



CITY OF
TOPEKA

MINUTES

TOPEKA PLANNING COMMISSION

Monday, May 18, 2020

6:00PM – via video conference

Members present: Brian Armstrong (Chair), Corey Dehn, Marc Fried, Wiley Kannarr, Jim Kaup, Corliss Lawson, Ariane Messina, Katrina Ringler, Matt Werner (9)

Members Absent: (0)

Staff Present: Bill Fiander, Planning & Development Director; Dan Warner, Comprehensive Planning Manager; Mike Hall, Current Planning Manager; Annie Driver, Planner; Kris Wagers, Administrative Officer; Mary Feighny, Legal

Roll Call – Chairman Brian Armstrong called the meeting to order with eight members present for a quorum. Ms. Messina logged on following the vote regarding approval of the April 2020 minutes.

Mr. Fiander stated that Planning staff had received a request to ask for a change to the order of the agenda, that change being to consider CU20/01 at the beginning of the meeting. Planning staff have no objections, and don't anticipate the hearing will take an extended amount of time.

Mr. Armstrong asked the commission if there were any objections to the requested change and, hearing none, stated that the change is approved.

Approval of Minutes from April 20, 2020

Motion to approve by Mr. Dehn, **second** by Mr. Kaup. **APPROVED** (8-0-0)

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

Mr. Armstrong stated that his firm has an interest in the CU20/0 case so as that case was heard he would hand the gavel to Mr. Fried (vice-chair), mute his microphone and camera, and abstain from voting.

Action Items

Mr. Armstrong muted his microphone and camera and Vice-Chairman Fried called the first case.

CU20/01 by: City of Topeka Water Pollution Control requesting a Conditional Use Permit on property zoned "R-2" Single Family Dwelling District and located at the southeast corner of NE Grant Street and NE Jefferson Street in order to relocate and rebuild a sanitary sewer pump station.

Ms. Driver presented the staff report and stated that a variance to setbacks was approved by the Topeka Board of Zoning Appeals at their regularly scheduled meeting on May 11, 2020. Staff's recommendation is for approval of the conditional use permit, subject to the two conditions listed on the staff report.

Andy Wright and Angela Sharp, both of Bartlett & West, were both logged on to the video conference. Also logged in were Braxton Copley and Michelle Neiswender, both of COT Utilities.

Ms. Sharp stated that Ms. Driver's description of the project was thorough and correct. She referenced a past condemnation case of the subject property where the City Council determined that this is the appropriate site for the improved/upgraded pump station. The subject property is needed due to the fact that the existing pump station must remain in service during the construction of the replacement pump

APPROVED

station. Once operations are transferred to the new pump station, the old one will be demolished.

Ms. Sharp explained that in regard to storm water treatment, it has been determined that a smaller retention pond may be sufficient. This will ultimately be determined during the final stages for the building permit process.

With no questions from commissioners, Mr. Fried declared the public comment time open. With nobody wishing to speak, Mr. Fried declared the public comment time closed.

Commissioners voiced no concerns about the project, and there was a **motion** by Mr. Kannar to recommend approval to the Governing Body of the Conditional Use Permit (CU20/01) subject to the conditions listed in the staff report. **Second** by Ms. Lawson. **APPROVAL** (8-0-1 with Mr. Armstrong abstaining)

PUD19/02 Sports Zone PUD by: T&L 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 (O&I-2 uses with limited I-1 uses) on a 23 acre property located at 3907 and 3909 SW Burlingame Road. **(Continued from September 2019 Public Hearing)**

Ms. Driver presented the staff report and recommendation for approval subject to conditions listed therein.

Mr. Hall stated that a videoconference meeting was held May 13, 2020 between City staff and neighboring property owners, along with Vernon Jarboe, legal counsel for the neighbors. The purpose of the videoconference was to better inform property owners involved regarding the most recent proposal and allow them ask questions and express concerns. Based on that meeting, Mr. Hall stated that the owners feel the application for re-zoning should not be considered due to current zoning violations on the property. Based on current and past experience, they are concerned that the owners will not abide by new zoning regulations. Mr. Hall explained that while zoning and zoning enforcement are closely related, they should be looked at separately. He stated that when a property with zoning violations submits an application for re-zoning that would resolve some or all of the violations, it is typical for enforcement to be put on hold until the outcome of the re-zoning request. There was information provided about the DMV operation on Tract A and a 2012 legal determination by COT legal department that as a state-run operation, it is not subject to the zoning regulations of the City. Building permits were approved for the re-model of the building on Tract A based on this determination. The operation of the DMV is allowed in the proposed PUD.

Mr. Hall stated that the current proposal is substantially different from what was considered in September of 2019, the changes largely based on concerns heard at the September Planning Commission meeting. Those concerns include heavy truck traffic on the site, use of the north entrance, and the concern that potential new industrial uses would exacerbate current problems with truck traffic. The current proposal removes tractor trailer use from Tract A and restricts future tractor trailer use to the south entrance, prohibits outdoor storage of materials and equipment on Tracts A & B, and requires a physical barrier to be installed to prevent access to Tract B from the north entrance (except for emergency response vehicles) if there is a change of use to I-1 light industrial use on Tract B. The current proposal also includes landscaping requirements to be triggered by certain specific events.

Mr. Hall explained that staff has worked to balance the interests of the applicants with those of the neighboring owners.

Mr. Fried asked whether issues may arise from the requirement for truck traffic to use to south entrance. Mr. Hall stated he understands the applicant has confirmed that the access easements will work as

intended by the PUD.

Mr. Kaup asked about the signage at the north entrance. Ms. Driver stated that any signage, even though it's considered "private," would require approval by the COT traffic engineer. Mr. Hall further explained that it's considered "private" because it is paid for by the applicant. It will still be standard MUTCD complaint signage. Mr. Hall could not state with certainty that those who do not follow the rules of the signage could be ticketed by Topeka Police.

Mr. Armstrong asked for confirmation that the intended traffic analysis at the intersection of the Burlingame frontage road and north entrance drive (to be done once Sports Zone resumes normal operations which have ceased due to COVID-19 concerns) will help guide the recommend signing plan. Ms. Driver stated that yes, that is her understanding.

With no further questions from commissioners, Chairman Armstrong invited the applicant to speak. Kevin Holland of CFS represented the applicants, who were also present/logged into the videoconference.

Mr. Holland stated he believes staff covered the proposal well and he is open to questions. He gave some background on the property and the reasons the owners were considering the future sale of it. He explained that there are no current sale plans or offers; the owners simply want to offer flexibility to potential buyers.

Ms. Lawson asked if the applicant could wait until the traffic analysis is completed. Mr. Holland pointed out that the owners have been waiting for 9 months. He's uncertain what the traffic analysis would change and added that any industry other than the Sports Zone would almost certainly have less traffic than is currently seen. The applicant is also more than happy to put up any signage the City requests.

Mr. Dehn asked how many trucks go in and out on a daily basis. Mr. Holland stated the DMV generates about 3-4 truck entrances/day as they arrive to do testing. They then exit. He stated that other trucks not there for the DMV already use the south entrance. Mr. Dehn asked how long a lease the DMV has and Mr. Holland stated he believes they have 9-10 years remaining.

Mr. Kaup noted that the applicant's minutes from the January 2020 Neighborhood Information Meeting are "quite cursory" and he asked Mr. Holland if he disagrees with any of the information provided by the neighbors about that same meeting. Mr. Holland stated he attempted to accurately describe concerns he heard and noted that what was written by the neighbors may be more detailed than what was spoken. Mr. Kaup asked what time that meeting adjourned and Mr. Holland stated he believed it went on until approximately 6:25PM.

With no further questions from commissioners, Chairman Armstrong **opened the floor for public comment.**

Matt Masilionis spoke, stating he'd like to address the questions about the NIM meeting notes. He stated the meeting started more than an hour after it was supposed to and the building was closing so they were not allowed to stay past 5:45PM. He was concerned that the meeting minutes did not adequately reflect concerns from neighbors.

Mr. Masilionis explained that he is the son of Margaret Masilionis and is speaking on her behalf. He provided family history, adding that the cemetery on the property is a family cemetery.

Mr. Masilionis stated the proposed plan is not compatible with R-1 zoning and does not conform to the Topeka Future Land Use Map (FULU). He spoke about current zoning violations on the property, stating that the applicants have done nothing to correct them and the City has not enforced the zoning regulations or agreements of the Conditional Use Permit.

Ms. Wagers informed the applicant that his allotted 4 minutes was up and he requested an additional 4 minutes to speak. **Motion** by Mr. Armstrong to allow the extension; **APPROVED 9/0/0**

Mr. Masilionis stated the proposal creates an encroachment of incompatible uses which the Topeka Municipal Code (TMC) prohibits. He stated the plan goes against the FULU plan and suggested that should be reviewed and changed prior to approving the proposed PUD plan. He expressed concern that the request is for a major density change and also that any future owners might not abide by the zoning regulations.

Mr. Masilionis stated that the current owners have not marketed the property nor done any market analysis. He suggested that if they did, they may find a change in zoning unnecessary. He also expressed concern about the lack of a landscape plan as required for a PUD.

Mr. Masilionis stated he feels the application is flawed from a municipal code and planning perspective and harmful to the long-standing homeowners. He asks that the application be denied.

Julie Ireland spoke, stating she represents her parents of 3905 SW Burlingame Rd. She referred to blinking lights from a sign and truck traffic that she said can be seen and heard from her parents' home. She stated she doesn't believe any truck regulations would be enforced because trucks were never allowed in the beginning and that was never enforced. She stated she has contacted City staff about current zoning violations and was told that they would be reviewed after the zoning case is closed. She provided photos of the items she feels are violations and these were shown during the meeting using "screenhsare".

Robert Masilionis of 3903 Burlingame spoke, explaining that he has been the president of Foster Cemetery for 3-4 years now. He stated the cemetery runs on donations and was once quiet and peaceful.

Mr. Masilionis expressed concern about the current level of traffic and noise at the cemetery, this generated by Burlingame Road, the nearby gas station, and now traffic on Tract B, which he said has caused un-reported damage to the cemetery fence. He is concerned about what the traffic will be like if Tract B is zoned light industrial.

Daniel Masilionis representing 3903 Burlingame spoke. He said he works with real estate rental property and is familiar with zoning regulations. He stated that the homeowners did not object to the CUP sought by the current property owners that allowed them to build the Sports Zone, however, soon after that was done, the truck driving school was added and later a daycare center, neither of which, he said, are allowed under the current zoning of the property. He asked that the zoning request be denied until the property is brought into compliance with current zoning regulations and maintained that way for 6 months to show good faith.

Vernon Jarboe spoke as legal counsel for the homeowners. He stated that there is currently a CUP on the property which legally could be revoked; zoning cannot be revoked.

Mr. Jarboe stated that fencing should be required to be erected between Tract A & B within 30 days of re-zoning; this would stop trucks using the north entrance. He stated that landscaping should be a minimum of 100'; the proposed 20' is insufficient.

Mr. Jarboe stated that the frontage road is public while the Sports Zone drive is private. He said the original CUP calls for a stop sign on the private drive to stop cars when exiting the Sports Zone property and allow drivers on the frontage road an opportunity to turn. He said the stop sign has been removed by the applicant and replaced with a yield sign.

With the allotted 4 minutes being up, Mr. Jarboe asked commissioners for an additional 4 minutes.

Motion by Mr. Armstrong to allow the extension – **APPROVED 9/0/0**

Regarding a traffic analysis, Mr. Jarboe stated that the property is already being used for industrial uses and thus the analysis should be done now.

Regarding the Golden criteria, Mr. Jarboe stated that the current use is illegal; what should be

considered in the character of the neighborhood are the homes that have been there for 100+ years.

Nearby zoning is residential, though some industrial does exist to the south. He stated that if the zoning were dealing with Tract C, the industrial use would be relevant, however, this application is for zoning of Tracts A & B.

Regarding the length of time the subject property has remained vacant, Mr. Jarboe stated that with the exception of Tract C, the property is in use today and has not been vacant.

Regarding relative gain to public health, etc. compared to hardship imposed, Mr. Jarboe stated the re-zoning would place residential zoning in the midst of industrial zoning.

Regarding the comprehensive plan, Mr. Jarboe stated that it does not call for industrial use on this site.

Mr. Fried asked if the north entrance off Burlingame Road up to the frontage road is public or private and Mr. Jarboe stated it is public to that point.

Mr. Kaup asked if the majority of the neighborhood concerns would go away if truck traffic were removed from the north entrance. Matt Masilionis stated trucks entering there is not a large issue to his mother due to the position of her house, but she does have an issue with all the "clutter" and debris on the site behind her house. At the same time, she is quite concerned about the inability to safely turn off her street into the drive because the stop sign has been removed and replaced by a yield sign. Heavy Sports Zone traffic makes this dangerous.

Ms. Ireland stated that it's amazing to her that there hasn't been an accident because it's dangerous for homeowners to try to turn off their frontage road and into the driveway to go to Burlingame due to cars coming and going from the Sports Zone. She would prefer the City close that driveway and build an entrance directly on to Burlingame Road from the frontage road for use solely by the houses located there.

Mr. Kaup stated he is sensitive to the property owners' concern about lack of specificity as to any future use but asked Mr. Jarboe if he agrees that identification of a specific use is not required for a re-zoning, regardless of whether it's a straight re-zone or a PUD. Mr. Jarboe stated that yes, this is his understanding of the COT zoning code. He continued that the concerns here are to do with unidentified industrial uses in close proximity to residential zoning. Mr. Jarboe spoke specifically to concerns about uses for repair of vehicles and noted that the PUD doesn't explicitly say it must take place indoors.

Regarding setback requirements between residential and industrial zonings, Mr. Kaup asked for confirmation that it is 30' and asked Mr. Jarboe what his thought is on that. Mr. Jarboe stated that if there is a 100' landscape barrier, they wouldn't care about the setback.

Mr. Kaup asked if there were a traffic analysis performed based on the most intense use possible, a setback greater than 30', a greater landscape area, and a way to deal with the north entryway concerns, would that satisfy the concerns of the neighborhood. Mr. Jarboe stated he is unwilling to confirm that, but would like to have a greater setback, greater landscape area, and a fence erected now between Tracts A & B.

Mr. Werner asked if the uses proposed on the PUD would "clean up" current issues on the property. He stated it seems to him that it would and asked if approved, would the property owners immediately have to bring the property into compliance.

Mr. Hall stated that Tract A is immediately adjacent to a residential use; Tract B is not. Under the proposed PUD, all current uses on Tract A would be allowed except semi-Tractor trailers, and they would not be allowed to use the north entrance. Tract B industrial uses are restricted by the PUD. Staff attempted to remove uses most likely to have a negative impact, for example artisan manufacturing is allowed, but full manufacturing is not. He stated that staff's intent was to not allow outdoor repair of

equipment / machinery, vehicles and the note could certainly be clarified to state that. Mr. Hall stated that a 20' landscape buffer is what is required in the most restrictive cases where a land use is adjoining an arterial.

Mr. Hall stated that the intent of the PUD is to not allow truck traffic and outdoor storage on Tract A. He added that one of the concerns about immediately erecting a fence between Tracts A & B is that it would force all Sports Zone traffic to use the south entrance. He clarified that Tract A will not allow semi-truck traffic; while the office will remain on Tract A, the trucks will not be allowed on it. Ms. Ireland stated that truckers must use Tract A to access the road to the driver testing/training area. Mr. Holland of CFS stated that the road Ms. Ireland was referring to is on Tract B.

Ms. Messina asked what changes have been made since the September Planning Commission meeting to bring the property into compliance with the current zoning regulations. One of the owners stated that Whiteline trucks have all been instructed to use the south entrance.

Ms. Messina asked staff what typical enforcement is for zoning violations if the property does not submit an application for re-zoning. Mr. Fiander explained that it is a lengthy process that begins with a complaint, as we only have 1 zoning officer for 60 miles of city. The zoning officer investigates and typically asks the owner to correct the violation voluntarily, giving them 30 days to do so. If they do not correct the violation, it will get sent to prosecution / City attorney's office, where a case would ultimately be heard in municipal court. Experience shows that unless there is a safety issue or something egregious that is threatening to the public, it can take several months to get docketed. Once the court hears it and makes a decision, that decision can be appealed.

Responding to a question, Mr. Hall stated that typically requirements take effect when a certificate of occupancy or building permit, etc. are applied for. At that point the City would require the fence be erected or the landscaping be put in place and if not completed, the permit/ certificate of occupancy would not be available. Requiring the fence and/or landscaping prior to that is a possibility, though it's difficult to enforce based on Mr. Fiander's explanation above. He added that a detailed landscaping plan is not generally required until a specific use is decided upon because it's generally based on that specific use. Changes to it would require an amendment to the PUD, which is expensive and time-consuming.

Daniel Masilionis asked the owners if they have tried to sell the property without the property having been re-zoned as it is, he believes, a perfect place for a retirement home. Mr. Holland stated and Mr. Hall confirmed that a retirement home would require a change in zoning.

Ms. Messina asked if the property can legally be sold while out of zoning compliance with zoning regulations and Ms. Feighny replied yes.

Mr. Dehn asked whether landscaping would immediately be required if the zoning change were approved. Mr. Hall stated they would not and provided information as to why. Mr. Holland stated that the property owners would agree to do the landscaping immediately if the zoning application were approved.

Mr. Kaup stated that based on what he's heard tonight, he would like to consider delaying the decision and ask the applicant to return with a "last/best offer". Ms. Messina stated she agrees.

Ms. Ringler stated that she understands the family history of the property, yet this part of the community is in fact moving toward industrialization rather than residential. She agreed with Mr. Kaup that the decision could be deferred to a future meeting.

Mr. Kannarr suggested a traffic study needs to be complete and Ms. Lawson agreed. Mr. Armstrong stated he's not sure that will help in light of the fact that trucks are being diverted to the south entrance. Mr. Fried agreed with Mr. Armstrong, stating that there will still be an issue with the volume of traffic generated by the Sports Zone, but that's already occurring and presumably anticipated under the CUP.

Mr. Armstrong asked staff to clarify the statement on page 8 of the staff report about COT engineering reviewing existing conditions. Mr. Hall explained that the purpose of this is to find the best way to

improve safety and traffic flow at the intersection of the private drive and frontage road. He confirmed that this will determine which is best with the current uses, a yield sign or a stop sign.

Mr. Fiander reminded all that COT engineering is waiting for “normal conditions” to return prior to doing the traffic analysis. With uncertainty caused by COVID-19, it’s unclear how long it will be before that happens.

Mr. Holland stated that the applicant agrees to table the application until the City’s traffic study is in.

Motion by Mr. Fried to continue the item until staff can present to the commission the findings of a traffic impact analysis as well as the applicant’s consideration of any alternative conditions they wish to present to the commission; **second** by Mr. Dehn. **APPROVED 9/0/0**

A20/02 Six Zero North Subdivision (P20/09), an approximately 74-acre subdivision on property located at 3325 NW 25th Street. (Warner)

Mr. Warner reviewed the memo provided in the agenda packet, explaining that the Land Use and Growth Management Plan (LUGMP) has established a policy that the Planning Commission review annexations greater than 10 acres for consistency with growth management principles of the LUGMP. Staff’s recommendation is for a finding that annexing the subject property is consistent with the Comprehensive Plan.

Hearing no concerns voiced, Mr. Kaup made a **motion** for a finding that annexing the subject property is consistent with the Comprehensive Plan. **Second** by Mr. Kannarr. **APPROVAL (9-0-0)**

Review/Approval of Topeka Planning Commission By-Laws

Mr. Fiander suggested the the review and approval of the by-laws be tabled until the next Planning Commission meeting. Mr. Armstrong made a motion to do so, Mr. Fried seconded, and the motion passed 9-0-0

Communications to the Commission

Mr. Fiander stated that hopefully the June meeting will be “in person” but no final decisions have yet been made. Information will be provided.

With no further agenda items, meeting was adjourned at 8:28PM