



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: February 5, 2013

REPORT NO: 13-08

ATTENTION: Council President and City Council

SUBJECT: Ekco Metals, Project Number 241664, Council District 8, Process 2

REFERENCE: Resolution Number R-307740 for the October 15, 2012, City Council meeting on the CEQA appeal (Attachment 4). Minutes for the meeting available via: <http://dockets.sandiego.gov/sirepub/pubmtgframe.aspx?meetid=1447&doctype=Minutes>

REQUESTED ACTION: Should the City Council approve permits to operate a Large Collection Recycling Facility located at 2830 Commercial Street in the Southeastern San Diego Community Plan area?

STAFF RECOMMENDATION:

1. **Certify** Negative Declaration No. 241664; and
2. **Approve** Neighborhood Development Permit No. 869648 and Neighborhood Use Permit No. 869646.

Background:

Existing Conditions: The 0.56-acre site is located at 2830 Commercial Street in the I-1 Zone of the Southeastern San Diego Planned District Ordinance (SESDPDO) and the Federal Aviation Authority Part 77 Overlay Zone, within the Memorial Neighborhood of the Southeastern San Diego Community Plan (Attachment 1). The site was previously developed in the 1950s with a Commercial Truck freight terminal and associated improvements when zoned M-2 (manufacturing). The property was rezoned I-1 SESDPDO in 1987 with the adoption of the Community Plan.

Directly to the east along Commercial Street is a vehicle parts storage facility. Further to the east across 29th Street are several vehicle repair shops that utilize refurbished parts. Directly to the south across Commercial Street is a commercial vehicle repair shop. This vehicle repair shop also operates the vehicle parts storage facility that is directly adjacent to the east of the subject property. Directly to the west on Commercial Street is an auto towing facility. Across the alley behind the subject property is a mix of commercial and single-family residential uses.

The subject parcel is a paved lot with an existing approximately 442-square-foot office building attached to an approximately 2,700-square-foot covered loading dock, open on three sides, built in the 1950s. The site is surrounded on the north, west, and south property lines by a 10-foot metal corrugated fence. The eastern property line abuts an adjacent building on the neighboring property. Currently the site is accessed by an existing driveway on Commercial Street and has no alley access. The site is located approximately 215 feet north of the nearest residentially zoned property. The property was previously used from 1999-2010 as a truck transfer and storage station, which is permitted by right in the I-1 Zone.

Neighborhood Code Compliance: The applicant was issued a Notice of Violation (NOV) on April 20, 2011, (Attachment 8) for failing to obtain a Neighborhood Use Permit (NUP) to operate a Large Collection Recycling Facility, a Neighborhood Development Permit (NDP) for an over height fence, as well as building permits for the construction of an underground weight scale and required sign permits.

On May 26, 2011, the applicant requested confirmation from the Development Services Department that a transfer and storage use on the site was allowed by right under the I-1 Zone. Staff concurred and the current use on the site consists of bringing material to the site, transferring to trucks (with no sorting of material) and hauling it to a facility in Los Angeles, as allowed by the zone.

On June 30, 2011, the applicant applied for a NUP and a NDP for the Large Collection Recycling Facility, the over height fence and permits for the truck scale. Signage is being addressed under a separate ministerial permit.

Environmental Appeal: On June 12, 2012, staff concluded that the project was exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (existing facilities). On June 26, 2012, the chair of the Southeastern San Diego Community Planning Group, appealed the determination. On October 9, 2012, the appeal was brought before the City Council and continued until October 15, 2012. At the October 15, 2012 hearing the City Council upheld the appeal and directed staff to reconsider the environmental determination (Attachment 4).

Pursuant to SDMC Section 112.0520(e)(1), the lower decision-maker's decision to approve the project shall be held in abeyance. The City Council shall retain jurisdiction to act on the revised environmental document and associated project.

Project Description:

The project proposes the operation of a Large Collection Recycling Facility per San Diego Municipal Code Section 141.0630(e). The proposed facility would remove metals from various locations around the City and bring them to the site for sorting and collection. This

material consists mostly of scrap metal and metal construction debris. The project site will also accept public drive-up redemption of recyclable materials during business hours. Once delivered and sorted on-site, the metals will be loaded onto a truck and transported to the applicant's Los Angeles recycling facility for processing. There will be sorting of material but no processing of materials at the site.

The proposed project has been conditioned to prohibit reverse vending machines, accepting of California Redemption Value (CRV) items, and containers for any after-hours donations. Operating hours will be from 7:00 a.m. to 3:30 p.m., Monday through Friday, and 7:00 a.m. to 12:30 p.m. on Saturday.

The project site contains an existing 10-foot metal corrugated fence located within the front yard setback where a 6-foot setback is required. The project proposes to move the front fence and associated gates outside of the setback. Fences outside of the setbacks are allowed with a maximum height of 12 feet. The maximum height of the proposed fence (outside of the front yard setback) is 10 feet. The project also proposes to remove the existing stairs within the front yard setback, close off access to the alley, provide landscape within the front yard setback and construct a lift adjacent to the new accessible parking space on site. A minimum of 10 automobile spaces (including 1 van accessible space) are required by the Land Development Code; the proposed project will provide 14 automobile spaces.

Required Permits:

The proposed development requires a Process Two Neighborhood Development Permit (NDP) and a Neighborhood Use Permit (NUP). A decision for the proposed project was not yet determined by Staff when the Environmental document was appealed (see 'Environmental Analysis' section below). Pursuant to SDMC Section 112.0520(e) (1), the lower decision-maker's decision to approve the project was held in abeyance and the City Council retains jurisdiction to act on the revised environmental document and associated project.

Neighborhood Use Permit:

The project proposes a Neighborhood Use Permit (NUP) to operate a Large Collection Recycling Facility which is not specifically identified in the Industrial Zones of the Southeastern San Diego Planned District Ordinance (SESDPDO); therefore, the City-wide separately regulated uses apply pursuant to San Diego Municipal Code (SDMC) Section 151.0401(a).

The Planned District Appendix A lists many, but not all, possible land uses. SDMC Sections 151.0103 (Applicable Regulations) and Section 151.0401 (General and Supplemental Regulations) provide direction on land uses that are not specifically

mentioned in the City's twenty (20) Planned Districts. The Southeastern San Diego Planned District Ordinances (PDO) does not contain all of the possible land use designations. Some land uses are covered in SDMC Section 151.0103(a) and (b) that apply to all planned districts unless specific direction is contained in the applicable PDO. These categories include land uses such as child care facilities, alcoholic beverage outlets, and adult entertainment establishments and recycling facilities.

Recycling Facilities (141.0620) are a separately regulated use citywide unless specifically detailed in the PDO. Of the twenty (20) PDOs only three (Center City, La Jolla Shores, and Mission Valley) identify recycling land use in the zoning section. The remaining 17 planned districts including Southeastern San Diego regulate recycling facilities as a separately regulated use in San Diego Municipal Code section 141.0620.

Large Collection Recycling Facilities are subject to SDMC Section 141.0620(e) which regulates the size of the property, equipment used, parking, landscaping, and signage. Staff has reviewed the application and determined the project complies with the applicable sections of the Municipal Code (except the deviations detailed in the NDP section below) and the Community Plan (as described on Page 5 of this report).

Neighborhood Development Permit:

A Neighborhood Development Permit (NDP) per SDMC Section 126.0402(g) is required when development proposes a fence that exceeds the height permitted in Section 142.0350. The two deviations listed below are supported by staff.

- a. 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 permitted.
- b. 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 permitted.

The underlying I-L zone allows a maximum height of 9 feet for fences within the rear and side yard setbacks. The applicant is requesting a height of 10 feet which equates to an 11 percent deviation. An NDP may be requested to permit an increase of up to 20 percent in the fence height limits. The increase in height is justified to ensure the protection of the health and safety of persons on the property and also provides an additional buffer to the surrounding neighbors.

Currently the fence material is corrugated metal and not allowed per the regulations in the SESDPDO. The permit is conditioned to require the front and rear yard fence be covered with engineered wood fencing material painted a light brown color. The western fence abuts the neighboring property and has been conditioned to provide the same material

(engineered wood fencing) as the front and rear fences when the adjacent property owners' fence is removed (Attachment 9).

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

Community Plan Analysis:

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 Rezonings; as well as Toxic Materials Control. In particular, the Community Plan states, "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 implements Industrial Objective 1 by limiting operating hours, limiting the type of recycling materials collected, and ensuring that collection containers are covered and secured and the facility does not generate light, odor or air nuisances to the surrounding community.

Industrial Objective 2 is implemented by re-activating a previously vacant site and creating additional employment opportunities as well as the increased economic activity to the area and businesses and entities utilizing the service.

Industrial Objectives 4 and 5 are implemented by improving the aesthetic appearance of the property through permit conditions through project specific improvements including fencing, landscaping, and removal of a staircase into the public right of way. Furthermore,

the project addresses Objective 5 through business practices including limiting recyclables received. No California Redemption Value (CRV) recyclables, after-hours drop offs, reverse vending, food waste, or small non-business (individuals) recyclables shall be received.

Objective 2 for the Memorial Community states: "Improve the appearance of Imperial Avenue, Commercial Street, Ocean View Boulevard, and National Avenue by improving the general appearance and maintenance of buildings along these streets, removing trash and adding landscaping." The project will implement the objective through landscaping, fencing, and graffiti abatement.

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 recycling 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 SRUs 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 SRUs 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.

Environmental Analysis:

On June 12, 2012, staff concluded that the project was exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (existing facilities). On June 26, 2012, the chair of the Southeastern San Diego Community Planning Group, Maria

Riveroll, appealed this determination. On October 9, 2012, the appeal was brought before the City Council and continued until October 15, 2012. The appellant challenged the conclusion that the site is occupied with an existing facility. Staff reevaluated the original determination and concluded the change from the existing use to the proposed use exceeded the definition of negligible and therefore, would not qualify for an exemption as an Existing Facility (Attachment 5). At the October 15, 2012, hearing the City Council unanimously granted the appeal and remanded the environmental determination back to staff (Attachment 4).

A Negative Declaration was prepared in accordance with the State of California Environmental Quality Act (CEQA) Guidelines. An initial study was prepared and determined that the proposed project will not have a significant effect on the environment.

Conclusion:

Staff has reviewed the application for the Neighborhood Use Permit and Neighborhood Development Permit and determined the project, including the proposed deviations as allowed by the NDP process, complies with the applicable sections of the Municipal Code. Staff has determined the required findings would support the decision to approve the proposed project (Attachment 10). Therefore, staff recommends the City Council approve the Neighborhood Use Permit and Neighborhood Development Permit as conditioned.

Alternatives:

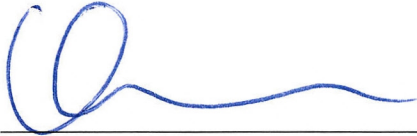
1. **Approve** Neighborhood Development Permit No. 869648 and Neighborhood Use Permit No. 869646, **with modifications.**
2. **Deny** Neighborhood Development Permit No. 869648 and Neighborhood Use Permit No. 869646, **if the findings required to approve the project cannot be affirmed.**

FISCAL CONSIDERATIONS: None. All costs associated with the processing of this project are paid through a deposit account maintained by the applicant.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: An appeal was filed regarding the California Environmental Quality Act exemption determination, and at the October 15, 2012, hearing the City Council unanimously granted the appeal and remanded the environmental determination back to staff.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: The project was denied by a vote of 6-3-0 on July 9, 2012, at the Southeastern San Diego Community Planning Group (Attachment 13).

KEY STAKEHOLDERS: Sterling Transit Inc., International Metals Ekco Limited, DBA Ekco Metals (Attachment 14), CEO Ely Keenberg, Southeastern San Diego Planning Group, Residents and Businesses within the Southeastern San Diego Community.



Kelly Broughton
Director
Development Services Department

KGB:RM

Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Resolution Number R-307740, dated October 15, 2012
5. October 12, 2012, Memo from Development Services Department
6. September 26, 2012, Memo from Development Services Department
7. CEQA Appeal dated June 26, 2012
8. Notice of Violation, dated April 20, 2011
9. Draft Permit with Conditions
10. Draft Permit Resolution with Findings
11. Project Plans
12. Community Planning Group Recommendation
13. Ownership Disclosure Statement
14. Environmental Resolution