



CITY OF
TOPEKA

MINUTES

TOPEKA PLANNING COMMISSION

Monday, September 16, 2019

6:00PM – Municipal Building, 214 SE 8th Street, 2nd floor Council Chambers

Members present: Katrina Ringler (Chair), Corey Dehn, Carole Jordan, Wiley Kannarr, Corliss Lawson, Ariane Messina (6)

Members Absent: Matt Werner, Brian Armstrong, Marc Fried (3)

Staff Present: Bill Fiander, Planning & Development Director; Mike Hall, Current Planning Manager; Annie Driver, Planner; John Neunuebel, Planner; Kris Wagers, Administrative Officer; Mary Feighny, Deputy City Attorney

Roll Call – Chairperson Katrina Ringler called the meeting to order with 6 members present for a quorum.

Approval of Minutes from August 19, 2019

Motion by Mr. Kannarr to approve; **second** by Mr. Dehn. **APPROVED** (6/0/0)

Declaration of conflict of interest/ex parte communications by members of the commission or staff –

Mr. Dehn explained that someone contacted him by phone about PUD19/02, but it was before he received his agenda packet and the caller was asking about process rather than content of the case.

Public Hearing of Z19/07 by: Milk & Honey Coffee Company, LLC requesting to amend the District Zoning Map on property located at 2200 SE 29th Street from O&I-2 Office and Institutional District to C-2 Commercial District to allow a coffee shop with drive-through service.

Ms. Driver presented the staff report and staff recommendation for approval.

With no questions from commissioners, Ms. Ringler **opened the floor for public comment.**

The applicants came forward to speak. Darlene Morgan provided some personal information about why she wants to open the coffee shop, and also stated that she has experience owning/operating small retail business. Co-owner Chris Hartman provided information about his background, stating he was CFO for Family Service & Guidance Center so has financial experience. Their dream is to provide a safe, welcoming place and perhaps encourage others to open businesses in East Topeka. Ms. Morgan stated that one person had been opposed to the re-zoning, but the person had since withdrawn his objections via an email to Ms. Driver. The email was provided as a handout to commissioners.

Ms. Jordan asked how long the building in question has been vacant and Mr. Hartman explained it's been approximately 2.5 years.

With nobody else coming forward to speak, Ms. Ringler declared the **public comment period closed.**

Mr. Dehn commented that he thought it was a good location for a coffee shop close to both residential and commercial, and it's good to see new businesses opening on the east side of town.

APPROVED 11/18/2019

Ms. Messina stated she has no concerns.

Ms. Ringler noted that although the Planning Commission is tasked with looking at requests with the long-term impact in mind, she feels that staff has addressed any concerns she might have by addressing the potential need to permit, provide site location buffering, etc.

Ms. Morgan stepped forward and noted that she and her partner are purchasing the building in hopes of having some sort of control over what might go in there if the business were to fail.

Motion by Mr. Dehn to recommend to the Governing Body approval of the re-classification of the property from O&I-2 Office and Institutional District to C-2 Commercial District; **Second** by Ms. Messina.

APPROVAL (6-0-0)

Public Hearing of PUD19/03 Wanamaker West Development PUD by: Cook, NT & Flatt, DW & Strobel, Kenneth E Trust d/b/a CF&S PR, requesting to amend the District Zoning Map for the subject property located at 6017 SW 30th Terrace from C-2 Commercial District and O&I2 Office and Institutional District **all to** PUD Planned Unit Development District (C-2 Commercial Use Group, with other specific uses limited to Self-Storage Type(s) I & II and Building, Construction, & Mechanical Contractors Office.)

Mr. Neunuebel presented the staff report and staff recommendation for approval.

With no questions from commissioners, Ms. Ringler **opened the floor for public comment**.

Kevin Holland with Cook, Flatt & Strobel Engineers came forward representing the applicant. He noted that the piece of property has been for sale for some time. The owner is hoping to make it more usable by changing the zoning, and also notes that with the addition of the Club Carwash, there is now more traffic in the area. Mr. Holland noted that the "view" to the north is the back side of Hyvee and to the east is a car wash, so putting an office environment there likely isn't a good investment. The owners have worked with Kansas Commercial to determine how to make the property more marketable.

With no questions from commissioners, Ms. Ringler **opened the floor for public comment**. With nobody coming forward to speak, Ms. Ringler declared the **public comment period closed**.

Mr. Kannarr stated that he lives relatively close to the site and the proposed use seems accurate given the site location and its limitations. Mr. Dehn and Ms. Lawson both agreed that being right behind Hyvee with a site line to the back of the 2 story building is a challenge, and Ms. Messina noted the lack of frontage on a busy street.

Motion by Ms. Lawson to recommend to the Governing Body approval of the PUD Master Plan along with conditions listed in the Staff Report; **second** by Ms. Jordan. **APPROVAL** (6/0/0)

PUD19/02 Sports Zone PUD by: T&J Land Co. LLC, requesting to amend the District Zoning Map from R-1 Single Family Dwelling District with an existing Conditional Use Permit for "Outdoor Recreation Fields, Retail Sales, and Food Service" and existing Special Use Permits for "Private Membership Club with Golf Courses" and "Community Building with Alcohol Sales" **all to** PUD Planned Unit Development (I-1 Uses) on a 23 acre property located at 3907 and 3909 SW Burlingame Road.

Ms. Driver presented the staff report and staff recommendation for approval.

Kevin Holland of Cook, Flatt & Strobel Engineers came forward representing the applicant. Mr. Holland provided some history on the property, stating that the owners had initially purchased it and built the SportZone when their children were young and participating in sports. He stated that approximately 250,000 people visit the complex each year. The owners wish to re-zone the property to expand the potential use and make it easier to sell if in fact they decide to do so at some point in the future. The rezoning will provide them with flexibility. They have broken the property down into three tracts that could potentially be sold

separately. Later it was noted that in order to do this, the property would need to be platted. The owners are aware of this.

Mr. Holland noted that the property to the west is not included in the PUD because most of it is in a flood zone and there's not a lot that can be done back there.

Mr. Holland noted that proposed uses have changed several times based on discussions with staff. He also noted that the road that makes up the north entrance is privately owned and maintained.

Ms. Ringer asked if there is an entrance/driveway directly into Tract C. Mr. Holland stated that there is not, but there could be. Currently it is a "field entrance" – he doesn't think it's an improved entrance.

Mr. Dehn asked if the three tracts could be sold separately. It was agreed that the land would need to be platted for this to happen. Zoning wouldn't change with the re-plat.

Ms. Ringler **opened the floor for public comment.**

Margaret Masilionis of 3901 SW Burlingame Road came forward to speak in opposition of the proposal. Ms. Masilionis expressed concerns about the Neighborhood Information Meeting, stating that there was no formal presentation. She asked questions about what was planned and was told there is no specific plan; she doesn't understand that and what might happen with the property concerns her. Ms. Masilionis stated that she submitted a letter to Ms. Driver on September 5. That letter was included as part of the agenda packet.

Ms. Masilionis talked about the traffic issues. There used to be a stop sign coming out of SportsZone just before cars crossed their frontage road but that has been replaced with a yield sign. This has made it more difficult for the people who live on the frontage road to get onto Burlingame when there is a lot of traffic coming and going on the site.

Ultimately, Ms. Masilionis is concerned about what will happen on the site as a result of the change, expressing concern about health and safety, as well as property values of the homes.

John Palma of 3905 SW Burlingame Road came forward to speak in opposition of the proposal. Mr. Palma spoke to the large amount of traffic generated by the SportsZone and the difficulty he has getting in and out of his property during events/high traffic times. He stated that the city required there be an entry to the south of the filling station, but it's not marked (no signage) and most people don't seem to know that it's an entry/exit for SportsZone. He said that there's a lot of truck traffic (semi/tractor trailer) using the north entrance, partly to service SportsZone, but mostly because there's a commercial driving school on the property. He stated that trucks are supposed to be prohibited from using that entrance. He said the church also uses the entrance right by his house, and they have even created a road from its parking lot to the SportsZone parking lot, increasing even more the number of people who use that entrance. He doesn't think that road was created with any approval from the city.

Mr. Palma stated he doesn't understand why the zoning needs to be changed if there are no current plans to use the property differently. He said they try to get along with the property owners and have tried to overlook the traffic problems, but worries that changing the zoning will simply justify the activity that is currently taking place even though it's not technically allowed.

Julie Palma Ireland came forward to speak in opposition of the proposal, explaining that she is Mr. Palma's daughter. Ms. Ireland pointed to the staff report condition #2 which recommends a note stating "access openings along SW Burlingame Road are existing for the existing uses only." She is concerned that the applicant is currently using the property for things not described or allowed, specifically White Line Commercial Driver License (CDL) Training, the address of which, when Googled, shows as 3907 SW Burlingame Road. She stated that the trucks are going in and out "all the time" and there's always at least

one truck parked right at the back property line of the residences. There's a sign there that says "Commercial Truck Parking". Ms. Palma stated there's a CDL renewal facility there. [when googled, it shows 3907 SW Burlingame Road as a Topeka CDL Test Drive location]. She stated that commercial trucks are not supposed to be using the north entryway, noting along with John Palma that the road is only 50' wide. Ms. Ireland stated that existing uses of the property (north entrance) include not only traffic from the Sportzone, but also the CDL driving school/test center, a dance school, a daycare, and the church. She noted the applicant stated that they have 250k people a year just at the SportZone, and most are using that one north entrance. Mr. Palma spoke to the difficulty of trying to exit his house on the frontage road and look not only for people who are exiting from the SportZone property, but also for cars which are turning in off Burlingame.

Ms. Ringler asked if there are signs stating no semis are allowed to use the north entrance, and Mr. Palma stated there are not.

Robert Masilionis of 5808 SW 26th Street came forward to speak in opposition of the proposal. Mr. Masilionis stated he is president of the Foster Cemetery at 3949 SW Burlingame Road and represents the cemetery board. He is concerned that there is no specific plan, he is concerned about traffic, and he is concerned about maintaining the peacefulness and safety of the cemetery. He spoke about the difficulty of turning off the frontage road to exit onto Burlingame. He suggested perhaps having one way in and another way out.

With nobody else coming forward to speak, Ms. Ringler declared the **public comment period closed**.

Ms. Ringler stated her understanding of the request is to open up potential possibilities for marketability in case the owners wish to sell the property in the future. Mr. Hall confirmed this and stated that changes to potential uses have taken place based on conversations between staff and the applicant. Mr. Hall stated that the applicant doesn't know what they're going to do with the property. While the city would prefer to have an idea of what's going to take place on the property, it's not required and a general zoning change allows for a wide range of potential uses. A PUD narrows down the potential uses.

Mr. Dehn asked if the driving school and daycare are allowed uses under the current zoning or covered by Conditional or Special Use Permits currently in place. Mr. Hall stated he's not certain; the driving school would be covered under the requested zoning, but that doesn't automatically accommodate truck traffic on the north entrance.

Ms. Ringler noted that the staff recommendations do not include allowing truck traffic on the north entrance; Mr. Hall noted that if the zoning were approved and trucks wanted to use that entrance, it would need to be approved and the City might require a traffic study. Mr. Hall noted that another entrance does exist – that being the one to the south.

Mr. Dehn asked if trucks would still be allowed in the parking lot and Mr. Hall stated he believed they would.

Mr. Kannarr asked if the same restrictions on trucks apply to buses, noting that with the sports complex he would anticipate a lot of bus traffic. Mr. Hall stated he's not certain but he doesn't think buses are restricted.

Mr. Holland returned to the podium and explained that over the years, delivery trucks bringing supplies have been necessary and he doesn't foresee a change in that. He also noted that some truck traffic is due to fields and trails that are located in the floodway. Ms. Ringler pointed to staff condition #2 which specifically prohibits semis. Mr. Holland stated he believes that wasn't referring to truck traffic at the current level but rather if it increases due to a change in use. He stated that the applicant doesn't believe there is significant truck traffic. Ms. Messina asked Mr. Holland what he determines to be "light" truck traffic and he stated perhaps 4 trucks a week. Tom Schmidlein, one of the owners, came forward to speak. He stated it's difficult for him to know which trucks are using the north vs. the south entrance. He explained that they added the

south entrance to assist with traffic flow and people, especially those using the fields to the rear of the property, have learned to use that because it's generally faster. He said that trucks are and always have been allowed to use the north entrance. Ms. Ringler asked if he's aware of condition #2 and he said he's not opposed to putting up a "no truck" sign. He said he's unable to protect the homeowners from traffic turning into the facility from Burlingame as it's an unmarked intersection.

Mr. Dehn asked if the SportZone is still in operation and Mr. Holland stated it is and there are no plans to change that.

Mr. Palma asked to speak again and stated that the south entrance is so obscure that people don't know to use it. He believes a sign would help.

Mr. Fiander explained that when Planning gets an application and staff sees there's an existing use that may not be conforming to the existing zoning, staff allows that use to continue if the applicant is applying for zoning that would allow it. He asked Planning staff if the current uses would be allowed under the proposed zoning. Mr. Hall reviewed the allowed uses with the proposed zoning, adding that there are conditions that must be met for change of use, including potentially needing to place a landscape buffer along the east property line.

Mr. Dehn asked if the landscaping buffer would be required to be 6'. Mr. Hall said he believed so and confirmed for Mr. Dehn and that the depth requirement could be increased.

Ms. Messina stated that she believes the proposal needs to be re-worked and brought back to the commission at a later date. Ms. Jordan agreed, as did Mr. Kannarr. He added that since the owner doesn't have a potential buyer at this time, it doesn't seem like it is ultra-time sensitive. He recommended they add a proposal for improved signage that would address part of the traffic problem. Ms. Lawson stated that she concurs.

Mr. Dehn stated that the car traffic is to be anticipated with such a facility, but he is concerned about the reported truck traffic. He suggested a larger landscaping buffer would be helpful if there is a use change.

Ms. Ringler stated that she too thinks it would be a good idea to take some more time to clarify some things. She thinks the north intersection is problematic.

Motion by Mr. Kannarr to defer to a future meeting so staff and the applicant can address issues raised; **second** by Ms. Lawson. **APPROVED** (6-0-0)

ACZR19/01 - The proposal to the Topeka Planning Commission would amend the Topeka Municipal Code (TMC) Title 18 (Comprehensive Plan-Signs-Subdivisions-Zoning) as follows:
Amendments to the Definitions in Chapter 18.55, Use Tables in Chapter 18.60, and Special Use Requirements in Chapter 18.225 to regulate Small Cell Wireless Facilities. Amendments to other chapters of TMC Title 18 may also be considered as needed to regulate Small Cell Wireless Facilities.

Mr. Hall reminded commissioners that he presented information at the June Planning Commission meeting. Provided in the September agenda packet was a memo from Mr. Hall, a document published by National League of Cities, and another document dealing with general design and aesthetic requirements. The latter was created and adopted by the City of Topeka & Shawnee County.

Mr. Hall spoke to the importance of the small cell wireless facilities (SCWFs) to provide for 5G wireless technology. They are relatively new and will complement rather than replace the towers used for 4G wireless technology. Currently our municipal code requires that almost all of these SCWFs have a CUP, and because of the sheer number of them needed, this is not practical. The FCC has time limits on how long a municipality can take to approve the SCWFs and gives very little leeway to prohibit or overly restrict their placement. Municipalities do have the ability to regulate appearance, and the Topeka/Shawnee County

document provides these regulations.

Mr. Hall noted that the recommended amendment does not codify all of the standards, and was written this way so changes could be made as technology changes and new standards and requirements are needed. Also noted was that the proposed amendment revises the definition of communication SCWFs so that it clearly excludes small cell facilities. It then adds a definition of small cell wireless facilities which is very specific and is consistent with the FCC order. Finally, the zoning matrix has been updated to include small cell wireless facilities. They would be permitted by right in every zoning district, and a paragraph would be added to TMC18.225.010 to specify how the SCWFs are to be handled.

Almost all of the SCWFs will be located in the right of way (ROW), so providers will need to enter into an agreement with the city separate and apart from the zoning decision. They will also be required to meet specific aesthetic requirements.

Mr. Hall presented staff's recommendation for approval and answered questions from commissioners.

Ms. Ringler **opened the floor for public comment.** With nobody coming forward to speak, Ms. Ringler declared the **public comment period closed.**

Motion by Mr. Kannarr to recommend to the Governing Body approval of the amendments to the zoning regulations to regulate Small Cell Wireless Facilities; **second** by Mr. Dehn. **APPROVAL** (6/0/0)

Communications to the Commission

Mr. Fiander stated he is considering adding a "public comment" time to the end Planning Commission agendas. The only criteria would be that comment be relevant to Planning Commission business.

Mr. Fiander announced that the sign code update was approved by the Governing Body 9-1 with one amendment reducing the grace period for portable message signs from 2 years to 1 year.

Mr. Fiander presented Commissioner Carole Jordan with a framed certificate commemorating her 6 years of service to the Topeka Planning Commission, October 2013 – September 2019. Ms. Jordan stated she is proud of all the Planning Commission has accomplished and she is confident our planning process will carry Topeka into 2022 and beyond.

With no further agenda items, meeting was adjourned at 7:47 PM