



PLANNING COMMISSION MEETING
March 23, 2015
Meeting Minutes

March 23, 2015 – 6:30 p.m.

Commissioners present: Britton, Culver, Denney, Graham, Josserand, Liese, Struckhoff, von Achen.

Staff present: McCullough, Stogsdill, Day, Larkin, M. Miller, Simmons, Ewert

PLANNING COMMISSION MINUTES

Receive and amend or approve the minutes from the Planning Commission meeting of February 23, 2015.

Motioned by Commissioner Josserand, seconded by Commissioner Struckhoff, to approve the February 23, 2015 Planning Commission minutes.

Motion carried 6-0-2, with Commissioners Culver and Graham abstaining.

COMMITTEE REPORTS

Receive reports from any committees that met over the past month.

Commissioner Britton said the Horizon 2020 Steering Committee met today. He said they were in the process of working through particular issues that needed to be addressed in the updated Comprehensive Plan. He said that would form the basis of the Issues Action Report that would be seen by Planning Commission, City Commission, and County Commission for approval.

Commissioner Josserand said the Oread Design Guidelines Committee met and talked about the proposal contained in the consultant's report regarding alleyway dwellings. He said they would meet again next Monday.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST

- No ex parte.
- No abstentions.

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ITEM NO. 1A PUD TO RS7; 5.18 ACRES; N SIDE OF QUAIL CREEK DR (SLD)

Z-14-00553: Consider a request to rezone approximately 5.18 acres from PUD [Alvamar] (Planned Unit Development) District to RS7 (Single-Dwelling Residential) District located along the north side of Quail Creek Drive. Submitted by Paul Werner Architects on behalf of Alvamar Inc, property owner of record.

ITEM NO. 1B PRELIMINARY PLAT FOR ALVAMAR INC TWO ADDITION; N SIDE OF QUAIL CREEK DR (SLD)

PP-14-00555: Consider a Preliminary Plat for Alvamar Inc Two Addition, a one lot subdivision containing 5.18 acres with frontage on the north side of Quail Creek Drive. The subdivision is proposed to support future low-density residential development. Submitted by Paul Werner Architects on behalf of Alvamar Inc, property owner of record.

Items 1A and 1B were deferred prior to the meeting.

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ITEM NO. 2 FINAL DEVELOPMENT PLAN FOR A HUTTON FARMS WEST PHASE II; N SIDE OF PETERSON RD BETWEEN DAYLILY DR & WILMA WAY (KES)

FDP-14-00551: Consider a Final Development Plan for Hutton Farms West Phase II, located on 16.4 acres on the north side of Peterson Road between Daylily Drive and Wilma Way. The plan includes 87 units of duplex and detached residential units. Submitted by Paul Werner Architects, for North Forty LC, property owner of record.

STAFF PRESENTATION

Ms. Katherine Simmons presented the item.

APPLICANT PRESENTATION

Mr. Paul Werner, Paul Werner Architects, agreed with the staff report with the removal of condition 3.

PUBLIC COMMENT

No public comment.

COMMISSION DISCUSSION

Commissioner Denney asked if there would still be a gate at the northwest corner.

Ms. Simmons said that was correct.

Commissioner Denney asked if it would be 20' wide paved concrete or asphalt with a curb.

Ms. Simmons said yes, it would follow street standards.

Commissioner von Achen inquired about the setbacks on the east side of the property.

Ms. Simmons said the setback was originally 35' but there was a waiver in the preliminary development plan to reduce that.

Commissioner von Achen asked about the buffer on the Hutton Farms side.

Ms. Day said she did not know off the top of her head.

Commissioner von Achen inquired about the variance for setback in the southwest corner of the subject property. She referenced a letter of concern that was included in the packet from Mr. Larry Hatfield.

Ms. Simmons pointed out the structures on the overhead. She said the structures had been moved not quite to the 200' distance to Mr. Hatfield's property that he mentioned in his letter. She said the closest structure was now roughly 110'-112' to the property line. She said the second structure was roughly 170' to that property line. She said based on the shifting of the structures that Mr. Hatfield had gained a little bit more distance between the structures and his property.

Mr. McCullough said regarding Commissioner von Achen's earlier question about the buffer on the Hutton Farms side, the answer was 40'.

Commissioner Josserand said he had general concerns about stacked parking, especially with duplexes and when the structures were intended to be rentals. He said the plan provided twice as many parking spots and that he would support it. He said it would be interesting to see the aesthetics of the area after a year or two of occupancy to see whether or not there were lots of vehicles on the streets.

ACTION TAKEN

Motioned by Commissioner Struckhoff, seconded by Commissioner Culver, to approve Hutton Farms West Phase II Final Development Plan, FDP-14-00551, based upon the findings of fact presented in the body of the staff report, with the removal of condition 3, and subject to the following conditions:

1. Revision of the Final Development Plan to show:
 - a. Water and sanitary sewer service line locations consistent with the approved public improvement plans.
 - b. Fire hydrants in locations as approved by Fire Prevention Staff.
2. Verification by the Stormwater Engineer that the plan dated 3/16/15 addresses the previous Stormwater Engineering review comments.
3. ~~City Commission approval of a requested variance to utility requirements scheduled to be heard on 3/24/16.~~
4. Approval and recording of a Minor Subdivision prior to the recording of the Final Development Plan.
5. Submittal of a Site Plan Performance Agreement.

Unanimously approved 8-0.

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ITEM NO. 3 SPECIAL USE PERMIT FOR 12TH & HASKELL RECYCLE CENTER; 1010 E 11TH ST (SLD)

SUP-15-00019: Consider a Special Use Permit for 12th & Haskell Recycle Center, to permit expansion of a Scrap and Salvage Operation, in conjunction with a Recycling, Collection and Processing Center, located at 1010 E 11th Street on approximately 5.83 acres. Submitted by Bartlett & West, Inc., for Robert B. Killough, property owner of record.

STAFF PRESENTATION

Ms. Sandra Day presented the item.

APPLICANT PRESENTATION

Mr. Robert Bo Killough agreed with what Ms. Day presented.

PUBLIC HEARING

No public comment.

COMMISSION DISCUSSION

Commissioner Jossierand asked if the East Lawrence and Brook Creek Neighborhood Associations were notified.

Ms. Day said that was part of the notice requirement. She said she had not heard from anyone. She stated she checked with Development Services staff and that the property was currently in compliance with no history of complaints.

Commissioner von Achen asked about the materials processed on site.

Mr. Killough said all materials except tires, propane tanks, and glass. He said they take plastic, cardboard, all metals, aluminum cans, copper, and automobiles, to name a few.

ACTION TAKEN

Motioned by Commissioner von Achen, seconded by Commissioner Britton, to approve a Special Use Permit, SUP-15-00019, for the expansion of a Scrap and Salvage Operation, in conjunction with a Recycling, Collection and Processing Center, located at 1010 E. 11th Street, based upon the findings presented in the body of the staff report and with a recommendation for approval to be forwarded to the City Commission subject to the following conditions:

1. Execution of a Site Plan Performance Agreement.
2. Submission of a revised plan to include the following notes that states: *"All manholes shall be maintained and clear of material storage to allow access to manholes as necessary by the City."*

Unanimously approved 8-0.

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ITEM NO. 4 CS-UC TO CS-UC; 0.27 ACRES; 804 PENNSYLVANIA ST (MKM)

Z-15-00022: Consider a request to rezone approximately 0.27 acres from CS-UC (Commercial Strip with Urban Conservation Overlay) District to CS-UC (Commercial Strip with Urban Conservation Overlay) District with modification to the zoning restriction to permit a bar use without a food sales requirement, located at 804 Pennsylvania St. Submitted by Flint Hills Holdings on behalf of Ohio Mortgage Investors LLC, property owner of record.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

APPLICANT PRESENTATION

Mr. Tom Larkin, Flint Hills Holdings, said he reached out to local businesses, homeowners, and tenants to see if they had any issues or comments. He said he included design changes after those meetings, such as the alley entry and increased buffer between the parking lot and Poehler Lofts. He said he also reduced the outdoor seating capacity to about 15% of the neighboring Cider Gallery. He said there was a catering license at Cider Gallery where there were often 250-300 people in the outside courtyard. He said alcohol was often served and there had not been one complaint in the two years it had been in operation. He said there would be roughly 30-35 people, at its busiest time, outside the bistro area. He said a common misconception was that the business model for this development would change. He said the operation would still include non-alcoholic sales such as food, baked goods, sandwiches and non-alcoholic beverages. He stated one of the biggest issues was the personal investment for the potential owners to have to track down sales and receipts from other business owners, mainly mobile food vendors. He said the presence of mobile food vendors would be a benefit to fix the problem of such a small building footprint. He said the building was historic and could not have extra square footage added on to accommodate a kitchen.

PUBLIC HEARING

Mr. Stephen Johnson said he was an artist and lived in a loft on E 9th Street. He spoke in support of the rezoning and felt it would be a good addition to the area.

Mr. Kyle Johnson said she was a business owner and tenant in the Cider Gallery. He spoke in support of the rezoning.

Ms. Janet Good said she was the East Lawrence Neighborhood Association president when the conditional zoning was originally placed on the property. She asked for holistic planning. She said at the time of the conditional zoning they had concerns about big development coming in. She expressed concern about being bookended with two entertainment districts. She said there was already too much traffic and parking issues due to downtown. She said this plan was a cool idea but the 9th Street Art Corridor was already in the works. She wanted them to think about the long term effect of turning the area into an entertainment district. She said there was already an impact from this entertainment zone. She felt licensing for bars should be kept to a minimum.

COMMISSION DISCUSSION

Commissioner Jossierand said in comparing the hearing tonight to what they heard previously he was bothered that there were no representatives from the East Lawrence Neighborhood Association.

Commissioner von Achen asked the applicant about the non-alcoholic sales.

Mr. Larkin said most would come from mobile food vendors. He said there would also be baked items and sandwiches from other businesses in town that they will partner with.

Commissioner von Achen asked Mr. Larkin if food would not be prepared onsite.

Mr. Larkin said that was correct.

Mr. McCullough said the issue was that vendors had difficulty investing in the project and not being able to prove compliance with the 55% rule due to gathering multiple receipts from multiple food vendors throughout the year.

Commissioner Josserand said when they previously considered this they were looking at the alternative of sales with food or a bar with early closing hours.

Mr. McCullough said with operational conditions such as early operation hours, no amplified music, etc.

Commissioner Josserand asked if the staff recommendation was similar. He asked if the Special Use Permit would implement the early closing hours.

Mr. McCullough said the staff recommendation was essentially the same except that instead of building operational conditions to zoning staff thought it was more appropriate to create conditions through the Special Use Permit process. He said the Special Use Permit was the tool to look at operational standards for the use to minimize potential negative impacts on the neighborhood.

Commissioner Culver asked if the Special Use Permit would come back to Planning Commission if it went that route.

Mr. McCullough said yes. He said if the request was approved with the condition that a bar was only permitted with a Special Use Permit the applicant would have to make a new application for a Special Use Permit for the bar use.

Commissioner Britton said he would not be comfortable with rezoning and allowing the straight up bar use. He liked the Special Use Permit option and did not see a problem with that. He said the area was a cool area and could benefit from mixed-use.

ACTION TAKEN

Motioned by Commissioner Britton, seconded by Commissioner Culver, to approve the rezoning request, Z-15-00022, for 804 Pennsylvania, with a condition that a *Bar* use without the food sales requirement be permitted only with a Special Use Permit.

Motion carried 6-2, with Commissioners Denney and Josserand voting in opposition.

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**ITEM NO. 5 TEXT AMENDMENT FOR VALUE-ADDED AGRICULTURAL BUSINESS
CONDITIONAL USE (MKM)**

TA-14-00548: Consider a Text Amendment to clarify locational and developmental standards for *Value-added Agricultural Business* Conditional Use and to clarify the uses which are permitted on non-conforming vested properties. *Initiated by County Commission on 12/17/14.*

STAFF PRESENTATION

Ms. Mary Miller presented the item.

Commissioner Liese asked about a communication that was included in the packet that expressed concern about the financial impact of property value.

Ms. Miller said with a Conditional Use Permit they would look at land uses in the area. She said if a use was located next to another use and would damage that use in some way the result could be that it would lose its home value. She said if a homeowner could prove that they would lose home value then Planning Commission could consider that when looking at a Conditional Use Permit. She said there could be negative impacts on surrounding properties.

Commissioner Liese asked if they would need to know if the negative impacts were based on noise, smell, etc.

Ms. Miller said they could take it into account with the Conditional Use Permit. She said for example, people felt quarries would decrease their home value. She said Planning Commission should also look at the public gain. She said some people believe a use would affect their home value based on their notion of what it would be like without knowing what it would be like.

Commissioner Liese said there was no real way for Planning Commission to objectively anticipate if it would affect property values.

Ms. Miller said depending on what the Conditional Use Permit use was there could be a study. She said the quarry had a study regarding home values after the quarry was finished and left.

PUBLIC HEARING

Ms. Linda Long said according to her attorney staff did not clarify the language of the value-added agriculture business Conditional Use Permit. She said there were still unanswered questions about the Conditional Use Permit. She wondered why it was important for these provisions to be approved now. She requested the item be deferred until a city planner was hired. She said when she met with staff in February they indicated they would speak with surrounding counties about similar ordinances. She wondered what was found out. She felt the public should be protected. She wanted to know who needed to apply for the permit; land owner or business owner. She expressed concern about property value and felt that neighbors would be forced to police the uses. She felt there were too many loopholes and said it needed to be tightened up. She wondered what qualified as an agricultural product. She said there was no need for this Conditional Use Permit until the entire thing was revised.

Commissioner Liese asked staff to respond.

Ms. Miller said she was not able to find other examples of value-added agricultural businesses from other counties. She said Douglas County was progressive and that other counties did not have

Conditional Use Permits for those uses. She said examples of an agricultural use were animal husbandry, raising crops, bees, rabbits, and game, for sale. She said it had to be for making money from it. She said a value added agricultural business was not agriculture, it was a business. She said anyone could apply for the permit but had to have the property owners consent. She said the County did not have the staff to do surprise inspections but if they received a complaint they would inspect. She said many Conditional Use Permits had reviews after a certain timeframe, such as 5 years. She stated if the Conditional Use Permit was rescinded there could be an empty building until it was refurbished into something else. She said the County was hiring someone to replace the former Planning Coordinator, Ms. Linda Finger.

Mr. Willis Long said he had been in contact with the County Zoning & Codes office and they were hiring a Planner to deal with this sort of thing. He said he will lose 15% value on his property. He expressed concern about the potential smell and past violations with the State.

Mr. McCullough said the County had a Planning Coordinator who was involved in issues such as text amendments, but that they were not the lead on the projects. He said Ms. Mary Miller had been one of the lead Planners in county type text amendments for years. He said his understanding was that the position the County was hiring for would help blend some opinion and input on this type of process but not solely to make this small amendment to the Code. He said the position would help the existing County staff process all types of day to day applications, such as variance requests and building permits. He said the position would be a supplement to what the joint City/County Planning Office does.

Ms. Cheryl Smith said when she opens her front door and looks east she could see the new sewage plant where agricultural land was taken to be turned into a sewage plant. She asked if the other uses that Ms. Miller brought had neighbors very close. She expressed concern about the area being preserved and felt the regulations needed to be changed.

Mr. Roy Chaney said this housing suburb was having a commercial use put in it. He said he moved to the country to be away from city businesses.

Mr. Roy Murphy said he applied for a Conditional Use Permit for a micro-distillery for an orchard in Baldwin City. He said the State had been encouraging micro-breweries and farm wineries in Kansas. He said regarding the issue of size his farm was 20 acres and if he was required to have a minimum of 40 acres he would be excluded. He said there had been a lot of interest in Baldwin City about his project. He said he would not need 40 acres. We said during years of drought or if he wanted to use other fruits not grown onsite he would need to bring in fruit. He said Planning Commission should consider the other side of the issue.

COMMISSION DISCUSSION

Commissioner Britton said Planning Commission was considering a text amendment but the public was commenting about a Conditional Use Permit. He asked staff to refresh his memory on where the Central Soyfoods Conditional Use Permit stood with the County Commission.

Ms. Miller said there was a protest petition filed which meant the Conditional Use Permit had to have a unanimous vote for approval. She said County Commission voted 2-1 to approve it so due to the lack of a unanimous vote it was denied. She said the Central Soyfoods application was gone.

Mr. McCullough said it was out of that process that the County Commission directed staff to draft this text amendment.

Commissioner Liese asked about options for Central Soyfoods now.

Ms. Miller said when a Conditional Use Permit was denied the applicant typically had to wait a year before making the same application, unless something had changed. She said if the text amendment was approved the standards would change and they could submit another Conditional Use Permit application that would go through the process again.

Commissioner Liese said whether the text amendment passed or failed to pass the applicant would have to go through a complete process.

Ms. Miller said that was correct.

Commissioner Liese said Planning Commission was not voting on Central Soyfoods and it should not be a major consideration in their decision about the text amendment. He said regardless of the text amendment the Conditional Use Permit could be denied.

Commissioner Denney said if the text amendment was approved it would give additional factors that could be considered for denial, such as odor. He felt the text amendment would actually help Planning Commission and County Commission regarding what could and should be allowed in a Conditional Use Permit.

Commissioner Britton inquired about access management standards.

Ms. Miller said the County Engineer worked on the access management standards and were primarily written for residential and went with the Subdivision Regulations. She said the County Engineers feeling was that it should apply the same to all uses. She said as long as the frontage requirements were met when the site was developed the access management standards wouldn't apply to a Conditional Use Permit. She said the language was meant to clarify that.

Commissioner Britton said it did not necessarily change anything just clarified it.

Ms. Miller said it clarified the current process.

Commissioner Liese said the decision they would make tonight had little to do with the Central Soyfoods Conditional Use Permit. He said it had more to do with potential future Conditional Use Permits. He asked if 40 acres was the minimum.

Ms. Miller said the acreage was for agricultural building permits. She said a value-added agricultural business was never exempt and would have to have a permit.

Commissioner Josserand asked if this text amendment would change the situation for the proposed micro-distillery in Baldwin City.

Ms. Miller said the micro-distillery had 20 acres. She said without changing the text amendment language the Conditional Use Permit would not be able to be approved.

Commissioner von Achen asked why they did not say there was no minimum site requirement.

Ms. Miller said the staff recommendation was to remove that.

Commissioner Culver inquired about the language regarding vested non-conforming uses and the option to initiate a separate text amendment.

Ms. Miller said it would be up to Planning Commission. She said there were numerous parcels that were non-conforming that had approved uses. She said it would be hard to figure out where to draw the line with such a broad policy.

Commissioner Josserand said he thought he read in the newspaper that Central Soyfoods was going to relocate within city limits.

Mr. McCullough said that he did not know if it was in the newspaper but that it was an option.

Commissioner Liese said he would vote in favor of the text amendment because he felt the language needed to be cleaned up. He said his vote was not an indicator of his feelings about the Central Soyfoods business or businesses like it.

Commissioner von Achen said one of the examples in the staff report was someone making bird seed. She asked if some of the products were grown on site but not all a Conditional Use Permit would still be needed.

Ms. Miller said that was correct.

Commissioner von Achen inquired about including water pollution standards.

Ms. Miller said the standards were developed in 2008. She said language regarding water pollution standards could be added.

Commissioner Britton said they were only being asked to look at a few little tweaks not opening the entire standards. He said he would support the text amendment.

Commissioner Denney said he would vote in favor of the text amendment because it clarified things that were less than clear before and make future Conditional Use Permits easier to deal with.

Commissioner Struckhoff thanked staff for their work. He said he would support the text amendment.

Commissioner Culver said he would support the text amendment to clarify the language to be consistent. He felt the defining uses for the vested non-conforming parcels should be separated out from this text amendment and have further discussion and/or more information gathered.

Ms. Miller said the County Commission asked for staff to look into it and provide more information on what type of uses were on non-conforming parcels.

Commissioner Culvers said they may need to take a deeper look at what uses that may entail and if they were looking at limiting any of those uses to have a discussion about that at the appropriate time.

Commissioner Josserand concurred with Commissioner Britton's comments.

Commissioner von Achen agreed with other Commissioners comments. She said she would like to see something about impacts to water added to not exceed EPA rules

Commissioner Britton asked if it already said any EPA standards.

Mr. McCullough said yes, but that they could make it part of the condition.

Commissioner Graham said she would vote in favor of the text amendment.

ACTION TAKEN

Motioned by Commissioner Britton, seconded by Commissioner Denney, to approve the text amendment, TA-14-00548, with the addition of language that requires compliance with all environmental considerations related to Federal EPA standards (air, water, etc).

Unanimously approved 8-0.

MISCELLANEOUS NEW OR OLD BUSINESS

Consideration of any other business to come before the Commission.

ADJOURN 8:48pm

Complete audio from the meeting can be found online:

<http://www.lawrenceks.org/boards/planning-commission/agendas>