

ITEM NO. 7 IG TO IL; .972 ACRES; 1021 E 31ST ST (KES)

Z-15-00471: Consider a request to rezone approximately .972 acres from IG (General Industrial) District to IL (Limited Industrial) District, located at 1021 E 31st St. Submitted by Richard G. Sells on behalf of Spirit Industries Inc, property owner of record.

STAFF PRESENTATION

Ms. Katherine Simmons presented the item.

APPLICANT PRESENTATION

Mr. Richard Sells said he had been looking for a location for a gun range and had only found 2 sites. He said he understood the free school gun act. He said in July 2014 open carry and conceal carry was signed into law. He said that took away some of the restrictions from the 1000' barrier. He said any person can walk up to a school with a hand gun as long as they don't go in. He also stated shooting on private land was allowed. He said the community center was less than 1000' from St. John's Catholic School, First United Methodist Church private preschool, Plymouth Congregational Church private preschool. He said for the past 19 years the city of Lawrence had operated a gun range inside the 1000' rule of a school and nobody had complained.

PUBLIC HEARING

Ms. Shannon Kimball, USD 497 Board of Education, expressed opposition to the rezoning. She discussed safety and security of the faculty and students. She said the proposed use would detrimentally affect the school district's College & Career Center site. It did not correctly address the impact of the federal gun free act. She said the campus in the future will partner with the Boys and Girls Club. She said a gun sale outlet and shooting range was not a compatible use with the neighboring school district educational use. She said the gun free school zone act created a 1000' gun free buffer around school district property. She stated the detriment to the school was very real and that the detriment outweighed the interest of the applicant in going forward with the rezoning.

She asked Planning Commission to deny this for safety and security reasons.

Mr. Colby Wilson, Director of Boys & Girls Club, said they were in the process of building a new teen center next to the College & Career Center. He said the expectation was that it would provide a safe place, physically and emotionally. He expressed concern about safety and asked Planning Commission to deny the rezoning request.

Mr. Randy Masten said he could not recall a worse idea than allowing a gun range near a school. He said it was not compatible with the surrounding development. He said a gun range was not conducive to the safety and wellbeing of children. He asked Planning Commission to deny the rezoning.

Mr. Chris Lane said he was in favor of the rezoning. He said other states that allow gun facilities near schools have not had issues. He said 80% of gun fatalities and injuries were due to guns bought illegally, not those regulated by gun ranges and facilities. He said having a gun facility near a school does not increase gun violence in schools.

APPLICANT CLOSING COMMENTS

Mr. Sells said he understood where the school board was coming from. He said the State of Kansas conducted a poll and found out that 30-40% of houses had guns in them. He stated that would mean there were approximately 30,000 guns in Lawrence. He said those guns would be sprinkled throughout the city and surely within 1000' of every school. He stated his facility would work with the Police, Sheriff's Department, and University of Kansas, to provide a safe environment and that education would be a part of his facility. He stated this facility would be a way to teach people to be safe with guns. He said he would conduct background checks for every member for felonies and they would not be able to shoot at his club.

COMMISSION DISCUSSION

Commissioner Sands asked Mr. Randy Larkin for the City's opinion on the law.

Mr. Larkin said the gun free school zone act limited possession of fire arms within 1000' of a school. He said there were certain exceptions. He said it would not apply to private property or a gun in a motor vehicle that was not loaded and in a box. He said it did not prohibit a shooting range or the discharge of firearms on private property within 1000'. He said in the City's opinion it would not necessarily prohibit it. He said the main argument seemed to be people traveling on the street to get to this location would be in violation of the law, but motorists can't drive anywhere in Lawrence without coming within 1000' of a school. He said the it was the City's opinion that this use at this property would not be prohibited.

Commissioner von Achen asked Mr. Wilson to show on the map where the Boys & Girls club would be located.

Mr. Wilson pointed on the map and stated that the Boys & Girls Club would connect to the College & Career Center.

Commissioner Sands asked Mr. Wilson if the Boys & Girls Club had already made a determination that this was the final site for their building. He asked what impact the shooting range would have on their plans.

Mr. Wilson said yes. He said the Boys & Girls Club would move forward but it may impact the efforts to raise funds for the facility.

Commissioner Denney asked the applicant what caliber of weapons would be allowed at the facility.

Mr. Sells said most of the guns shot at his indoor range would be handguns, such as 22 or 9mm. He said the ballistics of the range would handle any weapon with a muzzle velocity of 3,600 feet per second, which would include up to a 300 Winchester magnum but he didn't know why someone would want to site that type of gun on a 25' range. He said the only rifles he would allow would be 22, AR15, and 300 Blackout.

Commissioner Britton said federal law would take priority over state law. He said they needed to be concerned about the gun free school act. He said there was nothing about this that necessarily conflicted with the federal law. He said the hard question was about safety and compatibility with the surrounding area.

Commissioner Sands asked the applicant about his earlier comment about working with Police, Sheriff's Department, and KU Public & Safety.

Mr. Sells said he planned to work with them but did not have any correspondence with them yet. He said he talked to the fire department and they wanted to see the gun range happen. He said he had been approached by the National Guard who said they had to drive to Kansas City and Topeka to get qualified. He said he wanted to have a facility in place before he reached out to Police, Sheriff, and KU Police.

Commissioner Sands asked who at the National Guard Mr. Sells talked to.

Mr. Sells said he talked to a gentleman with the last name of Rogers. He said the conversation took place during a swim meet that their daughters were in.

Commissioner Sands said a key distinction needed to be made that Mr. Sells talked to individuals who provided their personal opinion but that they were not speaking on behalf of any organization.

Mr. Sells said that was correct.

Commissioner von Achen asked if the shooting range in the community building was still there.

Mr. Sells said yes.

Commissioner von Achen asked what kind of people Mr. Sells would hire to teach gun safety.

Mr. Sells said he would hire qualified people who would pass National Rifle Association provided tests.

Commissioner Liese said he received a conceal carry license in the past and owned guns. He wondered what percentage of customers would not qualify to join the club.

Mr. Sells said applicants names would be run through the National Instant Criminal Background Check System Nix program. He said anyone who did not pass that would not be allowed. He said in his experience it hasn't happened that often. He said he didn't know how many felons lived in Lawrence.

Commissioner Liese expressed concern about felons being turned away and being near a school. Commissioner Liese inquired about noise from the site.

Mr. Sells said there may be a popping noise, but not booming noise. He said he had lengthy rules that members would have to follow.

Commissioner Denney said federal law took precedent over state law. He said the federal law had exceptions. He said in the state of Kansas if you are licensed to have a conceal carry or retired law enforcement officer the 1000' rule does not apply. He said he drove by the area and the proposed site elevation was lower than the school district property. He said with the elevation a stray bullet would be unlikely to impact the school property. He said it came down to whether this was equal to an adult business or some other activity like that near a school.

Ms. Kimball said the business building could not be seen from the parking lot but that there were large banks of windows.

Commissioner Denney said the College & Career Center was close but not right across the street. He said the Bullet Hole in Overland Park was in a residential area. He said it was not unheard of.

Commissioner Liese said he wished there was a good gun range/gun shop in the county. He said having spent time at gun shops the people who walk around outside and come inside could be scary. He said he could not vote for this because of what goes on around a gun shop. He said he would vote in opposition but could support it in another location away from a school.

Commissioner Britton agreed with Commissioner Liese. He said any time they were talking about rezoning or significant change in an area they need to take the opposition seriously. He said the neighbors were the school district and Boys & Girls Club and if they have serious concerns about safety then they take those concerns seriously. He said it was a piece of mind thing for those taking their children there and employees who work there. He said often Planning Commission hears situations where neighbors are talking about not wanting something in their backyard. He said this wasn't like a cell or water tower where it was needed. He said a gun range wasn't a necessity.

Mr. McCullough said the rezoning request would accommodate the gun range use. He asked them to think about whether they thought the Code was deficient in its treatment with this particular use. He said there weren't prohibitions in the Code for locating this use to schools or other types of uses. He said Planning Commission may want to have a discussion about amending the Code to where gun ranges or retail sales should occur in the city. He said if the property had already been zoned IL then they wouldn't be having this discussion and it would have gone through an administrative site plan process.

Commissioner Britton asked staff if they needed to do anything with the request tonight. He said the zoning made sense but the use did not.

Mr. McCullough said he recommended making their opinions known in the minutes for City Commission. He said staff will know better after City Commission if a Code amendment may be necessary. He said on its face value they would support the recreation, but it was a gun range not a basketball court.

Commissioner Liese asked if the property had been zoned correctly at what point would the use have been questioned.

Mr. McCullough said through the site plan review.

Commissioner Denney said they should vote on if it fits in the Code. He asked Mr. Larkin about State law.

Mr. Larkin said there would be limitations on what the City could do. He said they could do some things like they do with drinking establishments, such as distances and time.

Commissioner Liese said Planning Commission was just a recommending body and that it was ultimately up to City Commission. He felt the issue would come back to Planning Commission one way or the other.

Commissioner Denney asked if they voted to deny the rezoning if it would go to City Commission.

Mr. McCullough said yes.

Commissioner Sands said in looking at the Golden Factor criteria it fit many but not all. He said the length of time the property was vacant was quite a while. He said regarding the relative gain to public health safety and welfare he was on the fence. He felt they should base decisions on facts not fears. He said if they try to create new zoning criteria it would unnecessarily restrict the decisions of Planning Commission. He said regarding safety, his fear was negligence discharge outside the box. He said he did not think gun ranges or gun shops draw certain types of people. He cautioned the applicant about mischaracterizing opinions of government agencies. He said he would vote in favor of the rezoning but just barely.

Commissioner von Achen commended Mr. Sells for his objective on training gun owners. She said she was uncomfortable endorsing this and referred to the Golden Factor of welfare health and safety. She said if anything ever happened it would be difficult for Planning Commission to handle. She said she would not support this but hoped the applicant found another location more appropriate.

Commissioner Struckhoff echoed Commissioner von Achen's comments about the applicant wanting to provide training. He said the difference between this location and the gun range in the community building was the retail aspect. He said he would not support the rezoning for the Golden Factor of wellness, health and safety.

Commissioner Struckhoff said this was difficult decision for him and he was on the fence.

Commissioner Denney said he was not as concerned about the Boys & Girls Club teen center because it would be more than 1000' away. He said if it was 50-75' across the street then yes it would be too close. He said given the distance and topography he would vote in favor of approval.

Commissioner Britton felt staff made the right recommendation based on the zoning ordinances. He commended the applicant for his work and emphasizing the educational side. He said when it came to public safety he preferred to error on the side of caution. He said he would vote against approval. He said Mary's Lake was near the site and another factor to consider. He felt perhaps they should consider looking at a text amendment so this could be separated out in the future.

Commissioner Liese asked staff to look into other municipalities and how they handle this issue.

Commissioner Britton suggested that the topic be a possible mid-month topic.

ACTION TAKEN

Motioned by Commissioner Liese, seconded by Commissioner von Achen, to recommend denial of the rezoning request and forward to City Commission.

Motion carried 4-2-2. Commissioner Britton, Liese, Struckhoff, and von Achen voted in favor of the motion. Commissioners Denney and Sands voted against the motion. Commissioners Culver and Kelly abstained.