She stated that St. John's has been violating the previous planned development ordinance by allowing other users to use the old school building.

Chairperson Ryan then opened the meeting for comments among the Commissioners.

Commissioner Sweetser stated that she wanted to lay groundwork in terms of terminology and its importance this time. The word commercial has a broad interpretation and broad scope and gives the sense that there is a lot of activity, that there may be lights, action, and anticipation of growth. It is unfortunate that commercial casts this type of designation. We have to address that and what it really means. It has been pointed out that commercial can mean a lot of things other than what the staff report indicates. Staff has indicated that of ten operations in item four, seven were given conditional uses. It strikes me that when 70 percent of something has to be given a conditional use that the definitions might not be characterized the best they can be.

William Heniff referred to the table included in the packet. He stated that for clarity, where there are conditional uses most are located within business districts.

Commissioner Sweetser stated that was not her point, it was that there were conditional uses needed for 70 percent of the institutions.

Commissioner Cooper added that do we want our children in the middle of a strip mall. As Commissioner Sweetser was indicating, the way our codes and ordinances are set up they aren't keeping our children in the forefront. She indicated that she has comments in response to the seven items.

PLAN COMMISSION RESPONSE TO THE SEVEN (7) ITEMS

Chairperson Ryan mentioned that they should go through the points one by one. He requested that Commissioner Cooper begin by discussing **item one**.

Commissioner Cooper stated that this item requires consideration of the type of operation in this church. It is different than a car wash or auto body shop and this is a service provided to families for children. However, it has different connotations for the type of entity that it is. The day care has agreed to limit growth to forty students. In this case, the owner of the day care is willing and wants to cap growth. So, that might be one of the ways to decipher this as a separate approval and reject something in the future. Caring for children is compatible with neighborhoods and that is where children are. That is a wonderful part of Lombard's community and a marketable and unique quality. This type of use is conducive to residentially zoned district. As mentioned, there was a school in the building before and it had worked for many years. There is synergy between the two and the other uses in the area. Lastly, looking at an aerial at what the physical build out looks like, some of the adjacent land is zoned residential, this an R2PD. To the north is recreational and includes a library. Where else do you want your children to go? The historical museum is nearby. When you look at the land how it is developed the uses are synergistic to this business.

Commissioner Sweetser asked if this is a commercial business then what commercial area would we want that in. Commercial areas are strip areas. Is that something we would say as a community, that is where a daycare center should be? Or in a quasi-residential area?

Commissioner Olbrysh stated that he realizes that day care facilities are part of society today because of both parents and single family parents working and there is a need for them. They have a place in the proper environment. After listening to all this today, he is still opposed to this petition because granting it would set a precedent for setting a commercial, for profit business into an residentially zoned residential area. He believes it would set a horrendous example for the Village. As an extreme example of this, East Central Avenue is one block south of where we sit. Central is a short distance from the Roosevelt Road Corridor. Does that mean we could establish commercial endeavors on Central? You don't only have to look at proximity to residential areas but how it is zoned. If St. John's wanted its own daycare center, we would still have to look at it. A substandard building would be an issue but the major concern is establishing a for-profit in a residential area.

Commissioner Sweetser stated that she had thoughts along the same line but these issues are very interrelated and woven. This is where terminology doesn't service well. As far as precedent, St. John's would not be forced to accept any other if they are sought out. She asked if because this is a planned development it would not set a precedent as each planned development is different.

Mr. Heniff stated that it is not automatic.

Commissioner Flint stated that he had the same thought as Commissioner Sweetser. A precedent would not be set because this is a Conditional Use. He understands Commissioner Olbrysh's comments but this petition should be evaluated on its own merits and if something else came along we would have to look at it.

Commissioner Burke stated that he lives in the area. He stated that he does not believe it is a quasi-residential neighborhood. We think it's a nice residential neighborhood. He stated that he did not know how you can say it wouldn't set a precedent. Churches are looking for ways to increase funding because of the economy and change of demographics. This would have an effect on other opportunities for this to occur in other planned developments in Lombard. It would be hard to stop that trend. Part of the issue is that the language is getting in our way and without changing that, it's difficult to address the situation.

Chairperson Ryan asked that the Commissioners begin discussion of **item two**.

Commissioner Cooper stated that there is compatibility with the school and the institutional planned development. So, the daycare doesn't fall under institutional heading.

Mr. Heniff stated that she is correct; it's a separate entity.

Commissioner Cooper stated that with the similarity of the educational focus we might want to look at those issues in the future.

Chairperson Ryan cautioned the Commissioners to stick to the present and not worry about the future at this point.

Chairperson Ryan asked that the Commissioners begin discussion of **item three**.

Commissioner Cooper stated that safety is increased by having people in the building and eyes on streets. She also stated that there is the financial contribution made in updating the building so it doesn't go into disrepair with the benefits of safety to public and entrances and sidewalks being cared for. She stated that working families need safe, loving environments to take children to. She mentioned that there is proven clientele relying on them. She noted that with all of the physical resources within this complex, they have something most do not have. Physical activity is so hard to come by and finding a place for physical activity is a challenge. This is a service for our community.

Commissioner Cooper also mentioned the location of the property and its proximity to transit and biking opportunities. She mentioned the Prairie Path, transit for commuting parents, and York theater. Also, no new construction would be required with having the old building. There would be no new buildings impacting the neighborhood. Bringing people to our downtown and enlivening the downtown and farmer's market is a benefit. We need people to patronize our downtown businesses and by having people coming into the downtown corridor it will be easier for people to access downtown.

Commissioner Olbrysh stated that he agreed with Commissioner Cooper as to the benefits. However, the issue is talking about a for profit organization in a residentially zoned area. He cannot get past that point. All the other points are great but the question is what organization is running the business. That is what bothers him.

Chairperson Ryan asked that the Commissioners begin discussion of **item four**.

Commissioner Flint stated the Plan Commission looks at each petition on its own merit. There is not a car dealership coming in here, it's something compatible with the area. We should look at it on a per case basis and this is a conditional use.

Commissioner Sweetser stated that she wished to reiterate the points she made before.

Chairperson Ryan asked that the Commissioners begin discussion of **item five**.

Commissioner Cooper stated that she would defer to KLOA regarding this item. The traffic study was completed and said this is one of the most efficient traffic flows they have seen. With the provision of the parking spaces, additional queuing should not be an issue.

Commissioner Sweetser stated that drop off times would only occasionally conflict with St. John's so she was not sure why an example was given about the queuing.

Mr. Heniff stated that it was meant to clarify discussion from the November meeting about traffic being delayed by queuing. It was given for reference purposes.

Commissioner Sweetser stated that she doesn't see the relevance.

Commissioner Burke stated that the petitioner acknowledged that there would be some overlap in traffic, particularly during morning drop off. He stated that he thinks there will be some overlap and will verify that Ash has a lot of cars waiting to get onto Lincoln. The petitioner's testimony comparing other schools traffic concerns is understandable but Westlake and Parkview are public schools and they are obligated to take that traffic. They are not asking to add to that traffic. If there is already a problem do we need to add to it?

Commissioner Sweetser stated that she did not think they would be adding to a problem because you mentioned it's an occasional overlap due to the time the center is open.

Commissioner Burke asked that the petitioner clarify the testimony.

The petitioner stated that pickup in the afternoon is usually after work, after the school is closed. In the morning, there will be some overlap for drop off times. However, the Creative Day parents will not be in the same queue and are not adding to any lines on Ash.

Chairperson Ryan indicated that **item six** has been discussed by the petitioner and Plan Commission. He asked that the Commissioners begin discussion of **item seven**.

Commissioner Cooper stated that St. John's has indicated that their decision has a lot to do with the economy.

Commissioner Sweetser stated that it serves a cause or it doesn't but to point to something and say you were going to do this and do that. Circumstances change and things come up not of our own doing and that is the issue here. She stated she is concerned that this opportunity came along and St. John's looked into it and it is coming across as a violation. Ultimately, it is more technical in nature and does not constitute premeditation or intent.

Chairperson Ryan asked for any other discussion.

Commissioner Flint asked staff if by approving this, would it set a precedent in their mind.

Mr. Heniff stated that there are two things to look at. We have a planned development in place. As information indicates that we have noted in the staff report, we haven't approved a use exception of a commercial day care in a residentially zoned R2 property. If approved, it could set a precedent. Day care centers are not listed as permitted or conditional use in residential districts. They can only be brought forward through use exception through their planned development. The Plan Commission gets to review every use exception on its own merit. One of the challenges is that we look at each case on own merits, but we have many institutional uses in the Village. The question comes up, they did it why can't we?

Commissioner Olbrysh stated that his background is in law and lawyers look at precedent. We can't ignore that. That is why he has his opinion. He has nothing against daycare centers and they help the working family. However, it is where it is located and the precedent that is being set and where does all this stop. That is the concern.

Mr. Heniff stated that counsel has given additional direction as to a finding they should make prior to any final consideration in this matter. Now that additional information has been included as public testimony, the Plan Commission will be asked to make findings related to the items presented this evening.

Mr. Moynihan stated that in addition to the findings to be made regarding the seven items identified by the Board, counsel has added an eighth finding to be made:

The petition complies with the Standards of Planned Developments, Standards for Planned Development with Use Exceptions, and Variation Standards for not requiring additional parking spaces as set forth in the petitioner's Responses to those Standards attached to the November 17, 2008 staff report.

George Wagner explained that in the staff report there is a summary of two possible options. In the event the Plan Commission wishes to approve, there should be along with those findings of fact, an eighth finding that provides that part of the motion of the Plan Commission is adopting their previous findings that the petition has complied with the Standard for Planned Developments, Use Exceptions and Variations. If there is a motion for denial, he pointed out the recommended language should include the acceptance of the Inter-departmental Review Reports from both November 17, 2008 and January 26, 2009.

Commissioner Sweetser stated that she would like attention paid to terminology as it hasn't served us well in this case.

Commissioner Burke agreed with that. He said that looking at the seven items there are some that are problematic and some that are non-issues. The precedence is something we need to consider and that could be problematic. He asked staff is it only two options: either we approve with all eight findings or deny altogether.

Mr. Heniff stated that with the seven findings the Board of Trustees wanted, ultimately, with the additional testimony, we come back to a favorable or unfavorable recommendation from the Plan Commission. Within those seven provisions there may be one response you may or may not feel comfortable with but it does meet the Standards required. The seven items should give clarity for final recommendation.

Commissioner Sweetser stated that they have observed the letter of the law but the terminology doesn't begin to help us understand how they fit or don't fit. The spirit of the law should be in play and she will use that in her vote.

Commissioner Olbrysh asked that if he made motion, will he get a second?

Mr. Wagner suggested making a motion.

On a motion by Commissioner Olbrysh and a second by Chairperson Ryan, the Plan Commission voted 3 to 3 that the Village Board deny the petition based on the finding that the petitioner had not met the required Standards as set forth in the Zoning Ordinance. The motion having failed, George Wagner asked for a motion to approve.

Commissioner Cooper made a motion to approve the petition as written within the PC 08-32 Remand Memo with the seven finding as requested by the Village Board and the eight finding:

8. The petition complies with the Standards of Planned Developments, Standards for Planned Development with Use Exceptions, and Variation Standards for not requiring additional parking spaces as set forth in the petitioner's Responses to those Standards attached to the November 17, 2008 staff report.

Commissioner Cooper stated that her motion for approval should be subject to the six conditions as written within the PC 08-32 Remand Memo. The motion was seconded by Commissioner Flint. The Plan Commission voted 3 to 3 that the Village Board approve the petition based on the finding that the petitioner had met the required Standards as set forth in the Zoning Ordinance.

As the Plan Commission was unable to obtain four votes for either approval or denial of the petition, this petition will be forwarded to the Village Board with no Plan Commission recommendation.

February 5, 2009
PC 08-32 Remand
Page 16

Respectfully,

VILLAGE OF LOMBARD

Donald Ryan, Chairperson
Lombard Plan Commission

c. Petitioner
Lombard Plan Commission

H:\CD\WORDUSER\PCCASES\2008\PC 08-32\Remand Referral Letter 08-32.doc