

LEE'S SUMMIT PLANNING COMMISSION

Minutes of Tuesday, March 13, 2018

The Tuesday, March 13, 2018, Lee's Summit Planning Commission meeting was called to order by Vice Chairperson Funk at 5:05 p.m., at City Council Chambers, 220 SE Green Street, Lee's Summit, Missouri.

OPENING ROLL CALL:

Chairperson Jason Norbury	Absent	Mr. Herman Watson	Absent
Mr. Donnie Funk, Vice Chair	Present	Mr. Beto Lopez	Absent
Ms. Colene Roberts	Present	Ms. Carla Dial	Absent
Mr. Don Gustafson	Present	Mr. Jeffrey Sims	Present
Ms. Dana Arth	Present		

Also present were Hector Soto, Planning Division Manager; Christina Stanton, Senior Staff Planner; Shannon McGuire, Staff Planner; Nancy Yendes, Chief Counsel Infrastructure and Zoning; Kent Monter, Development Engineering Manager; Jim Eden, Assistant Fire Chief I, Fire Department; and Kim Brennan, Planning Administrative Assistant.

1. APPROVAL OF CONSENT AGENDA

A. Minutes of the February 27, 2018, Planning Commission meeting

On the motion of Ms. Roberts, seconded by Mr. Sims, the Planning Commission voted unanimously by voice vote to **APPROVE** the Consent Agenda, Item 1A as published.

APPROVAL OF AGENDA:

Vice Chairperson Funk announced that there were no changes to the agenda, and asked for a motion to approve. On the motion of Ms. Roberts, seconded by Mr. Sims, the Planning Commission voted unanimously by voice vote to **APPROVE** the agenda as published.

PUBLIC COMMENTS

There were no public comments at the meeting.

2. Continued Application #PL2017-234 -- REZONING from AG to RLL -- 5261 NE Maybrook Rd.; Derek D. Collins, applicant

Vice Chairperson Funk opened the hearing at 5:07 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Mr. Robert Allen gave his address as 1637 NE Woodland Shores Circle in Lee's Summit; and stated that he was a contractor for the construction of a new home on this property. He was representing the Collins family in this application.

Vice Chairperson Funk asked for staff comments.

Ms. Stanton entered Exhibit (A), list of exhibits 1-14 into the record. She noted that the subject property and adjacent properties in all directions were zoned AG. The proposed new zoning for the property would be the RLL designation for large lots. The property was 3.85 acres, with the minimum size for AG being ten acres and the minimum for RLL being .5 acres. The applicants had submitted a survey for the property as well as a site plan that showed the existing structures. The Comprehensive Plan for 2005 showed this area as low-density residential. The adjacent AG properties actually had a mixture of agricultural and large lot single-family uses. A single-family home could be built on the subject property with no rezoning if it was at least 10 acres; and the reason for the rezoning was that it would not meet the 10-acre minimum requirement for AG zoning. The applicants had also submitted a preliminary design for a stormwater retention system; however, staff would need more information to determine whether the storm drain system would be adequate before issuing a building permit.

Ms. Stanton summarized other key items. The applicant had not been able to get the easements for a connection to the existing sanitary sewer. The City's Water Utilities department agreed that a connection to the public water supply was not feasible. The owners would be required to submit a copy of approval from Jackson County for an on site septic system before they could get a building permit. Ms. Stanton then referred the Commissioners to the specific issues addressed in the Codes and Ordinances section of staff's report. The applicants were required to submit a site plan and storm drainage study, as well as a drainage map, calculations for existing and proposed conditions, a cross-section view of the retention pond, riprap with calculations showing that the riprap was adequate for the expected flow.

Ms. Stanton concluded that staff considered the proposed rezoning an appropriate fit with the surrounding uses, so there were no concerns regarding zoning and land use. Staff had received a protest petition, which was included in the Commissioners' packets.

Following Ms. Stanton's comments, Vice Chairperson Funk asked if there was anyone present wishing to give testimony, either in support for or opposition to the application.

Ms. Teresa Vollenweider gave her address as 5201 NE Maybrook Road in Lee's Summit. She asserted that the proposed construction was not in character with the neighborhood. As it was, the neighborhood included a horse stable, cattle ranching operation, a hayfield, gardens, and wildlife including geese, deer, coyotes, foxes, bobcats, hawks and turkeys. What the applicant was proposing was a house with a baseball field and indoor training facility.

The previous owners, who had formed "Horn Baseball LLC" had obtained a Special Use Permit under false pretenses, and had violated the SUP's intent. The neighbors had no assurance that the new owners would not do the same thing. The field was theoretically used for occasional backyard games; the activities had produced an annoying level of noise. Nor were they supposed to encounter increased traffic and the neighborhood was not a public park. The former owners had operated a sports field that might as well be a commercial operation and the neighbors did not want this to happen again. Their impression was that they were part of an

experiment that had not been successful; and the zoning change could make it even more difficult to address any violations of the Special Use Permit.

Ms. Vollenweider mentioned the proposed indoor training facility, a 35'X80' building, which a neighbor had been told would be for storage of a tractor and other equipment. Mr. Horn had never owned a tractor; and the person who had done the mowing and weedeating had his own equipment. She stated that she had spoken with one of the engineers and had told him that the building was constructed in a hole; and as a consequence water was draining into a stagnant pool at the southwest corner that was sure to be a disease hazard. She had been told that this was what was intended, rather than have the water drain onto the baseball field.

Ms. Ellen Pantaenius, of the Husch Blackwell law firm gave her business address as 4801 Main Street in Kansas City. She summarized the concerns about the rezoning and use. The septic tank was an issue in addition to the stormwater problem. It would mean additional standing water on the property, with drainage problems and mosquitoes as a consequence that would affect the neighborhood in general. The baseball field was currently under a Special Use Permit but that would no longer be required when a residence was built on the property. Traffic generated by people using the facility had already created difficulties, as well as noise and disruption. Sometimes parked cars had lined the streets. There had also been complaints about use of the ballfield, and none of these complaints had been addressed.

Vice Chairperson Funk then asked if the Commission had questions for the applicant or staff.

Ms. Arth asked staff if they knew how many complaints had been filed. Ms. Stanton answered that the permit database included code enforcement, and it had indicated three complaints. The first one was the one in 2009 that had resulted in an SUP application. Of the other two, a 2014 complaint asserted that a trench had been dug along the east side of the outfield, from the base of the nearest power pole; and it had PVC and wiring for lighting. In 2015, a concern was raised about the building being used for indoor recreation in addition to storage of maintenance equipment. The Codes officers had taken pictures on the property several times, and did not see any evidence; however, they did not live in the neighborhood. If a complaint was not called to the Neighborhood Services division, staff could not open the case and send a staff person out to take photos. That could explain complaints made that were not followed up.

Ms. Vollenweider pointed out that the parking was on a one-lane road, and it worsened the water situation since the water was pushed over to the west side. The parking was on both sides of the road and it did not take long for "No Parking" signs to show up. The signs had gone up on her road as well but there were still about 25 vehicles. She added that they had not known who to call, though she had called Ms. Stanton; and that the City needed a hotline. She especially wanted to know what the City was going to do about these situations. She had not paid for her house and property to be the neighborhood police.

Ms. Roberts noted that staff's letter indicated all the adjacent properties as being zoned AG but the uses for those to the south and east were indicated as "Large Lot Single-Family Residential". Ms. Stanton acknowledged that this was the use for much of the neighboring properties, with single-family residential developments beyond. Ms. Stanton acknowledged that much of the property had been split up, and she had not done a search through the County records for when this was done. Ms. Roberts stated that what she saw on the aerial map was the property to the east, while zoned AG, was a residential use. It did not look on the map like it

was large enough to meet the 10-acre AG minimum. Mr. Soto mentioned that the property to the east, with a pond at the east end, was a horse farm zoned AG. Some of these anomalies were due to the 5-acre minimum for AG under the previous Ordinance 715, before the UDO was adopted in 2001. Ms. Roberts asked if the applicants would need to bring construction plans to the City before building a home on the property; and Mr. Soto answered that it would be approved administratively with a residential building permit and a plot plan.

Ms. Roberts asked if it could be built without connecting to the sanitary sewer, and Mr. Monter replied that it could be. The property was close enough for the owners to connect to the City sewer but they had not been able to get the necessary easements. They would be allowed to apply to Jackson County for approval of a private septic system. The County's minimum lot size was 3 acres. The City would be provided with a copy of the written approval.

Ms. Roberts stated that the connection should be required due to the property's proximity to the sewer line. Mr. Monter explained that staff at the Water Utilities Department agreed that the connection could not be made without the easements, and these had not been granted. Staff had confirmed with the Legal Department that if a property owner was unable to access the public system, they could request permission from Jackson County for an on-site sewer system assuming they had enough acreage.

Ms. Roberts asked if an owner of a property without access to the street could get permission to build on the property without putting in a driveway. Ms. Yendes explained that under State statutes, the owner could go to court and get an "easement by necessity" to connect to the street. No equivalent mechanism existed for a sewer connection. Ms. Roberts commented that there should be, as the failure rate of septic systems in Missouri was 30 to 50 percent. The City was being asked to approve one on the basis of not being able to get the easement; however, that was because they had no legal recourse. Ms. Yendes responded that this was correct. Concerning the rezoning, the decision was whether the property could be used for the zoning designation's purpose and whether infrastructure existed to support the rezoning. The Commission could choose to include lack of available infrastructure in their recommendation to the City Council. The question was whether it was appropriate to change the zoning from AG to RLL in order to allow for a house. They could not put a house on the property with AG zoning as the property was too small. The County would make the decision whether to approve a septic system for the subject property. Ms. Roberts emphasized that the applicants would be asking for a septic system that was not needed, as a sanitary sewer line was nearby.

Mr. Gustafson asked what were the conditions of the existing SUP. Ms. Stanton read the conditions listed in the SUP approved on December 17, 2009: (1) a term of 10 years; (2) the baseball field was to be used *"for family and friends as a practice field only, and there shall be no baseball games played at the site"*; (3) No signs were allowed; (4) The existing gravel access drive and parking area would be allowed to remain unpaved; (5) Access was limited to *"one driveway located near the northwest corner of the site"*; (6) Parking along Maybrook Road was prohibited; (7) *The existing backstop installed behind home plate, which is designed to contain foul balls, and the fencing along the first baseline shall be maintained;* and (8) *"Since the applicant's residential lot does not have direct access to the baseball field property, the applicant shall either obtain an access easement from his lot to the ballfield or not cross, or allow anyone else to cross, any other property to access the ballfield for any reason."*

Mr. Gustafson asked if the complaints focused on the ballfield's use. Ms. Stanton answered that some of the complaints that came in to the Neighborhood Services division were about whether lighting would be installed. This would require another SUP application; however, no lighting was installed. Another complaint, in 2015, was a concern over whether the large storage facility was being used for indoor training. The Code Enforcement officer visited several times and did not see any additional vehicles. Ms. Stanton acknowledged that this could have been happening after hours. Mr. Gustafson then asked if the lot size was legal for its current zoning, and if it had been grandfathered in from the old ordinance. Mr. Soto answered that since it was now under four acres, the lot did not meet the standard for either the UDO or the previous ordinance. It had been subdivided at some point prior to the UDO. Mr. Gustafson asked how it could have a building permit for a house, and Mr. Soto answered that it did not have one at present, which was a reason for the rezoning request. It would be issued when the property was zoned appropriately for its size.

Ms. Arth asked Mr. Allen if he knew what Mr. Collins' intent was as the property owner in regard to the baseball field. Mr. Allen replied that it would be only for family use. Mr. Collins had been informed that this was a legal obligation; and was making an effort to resolve the water problems. The sewer access was a matter of crossing only five feet of property; however, this was the easement that a neighbor had refused to grant. Ms. Arth noted that the SUP would expire in December of 2019 and then would need to be renewed. She also observed that the issue and the protest appeared to be the history of the ballfield rather than the proposed house.

Ms. Yendes pointed out that if the property were rezoned, the ballfield would not need a Special Use Permit. Vice Chairperson Funk asked if this meant that at a family reunion, they could have a baseball game and there would be no City violation, assuming that no one parked on the street. Ms. Yendes said that was correct. The distinction was whether any commercial activity on residential property, which would be a neighborhood or zoning enforcement issue.

Ms. Vollenweider stated that a house and its parking area and driveway would generate more water runoff. She had that same situation with the horse barn on her property. She emphasized that water runoff was an ongoing problem, as was the pool of stagnant water that accumulated in the corner. Other than in extra dry summers, that spot was rarely dry. She did not see a solution to these problems.

Mr. Sims noted that a detailed drainage study was required before a building permit was issued. He asked if the City would require the applicant to detain additional runoff. Mr. Monter replied that staff had already requested the applicant to employ a design professional, who had already provided a drawing for a stormwater retention pond and a preliminary stormwater report. Staff's report listed additional information staff had asked the applicant to provide in order to do a more detailed analysis and design.

Vice Chairperson Funk asked if there were further questions for the applicant or staff. Hearing none, he closed the public hearing at 5:40 p.m. and asked for discussion among the Commission members.

Ms. Roberts asked whether the City would want another parcel that lacked access to utilities to be rezoned for residential use. She did not consider a private septic system an acceptable alternative. Underground storage tanks were the most common cause of groundwater contamination and septic systems were the second most common. While she understood that it

was not the property owner's fault, a site that had access to a sanitary sewer line should not have a septic system.

Hearing no further discussion, Vice Chairperson Funk called for a motion.

Ms. Arth made a motion to recommend approval of Application PL2017-234, Rezoning from AG to RLL: 5261 NE Maybrook Rd.; Derek D. Collins, applicant; subject to staff's letter of March 9, 2018. Mr. Sims seconded.

Ms. Yendes clarified that making a motion of this kind did not obligate either the motioner or second to vote in favor.

Vice Chairperson Funk asked if there was any discussion of the motion. Hearing none, he called for a vote. The motion did not pass, with two "yes" (Vice Chair Funk and Ms. Arth) and three "no" (Ms. Roberts, Mr. Sims and Mr. Gustafson).

Ms. Yendes stated that this would go forward in the same way as a recommendation for denial.

(The foregoing is a digest of the secretary's notes of the public hearing. The transcript may be obtained.)

<p>3. Application #PL2017-257 -- SPECIAL USE PERMIT for outdoor secondary sales of motor vehicles: Genuine Auto Repair, 520 SW 3rd St.; Gary Serville, Jr., Derek D. Collins, applicant</p>
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Vice Chairperson Funk opened the hearing at 5:50 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Ms. Burgess Serville gave her address as 7903 Southview Drive in Grandview, Missouri. She stated that the business was an auto sales and repair shop, and they were applying for a renewal of their Special Use Permit. They did not plan any substantial changes to the business.

Vice Chairperson Funk asked for staff comments.

Mr. McGuire entered Exhibit (A), list of exhibits 1-15 into the record. He confirmed that the applicant operated a tire and auto service business that also sold vehicles under a Special Use Permit. It was previously granted for five years, under Ordinance 7263. Surrounding lots to the east, west and south were zoned CP-2 and RP-4 for the property to the north, which had an apartment complex.

The applicant proposed to use the parking spaces along the south property line to display the vehicles for sale. All notices had been sent out. The newspaper legal notice was on February 24, 2018 and the mailings had gone out to properties within 185 feet the day before, February 23. Staff had received no comments. They had evaluated the Special Use Permit application based on the SUP criteria established in Section 10.460 of the UDO, and found that the business complied with the conditions for outdoor sales of motor vehicles. The Commissioners' packets included information about the requirements. The applicant had requested a 25-year period; however, staff recommended five years, to stay consistent with the previously approved

SUPs for vehicle sales at this location. Additionally the history of current and previous City Council approval of SUPs was to stay with five-year terms or less along the 3rd Street corridor, in view of the long-term redevelopment potential of this area. It was the gateway and primary route into Downtown. While auto sales had been approved for short terms, they might not be the highest and best use in the long term. The vehicles for sale would be limited to five or fewer [Recommendation Item 2] and the parking lot screening would be installed [Recommendation Item 3].

Ordinances 7100 and 7263 required installing shrubs in the green space along 3rd Street, and this had not yet been done. It was a condition of this particular application.

Following Mr. McGuire's comments, Vice Chairperson Funk asked if there was anyone present wishing to give testimony, either in support for or opposition to the application.

Mr. Elvin Bell stated that he owned the subject property. He was in favor of the SUP renewal.

Vice Chairperson Funk then asked if the Commission had questions for the applicant or staff.

Ms. Arth noted that the SUP was first issued in 2012. She asked why the shrubbery had not been planted. Mr. Bell answered that the applicants had acquired the building four years ago, a year after the SUP was approved. He added that he had owned the property for about three years and had not been aware of the requirement but was willing to comply.

Mr. McGuire confirmed for Ms. Roberts that the plantings were a condition of approval for the past two SUPs. The current SUP had expired in December; and it was the first time the applicant had ever gone through this process. Ms. Roberts asked what would be the consequence if the shrubs still were not planted; and Mr. McGuire replied that it would be a Neighborhood Services case of a Special Use Permit violation.

Vice Chairperson Funk noted that after the initial approval, there was apparently no enforcement action for the first few years. Mr. McGuire had not been involved in the initial approval. Ms. Roberts remarked that this might have been because there had been no complaint made; and Mr. McGuire doubted that Neighborhood Services still had the history. Ms. Serville stated that the area currently had a juniper type ground cover. They did plan to install shrubs if that was a requirement.

Vice Chairperson Funk then asked Ms. Serville if the applicants agreed with staff's three Recommendation Items. Ms. Serville answered that they did.

Ms. Arth noted that this property went through two SUPs and the shrubbery had not been planted. She commended the applicants on their intent to comply, but this did seem to be difficult to enforce with the City's current resources. Mr. Soto acknowledged that the average citizen would not know that this was a condition of approval, and staff should have checked after the business license was approved. If landscaping was planted but then died, the follow-up would have to be complaint based.

Vice Chairperson Funk asked if there were further questions for the applicant or staff. Hearing none, he closed the public hearing at 5:56 p.m. and asked for discussion among the Commission members.

Ms. Roberts remarked that the SUP term might be reduced to a year if the City wanted to be sure it was done in this case.

Vice Chairperson Funk re-opened the hearing at 5:58 p.m., and Mr. Bell stated that am SUP cost about \$1,200. He was willing to put a deposit in escrow, but having to pay \$1,200 twice in two years would not be feasible. Vice Chairperson Funk then re-closed the hearing and called for a motion.

Ms. Arth made a motion to recommend approval of Application PL2017-257, Special Use Permit for outdoor secondary sales of motor vehicles: Genuine Auto Repair, 520 SW 3rd St.; Gary Serville, Jr., applicant subject to staff's letter of March 9, 2018, specifically Recommendation Items 1 through 3. Ms. Roberts seconded.

Vice Chairperson Funk asked if there was any discussion of the motion. Hearing none, he called for a vote.

On the motion of Ms. Arth, seconded by Ms. Roberts, the Planning Commission members voted unanimously by voice vote to recommend **APPROVAL** of Application PL2017-257, Special Use Permit for outdoor secondary sales of motor vehicles: Genuine Auto Repair, 520 SW 3rd St.; Gary Serville, Jr., applicant subject to staff's letter of March 9, 2018, specifically Recommendation Items 1 through 3.

(The foregoing is a digest of the secretary's notes of the public hearing. The transcript may be obtained.)

ROUNDTABLE

Regarding the rezoning application, Mr. Gustafson asked if the Commission needed to list reasons for not recommending approval. Ms. Yendes answered that the records of the application and meeting would provide enough information. Commissioners were not required to explain their votes, whether for approval or not. Generally, the Commission made recommendations and the Council made the final decision. Mr. Soto listed the situations in which the Commission had final authority: the Comprehensive Plan, preliminary plats and sign applications.

Mr. Soto reminded the Commission of Planning Commissioner training on April 17th at the new Water Utilities building on Hamblen Road. It was a joint training session with Independence and Blue Springs. This was a Tuesday evening but not a regular meeting night.

Mr. Monter noted that staff had added a "Process" section to staff's report; and this mentioned the Commission making a recommendation to the City Council.

ADJOURNMENT

There being no further business, Vice Chairperson Funk adjourned the meeting at 6:05 p.m.

PC 031318