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(R-2013-438)
REV. COPY

RESOLUTION NUMBER R- 308001

DATE OF FINAL PASSAGE FEB 12 2013

A RESOLUTION GRANTING NEIGHBORHOOD DEVELOPMENT
PERMIT NO. 869648/ NEIGHBORHOOD USE PERMIT NO. 869646 -
EKCO METALS - PROJECT NO. 241664

WHEREAS, STERLING TRANSIT INCORPORATED, Owner, and
INTERNATIONAL METALS EKCO LIMITED, DBA EKCO METALS, Permittee, filed an
application with the City of San Diego to operate a large collection recycling facility with
deviations for fence height and material on portions of a 0.56-acre site located at 2830-2846
Commercial Street in the I-1 Zone of the Southeastern San Diego Planned District and the
Federal Aviation Authority Part 77 Overlay Zone, within the Southeastern San Diego
Community Plan area; and

WHEREAS, the project site is legally described as Lots 28-34 Inclusive, Block 3, Reeds
Central Addition, Map No. 981; and

WHEREAS, under Charter section 280(a)(2), this resolution is not subject to veto by the
Mayor because this matter requires the City Council to act as a quasi-judicial body and where a
public hearing was required by law implicating due process rights of individuals affected by the
decision and where the Council was required by law to consider evidence at the hearing and to
make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on FEB 12 2013, testimony
having been heard, evidence having been submitted, and the City Council having fully
considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Neighborhood Development Permit No. 869648 and Neighborhood Use Permit No.869646:

NEIGHBORHOOD DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE (SDMC) SECTION 126.0404 AND NEIGHBORHOOD USE PERMIT – SDMC SECTION 126.0205:

1. Findings for all Neighborhood Use Permits

a. The proposed development will not adversely affect the applicable land use plan. The proposed development is requesting a Neighborhood Development Permit and Neighborhood Use Permit to operate a Large Collection Recycling Facility with deviations for fence height. The 0.56-acre site is located at 2830-2846 Commercial Street in the I-1 Zone of the Southeastern San Diego Planned District and the Federal Aviation Authority Part 77 Overlay Zone, within the Southeastern San Diego Community Plan.

The proposed project is located in the Memorial Neighborhood of the Southeastern San Diego Community Planning area. According to the adopted Land Use map, the Community Plan designates the site as Industrial as illustrated in Figure 30, page 207.

Objectives contained in the Industrial Element (page 97) recommend decreasing land use conflicts between industrial and residential or commercial development; increasing employment opportunities in the community; promoting the redevelopment or rehabilitation of existing industrial facilities; and decreasing crime and crime-related aesthetic impacts. In addition, plan objectives specific to the Memorial Neighborhood encourage the redevelopment of industrial uses along Commercial Street as well as the reduction of conflicts between industrial and residential uses along Commercial Street (Page 97).

The Industrial Element includes recommendations (page 100) for Use Restrictions; Development Standards and Rehabilitation; Defensible Design; Recommended Rezoning; as well as Toxic Materials Control. In particular, industrially-designated areas should be reserved for industrial and/or office park uses and should not be pre-empted by commercial or residential uses. Auto dismantling, junk yards, outdoor open storage and recycling industries should be prohibited in the Southeastern San Diego community. Compliance with this restriction should be required within ten years of adoption of the applicable zoning regulations. The proposed project is consistent with the goals of the General Plan Economic Prosperity Element for establishment and retention of non-base sector employment uses and encouraging the development of small businesses (Policy EP-A.6). Further, the project meets the broad objectives of the Southeastern San Diego Community Plan for increased employment opportunities; rehabilitation of existing industrial facilities; and decreasing crime and crime-related aesthetic impacts (i.e. graffiti) by constructing new fencing and incorporating planting material along the perimeter of the property.

The Community Plan states that restricting outdoor open storage facilities should be required within ten years of adoption of the applicable zoning regulations. The zoning regulations for the SESD Community Plan were originally adopted in 1987. At that time the regulations were not updated to include the recommended restrictions included in the community plan. Furthermore, the zoning regulations were last revised with the 7th Amendment to the Land Development Code (August 23, 2011) to include Separately Regulated Uses (SRU) in Planned Districts. The SRU's apply to planned districts except where a conflict is explicitly identified in the planned district for a specified use. The Southeastern San Diego Planned District Ordinance (SESDPDO) regulations are silent on auto dismantling, junk yards, outdoor open storage and recycling industries and thus the SRU's contained in Section 141.0601 of the Land Development Code (LDC) apply.

Since the adoption of the community plan and zoning regulations in 1987 and the subsequent updates to the zoning regulations (10 in total) including those that govern the SESDPDO, the specific recommendation regarding restricting these types of uses has not been implemented. As such, the underlying Industrial land use designation and applicable zoning regulations would apply. Therefore, the proposed project would not adversely affect the community plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The proposed development is requesting a Neighborhood Development Permit and Neighborhood Use Permit to operate a Large Collection Recycling Facility with deviations for fence height. The 0.56-acre site is located at 2830-2846 Commercial Street in the I-1 Zone of the Southeastern San Diego Planned District and the Federal Aviation Authority Part 77 Overlay Zone, within the Southeastern San Diego Community Plan.

A Negative Declaration was prepared in accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines. An initial study was prepared and determined that the proposed project will not have a significant environmental effect. All Uniform Building, Fire, Plumbing, Electrical, Mechanical Code and City regulations governing the construction and continued operation of the development apply to this project to prevent adverse affects to those persons or properties in the vicinity of the project. Therefore, the proposed development will not be detrimental to the public health, safety and welfare.

3. The proposed development will comply with the applicable regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code. The proposed development is requesting a Neighborhood Development Permit and Neighborhood Use Permit to operate a Large Collection Recycling Facility with deviations for fence height. The 0.56-acre site is located at 2830-2846 Commercial Street in the I-1 Zone of the Southeastern San Diego Planned District and the Federal Aviation Authority Part 77 Overlay Zone, within the Southeastern San Diego Community Plan.

The proposed project complies with all the applicable development regulations of the I-1 Zones, except for the two proposed deviations, which are allowed through the Neighborhood Development Permit (NDP) process. The deviations requested by the applicant are as follows:

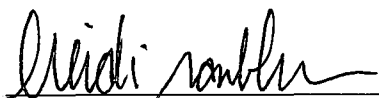
1. A deviation to allow a maximum height of 10 feet for the fence located in the side yard setback where a maximum of 9 feet is otherwise permitted.
2. A deviation to allow a maximum height of 10 feet for the fence located in the rear yard setback where a maximum of 9 feet is otherwise permitted.

Staff has determined that the height of the fence meets the purpose and intent of the regulations and the NDP allows for minor deviations; therefore staff supports the deviations.

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED, that Neighborhood Development Permit No. 869648 and Neighborhood Use Permit No. 869646 are granted to Sterling Transit Incorporated, Owner, and International Metals Ekco Limited, dba Ekco Metals, Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Heidi K. Vonblum
Deputy City Attorney

HKV:hm/nja
1/28/2013
02/22/13 REV.COPY
Or.Dept:DSD
Doc. No.: 505270_2

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24001768

NEIGHBORHOOD DEVELOPMENT PERMIT NO. 869648
NEIGHBORHOOD USE PERMIT NO. 869646
EKCO METALS, PROJECT NO. 241664

CITY COUNCIL

This Neighborhood Development Permit No. 869648 and Neighborhood Use Permit No. 869646 are granted by the City Council of the City of San Diego to STERLING TRANSIT INCORPORATED, Owner, and INTERNATIONAL METALS EKCO LIMITED, DBA EKCO METALS, Permittee, pursuant to San Diego Municipal Code [SDMC] sections 126.0203 and 141.0620. The 0.56-acre site is located at 2830-46 Commercial Street in the I-1 Zone of the Southeastern San Diego Planned District and the Federal Aviation Authority Part 77 Overlay Zone, within the Southeastern San Diego Community Plan. The project site is legally described as: Lot 28-34 Inclusive, Block 3, Reeds Central Addition, Map No. 981.

Subject to the terms and conditions set forth in this Permit, permission is granted to STERLING TRANSIT INCORPORATED, Owner and INTERNATIONAL METALS EKCO LIMITED, DBA EKCO METALS, Permittee to allow for a large collection recycling facility in an existing building with an attached covered loading dock, as described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated FEB 12 2013, on file in the Development Services Department.

The project shall include:

- a. The operation of a large collection recycling facility for metals only;
- b. Continued existence of the existing office building and loading dock, and removal of the existing stairs in the right-of-way;
- c. A deviation to allow a maximum height of 10 feet for the fence located in the side yard (western property line) setback where a maximum of 9 feet is otherwise permitted.
- d. A deviation to allow a maximum height of 10 feet for the fence located in the rear yard setback where a maximum of 9 feet is otherwise permitted.

- e. Landscaping (planting, irrigation, and landscape-related improvements);
- f. Off-street parking;
- g. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. If, on February 12, 2018, the project site is no longer zoned to allow the use authorized by this Permit, this Permit shall expire and the corresponding use of the site shall cease by February 12, 2023. If, on February 12, 2018, the project site is zoned to allow this use, then this Permit shall not expire.
3. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
4. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
5. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

7. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. § 1531 et seq.).
8. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.
9. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.
10. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

LANDSCAPE REQUIREMENTS:

11. Owner/Permittee shall install all required landscape and obtain all required landscape inspections. A "No Fee" Street Tree Permit shall be obtained for the installation, establishment, and on-going maintenance of all street trees.
12. Owner/Permittee shall maintain all required landscape in a disease-, weed-, and litter-free condition at all times. Severe pruning or "topping" of trees is not permitted.

PLANNING/DESIGN REQUIREMENTS:

13. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.

14. Within 90 days of the final approval of this permit, the Permittee shall remove the fence located within the front yard setback and reconstruct the fence outside of the front yard setback, to the satisfaction of the Development Services Department.
15. Prior to the issuance of any construction permits, Owner/Permittee shall cover the front and rear sides of the existing metal corrugated fence within the front yard and rear yard. The material to cover the fence shall be engineered wood fencing material painted light brown wood color satisfactory to the Development Services Director.
16. The fence at the western property line shall be clad with engineered wood fencing material on the west-facing side when the adjacent property owner's fence is removed. The material to cover the fence shall be engineered wood fencing material painted light brown wood color.
17. Prior to the issuance of any construction permits, the Permittee shall be required to complete the San Diego Fire Department Hazardous Materials Information Sheet (form FPB-500).
18. The materials brought to the site shall comply at all times with the San Diego County Department of Environmental Health requirements.
19. Allowable hours of operation for the facility are:
 - a. Monday-Friday: 7:00am to 3:30pm
 - b. Saturday: 7:00am to 12:30pm
 - c. Sunday: Closed
20. All signs associated with this development shall be consistent with sign criteria established by City-wide sign regulations.
21. The facility may aggregate or sort recyclable material collected or accepted by on-site donation, redemption, or purchase predominantly from the public in preparation for shipping to market, in accordance with SDMC Section 141.0620(e).
22. Power-driven processing equipment, including equipment used for aluminum foil and can compacting, baling, plastic shredding, and other limited processing activities may be permitted if in compliance with the noise regulations in SDMC Section 142.0720.
23. There shall be no after-hours donation of recyclable material.
24. There shall be no California Redemption Value (CRV) items accepted.
25. There shall be no reverse vending machines.
26. Collection containers shall be constructed of durable, waterproof, rustproof, and nonflammable material, and shall be maintained in good condition.
27. Collection containers shall be covered and secured from unauthorized entry or removal of material.

28. Facilities shall be clearly marked with the name and telephone number of the facility operator and the hours of operation. A notice shall be displayed stating that material may not be left outside the containers.

29. Facilities shall be kept free of litter and shall be swept at the end of each collection day.

30. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

TRANSPORTATION REQUIREMENTS

31. A minimum of 10 automobile spaces (including 1 van accessible space) shall be provided as required by the Land Development Code, satisfactory to the Development Services Department. All on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing by the Development Services Director.

32. Gates shall remain open at all times during business hours, and signage stating that the gates shall remain open at all times during business hours shall be placed on the property, to the satisfaction of the Development Services Department.

INFORMATION ONLY:

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the City Council of the City of San Diego on February 12, 2013, and Resolution No. R-308001.

Neighborhood Development Permit No. 869648
Neighborhood Use Permit No. 869646
Date of Approval: February 12, 2013

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

By _____
Renee Mezo
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each every obligation of Owner/Permittee hereunder.

STERLING TRANSIT INCORPORATED
Owner

By _____

**INTERNATIONAL METALS EKCO LIMITED,
DBA EKCO METALS**
Permittee

By _____

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**