AGENDA ITEM 1-2

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Conduct a public hearing to consider the appeal from Lowe's HIW, Inc., regarding the Planning Commission's decision of April 13, 2005, pertaining to the application of design standards for Large Retail Establishments to their Lodi store.

MEETING DATE: May 18, 2005

PREPARED BY: Community Improvement Manager

RECOMMENDED ACTION: That the City Council deny the appeal and uphold the Planning Commission's decision that the Design Standards for Large Retail Establishments do apply to the design and review of all outdoor storage and display of merchandise at the Lowe's store in Lodi.

BACKGROUND INFORMATION: At the April 13, 2005 Planning Commission meeting, a public hearing was conducted to review the outdoor storage/display limitations for the new Lowe's store, located at 1389 S. Lower Sacramento Road.

Review of Public Hearing of April 13, 2005

At the April 13th hearing, I presented the staff report that had been prepared by former Community Development Director Konradt Bartlam before his departure. Mr. Bartlam had been the primary person in contact with the Lowe's representatives throughout the course of this project, especially in the matter pertaining to the approval of outdoor storage and display of merchandise, which is the crux of the issue on appeal. Mr. Bartlam's report, which is attached and referenced as Exhibit A, outlined the full timeline of this process which started with the Use Permit approval in May of 2003, through the Site Plan and Architectural Review Committee's (SPARC) initial review later that same month and finally SPARC's subsequent review of Lowe's proposed plan for outdoor storage and/or display of merchandise in November 2004, some 16 months later.

It was during that 16 month period, specifically in May of 2004, that the Design Standards for Large Retail Establishments that the City Council had approved and adopted went into effect. When Lowe's finally did submit its plan for review in October of 2004, it was a plan that had come about through a great deal of work between Staff and the Lowe's representatives. More importantly, it was a plan that met all of the City's requirements, including those contained within the Design Standards for Large Retail Establishments, which were in effect at the time that the Lowe's plan was submitted for SPARC review.

As noted in the staff report, at the November 2004 SPARC meeting, Lowe's representatives attempted to amend the proposed plan for outdoor storage and/or display of merchandise. At that time, Mr. Bartlam recommended that SPARC table the matter pending Lowe's submittal of a revised plan for Staff review and comment, prior to reconsideration by SPARC.

APPROVED: _____
Blair King, City Manager

In my report to the Planning Commission, I reiterated that since the SPARC meeting of November 1, 2004, Lowe's has not submitted a revised plan for SPARC review. However, since November 1st, Lowe's has proceeded to store and display merchandise across the front of the store without having any approved plan whatsoever.

During the public hearing, the Lowe's store manager confirmed that they currently have outdoor storage and display and that they are considering expanding that to include the display of storage sheds out in the parking lot area in front of the garden center.

In conjunction with my report to the Planning Commission, Deputy City Attorney Janice Magdich outlined that the Planning Commission's determination must be based upon whether or not Lowe's had a vested right which would allow it to submit plans regarding outdoor storage and display of merchandise that do not require compliance with the design standards approved by the Council and effective as of May 7, 2004. Ms. Magdich went on to explain that the right to develop becomes vested when all discretionary approvals for a project are obtained and only ministerial approvals remain, and that prior to that vesting the City can make changes in standards, land use designations and fees that impact a project and with which the developer must comply. Because Lowe's occupancy was conditioned upon obtaining SPARC approval of plans for outdoor storage and that was not satisfied prior to the May 7, 2004 effective date of the Design Standards for Large Retail Establishments, Lowe's did not have a vested right to proceed under pre-May 7th design standards. Therefore, any plan submitted by Lowe's to SPARC for consideration must comply with the standards now in effect.

Review of Issues on Appeal

Lowe's arguments at the public hearing, as stated by Jennifer Renk, attorney for Lowe's HIW, Inc., and in her letter to the Planning Commission dated April 13, 2005, which is attached to and referenced in their appeal, are as follows:

1. That the design standards do not apply retroactively to the Lowe's project;
2. That the outdoor display is part of the overall Lowe's project and is not a "new" project; and,
3. That Lowe's meets the spirit and intent of the design standards.

After conducting the public hearing, the Planning Commission voted to affirm that the Design Standards for Large Retail Establishments applied to Lowe's Lodi store. Subsequent to that decision, Ms. Renk filed an appeal on behalf of Lowe's HIW, Inc., seeking to overturn the decision of the Planning Commission.

In their appeal, Ms. Renk asks that the City Council consider the same three arguments that were made in Lowe's presentation to the Planning Commission. In response to the first two items, we refer to the points made by Deputy City Attorney Magdich at that initial public hearing that Lowe's did not have any vested right as they had not yet received all discretionary approvals for their project. In response to their third argument, I can only say that as of this date, we have yet to receive any plan to review in order to determine what Lowe's is or is not in compliance with.

In conclusion, Staff's position is that any plan for outdoor storage or display of merchandise submitted by Lowe's after May 2004, is subject to the new Design Guidelines for Large Retail Establishments, and furthermore, that this issue was communicated to the Lowe's representatives by Staff during the process of working on a plan leading up to Lowe's submittal for SPARC review in November 2004. Therefore, Staff respectfully requests that the Council deny the appeal.

As stated in my report to the Planning Commission for the April 13th public hearing, regardless of the decision this evening, this issue still requires SPARC review. I firmly believe that if given the opportunity to actually work with the Lowe's representatives through that process, staff can identify areas where outdoor storage can be allowed in such a manner that Lowe's is able to adequately service its customers.

FISCAL IMPACT: No Fiscal Impact

FUNDING AVAILABLE: No Funding Required.

Joseph Wood
Community Improvement Manager

Attachments

cc: City Attorney
Planning Commission
Appellant

MEMORANDUM, City of Lodi, Community Development Department

To: Planning Commission

From: Community Development Director

Date: April 13, 2005

Subject: Review of outside storage/display limitations for the Lowe's store located at 1389 S. Lower Sacramento Road.

At the March 23, 2005 Planning Commission meeting, Commissioner Mattheis requested that the on-going issue regarding outdoor storage/display of merchandise at the recently opened Lowe's be brought to the Planning Commission for interpretation of City standards. This item has been noticed in the typical manner, including the Lowe's Store Manager.

As the Commission is aware, the processing of the Lowe's project took some time and was a challenge for staff to navigate between the folks at Lowe's and community expectation. During that process, the representative from Lowe's, Jim Manion, made it clear to staff that it was not his new company policy to display or store merchandise outdoors. The Planning Commission approved the Use Permit for the center in May 2003. A condition of that approval, as a matter of City requirement, was that Site Plan and Architectural Review Committee (SPARC) approval of the site plan and building elevations was required prior to issuance of a building permit.

The SPARC reviewed the plans for the project in May 2003 shortly after the Planning Commission's approval. As the minutes from that meeting reflect, a fair amount of time was spent on the issue of outdoor storage/display of merchandise. I would call your attention to the discussion by Mr. Manion regarding the storage of building materials such as blocks and fencing material. At the conclusion of the discussion, I recommended a condition that both SPARC and Mr. Manion agreed upon. It reads:

> "The storage and/or display of materials shall be allowed in defined areas that are identified by SPARC prior to the final occupancy of the building."

It was the intent of this condition to allow Lowe's to have the time, during construction, to define specifically what and where they wanted to display or store merchandise. Subsequent to the SPARC approval for the store, a building permit was issued by the City in March 2004.

In May 2004, the City Council approved the Design Standards for Large Retail Establishments. Keep in mind that at the time of this approval, Lowe's had not received any approval to display or store merchandise outside of their building. In fact, it was

toward the end of their construction in November that they finally brought the request forward.

After weeks of working with Mr. Manion in November 2004, a plan for outdoor storage and/or display of merchandise was presented to SPARC. This plan met all of the City's requirements, including those contained within the Design Standards for Large Retail Establishments, which I contend must apply to this issue. At the SPARC meeting, Mr. Manion attempted to change their request and have SPARC enlarge the areas they were requesting approval. I recommended to SPARC that they table the matter so that Lowe's could figure out what they wanted to do. Since November 1, 2004, no new plan has been submitted for SPARC review.

In summary, a SPARC condition exists that requires Lowe's to submit a plan for any outdoor display or storage of merchandise. Subsequent to that condition being approved, the City enacted design criteria that sets forth a minimum 8-foot-wide dimension for sidewalks within this type of project. It is my interpretation that those standards must apply to the outdoor storage issue since Lowe's did not have approval for this activity prior to the standard. The issue before the Commission is whether the large standards apply and in particular the 8-foot minimum sidewalk dimension. Regardless of the Planning Commission action, Lowe's must still make application to SPARC for approval of any outdoor storage or display. Frankly, if Lowe's would have followed through with the condition requirements in a timely manner, this discussion would be moot.

Respectfully Submitted,

Konradt Bartlam
Community Development Director

KB/lw

Attachments

DRAFT

MINUTES FROM APRIL 13, 2005 PLANNING COMMISSION MEETING

Review of outside storage/display limitations for the Lowe's store located at 1389 S. Lower Sacramento Road. This item was presented to the Commission by Joseph Wood, Community Improvement Manager. Mr. Wood explained that at the March 23rd Planning Commission meeting, Commissioner Mattheis requested that the on-going issue regarding outdoor storage and the display of merchandise at the recently opened Lowe's be brought back to the Planning Commission for interpretation. Commissioners Haugan and Heinitz stated that they had met with the store manager of Lowe's prior to the meeting. Deputy City Attorney Magdich went through a timeline of events. On May 22, 2003 following approval of the project, the Site Plan and Architectural Review Committee (SPARC) met and as a condition that was agreed to by Jim Manion, who represented Lowe's, that storage and/or display of materials shall be allowed in defined areas that would be identified by SPARC prior to final occupancy. On March 18, 2004 the building permit was issued for the Lowe's store; and was subject to the SPARC condition regarding the outdoor display. On April 7, 2004 the Large Scale Retail Design Standards were approved by the City Council and the Ordinance became effective on May 7, 2004. On November 1, 2004 SPARC met and Lowe's presented a plan for the outdoor storage and the display merchandise which met all City requirements including the Large Scale Retail Design Standards that was approved by the City Council in April 2004. At that meeting, Mr. Manion proposed changing the plan and a motion was made that the matter be tabled so that Lowe's could seek a Variance to the Large Scale Retail Design Standards. To date there had been no plan submitted for the outdoor storage for Lowe's that had been approved by SPARC and no request for a Variance has been filed. She explained that the decision before the Commission was whether the design standards applied or not to the Lowe's project.

Hearing Opened to the Public

Jennifer E. Renk, Steefel Levitt & Weiss, One Embarcadero Center, 30th Floor, San Francisco, CA. Ms. Renk was present to represent the Lowe's store. She felt the real crux of the issue was the characterization of the approval that SPARC rendered back in May of 2003. She called the Commission's attention to the language of the condition "**The storage and/or display of materials shall be allowed in defined areas that are identified by SPARC prior to the final occupancy of the building.**" She felt that the condition fell within the doctrine of vested rights in that SPARC intended to allow Lowe's to display items outside of the store. What it left for a later date was the actual identification of where these displays were going to go. She argued that it did not open up a discretionary approval that allows subsequent zoning rules to be applied retroactively. She felt it was an unnecessary exercise that Lowe's was going through and that Lowe's wanted to work with the City to make the display area work for both Lowe's and the City.

Erik Hajek, Lowe's Store Manager. Mr. Hajek presented a packet to Commission with a proposal for their outdoor display. He noted that currently everything comes in at night and the outdoor display area was clean, neat, and swept each day. He was proposing to display larger items (grills, riding tractors) in the front of store. He stated that the store needed additional space (outdoors) to service his customers. He also shared his desire to have outdoor sheds displayed in the front of the garden area which would take up to 8 to 9 parking spaces.

Mr. Wood pointed out there had not been an outdoor display plan resubmitted for approval and at the current time there should not be any outdoor storage or displays.

Pat Patrick, Lodi Chamber Commerce, 135 S. School Street. Mr. Patrick was present to encourage the outdoor storage play for the Lowe's store. He felt that outdoor displays for the store would not be too visible from the road since the store was located to the back of the parcel. He noted that Lowe's customers wanted to see the outdoor displays so that they could get a visual of the items they were interested in buying. He did not want to put the Lowe's store at a competitive disadvantage.

Hearing Closed to the Public
Commissioner Heinitz stated that he appreciated the store manager's willingness to work with City staff. He felt the store had enough room outside to display their items. He asked to see a plan for the outdoor display and felt the store was subject to the new Design Standards for Large Retail Establishments.

Commissioner Aguirre agreed with Commissioner Heinitz and noted that most of the outdoor displays were only seasonal. He wanted to see an outdoor plan before the commission moved forward.

Commissioner Haugan stated that Lowe's was a home improvement center and there were expectations from the public to see plants, barbeques, and lawnmowers displayed in front of the store. He wanted to create a win-win situation for both the City and Lowe's.

Commissioner Moran felt there was still a discretionary approval on the table, being SPARC's review of the display and outdoor storage areas. She agreed that the Commission needed to work with Lowe's to get the issue resolved. She supported the idea that the new design standards do apply to Lowe's.

Hearing Reopened to the Public
Jennifer Renk, Steefel, Levitt & Weiss. Ms. Renk stated that Lowe's was still planning on going back to SPARC for the approval of their outdoor storage display area. She felt applying today's standards instead of past standards was not fair to Lowe's. Lowe's felt the new standards were too restrictive and withdrew their plan at the November 1, 2004 meeting.

Eric Hajek, Lowe's Store Manager. Mr. Hajek stated that he attended the November 1, 2004 meeting and the main question at that meeting was whether the new standards applied to the project or not. Mr. Bartlam and Mr. Manion went back and forth on the matter. He claimed that Mr. Bartlam was the person who tabled the matter and stated that the item would need to go before the Planning Commission and walked out of the room. He further stated that if the new guidelines were applied, he would not be able to do the outdoor storage to be able to service his customers. He requested that they be allowed to go by the old design standards.

Mark Meissner, Associate Planner, went on record stating that he was present at the SPARC meeting of November 1, 2004. The plan that was presented at that meeting was purposely designed to meet the new design standards and that the decision was made at that meeting that they weren't happy with the plan that they (Lowe's) had brought in.

Hearing Closed to the Public

The Planning Commission on motion of Commissioner Heinitz, Moran second, voted that Lowe's was under the **new** Design Standards for Large Retail Establishments by the following vote:

AYES:	Commissioners:	Heinitz, Moran, and White
NOES:	Commissioners:	Aguirre and Haugan
ABSENT:	Commissioners:	Mattheis and Phillips
ABSTAIN:	Commissioners	

PROOF OF PUBLICATION

(2015.5 C.C.C.P.)

STATE OF CALIFORNIA

County of San Joaquin

I am a citizen of the United States and a resident of the County aforesaid: I am over the age of eighteen years and not a party to or interested in the above entitled matter. I am the principal clerk of the printer of the Lodi News-Sentinel, a newspaper of general circulation, printed and published daily except Sundays and holidays, in the City of Lodi, California, County of San Joaquin and which newspaper had been adjudicated a newspaper of general circulation by the Superior Court, Department 3, of the County of San Joaquin, State of California, under the date of May 26th, 1953. Case Number 65990; that the notice of which the annexed is a printed copy (set in type not smaller than non-pareil) has been published in each regular and entire issue of said newspaper and not in any supplement thereto on the following dates to-wit:

May 7th

All in the year 2005.

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Dated at Lodi, California, this 7th day of May, 2005

Diane Rosales

Signature

RECEIVED

This space is for the County Clerk's Filing Stamp

2005 JUN 13 AM 8:56

CITY CLERK
CITY OF LODI

Proof of Publication of
Notice of Public Hearing

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on Wednesday, May 18, 2005 at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a Public Hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following matter:

a) the appeal from Lowe's HIW, Inc., regarding the Planning Commission's decision of April 13, 2005, pertaining to the application of design standards for Large Retail Establishments to their Lodi store.

Information regarding this item may be obtained in the office of the Community Development Department, 221 West Pine Street, Lodi, California. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the Public Hearing.

By Order of the Lodi City Council:
Susan J. Blackston
City Clerk
Dated: May 4, 2005

Approved as to form:
D. Stephen Schwabauer
City Attorney
May 7, 2005 — 08501768

8501768

CITY OF LODI

Carnegie Forum
305 West Pine Street, Lodi

NOTICE OF PUBLIC HEARING

Date: May 18, 2005

Time: 7:00 p.m.

For information regarding this notice please contact:
Susan J. Blackston
City Clerk
Telephone: (209) 333-6702

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on **Wednesday, May 18, 2005** at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a Public Hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following matter:

a) the appeal from Lowe's HIW, Inc., regarding the Planning Commission's decision of April 13, 2005, pertaining to the application of design standards for Large Retail Establishments to their Lodi store.

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By Order of the Lodi City Council:

Susan J. Blackston
City Clerk

Dated: May 4, 2005

Approved as to form:

D. Stephen Schwabauer
City Attorney

Please immediately confirm receipt of this fax by calling 333-6702

CITY OF LODI
P. O. BOX 3006
LODI, CALIFORNIA 95241-1910

ADVERTISING INSTRUCTIONS

SUBJECT: **SET PUBLIC HEARING FOR MAY 18, 2005, TO CONSIDER THE APPEAL FROM LOWE'S HIW, INC., REGARDING THE PLANNING COMMISSION'S DECISION OF APRIL 13, 2005, PERTAINING TO THE APPLICATION OF DESIGN STANDARDS FOR LARGE RETAIL ESTABLISHMENTS TO THEIR LODI STORE**

LEGAL AD

PUBLISH DATE: **SATURDAY, MAY 7, 2005**

TEAR SHEETS WANTED: **Three (3) please**

SEND AFFIDAVIT AND BILL TO:
SUSAN BLACKSTON, CITY CLERK
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

DATED: THURSDAY, MAY 5, 2005

ORDERED BY:

Kari J. Chadwick
KARI J. CHADWICK
ADMINISTRATIVE CLERK

JACQUELINE L. TAYLOR, CMC
DEPUTY CITY CLERK

JENNIFER M. PERRIN, CMC
DEPUTY CITY CLERK

Verify Appearance of this Legal in the Newspaper – Copy to File

SEND PROOF OF ADVERTISEMENT. THANK YOU!!

Faxed to the Sentinel at 369-1084 at _____(time) on _____(date) _____(pages)
LNS _____ Phoned to confirm receipt of all pages at _____(time) ____Jac ___ KJC ___Jen (initials)

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DECLARATION OF POSTING

SET PUBLIC HEARING FOR MAY 18, 2005, TO CONSIDER THE APPEAL FROM LOWE'S HIW, INC., REGARDING THE PLANNING COMMISSION'S DECISION OF APRIL 13, 2005, PERTAINING TO THE APPLICATION OF DESIGN STANDARDS FOR LARGE RETAIL ESTABLISHMENTS TO THEIR LODI STORE

On Friday, May 6, 2005, in the City of Lodi, San Joaquin County, California, a copy of a Notice of Public Hearing to consider the appeal from Lowe's HIW, Inc., regarding the Planning Commission's decision of April 13, 2005, pertaining to the application of design standards for Large Retail Establishments to their Lodi store, (attached hereto, marked Exhibit "A"), was posted at the following four locations:

Lodi Public Library
Lodi City Clerk's Office
Lodi City Hall Lobby
Lodi Carnegie Forum

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 6, 2005, at Lodi, California

ORDERED BY:

SUSAN J. BLACKSTON
CITY CLERK

_____
Jacqueline L. Taylor, CMC
Deputy City Clerk

Kari J. Chadwick
Administrative Clerk

_____
Jennifer M. Perrin, CMC
Deputy City Clerk

N:\Administration\CLERK\KJC\DECPOST2.DOC

DECLARATION OF MAILING

SET PUBLIC HEARING FOR MAY 18, 2005, TO CONSIDER THE APPEAL FROM LOWE'S HIW, INC., REGARDING THE PLANNING COMMISSION'S DECISION OF APRIL 13, 2005, PERTAINING TO THE APPLICATION OF DESIGN STANDARDS FOR LARGE RETAIL ESTABLISHMENTS TO THEIR LODI STORE

On May 6, 2005, in the City of Lodi, San Joaquin County, California, I deposited in the United States mail, envelopes with first-class postage prepaid thereon, containing a notice to set public hearing for May 18, 2005, to consider the appeal from Lowe's HIW, Inc., regarding the Planning Commission's decision of April 13, 2005, pertaining to the application of design standards for Large Retail Establishments to their Lodi store, marked Exhibit "A"; said envelopes were addressed as is more particularly shown on Exhibit "B" attached hereto.

There is a regular daily communication by mail between the City of Lodi, California, and the places to which said envelopes were addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 6, 2005, at Lodi, California.

ORDERED BY:

SUSAN BLACKSTON
CITY CLERK, CITY OF LODI

ORDERED BY:

JACQUELINE L. TAYLOR
DEPUTY CITY CLERK

JENNIFER M. PERRIN
DEPUTY CITY CLERK

KARI J. CHADWICK
ADMINISTRATIVE CLERK

CITY OF LODI

CITY HALL, 221 W. PINE ST.
P. O. BOX 3006
LODI, CALIFORNIA 95241-1910

SET PUBLIC HEARING FOR MAY 18, 2005, TO CONSIDER THE APPEAL FROM LOWE'S HIW, INC., REGARDING THE PLANNING COMMISSION'S DECISION OF APRIL 13, 2005, PERTAINING TO THE APPLICATION OF DESIGN STANDARDS FOR LARGE RETAIL ESTABLISHMENTS TO THEIR LODI STORE

also mailed to:

(7) Planning Commissioners

Member(s)
Eddie Aguirre
Dennis Haugan
Randy Heinitz
Tim Mattheis
Gina Moran
David Phillips
Dennis White

Jennifer E. Renk
c/o Steefel Levit & Weiss
One Embarcadero Center, 30th Floor
San Francisco, CA 94111-3719

Pat Patrick
c/o Chamber of Commerce
35 S. School Street
Lodi, CA 95240

Lowe's Home Improvement Store
Attn: Erik Hajek
1389 S. Lower Sacramento Road
Lodi, CA 95242

CITY OF LODI
CITY HALL, 221 W. PINE ST.
P. O. BOX 3006
LODI, CALIFORNIA 95241-1910

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Notice of Public Hearing

CITY OF LODI
CITY HALL, 221 W. PINE ST.
P. O. BOX 3006
LODI, CALIFORNIA 95241-1910

Steefel, Levitt & Weiss
Jennifer E. Renk
One Embarcadero Center, 30th Floor
San Francisco, CA 94111-3719

Notice of Public Hearing

CITY COUNCIL
JOHN BECKMAN, Mayor
SUSAN HITCHCOCK,
Mayor Pro Tempore
LARRY D. HANSEN
BOB JOHNSON
JOANNE MOUNCE

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
P.O. BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 333-6702
FAX (209) 333-6807
cityclrk@lodi.gov

BLAIR KING, City Manager
SUSAN J. BLACKSTON
City Clerk
D. STEPHEN SCHWABAUER
City Attorney

May 5, 2005

MAILED CERTIFIED MAIL
AND REGULAR U.S. POSTAL DELIVERY

Steefel, Levitt & Weiss
Jennifer E. Renk
One Embarcadero Center, 30th Floor
San Francisco, CA 94111-3719

NOTICE OF CITY COUNCIL PUBLIC HEARING – May 18, 2005

This letter is to notify you that a public hearing will be held by the City Council on **Wednesday, May 18, 2005**, at **7:00 p.m.**, or as soon thereafter as the matter can be heard, at the Carnegie Forum, 305 W. Pine Street, Lodi.

This hearing is being held to consider your appeal of the Planning Commission decision on April 13, 2005 pertaining to the application of Design Standards for Large Retail Establishments to the Lodi Lowe's store.

If you challenge the proposed action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing. *Note: Written correspondence for the City Council may be mailed in c/o the City Clerk's Office, P.O. Box 3006, Lodi, CA 95241-1910, or delivered to the City Clerk at 221 West Pine Street, Lodi, California.*

Should you have any questions, please contact my office or the Community Development Department at (209) 333-6711.

Sincerely,

Susan J. Blackston
City Clerk

cc: Community Development Department

Item I-2

Susan Blackston

From: Susan Blackston
Sent: Wednesday, May 18, 2005 3:58 PM
To: 'Scott Davis'
Cc: City Council; Blair King; Steve Schwabauer; Joseph
Subject: RE: Lowes

Dear Mr. Davis:

This reply is to confirm that your message was received by the City Clerk's Office and each member of the City Council. In addition, by copy of this e-mail, we have forwarded your message to the following departments for informational purposes:
1) City Manager, 2) City Attorney, and 3) Community Development.

Thank you for expressing your views.

/s/ Susan J. Blackston, City Clerk

-----Original Message-----
From: Scott Davis [mailto:shaqman@comcast.net]
Sent: Wednesday, May 18, 2005 3:55 PM
To: Susan Blackston; Susan Hitchcock; Bob Johnson; JoAnne Mounce; John Beckman; Larry Hansen
Subject: Lowes

Members of the City Council,
I hope you have all decided to allow Lowes to display merchandise in front of their store. Customers expect to see stuff out front and the store sits far enough back from Lower Sacramento Road so that there is zero sight blight. Not allowing the display of merchandise is an injustice to Lowes and their customers. Thanks very much.
Scott Davis
809 Laver Court
Lodi, CA 95242

Item I-2

RECEIVED
2005 MAY 18 AM 7:43
CITY CLERK
CITY OF LODI

STEEFEL, LEVITT & WEISS
A Professional Corporation

May 17, 2005

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19132

VIA FACSIMILE AND ELECTRONIC MAIL

John Beckman, Mayor
And Members of the City Council
City of Lodi
221 W. Pine Street
Lodi, CA 95242

Re: Lowe's appeal regarding the Planning Commission's decision pertaining to the application of Design Standards for Large Retail Establishments to the Lodi store

Dear Mayor Beckman and City Councilmembers:

We represent Lowe's HIW, Inc. in connection with the appeal of the Planning Commission's determination on April 13th that the City of Lodi's (City) Design Standards for Large Retail Establishments (Design Standards) apply to the fully entitled Lowe's store.

As you are aware, the Lowe's store is open and fully operational. Therefore, the City's attempt to apply Design Standards adopted after the store was entitled will, in effect, operate as an outright prohibition of outdoor displays because Lowe's did not enjoy the opportunity to design its store in accordance with the requirements enacted after the fact. In other words, the City would be unfairly imposing a prohibition onto the Lowe's store that does not extend to any other existing retail establishment in the City. Such an imposition is tantamount to subjecting Target, for example, which has been operating in Lodi for years, to suddenly scale back its outdoor displays because new design guidelines have been enacted. As such, in the interest of equity and fairness, the City should allow Lowe's to proceed to the Site Plan and Architectural Review Committee (SPARC) unfettered by these Design Guidelines so that reasonable accommodations may be made for its outdoor display needs.

Accordingly, for this reason and the reasons stated to the Planning Commission below, we urge the City Council to overturn the Planning Commission's decision and find that such retroactive application of these Design Standards is not only inappropriate and unfair, but unnecessary in light of Lowe's ongoing efforts to work with the City to find an acceptable solution to its outdoor display and storage needs.

STEEFEL, LEVITT & WEISS

I. **Introduction**

By way of background, the Vintner's Square Shopping Center was approved by the Planning Commission on May 14, 2003. On May 22, 2003, SPARC held a special meeting in order to consider the Lowe's proposal to build a 161,234 square foot commercial home improvement center within the Vintner's Square Shopping Center. Based on staff's recommendation, SPARC approved the site plan with conditions based on findings that it provided the elements for a well designed shopping center, was consistent with the project analyzed in the Environmental Impact Report, and complied with all applicable provisions of the Commercial Shopping (C-S) zoning district.

Although staff had recommended that SPARC add a condition that would prohibit all outdoor storage and displays, after much deliberation, SPARC unanimously passed a motion with a modified condition that read: **"The storage and/or display of materials shall be allowed in defined areas that are identified by SPARC prior to the final occupancy of the building."** The minutes reflect that SPARC contemplated allowing up to at least seven (7) months after the building was constructed for this outdoor area to be defined in order to provide for input from store management. Lowe's willingly accepted this condition.

In March 2004, Lowe's pulled its building permit in order to begin construction. At the end of October 2004, the City issued its Certificate of Occupancy and the Lowe's store opened on November 3, 2004. Directly prior to the store's opening, Lowe's submitted its outdoor storage plan to SPARC and a hearing was held on November 1, 2004. At this hearing, staff recommended a plan allowing for limited outdoor display and storage with the following three conditions:

- A minimum 8-foot wide sidewalk must be maintained in front of the store pursuant to the requirements of the Large-Scale Design Requirements adopted earlier this year.

- No display or storage of materials will be allowed in parking, drive or loading areas as depicted on the approved site plan.

- A minimum 4-foot wide sidewalk is required around the building for ADA and emergency access.

After further consideration, Lowe's determined that the imposition of the first condition was too restrictive for the space in front of its store and asked that it be able to withdraw and revise the plan. Specifically, Lowe's realized that the 8-foot wide sidewalk requirement stemming from the Design Standards was too onerous for its display needs. Lowe's also objected to the City's application of the Design Guidelines to its project that had been approved well before the City adopted the Design Standards. SPARC then tabled the item and staff subsequently requested that the Planning Commission agendize an item to discuss and

determine the applicability of the Design Standards to the Lowe's outdoor storage and display issue.

On April 13, 2005, the Planning Commission voted 3-2, with 2 absent, for a motion that the Design Standards for Large Retail Establishments apply to the Lowe's store. This appeal followed.

II. **Applicability of Design Standards for Large Retail Establishments**

For the reasons set forth below, we believe that these Design Standards should not be applied to the Lowe's outdoor storage/display plan.

- **Design Standards do not apply retroactively to the Lowe's project.**

In May 2003, SPARC approved the Lowe's project and the City issued a building permit in March 2004. On April 7, 2004, **almost one year after the City's approval of the Lowe's project**, the Lodi City Council adopted Ordinance No. 1746, Design Standards for Large Retail Establishments, effective thirty days thereafter on May 7, 2004. The Lowe's project was approved and permitted months before the Design Standards became effective and at no time did SPARC ever discuss their applicability to the Lowe's project.

Furthermore, by the City's own terms, the language of the ordinance clearly indicates that these Design Standards apply only to **future** large-scale retail projects and not to those that have already been approved. Here, Lowe's is not only approved, but constructed and open. Therefore, under the terms of its own ordinance, the Design Standards do not apply, and a retroactive application is not permissible.

- **Outdoor display is part of the overall Lowe's project and is not a "new" project.**

SPARC adopted a condition of approval providing for outdoor display and storage during its original consideration of the Lowe's project. The outdoor display plan is not a "new" project for purposes of applying the subsequent Design Standards. The outdoor display is incidental to, and part of, the original Lowe's project and is therefore not subject to the Design Standards.

Moreover, the Design Standards would not even apply to the outdoor/display question here because the area in question does not meet the ordinance's 25,000 square foot threshold. For example, assuming for the sake of argument that the Design Standards did apply to the Lowe's store, the portion of the project still susceptible to "discretionary review" by SPARC measures no more than 5,000 square feet in front of the existing store—well below the ordinance's 25,000 square foot threshold. Therefore, on its face, the applicability of the Design Standards to this isolated square footage is impermissible on this basis alone.

STEEFEL, LEVITT & WEISS

- **Lowe's meets the spirit and intent of the Design Standards.**

When Lowe's prepared its site plan for approval, it relied upon the requirements in place at the time. If the City had an 8-foot minimum sidewalk requirement in place prior to Lowe's approval, Lowe's would have designed its site plan to accommodate the outdoor display areas in such a way that would comply while meeting its display needs. Now, however, in fairness to Lowe's, it would be inappropriate to apply these Design Standards after the fact. Therefore, Lowe's asks that it be allowed to work with SPARC and staff to resolve the outdoor display/storage absent the Design Standards but in keeping with the City's vision for large scale retail development.

III. **Conclusion**

In light of the foregoing, Lowe's asks that the City Council reverse the Planning Commission's determination that the Design Standards are applicable to the Lowe's outdoor storage/display plan. More importantly, however, Lowe's would like to stress its commitment to working with staff to arrive at a mutually acceptable solution that conforms to the spirit and intent of the City's Design Standards for Large Retail Establishments. Lowe's has enjoyed a productive relationship with the City thus far and looks forward to continuing in this vein.

Thank you for your consideration.

Sincerely,

Jennifer E. Renk

cc: John Beckman, Mayor
Members of the City Council
D. Stephen Schwabauer, City Attorney

19132:6446798.1

filed 5-18-05
Item I-2

April 13, 2005

Planning Commission Meeting
April 13, 2005

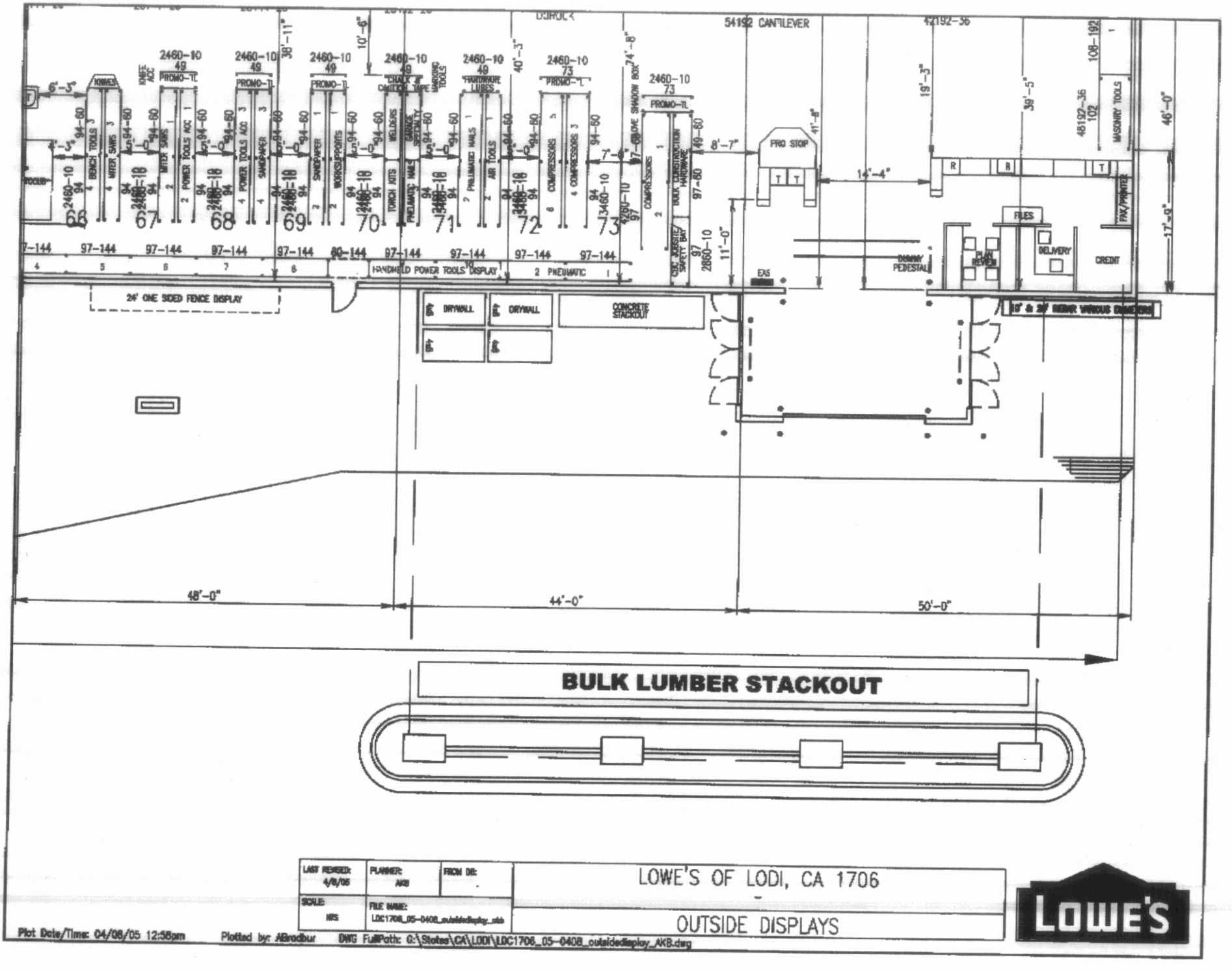
Proposal For Outdoor Display

The following packet of pictures and site plans is meant as a proposal for outdoor storage and display areas. The packet contains the site plans for the store front with some pictures of what the actual proposal might look like when completed and is broken down into four sections for easy review. The last picture is meant as an alternative to the proposed request for outdoor shed displays should the original request not be considered.

Thank you for your consideration on this matter.

Erik Hajek

Store Manager Lowes HIW



LAST REVISED: 4/8/05	PLANNER: AKB	FROM DB:
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LOWE'S OF LODI, CA 1706

OUTSIDE DISPLAYS

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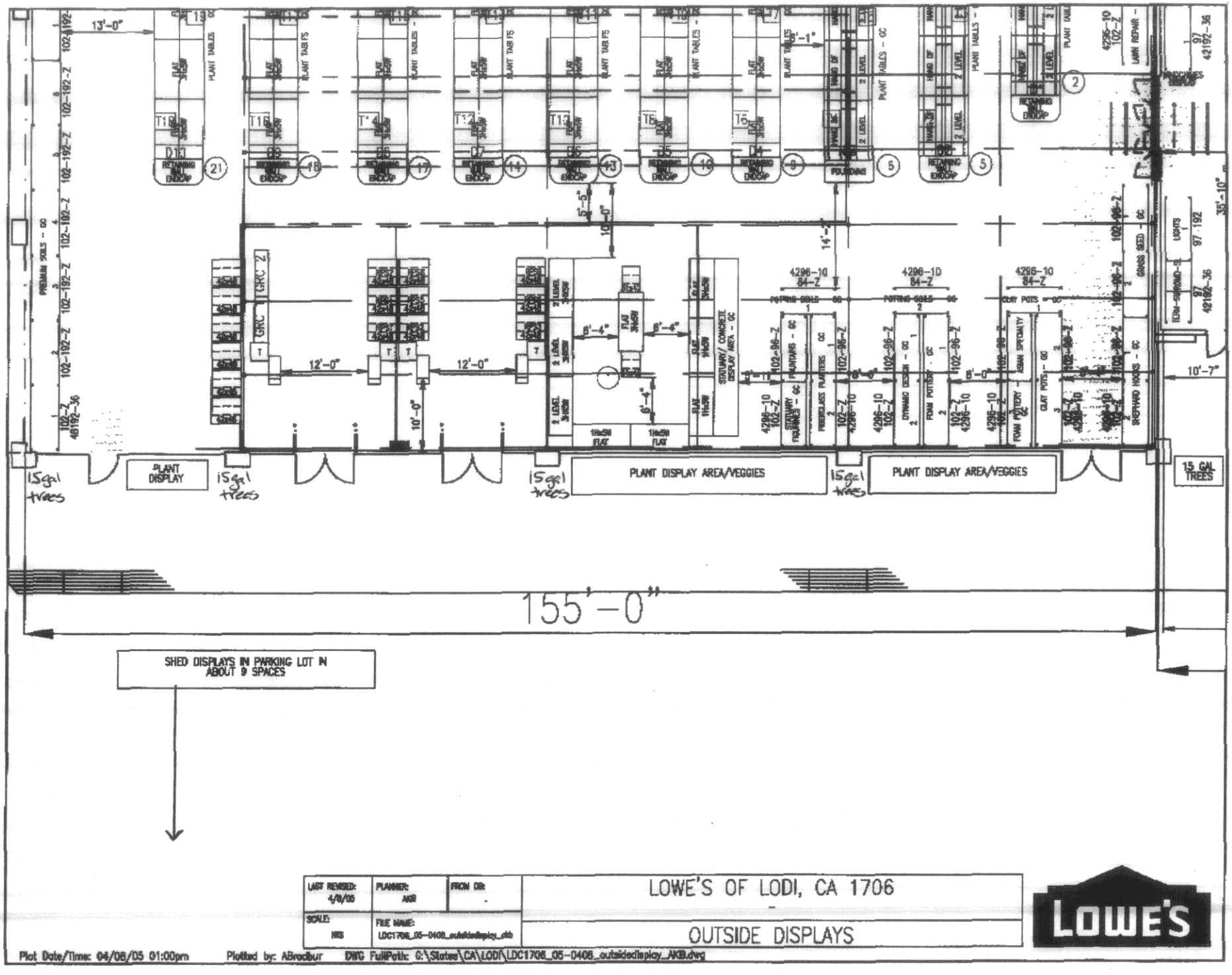
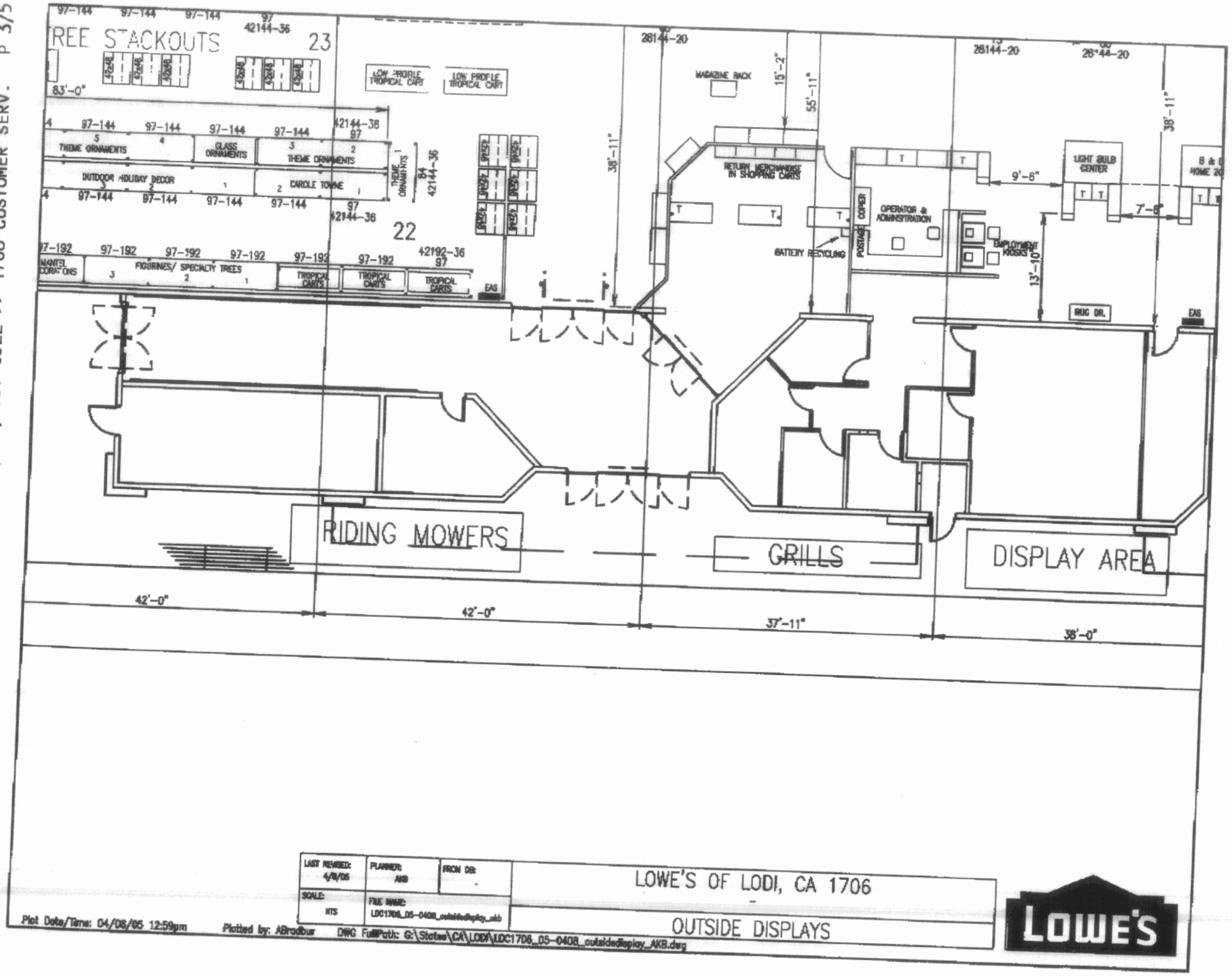
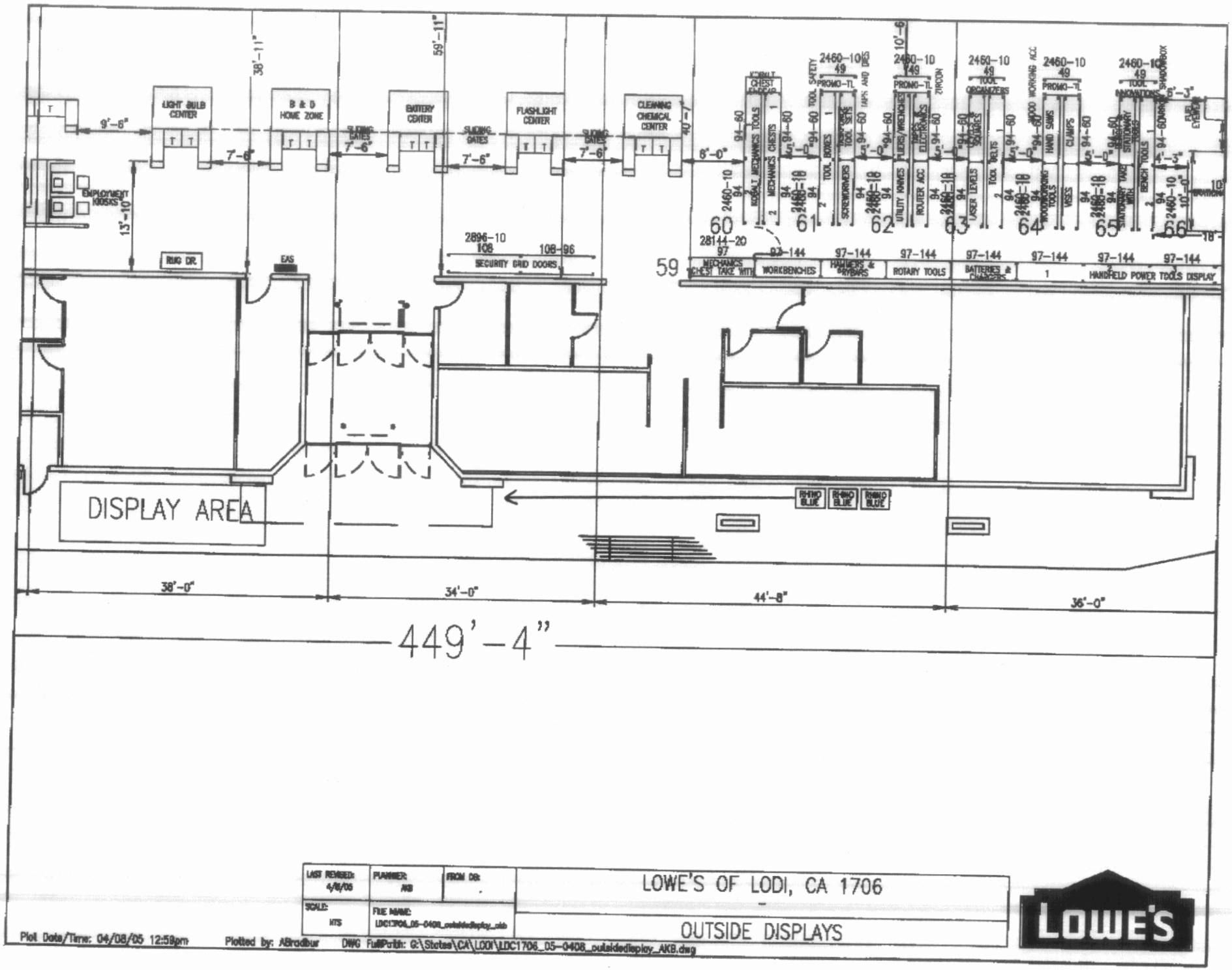

155'-0"
PLANT DISPLAY
PLANT DISPLAY AREA/VEGGIES
PLANT DISPLAY AREA/VEGGIES
15 GAL TREES
SHED DISPLAYS IN PARKING LOT IN ABOUT 9 SPACES
LOWE'S OF LODI, CA 1706
OUTSIDE DISPLAYS
LOWE'S



LAST REVISED: 4/8/05	PLANNER: AKB	FROM DB:	LOWE'S OF LODI, CA 1706
SCALE: NTS	FILE NAME: LDC1706_05-0408_outsidedisplay_akb		OUTSIDE DISPLAYS

Plot Date/Time: 04/08/05 12:59pm Plotted by: ABrodbur DWG FullPath: G:\Stores\CA\LODI\LDC1706_05-0408_outsidedisplay_AKB.dwg

LOWE'S



LAST REVISED: 4/8/05	PLANNER: AKB	FROM DB:	LOWE'S OF LODI, CA 1706
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Plot Date/Time: 04/08/05 12:59pm Plotted by: ABradbur DWG FullPath: G:\Stores\CA\LODI\LDC1706_05-0408_outsidedisplay_AKB.dwg

STORE FRONT.JPG

Lawn Mower Display Area.JPG

DRIVE THRU CANOPY.JPG

FRONT OF GARDEN CENTER.JPG

REGISTER FRONT OF GARDEN.JPG

SOUTH SIDE OF GARDEN.JPG

CITY COUNCIL
JOHN BECKMAN, Mayor
SUSAN HITCHCOCK,
Mayor Pro Tempore
LARRY D. HANSEN
BOB JOHNSON
JOANNE MOUNCE

CITY OF LODI

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cityclrk@lodi.gov

BLAIR KING, City Manager
SUSAN J. BLACKSTON
City Clerk
D. STEPHEN SCHWABAUER
City Attorney

May 19, 2005

Steefel, Levitt & Weiss
Attention: Jennifer E. Renk
One Embarcadero Center, 30th Floor
San Francisco, CA 94111-3719

RE: Resolution Granting the Appeal of Lowe's HIW, Inc., Thereby Rescinding the Planning Commission's Decision of April 13, 2005

The Lodi City Council, at its meeting of May 18, 2005, adopted the enclosed resolution granting the appeal of Lowe's HIW, Inc., thereby rescinding the Planning Commission's decision of April 13, 2005, that the design standards for Large Retail Establishments apply to the design and review of all outdoor storage and display of merchandise at the Lowe's store in Lodi.

Further, the Lodi City Council referred this matter to the Site Plan and Architectural Review Committee for review. Please contact the Community Development Department at (209) 333-6711 if you have any questions.

Should you require further information or have any questions, please feel free to contact my office.

Sincerely,

Susan J. Blackston
City Clerk

SJB/JMP
Enclosure

cc: Community Development Department

RESOLUTION NO. 2005-101

A RESOLUTION OF THE LODI CITY COUNCIL GRANTING THE APPEAL OF LOWE'S HIW, INC., RESCINDING THE PLANNING COMMISSION'S DECISION OF APRIL 13, 2005, THAT THE DESIGN STANDARDS FOR LARGE RETAIL ESTABLISHMENTS APPLY TO THE DESIGN AND REVIEW OF ALL OUTDOOR STORAGE AND DISPLAY OF MERCHANDISE

WHEREAS, on April 13, 2005, the Lodi Planning Commission held a public hearing to review the outdoor storage/display limitations for the new Lowe's store located at 1389 S. Lower Sacramento Road; and

WHEREAS, the Lodi Planning Commission voted that Lowe's was under the new Design Standards for Large Retail Establishments; and

WHEREAS, an appeal of the Planning Commission decision was filed with the City Clerk's office on April 18, 2005, by Steefel, Levitt & Weiss on behalf of Lowe's HIW, Inc. seeking to overturn the decision of the Planning Commission, stating in part the following:

1. That the design standards do not apply retroactively to the Lowe's project;
2. That the outdoor display is part of the overall Lowe's project and is not a "new" project; and
3. That Lowe's meets the spirit and intent of the design standards.

WHEREAS, at its meeting held May 18, 2005, the Lodi City Council conducted a public hearing to consider the appeal from Lowe's HIW, Inc., regarding the Planning Commission's decision of April 13, 2005, pertaining to the application of design standards for Large Retail Establishments to its Lodi store.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby grant the appeal of Lowe's HIW, Inc., thereby rescinding the Planning Commission's decision of April 13, 2005, that the Design Standards for Large Retail Establishments apply to the design and review of all outdoor storage and display of merchandise at the Lowe's store in Lodi, and hereby refers the matter to the Site Plan and Architectural Review Committee for review.

Dated: May 18, 2005

I hereby certify that Resolution No. 2005-101 was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 18, 2005, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, Mounce, and Mayor Beckman

NOES: COUNCIL MEMBERS – Hitchcock

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None

SUSAN J. BLACKSTON
City Clerk