

PLANNING COMMISSION MEETING

February 22, 2016

Meeting Minutes DRAFT

February 22, 2016 – 6:30 p.m.

Commissioners present: Britton, Butler, Carpenter, Culver, Denney, Kelly, Liese, Sands, Struckhoff, von Achen

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

PLANNING COMMISSION MINUTES

Receive and amend or approve the minutes from the Planning Commission meeting of January 25, 2016.

Motioned by Commissioner Denney, seconded by Commissioner Kelly, to approve the January 25, 2016 Planning Commission minutes.

Approved 9-0-1, with Commissioner Culver abstaining.

COMMITTEE REPORTS

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

Commissioner Britton said Planning Commission held a joint meeting with Historic Resources Commission last week to work on the Oread Design Guidelines.

Commissioner Culver said the Metropolitan Policy Organization (MPO) met last week and received a presentation from KDOT regarding the K-10 & Kasold closure. He said KDOT decided to have additional public discussions.

Commissioner von Achen reminded Planning Commissioners of the joint meeting with the Sustainability Advisory Board on March 9, 2016. She asked Planning Commissioners to familiarize themselves with that chapter prior to the meeting.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST

- Receive written communications from staff, Planning Commissioners, or other commissioners.

Mr. McCullough reminded Planning Commissioners of their joint meeting with Sustainability Advisory Board on March 9, 2016 at 5:30pm in the Lawrence Public Library.

- Ex parte:
Commissioner Sands said he received an email of opposition from Ms. Shannon Kimball regarding Item 2 that was included in the packet.
- Abstentions:
Commissioner Kelly said he would abstain from Item 2 since he was an employee of the school district and Director of the College and Career Center. He commented on the charge to do a comparative analysis of multiple sites. He said Planning Commission regularly reviewed and made recommendations

on a particular property or development. He said their analysis includes immediate relationships such as character of neighborhood, how it would affect nearby properties, and a larger relationship such as conformance with the Comprehensive Plan, and to gain public health safety and welfare. He said this practice helped them consider not only the proposal best for the neighbors but how it would affect the community as a whole. He said their discussions and recommendations were not about the best spot to locate a specific project but to consider the application that had come before them and determine if it met the needs and expectations of the neighbors and community. He felt a comparative analysis fundamentally changed the context of that discussion. He said it was not about whether the proposal was right for the community or neighbors, the discussion becomes which property is more advantageous or egregious to multiple parties, not the individual application. He said there were many items that come before Planning Commission that would be deemed not the best fit for the neighborhood. He did not feel the charge of Planning Commission was to look at properties available that meet the current zoning requirements and determine the best location. He felt it could be a destructive practice. He said the applicant did not intentionally bring forward two competing sites. He wondered what would prevent a future applicant bringing multiple sites forward on a divisive project and asking Planning Commission to pick the lesser of two evils. He said the process seemed extraordinary and he was disappointed he could not participate in the discussion. He said he had a conflict and it troubled him the two applications had been rolled together. He encouraged Planning Commission to avoid comparative analysis requests in the future.

Commissioner Culver said he would abstain from Item 2 because he served on the board of directors of the Boys & Girls Club, which was in close proximity of the originally proposed location. He said due to any perceived biased he would abstain.

Commissioner Kelly left the meeting at 6:40pm.

ITEM NO. 2 IG TO IL; .972 ACRE; 1021 E 31ST ST (KES)

Gun Range: **Z-15-00471**: Reconsider a request to rezone, Z-15-00471, 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. (PC Item 7; denied 4-2-2 on 11/16/15) *Referred back to Planning Commission by City Commission on 1/12/16.*

STAFF PRESENTATION

Ms. Katherine Simmons presented the item.

APPLICANT PRESENTATION

Mr. Richard Sells said he was sorry to see that the City had to shut down the gun range in the basement of community building. He said the City was running a gun range that most people didn't know about and that it didn't meet ADA, EPA, or OSHA approval. He said he kept hearing it was grandfathered in but it obviously was not since it was on public property not private property.

He said the City had been running it illegally for the past 19 years. He said his new gun range business would be safe, legal, and would meet ADA, EPA, and OSHA standards, but that he keeps getting shut down. He said the last time he was at Planning Commission the gun free school zone act was brought up. He said the gun free school zone act was nothing and had no effect on any of this. He said there were exceptions to the gun free school act, such as being on private property and a licensed agent of the Federal government, which he was. He said the 1000' law came into place because the law used the same distance for drug sales, which was also 1000'. He said if someone was going to do something stupid they were going to do it whether they were a foot away or 10 miles away. He said the intent for the law was good but that it had no claim to this issue since it was on private property and run by a Federal government agent. He said the gun free act had exceptions that he met. He said back when the school district was looking at a place to put their school the property was rezoned from industrial to allow a school. He said someone didn't do their homework and made a mistake and now his business was being persecuted. He said the Mayor, Mike Amyx, said at a City Commission meeting that he made a mistake. He felt things were not thought out very well for that area. He said he was trying to open a business that met every law and regulation to be able to do it. He said the City had Planning staff that recommended approval of the 31st Street location. He stated he didn't want to be the bad guy or be bullied but he also didn't want to be bullied. He said he called the company that made the material he was going to use in the range and they had never had any incidents where a bullet got out of a building with their material.

PUBLIC HEARING

Mr. Mike Kelly said the City of Chicago passed a law called the responsible gun owners ordinance. He said it required firearm training in a shooting range to obtain a city permit to carry a gun. He said they also banned shooting ranges within the city limits of Chicago. He said an individual sued the City of Chicago, Ezell vs. City of Chicago, and won in Federal District Court but lost at the Federal Appeals Court because they found that the second amendment applied regardless of jurisdiction. He said the judges found that Chicago did not present any empirical evidence that gun ranges were a hazard. He said Chicago had one of the worst gun problems in the country, yet Chicago could not show evidence that a gun range was a problem. He read Kansas law:

12-16,124. Firearms and ammunition; regulation by city or county, limitations.

No city or county shall adopt or enforce any ordinance, resolution or regulation, and no agent of any city or county shall take any administrative action, governing the requirement of fees, licenses or permits for, the commerce in or the sale, purchase, transfer, ownership, storage, carrying, transporting or taxation of firearms or ammunition, or any component or combination thereof.

He strongly urged the City to check with an attorney about Kansas law.

Mr. Ken Easthouse, Prairie Park Neighborhood Association, expressed opposition to the rezoning. He said the property fell in a gap between the Southern Development Plan and the Southeast Development Plan. He said Horizon 2020 had not been updated to reflect the area realignment in the past few years. He said no recent traffic study had been done either. He did not feel that one business should dictate the policy for the intersection.

Ms. Donna Logan (last name was not audible) felt the Malls location would be too close to too many schools. She was opposed to both potential sites. She said the advantage of the gun range in the community building was that it was close to law enforcement. She expressed concern for foreign non-citizens using guns.

Mr. Duane LaFrenz, Boys & Girls Club, opposed the rezoning and the gun range being at this location. He expressed concern that there would be no control of the people once they left the gun range. He said what potentially could happen scared him. He said people take their children to Boys & Girls Club to be safe.

Mr. John Bowen, 403 Dakota, expressed concern about the many young children around the Malls area. He stated there was a school right behind the Malls.

Mr. Chris Lane said at the last Planning Commission meeting the City attorney Randy Larkin said the gun range would be legal at this site since it was on private property and the 1000' rule did not apply. He felt the business was being discriminating against. He said the 31st Street location was better because the area was zoned industrial and on the outside of town.

Ms. Melinda Henderson said she used to work inside the building at 1021 E 31st Street and that the College & Career was up a hill, not directly across the street. She did not feel the Malls location was not appropriate for a gun range. She encouraged Planning Commission to read Michael Kelly's letter that he sent to City Commission.

Ms. Andrea Bowen, 403 Dakota, said she had an 8 year old son who used the intersection of 23rd & Louisiana Street. She said the area around the Malls was full of pedestrians. She did not feel safe with the potential for gun sales there.

APPLICANT CLOSING COMMENTS

Mr. Sells said he had no ill feelings toward the school district or Boys & Girls Club. He wondered how close was too close. He said there was a pawn shop not too far away on Haskell Ave. that sold guns and ammunition. He said there were also homeowners that sold guns and ammunition in the area. He said before he sells a gun he will do a background check. He stated that the Boys & Girls Club had not purchased the land yet.

COMMISSION DISCUSSION

Commissioner Sands asked if Planning Commission could break up their discussion to address one site and then the other. He suggested they do the comparative analysis that City Commission directed them to do and then vote on whether they believe the gun range should go at the 31st Street site.

Mr. McCullough said if the applicant was denied by City Commission that would put them back to the drawing board to pursue other sites. He said the applicant had already starting pursuing different sites and made an application for another site with a different process. He said that application was submitted the same day of the City Commission meeting. He said there was new information with the comparative analysis for Planning Commission to consider.

Commissioner Denney asked if the rezoning request for 31st Street did not exist would the site plan application for the Malls site be heard by Planning Commission.

Mr. McCullough said no, a site plan would be an administrative process. He said it would not be heard by Planning Commission and only heard by City Commission with an appeal.

Commissioner Britton asked staff to explain why the Malls location qualified for administrative approval.

Mr. McCullough said the Malls location was zoned for indoor participant sport land use.

Commissioner Britton asked if there had previously been a gun range classified under that use.

Mr. McCullough said not every specific use was included in the zoning Code. He said the Code provided some examples of indoor participant sport and staff felt that the gun range fell into as a use where participants go in with no spectators. He said the classification had been used for an archery range.

Commissioner von Achen felt there was a big difference between bowling and a gun range, which were both considered an indoor participant recreation. She felt that requiring a Special Use Permit seemed like a reasonable course to take.

Mr. McCullough said the Land Development Code provides that if a use is not specifically within the table of uses that the Planning Director could find a use for it if it existed. He said a Text Amendment would be required for uses that don't exist in the Code. He said an example of that came up a few years ago with a private jail facility. He said staff felt the gun range fit best as a use under the indoor participant recreation. He said that was an administrative decision and appeals on that decision would go to the Board of Zoning Appeals. He said Planning Commission could challenge that decision and make that a recommendation to City Commission.

Commissioner von Achen asked what the downside of doing that would be.

Mr. McCullough said the downside could be a delay for the applicant. He said if Planning Commission disagreed that gun ranges belonged in that category and that the commercial districts supporting that use aren't correct it was a valid discussion to have. He said if Planning Commission believed that the IL zoning district, for example, should support this type of use then maybe it was an off-base discussion.

Commissioner von Achen she felt the Special Use Permit process would be more appropriate. She felt a shooting range was different than anything else in the indoor participant recreation category.

Commissioner Liese asked staff to reiterate the relevance of gun free school zone act.

Mr. Randy Larkin said there were many reasons to approve or deny a rezoning based on the Golden Factors. He said the gun free school zone act did not apply to private property.

Commissioner Liese asked if Planning Commission should be looking at land use, not the gun free school zone act.

Mr. Larkin said that was correct since this was private property.

Commissioner Britton asked for clarification on people going to and from the property through the 1000' buffer.

Mr. Larkin said public rights-of-way qualify as public property, so the rules would apply to people driving anywhere in Lawrence.

Commissioner Sands asked Mr. Sells if he planned on renting weapons at his facility.

Mr. Sells said yes.

Commissioner Sands asked Mr. Sells if he had heard of the suicide prevention Gun Shop Project by the Harvard School of Public Health.

Mr. Sells said no.

Commissioner Sands expressed concern about a person renting a gun and killing themselves. He said the CDC had tracked 50 suicides at gun ranges in recent years with rented guns. He said rented guns were his primary concern with safety at gun ranges. He said he was not worried about the sale of guns because it was generally a safe thing.

Commissioner Denney had some of the same feelings that Commissioner Kelly stated at the beginning of the meeting. He said Planning Commission was charged by City Commission to compare this. He said Planning Commission's function and purpose was determined by the elected officials of City Commission and County Commission so if they have directed Planning Commission to compare something that was not in their basic charter but it was well within what Planning Commission should do. He said he watched the City Commission meeting and it was his interpretation that they wanted Planning Commission to say which site would be the better location. He said the only thing he heard was to relook at the character of the neighborhood. He said it wasn't clear if City Commission meant both sites or just one. He agreed with Commissioner von Achen that perhaps there should be a special look at gun ranges but that would be a process of changing the Code, which was not what they were asked to do tonight. He stated City Commission asked Planning Commission to compare analysis. He said regarding gun ranges, in looking at the character of the neighborhood, he would be opposed to a gun range at the Malls. He said the Peaslee Center was an adult education center, not a grade school or junior high. He said the College and Career Center was designed and advertised to treat students as adults and professionals, according to their website. He said one of the class examples on their website shows a video of forensic training where the students are collecting bullets from a simulated crime scene. He said another activity at the school was welding. He said the character of the 31st Street neighborhood was pretty open so if it was a comparison between the two sites than the 31st location was the better choice. He said if they were concerned about gun sales and gun ranges within the city of Lawrence then they need to talk about changing Code or laws. He felt they should approve the 31st Street site. He said if they approve the rezoning he would include in the recommendation that Planning Commission or City Commission look at the issue of whether the Code needed to be changed regarding gun ranges. He shared Commissioner Sands' concern about gun rentals and suicide. He said as of right now there was no federal, state, city law which in any way prohibited the initiation or operation of this business at this location.

Commissioner Liese said he was still not completely clear on what a comparative analysis was. He said it did not seem like the concept of doing a comparative analysis was something Planning Commission was qualified to do. He said he would probably abstain because he did not really understand what he was supposed to do.

Mr. McCullough said City Commission wanted to hear from Planning Commission on which would be the better location since the applicant submitted an application for the Malls location. He said it was tough for Planning Commission and City Commission. He said if the 31st Street site was not approved by the governing body it opened the possibility of it being at the Malls location.

Commissioner Liese said he felt they were being asked to see something they had already heard before.

Mr. McCullough said the responsibility of Planning Commission was to take on the City Commission's request. He said new information was presented to City Commission with maps that showed the relative locations of all of the commercial zoning districts that allowed it to exist within the 1000' gun free school zone area, relative to other schools. He said while there was one school of an adult education nature affecting this site, there

were other schools affecting other sites that were different degrees of education and activity. He said the real request from City Commission was to do a relative analysis of where a gun range could go and weigh them against each other and then judge the 31st Street site with those items in mind.

Commissioner Liese said all it would take was an administrative decision for it to go at the Malls site. He did not know why Planning Commission had to be involved in this decision. He said it was his responsibility to comment and express his opinion. He said it would go back to City Commission and he did not know what a comparative analysis was and did not understand the request. He felt he was not in a position to say whether one was better than the other.

Mr. McCullough said to view the request as a question of given the two locations of the Malls and the 31st Street, which would Planning Commission prefer.

Commissioner Liese said he would vote on which site was better but he did not want to rehear the rezoning they already voted on.

Mr. McCullough said the specific question from the City Commission was the issue of picking between the two sites. He said Planning Commission could answer the City Commission's direct question of picking between the two sites and then also say that the recommendation on the rezoning request did not change.

Commissioner Liese said he would be comfortable with that. He said if he had to pick what site would be better it would be the 31st Street site.

Commissioner Britton asked what the effect of a denial recommendation would be.

Mr. McCullough said when it goes back to City Commission they can make any determination with a simple majority vote. He stated City Commission wanted Planning Commission input on the new information of school zones.

Commissioner Britton said it was awkward for Planning Commission, in this context of a specific application, to have to do this sort of comparison between two particular properties. He said he felt on shaky ground trying to determine between two specific pieces of property. He asked if notice went out for the Malls location.

Mr. McCullough said notice went out for the Malls site plan.

Commissioner Liese said he would consider making a motion to only comment on the two properties and which one Planning Commission, in that comparative analysis, would think would make more sense for this operation. He said it appeared clear to him that the 31st Street was more appropriate. He said he did not want to rehear the rezoning of 31st Street because they already gave their comments and vote on that.

Commissioner Britton said ultimately it would give City Commission what they were asking for. He said one of their options for Planning Commission was to not vote again because the prior decision stands. Or they could vote again.

ACTION TAKEN

Motioned by Commissioner Liese to compare the two properties, strengths and weaknesses, and vote on one over the other. He said that way they would not have to approve or deny what they had already voted on. He said he would vote in favor of 1021 31st St being a more appropriate location.

Commissioner Denney said his statement about approving this request was predicated upon the premise that was the method of answering the question asked by City Commission. He said Planning Commission already voted on the rezoning. He stated if Planning Commission tells City Commission which site was the best then

Mr. Sells still gets his due process by going back to City Commission, which would only require a 3-2 vote. He said whether Planning Commission approves or disapproves this site had no effect on what happens when it goes back to City Commission. He felt they needed to be sure to answer Commissioner Boley's concern about comparing the character of the neighborhood.

Commissioner Liese said he had never abstained from a vote. He did not mind the process of comparing the two sites. He felt City Commission hands stuff back to Planning Commission that they could decide themselves. He felt like they did not receive much new or different information. He said nothing really changed except an alternative site came up. He said City Commission had the right and responsibility to make a decision. He said he was comfortable with whatever decision City Commission came up with. He stated all City Commission could ask of Planning Commission at this point was to compare the two properties. He said if it was going to be one or the other he thought the applicants choice of 31st Street was the better choice.

Motion failed for lack of second.

Commissioner Britton said they should do the comparative analysis and then vote. He said after that they could make a motion on the rezoning if they wanted.

Commissioner Carpenter asked about the actual impact.

Mr. McCullough said the pending rezoning request that was returned by City Commission to specifically address two issues; compare the two sites and take into careful consideration of the character of the neighborhoods. He said when City Commission returns an application to Planning Commission, upon reviewing the request, Planning Commission has the option of returning a recommendation to City Commission. He urged Planning Commission to take a vote on the rezoning to help City Commission. He said that would be the most helpful to City Commission since they won't be constrained by the 4-1 supermajority vote.

Commissioner Britton said it would be most useful to City Commission to do a comparison vote.

Commissioner Butler liked the option of voting on the 31st Street or 23rd Street.

Commissioner Liese said he would vote for 1021 31st Street as the better location but he could not then vote to deny the rezoning. He said his rezoning vote from before stood. He felt it made no sense to say the 31st Street location was better but then deny the rezoning.

Commissioner Britton said he did not remember that Planning Commission ever considered another specific location for the proposed use.

Commissioner Liese said Planning Commission had been told so many times in the past that they should not consider other sites where a business should go.

Commissioner Sands said they were given certain instructions by City Commission. He did not think voting on a comparison would set a precedence.

Commissioner Sands charged staff to look at other cities and how they handle gun ranges in CN2 zoning districts.

Motioned by Commissioner Britton, seconded by Commissioner Liese, to recommend the 1021 E 31st Street location as being the better location than 711 W 23rd Street in terms of locating a gun range within the city.

Commissioner Britton agreed with Commissioner Denney's comments. He said he would not like a gun range at either location in terms of the golden factors. But between the two sites the less intense neighborhood in

terms of pedestrian traffic, family traffic, young school age traffic, and consumer traffic was the 31st Street location. He felt the Malls location would be more detrimental than the 31st Street location.

Commissioner Denney said for all the reasons he stated before he would be in favor of the motion.

Commissioner von Achen said there needed to be a safe place where people can shoot guns safely. She said it was not the use that caused concern, it was the location.

Commissioner Butler echoed what Commissioners Denney and von Achen said. She said she would prefer the 31st Street location. She said she was not present during the last initial vote but she would be in favor of approving this rezoning of 31st Street.

Commissioner Carpenter said he was not on Planning Commission during the first vote but he would be inclined to vote in favor of the rezoning. He said in comparing the two sites he would choose the 31st Street site. He expressed concern about the potential outcome being two sites ready for a gun range.

Commissioner Sands said he would choose the 31st Street as being better when comparing the two sites. He endorsed a new vote on the rezoning since their prior meeting did not have a full commission.

Commissioner Liese said the 31st Street location was the most appropriate when comparing the two. He said he would abstain from voting on the rezoning again. He said given the amount of guns in society now it was good to have a place for people to practice.

Commissioner Struckhoff said in doing a comprehensive analysis the 31st Street was not as bad as the Malls location. He stated the high school he attended had five shooting lanes in the basement and that he had been a competitive shooter and hunter. He felt it was important to have facilities to promote gun safety.

Motion carried 8-0-2, with Commissioners Culver and Kelly abstaining.

Commissioner Britton asked about the site plan appeal process.

Mr. McCullough said the applicant or those within the notice area could appeal.

Commissioner von Achen inquired about the issue of lead in shooting ranges.

Mr. Sells said it was an EPA requirement. He said at the end of the shooting line and the unit above shooters would point air to a suction area at the end of the lane. He said the air would travel down the lane at 75 feet per minute and go through a HEPA filtration system. He said there would also be row filters in the front and in back. He stated the front filters would have to be changed every 30 days and the back filters every 90 days. He said the air that goes back out into the atmosphere would be 97.5% pure, which was more pure than the air outside.

Commissioner von Achen asked if food would be served at the gun range.

Mr. Sells said no, but that he may have water or soda.

Commissioner Sands said the employees would be protected under OSHA. He asked about the wiping and cleaning of vertical surfaces.

Mr. Sells said the company he was buying the ranges from had not told him yet about the cleaning process but that his plan was to clean the facility daily.

Motioned by Commissioner Sands, seconded by Commissioner Denney, to approve the rezoning request from IG (General Industrial) District to IL (Limited Industrial) District at 1021 E 31st Street and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report.

Commissioner Britton said he would vote against the motion because he felt Planning Commission had the relevant information they needed for their vote last time. He said it was a close call and he tended to error on the side of caution with close calls. He was concerned about setting a precedent about comparing two specific properties. He did not feel they should consider other options in town. He said the future could not be predicted but if the rezoning was approved there would be at least two places that would be ready and capable to have a gun range. He said he would vote against the motion.

Commissioner Liese agreed with Commissioner Britton about having enough information to vote before. He said of the two locations the 31st Street location was the better of the two locations but he could not then vote against the rezoning. He said he would abstain from voting.

Commissioner Sands said he would vote in favor of the motion he made. He felt Planning Commission should not compare/contrast sites on a regular basis. He said during the last vote he voted against the denial. He said it was still a thin yes. He expressed concern about gun rental safety. He challenged the applicant to prevent suicide via gun rentals with extra safety measures. He said he was not as worried about the noise and lead because there were regulations in place. He said he was also not as concerned about negligence discharge after visiting the site.

Commissioner Carpenter said given the location and knowing the gap in the map due to floodplain, made the 31st Street location more preferable than the 23rd Street location. He felt there was very little that could be hit by a stray bullet at the 31st Street site. He said he would vote in favor of the rezoning to allow the gun range at 31st Street.

Commissioner Denney said he would support the motion. He said the Malls location bothered him a great deal. He asked staff to reexamine where gun ranges could go.

Commissioner von Achen said she voted against the rezoning last time and she still had the same reservations. She said it seemed like the 31st Street was within the 1000' gun free zone but exempt because it was private property, although not necessarily any safer due to it being on private property. She said she would support the rezoning primarily because it seemed that this location would not present a negative impact to the school and doesn't present as much risk as other locations. She said with great ambivalence she would support the motion.

Motion carried 5-2-3, with Commissioners Butler, Carpenter, Denney, Sands and von Achen voting in favor of the motion. Commissioners Britton and Struckhoff voted against motion. Commissioners Culver, Kelly, and Liese abstained from voting.

Motioned by Commissioner Denney, seconded by Commissioner von Achen, to direct staff to research appropriate zoning for gun ranges.

Commissioner Denney said an area with the character of the Malls should be looked at as not a good location.

Mr. McCullough asked if Planning Commission was asking for the initiation of a text amendment or just research.

Commissioner Denney said he wanted staff to research options.

Commissioner Sands said he wouldn't mind knowing what other communities in Kansas have gun ranges zoned as.

Motion carried 8-0.

DRAFT