Monday, December 21, 2020

6:00PM – via video conference

Members present:  Brian Armstrong (Chair), Corey Dehn, Wiley Kannarr, Jim Kaup, Corliss Lawson, Ariane Messina, Katrina Ringler (7)

Members Absent:  Marc Fried, Matt Werner (2)

Staff Present:  Bill Fiander, Planning & Development Director; Dan Warner, Planning Division Director; Mike Hall, Current Planning Manager; Annie Driver, Planner; Bryson Risley, Planner; Kris Wagers, Administrative Officer; Mary Feighny, Legal

Roll Call – Chairman Brian Armstrong called the meeting to order with seven members logged in for a quorum.

Approval of Minutes from November 16, 2020

Motion to approve by Mr. Kaup, second by Ms. Messina. APPROVED 7-0-0

Declaration of conflict of interest/ex parte communications by members of the commission or staff –

Mr. Armstrong reported that he had been contacted by Mr. Hutton (CU20/03) about his firm conducting a traffic study for the project. Mr. Armstrong asked him to contact another company since this case would be considered by the Planning Commission.

Action Items

CPA20/01 by the City of Topeka, a request to amend the text and map of the City of Topeka’s Comprehensive Plan creating the East Topeka North Neighborhood Plan. The area affected by the amendment is bounded by the BNSF railways to the north and west, Deer Creek Trail to the east, and SE 6th Avenue to the south.

Mr. Warner reminded all that there was a presentation on the plan at the November 2020 meeting of the Topeka Planning Commission and indicated that this evening Mr. Risley focus on implementation of the proposed plan. He then introduced Mr. Risley and invited him to speak.

Mr. Risley presented information as provided in the agenda packet and presentation slides, concluding with staff’s recommendation for approval. He noted that if approved by the Planning Commission, he anticipates the case being heard by City Council in January 2021. If approved by Council, project design and implementation will take place in 2021 and 2022.

Mr. Kaup asked whether the recommended projects would be included in the CIP. Mr. Warner reported that the $1.7m SORT funding is programmed into the CIP annually. The housing funds are an allocation from the federal housing funds that the city receives annually. He confirmed that if the Governing Body approves the plan, there is the expectation that the projects will be funded.

Mr. Armstrong declared the public hearing open, and with nobody logged asking to speak, declared the public hearing closed.
**Motion** by Ms. Messina to recommend approval to the Governing Body as an element of the City’s Comprehensive Plan. **Second** by Ms. Lawson. **APPROVED (7-0-0)**

**Z20/05 by Topeka North American Legion Post 400** requesting to amend the district zoning map on property located at 3029 NW U.S. 24 Highway from “M-2” Multiple Family Dwelling District to “I-1” Light Industrial District.

Mr. Armstrong called the case and Ms. Driver presented the staff report and staff recommendation for approval.

Kevin Holland (CFS) was logged in representing the applicant. He explained that the owners are potentially planning to put the property up for sale and a change in the zoning with help to make it more marketable. The requested change in zoning designation will, Mr. Holland explained, be in keeping with the zoning of neighboring properties.

With no questions from commissioners, Mr. Armstrong declared the public hearing open, and with nobody logged asking to speak, declared the public hearing closed.

Mr. Kaup stated that this appears to be a logical change and made a motion to recommend to the Governing Body approval of the reclassification of the property from “M-2” Multiple Family Dwelling District to “I-1” Light Industrial District. **Second** by Mr. Dehn. **APPROVED (7-0-0)**

**CU20/03 by: Kansas Sand & Concrete, Inc.** requesting a Conditional Use Permit on property presently zoned “I-2” Heavy Industrial District and located along the east side of NW Stina Court near the intersection of NW 25th Street and NW Stina Court, in order to allow for “Manufacturing Processing, Type III” (concrete mixing plant).

Mr. Armstrong called the case and Ms. Driver presented the staff report, concluding with staff’s recommendation for approval subject to conditions listed in the staff report and making note of condition #3 which speaks to roadway improvements and is tied back to page 6 of the staff report. The applicant is provided with the option of providing an alternative to what is being asked regarding road improvements. Ms. Driver noted city staff, including Kristi Ericksen, Traffic Engineer for City of Topeka, were available to take questions. She also noted that the applicant and representative (John Hutton) were logged in and she made reference to a letter from Mr. Hutton that was sent to commissioners today via email. (added to official agenda packet as an addendum).

Regarding the city engineering department’s recommendation referenced on page 6 of the staff report and calling for a 2" overlay on Stina and a 1" overlay on 25th, Mr. Armstrong asked regarding the timing of that requirement. Ms. Driver explained that improvements would need to be completed prior to development of the property as without them, the applicant would not be issued a Certificate of Occupancy. Mr. Armstrong stated he has reviewed the traffic study and concurs that while the amount of traffic which will be generated will not be significant, the type of traffic will be heavy trucks that cause more damage to pavement than a normal vehicle. This will have an impact on the pavement system.

Mr. Kaup asked planning staff if road-improvements could be an open-ended condition and Ms. Driver confirmed that was the intent.

Mr. Kaup inquired about stormwater. Ms. Driver stated there will be 2 detention ponds (both retention and detention) and stormwater/drainage review will be done later in the project as part of the site plan review process.

John Hutton spoke representing Kansas Sand and Concrete. Mr. Hutton stated he believes it important to review the economics of the situation rather than just a pure review of the zoning issues. He noted that the final project will come with a cost of $8-10m, a substantial investment for his client who has been in business for the past 98 years and one that will likely serve them for the coming 100 years.

Mr. Hutton made reference to his letter in regard to Stina Ct. and expressed concern about the equity of
requiring his client to pay for road improvements when the paving conditions were approved by the City engineering department knowing that the road would be serving an industrial park. Regarding 25th Street, he noted that the street has been in place for some time. He stated that it is an industrial road less than ¼ mile from one of the largest industrial facilities in NE Kansas (Goodyear Tire & Rubber) as well as other industrial facilities nearby. He questions the equity of charging his client for mill and overlay of a portion of the street when it will be also used by many industrial uses already in place.

Mr. Hutton stated that the cost of the road improvements will likely be significant, though he doesn’t have an estimate. He spoke about the property taxes his client is currently paying and the amount they will be paying with the improvements they plan to make on the new site. He stated that in asking his client to pay for road improvements staff is, in effect, asking them to pay an additional tax. He also stated that while other companies receive incentives through JEDO, etc., his client is not asking for that.

Mr. Hutton concluded by stating that his client is asking the commission to approve the CUP with conditions 1 and 2 but not condition 3.

Mr. Dehn asked if Kansas Sand & Concrete intends to keep their current facility open after the new one is built. Mr. Hutton explained that it will remain open for awhile to be sure the new facility is operating as planned, but eventually they will close the existing facility and sell the real property.

Mr. Kaup stated he believes the location chosen is a good one. He is concerned though with KS Sand & Concrete’s position and asked Mr. Hutton to verify that that they maintain they should not be required to contribute towards the cost of improving either of the streets (Stina Ct and 25th Street). Mr. Hutton confirmed. He stated they are open to negotiating because, he stated, “at the end of the day it’s really a financial contribution.” He explained that although staff left the option open for his client to suggest other ways to mitigating the stress on the road, he doesn’t know what the options could be other than to lay additional asphalt. He stated his client might be willing to contribute to the project.

Mr. Kaup noted that he used to live in the area and is very familiar with the roads; seldom has he seen Goodyear truck traffic on the stretch of 25th Street in question.

Mr. Kaup noted that based on the studies Kansas Sand and Concrete had done, there is no dispute that the traffic will cause unusual wear and tear on both 25th & on Stina Ct., unusual in that it will shorten the expected lifespan of the road due to high volume and/or heavy loads. Mr. Hutton stated that especially in regard to Stina Ct., it was the city’s decision to lay less asphalt than what was originally planned. He stated that his customer purchased property in an industrial area because there were roadways and utilities already there.

Mr. Kaup asked if a continuation would be acceptable to allow the applicant and staff additional time to come to an agreement on condition #3. He added that what is being proposed is going to cause damage to a publicly owned roadway that would not be occurring but for the approval of the conditional use permit. Mr. Hutton agreed with the understanding that actual dollars will be discussed. Mr. Kaup stated that it is not uncommon for a developer to agree to pay a percentage of the actual cost of infrastructure improvements, with a cap. Mr. Hutton agreed.

Mr. Armstrong asked Kristi Ericksen, COT Traffic Engineer, if she’s able to provide a cost estimate for mill and overlay. Ms. Ericksen stated she could figure cost for the city to do the improvements but not what it would cost for the applicant to hire it done.

Mr. Hutton said he foresees the city doing the work and his client paying a portion of the cost to the city. He doesn’t see a need to have his client hire someone to build on a public right of way.

Mr. Armstrong declared the public hearing open.

Nancy Fleeker Daniels spoke representing her mother, Jane Fleeker, who owns the farm all along the west boundary and directly to the north of the project. Ms. Daniels stated she attended the Neighborhood Information Meeting (NIM) and worked out several things her mother initially had
concerns about. Ms. Fleeker remains concerned that there will be sufficient drainage to ensure additional water will not end up on her farmland. Ms. Daniels understands that the project will be reviewed by city staff but still wants assurance that her mother’s property will not be affected. In regard to road improvements, she is concerned about her mother having to pay for road improvements made necessary by the project.

Mr. Armstrong asked staff if they have a response and Ms. Driver stated that initial plans have been reviewed by our stormwater engineer and plans will have to be further reviewed before a building permit is issued. It is Ms. Driver’s understanding that no net increase will be allowed on Ms. Fleeker’s property. Treatment of the water will also be addressed.

Ms. Fleeker asked about cost of road improvements and Mr. Hall stated that as proposed, there is no proposal for a cost-sharing by other property owners in the area.

With nobody else logged in to speak, Mr. Armstrong declared the public hearing closed.

Mr. Dehn stated that the chosen location seems to be a good one and noted that potentially the move could mean fewer city streets will be used to move product.

Mr. Kaup believes the issue of contributing to the cost of the roadway is significant. The location makes a lot of sense and there’s no question it’s a good company, but we have an obligation to protect public property as land is developed. **Motion by Mr. Kaup to continue the matter to the next (January 2021) meeting**, requesting the applicant and city staff determine with some certainty regarding the dollar amount the applicant would pay for improvements. Ms. Ringler stated she would support the motion but believes the improvements to Stina are not as important as those to 25th Street.

Mr. Armstrong stated that although Stina Ct. is 10 years old, he thinks the proposed land use and heavy truck traffic will have an adverse impact on both 25th Street and Stina Ct.

Mr. Kaup stated he agrees with Mr. Armstrong, though he thinks Stina Ct. may show wear and tear sooner than 25th Street. He’d like to keep both streets in the motion.

Ms. Ringler verified that while she supports Mr. Kaup’s expertise, her intent was not to second the motion.

**Second by Ms. Lawson**, stating she sees this as a significant issue.

Mr. Kaup asked for confirmation from the applicant that a continuance would not create an impossible situation for them. Mr. Hutton stated they can work with the deferral and thanked Mr. Kaup for his consideration.

Upon roll-call vote, **APPROVAL (7-0-0)**

**ACZR20/01**, a request to amend the Topeka Municipal Code (TMC) Title 18 (Comprehensive Plan-Signs-Subdivisions-Zoning) as follows: Amendments to the Definitions in Chapter 18.55, Use Tables in Chapter 18.60, and Special Use Requirements in Chapter 18.225 to regulate Short-Term Residential Rentals, uses currently referred to as “Bed and Breakfast Home” and “Bed and Breakfast Inn” by TMC Title 18. Amendments to other chapters of TMC Title 18 may also be considered as needed to regulate Short-Term Residential Rentals which are generally owner-occupied or non-owner occupied dwellings that offer lodging to transient guests.

Mr. Armstrong called the case and Mr. Hall noted that public comments were emailed to commissioners this afternoon. Mr. Hall presented the staff memo and information, along with staff recommendation for approval.

Mr. Kaup expressed concern about the proposed wording of the ordinance, specifically lines 342 and 343 regarding the definition of a transient guest. He asked what “28 days” means and Mr. Hall stated the intent is to mean 28 consecutive days, adding that this is consistent with how the State of Kansas regulates short term rentals in terms of tax collection.
Mr. Kaup noted that new construction is prohibited for the purpose of short term rentals and asked why. Mr. Hall stated it is in the existing code and he could only speculate on the intent. He noted that a positive outcome of short-term rentals is that people “fix up” existing homes to make them marketable. Mr. Kaup stated he appreciates it would likely be rare for someone to build a house specifically to be a short term rental, but he questions why we would want to regulate that.

Mr. Kaup believes the phrase on page 42 and other places, “activities producing noise with the potential to disturb adjacent residents”, is too vague and unenforceable.

Someone logged in for the public hearing asked if they could speak and Mr. Armstrong explained that the public hearing will be opened soon, but at this is still a time for questions and discussion amongst commissioners and staff.

Mr. Hall noted that the phrase is in fact vague, but staff wishes to avoid being so specific that some sources of noise might be overlooked. Mr. Kaup stated the only noise regulations he’s aware of that have some guarantee of success are those that carry a decibel level.

Mr. Armstrong declared the public hearing open.

Brandie Holloway stated that as a host, it is her responsibility to be sure that surrounding neighbors are put at ease by setting rules for rentals. For example, her rental(s) include a rule of “no additional guests after 10PM,” which helps with issues that may arise from parties. She also suggested a machine that reads decibel levels and offered other suggestions for house rules. Ms. Holloway stated she shares Mr. Kaup’s concerns about prohibiting new construction for the purpose of use as a short-term rental.

Pam Foster asked for clarification regarding “28 days”, noting that someone could stay 28 days, leave for 1, then return for another 28, etc., essentially being there for 12 or more months with 1 day in a hotel every 28 days. Mr. Hall stated that someone staying more than 28 days is a long-term renter rather than a short-term renter and noted that long-term rental is an allowed use that doesn’t require any sort of approval.

Ms. Feighny stated that “transient guest” is tied to the definition of a short-term residential rental, which is a dwelling that contains rooms kept for transient guests. It is consistent with state law, which defines hotels and motels in terms of whether they provide lodging to a transient guest, and she doesn’t feel there’s a relevant concern with the wording.

Suzy Loy spoke, stating she’s a “Type 1” operator of an Air B&B and has been renting for 2.5 years. She stated the only issue she has is regarding parking, and she has recommended some language changes she hopes will be considered. Without such changes, she’ll be forced to apply for a conditional use permit and even that has parking specifications that may disqualify her property. She said she has invested a lot of time and money and would hate to be denied the ability to continue renting simply because she has an old home.

With nobody else logged in to speak, Mr. Armstrong declared the public hearing closed.

Ms. Ringler asked staff to address Ms. Loy’s proposed wording changes. Mr. Hall stated he thinks there’s a way to revise the standards to address her concerns. Specifically, in such a way that recognizes an existing home as a legal non-conforming use. Mr. Hall spoke specifically to Ms. Loy’s situation and noted that even if the language were changed, Ms. Loy would only be allowed to rent out 2 sleeping rooms.

Ms. Messina asked for clarification regarding staff’s recommendation and Mr. Hall explained that staff is recommending approval, potentially with revisions. Mr. Kaup suggested that unless there is some urgency to getting this before City Council, he would recommend continuing the matter to have staff work on language relating to the noise issue. He believes the “28 days” is in fact an issue, and staff should also consider removing text prohibiting allowing new construction for the purpose of building a short-term rental.
Mr. Armstrong asked if continuing would be a problem and Mr. Fiander explained that urgency only exists in the sense that staff have put of enforcement as they’ve worked on this ordinance. If it takes another meeting to come up with a more coherent proposal, he sees no problem with that but reminds that there is an enforcement issue that’s been stayed for the past 6+ months.

Mr. Kaup stated he thinks it’s a good piece of work but needs some more work. He added that if the case is deferred, staff should also look at concerns raised by Ms. Loy.

**Motion** by Mr. Kaup to continue the matter to the January 2021 meeting; **second** by Ms. Messina.

**APPROVED (7-0-0)**

**Communications to the Commission** –

Mr. Fiander wished all “happy holidays” and thanked commissioners for their diligence in getting through this year and new methods.

**With no further agenda items, the meeting was adjourned at 8:11PM**