

The City of Lee's Summit
Action Letter
Planning Commission

Thursday, February 28, 2019

5:00 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

Call to Order

Roll Call

Present: 8 - Board Member Carla Dial
Board Member Jason Norbury
Board Member Dana Arth
Board Member Don Gustafson
Board Member Donnie Funk
Board Member Jeff Sims
Board Member Jake Loveless
Board Member Mark Kitchens

Absent: 1 - Board Member John Lovell

Approval of Agenda

A motion was made by Board Member Funk, seconded by Board Member Dial, that this agenda be approved. The motion carried unanimously.

Public Comments

There were no public comments at this meeting.

1. Approval of Consent Agenda

A [2019-2590](#) Minutes of the February 14, 2019, Planning Commission meeting

A motion was made by Board Member Funk, seconded by Board Member Dial, that these minutes be approved. The motion carried unanimously.

Public Hearings

2. [2019-2595](#) No Items

Other Agenda Items

3. [2019-2594](#) Planning Commissioner training

Mr. Elam remarked that City staff wanted to revive the regular training for the Planning

Commission and we wanted to re-start that. This meeting was a good time for that, as there were no public hearings due to a lack of re-submittals of applications. It was also a good opportunity in view of upcoming changes, as the staff would be looking at both case law and parts of the UDO that had been problematic, such as parking.

Mr. David Bushek summarized some items, encouraging Commissioners to ask questions. He commented that Commission members might sometimes have questions about procedures, but not ask them if they were at a meeting and in the middle of a public hearing.

Motions: There were three circumstances where the Commission was making a decision with a vote, as opposed to a recommendation. These were the Comprehensive Plan including associated documents, preliminary plats and sign applications. Everything else was a recommendation to the City Council. He added that staff would include the verbatim version of the motion in the packets for an application. A motion would include any proposed amendments.

Planned vs Standard zoning: Nationwide, big picture there were two schools of thought regarding how municipalities approached zoning. One form, which most cities adhered to especially smaller ones, was called "Euclidian" zoning. It was named after a case in Euclid, Ohio that acknowledged the basic nature of zoning. "Standard" zoning ordinances designated residential, industrial, commercial and institutional uses. Zoning districts were identified based on the densities of these uses, with distinctions made such as C-1 and C-2. An applicant would come forward requesting a particular use and staff would tell them what zone was the best fit for that use. Special circumstances might require a Special Use Permit. The rezoning decision would consist of changing the zoning classification of a property, with a hearing concentrating on changing the zoning exclusively, without regard to particular use.

"Planned" zoning was what Lee's Summit's UDO addressed. Before he had first come to work for the City in 2000, he practiced at a law firm that did work for the City; and he had done much of the basic writing of the UDO draft. The focus at the time was a shift from standard to planned zoning, for which preliminary development plans were the primary tool for implementation. Planned zoning allowed the City to get into the type of issues the UDO addressed; and the current Commissioners had all joined since UDO had gone into effect.

Modifications: Regarding discussion of modifications, Mr. Bushek had seen two different points of view on modifications. One was that the City had established its standards, and that in general too many exceptions were allowed. The other view was that modifications were a critical tool for planned zoning. When the UDO was drafted a great deal of discussion took place about how modifications should work, what standards should be and even if they should be done. After seeing this debate in various applications, he had concluded that they could use a name like "deviations" or "adjustments" rather than "modifications." They were essentially the same thing, but were also a tool for planned zoning. The City would have the ability to address details of parts of an application that they would not otherwise do with standard zoning. Because the UDO had so many details and requirements for applications, modifications enabled the City to adjust based on circumstances in any individual application.

Mr. Bushek emphasized that though modifications were an important tool in planned zoning, this function had become diluted or lost as various applications went through hearings. People opposed to specific applications often objected to modifications on keeping to the standards the UDO had established.

Chairperson Norbury remarked that this conversation had happened at one of the his meetings with staff and the Mayor. The Planning Commission's perspective was making sure they thoroughly discussed modifications and made sure that the reasons for them were clear in the record before approval. Much of the concern about the number of modifications had come from the City Council, and for they had taken a negative view of some projects on those

grounds. During the joint meeting in November they had talked about putting more emphasis on the Commission's actions and decisions, in the interest of the Council not having to re-do anything. Chairperson Norbury considered changing the name less important than the Commission taking more 'ownership' of it.

Mr. Bushek added that while he would not encourage making more use of modifications as a tool, it was often necessary to use it for some applications. In many situations granting modifications was not appropriate; and use or rejection of requested modifications was one of Commission's responsibilities. Modifications were in fact one of the tools of planned zoning and would not exist if the City took the standard zoning route. It could be helpful for Commissioners to make clear for the record why a requested modification was granted and what purpose it served. That would give the City Council more perspective on as the application went forward. He added that an application could be a contested item in situations where a number of modifications were a significant focus.

Legislative nature of zoning decisions: Every US state fell into one of two categories in terms of the legal standard of review applied to rezoning decisions. When the Council approved rezoning of property, the preliminary development plan that was approved was actually part of the rezoning. This reflected the nature of planned zoning as set forth in the UDO and was part of the decision on the rezoning. A legal challenge could be brought against the City, and that could be done by an applicant if the application was rejected. This could also happen in the event of an approval if the person bringing the lawsuit had legal standing. The standard of review that applied to the decision was the legislative standard for review if the dispute got as far as a lawsuit. This meant that a body of case law had evolved regarding what that legislative standard was. Essentially the court would test whether the City's decision was 'reasonably doubtful' or 'fairly debatable.' It would look at the facts at the time the decision was made, not what any individual Councilmembers' or legislators' reasons were for the decision.

Some other states, including Kansas, used a "quasi-judicial" review approach. A court could look only at whatever record was created by the municipality in the decision-making process. This mirrored the approach of a court of appeals in a lawsuit. No new evidence was presented. In Missouri, whatever facts existed at the time the decision was made could be reviewed in court if the decision was challenged, and new evidence could be introduced in court. Mr. Bushek emphasized the importance of the record the Planning Commission created for the City Council. By state law, only two things were required for a rezoning. The municipality had to hold a public hearing, and that hearing had to be announced in advance via a newspaper notice 15 days in advance. The statute referred to a 'public hearing' but did not say a planning commission had to have a public hearing but only referred to one; so legally the City Council could hold the hearing instead and satisfy State law requirements. Everything else that was in the UDO was extra procedures. The City of Lee's Summit held two public hearings, plus notification of property owners within 185 feet; and these were extra procedures that the City chose.

The UDO emphasized the importance of the Planning Commission's role in creating a thorough record for the City Council to review. In the joint meeting it had appeared that the Council looked to the Commission to create such a record. A base would be built, with all the evidence and testimony available to be used in making a decision by the time an application went forward.

Regarding modifications, Mr. Loveless added that when something appeared controversial it was a good idea to dig a little deeper. With requested modifications, it was important to be clear on why they were requested. It was always a good idea to have a discussion or at least ask. The Mayor had emphasized that the Commission should not be afraid to continue a matter if they did need to take another look. It was acceptable to delay and be sure it was clear why the request said the modification was needed.

Concerning modifications, Mr. Gustafson clarified that the Commission did not initiate modifications but most often followed recommendations in staff's reports. There were legal reasons for staff to encourage discussion on why modifications were requested and when the City should grant them.

Mr. Elam stated that he and Mr. Soto had reworked the staff letter format. A major goal was to reduce a tendency to be repetitive. They also wanted to integrate discussion relating to the UDO's 18 criteria for approval of a preliminary development plan and rezoning. Sections were devoted to standards like compatibility, UDO standards and the Comprehensive Plan. The ordinance had 3 criteria for modifications specifically, and staff planned to cover these with each modification. They hoped to show the Commission the new staff report format for comment at the March 14th meeting.

Mr. Bushek then stated that evaluating applications before public hearing was a final item he wanted to cover. When he had previously worked for the City, he had participated in development review committee meetings and had done the same more recently, about 15 years later. He had noticed how the tools and processes accessible to staff had evolved and changed considerably in that time, and how much more technology was available. The Strother conference room, where these were held, had a large whiteboard and projector. Every application would be displayed on the whiteboard, with details on the city's public infrastructure, including the dimensions of the water lines, that would light up on the map. City staff reviewed all this in detail.

Mr. Bushek had noticed in testimony, especially in opposition to an application, was questioning of why City staff supported or did not support a particular application. In a way, staff's function was more being a filter than actually promoting an application. People speaking at a Commission or Council meeting, were either trying to persuade their hearers to do something or they were presenting information, or sometimes both. In the case of staff presentations, the emphasis was on information, even when staff was supporting an application. However, part of that information function was communicate whether the application met City requirements; and the review process was the reason staff so often recommended approval. When they did not recommend approval, part of their job was to give the Commission or Council the reasons. Over time, an application might be reworked until it did meet the standards. Mr. Bushek added that if applications were delivered directly to the Commission as City staff without this filtering process, there would be many more recommendations for denial.

Mr. Elam added that the staff 'filtering' that the Commission saw also represented a window in time during which the City determined whether an application was ready for a public hearing. That time could be very short, often two or three days. When an application was continued at staff's request, it was a result of a staff decision that the application was not ready. The UDO included a firewall that prohibited a public hearing without some specific things happening. This was often based on an evaluation of available infrastructure. Mr. Soto would address some of the interactions of staff with applicants.

Mr. Soto related that this interaction was in three parts. The first, a requirement for all applications, was the initial meeting with the applicant. These were typically scheduled for two hours and were staff's first opportunity to see the project and give feedback as well as technical guidance when needed. Sometimes a developer was told that a plan would not work, often from a land use and zoning perspective. It would provide an opportunity for the applicant to work on items that staff had identified as needing improvement. Sometimes a project would be dropped altogether and go no further in the process; and others had recommendations for denial; on the basis of obstacles the applicant was unlikely to overcome. The idea was to weed out unworkable projects before the applicant wasted too much time and funds. Following this initial meeting, staff had a more technical, detailed review that went into more detail. Staff typically had about ten business days between the first submittal and

an internal staff review.

The next step in evaluation was a development review committee or team that met once a week. It included expressing and discussing concerns including issues that affected other departments, as well as giving an applicant guidance for resolving problems. The goal was never to turn a project away but rather to provide information necessary for making the right decision about whether a project was likely to succeed. Staff would give an applicant and their design professionals a document summarizing their decision and reasons. There would be one more submittal where staff would evaluate how effectively the applicant had been able to adjust the plans in order to address any concerns staff had raised. The evaluation would be guided by the the governing documents: the UDO and the Design and Construction manual. The latter would be a guide in determining whether the necessary infrastructure was adequate. If the application was approved, any final clean-up items and details could be taken care of; and if it was determined to not be ready for public hearing, staff would continue to work with the applicant with guidance and information to further refine the project.

Chairperson Norbury then asked if the Commissioners had any questions for staff.

Mr. Funk asked if staff recommending approval was a procedural term. Mr. Elam answered that he would classify it as 'historic.' The final decision was governed by whether a project met the UDO's standards. Of the 18 criteria, one was the recommendation of the professional staff. Within that criteria, the standards of the UDO and the Design and Construction manual had to be met. Mr. Funk asked if there was a term other than a statement that a project met all the criteria. Mr. Elam answered that it was generally just a reference to the application meeting the UDO standard; which would be referenced in the Codes section.

Mr. Bushek recalled working with the Planning Director at the time when the UDO was drafted. Even then the current language and format was used. That format included the from staff that they recommended approval. He again emphasized that it was not staff's purview to persuade the Commission to recommend for approval, but to communicate information. A more detailed statement would include staff having reviewed the application and project thoroughly and concluded that it met UDO standards.

Mr. Loveless indicated that for many people who were not familiar with the process, that would be helpful. In terms of the change in the forms and process, he suggested some standard language in the report explaining staff recommendation of approval in a little more detail, indicating that staff had gone through the review process, held meetings with the applicant, reviewed all the UDO standards and determined that the project met all the requirements. If the wording and language made this clear, it could form a response to people testifying at hearings who did not have a clear idea why staff made the recommendation it did. He added that it might be easier to adjust the language on the front end rather than using a footnote. It would make the reasons clear rather than just stating that staff recommended approval.

Chairperson Norbury stated that if they did intend are going to fine-tune official language, this would be better than trying to find a replacement for the word "modification". He looked forward to hearing the Council's take on the language concept as well.

Ms. Dial remarked that she had heard several comments from the public to the effect the City had already made its decision by the time an application came to the Planning Commission, and this reflected some unnecessary confusion. When the public believed that the City had already made up its collective mind, this did not encourage a good rapport.

Regarding the term "recommend", Mr. Kitchens believed that this was where a lot of confusion came in, although he acknowledged that this was standard language. There had been feedback about many recent applications the City having recommended for approval. At

the last Council meeting, applicants had raised questions about exactly what ordinances or standards they had not met and he theorized that the language was what gave rise to a certain amount of aggravation. Mr. Bushek responded that the UDO had a list of the 18 factors that the City, including both the Council and the Commission, should evaluate in making rezoning decisions. One of these factors was the recommendation of professional staff.

Recommendation professional staff, might be emphasized in defending the City's decision in court in the event of a lawsuit. The Commission as a recommending body and the City Council as a decision-making body could assign whatever weight they wanted to that factor in particular. He emphasized that it was one of many factors that would be evaluated, including in court.

Staff's recommendation was especially important since the Commission and Council relied on them; however, when the decision was finally made, it was decided in whatever way either body deemed appropriate to that recommendation. However, it was not the only ingredient. Traffic concerns, for example, might override staff recommending approval based on other parts of the application.

Mr. Loveless noted that there were some components that City staff did not look at, such as a project's financial feasibility or, sometimes aesthetics. What they concentrated on were components such as whether a project met UDO standards and whether it fit the zoning. It did not seem that financial feasibility was given much attention and the City essentially went on what had been laid out in the past. He was skeptical about whether recommendation of professional staff should be in the 18-item list. Mr. Bushek believed the answer on this issue was related to the historical nature of the function that City staff had served to analyze these applications and then present them to the Commission. He agreed that some factors the City could take into account that were not usually significant factors in discussions. He recalled that several years ago the planning director had requested a list of all the factors that were valid for the City to consider, based on case law, in the event of a rezoning decision. Through the process of drafting and adopting the UDO, the City and in fact all the people involved made a decision to make these criteria part of the UDO. When City staff reviewed these applications they focused on the things most important to the City from a public improvements perspective, and that the Commission heard considerable testimony about; such as streets, water, sewer, storm drainage and compatibility with neighboring property. Other factors could be considered in the appropriate circumstances, and could legitimately be taken into account in zoning decisions.

Chairperson Norbury suggested to Mr. Bushek that he check and see if these criteria had been amended since they were originally drafted. He noted that a lot of changes had happened in both planning theory and practice in the last few decades. Mr. Bushek related that he had essentially written the original UDO draft when he had previously worked for the City. It had been amended many times and he had forgotten some of it from 20 years ago. One of the ways he was updating was reading cases from the perspective of planning and zoning law.

Chairperson Norbury related that when he was first on the Commission nine years ago, he was liaison to the CEDC (then the CDC). He had learned during that time that each Councilmembers had particular theories and issues which acted as a lens through which they saw everything brought to the Council. Viewed objectively, there was nothing that ranked the criteria in terms of importance. The Commissioners could pick what they believed mattered most; and that could vary even from project to project. His goal had always been that every Commission member to have their own voice.

Mr. Bushek responded that this was how the process was supposed to work, with each member bringing their background and their expertise and experience to the table when considering an application. That might be an engineering or financial perspective, or it might reflect experience in development.

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Mr. Gustafson added that the professional judgment of the planners was important, and planning was much different, a little more subjective, than engineering. Mr. Bushek agreed that there would be more thought and discussion about this issue.

Mr. Soto acknowledged that the list of criteria was not included in the Commissioners' packets. He displayed a Word document listing them.

Roundtable

Mr. Johnson stated that Mr. Bob McKay was retiring. A party would be held for him next Friday, at 2:00 p.m. He thanked Mr. McKay for being helpful and welcoming, and had been a mentor. This was his last Planning Commission meeting.

Chairperson Norbury also thanked Mr. McKay for his help.

Mr. Elam thanked Mr. McKay for his service to the community over the last 19 years, as well as the planning profession in general over the last 42 years. Lee's Summit had been very fortunate to have Mr. McKay during the city's growth. Chairperson Norbury remarked that Lee's Summit had grown in the past two decades from a population of 35,000 to 100,000 was actually a transition to a different type of city.

Mr. Elam also reported that the LS Ignite's strategic planning group had a community conversation yesterday at John Knox Village, with 60 or 70 participants. Another one was scheduled for 6:30 tonight Lee's Summit High School cafeteria. Or it could be accessed at Lsignite.net/online conversation.

Adjournment

There being no further business, Chairperson Norbury adjourned the meeting at 6:01 p.m.

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