

MINUTES

The **Rogers Planning Commission** met for an online public meeting on May 19, 2020 at 5:00 P.M. The meeting was called to order by Chairman Eriks Zvers following a brief delay to confirm online connections with Commissioners, etc.

MEMBERS PRESENT:

Chairman Eriks Zvers, and Commissioners Rachel Crawford, Dennis Ferguson, Kevin Jensen, Mark Myers, Tony Noblin, Mandel Samuels, John Schmelzle, and Don Spann.

OTHER OFFICIALS PRESENT:

Community Development Director John McCurdy, City Engineer Lance Jobe, Planning Administrator Lori Ericson, City Planner Ethan Hunter, Planner III Beth Johnson, Planner I Chris Robinson, Planning Tech Gloria Garcia, Staff Attorney Bonnie Bridges, RWU Superintendent Brent Dobler, RWU Engineer Stephen Ponder, Deputy Fire Chief B.J. Hyde, Airport Manager David Krutsch, and Councilman Mark Kruger.

ACTION ON MINUTES:

Motion by Jensen, second by Schmelzle to approve the minutes of the May 5, 2020 as presented. Voice Vote: Unanimous - Yes. ***Motion carried.***

APPROVED

REPORTS FROM STAFF:

City Planner Ethan Hunter explained the Zoom online meeting process, noting that only the Commissioners and needed staff are shown on the screen, attendees are not shown and are muted until recognized by staff. He explained the “raise hand” option for attendees online and by phone.

REPORTS OF BOARDS AND STANDING COMMITTEES:

DEVELOPMENT REVIEW COMMITTEE —

None.

PLANS & POLICIES COMMITTEE —

None.

CONSENT AGENDA:

OLD BUSINESS:

- 1. A request by CAN-ARK Diamond to consider a rezone of 17.26 acres at the SE corner of N. 2nd Street and N. Airport Loop from A-1 (Agricultural) to the NR (Neighborhood Residential) zoning district. (Tabled at the 5-5-2020 meeting at the applicant’s request.)**

Hunter explained the staff report noting that the request complies with the existing Neighborhood Growth Designation on the Comprehensive Growth Map, but due to the proximity

to the Rogers Executive Airport the Planning Staff would like to see the CGM designation changed to Employment Center.

Attorney Bill Watkins, representing the applicant, noted the request complies with the existing CGM and the Planning Staff's previous report for the May 5 meeting supports the rezone. He quoted from a letter attached to the report written by Rogers Airport Manager David Krutsch that was attached to that report. Watkins said his client agreed to table the request until this meeting, and the new staff report opposes the application and requests the CGM be changed. He talked about the surrounding uses in place and what types of uses that would be allowed in the Employment Center Growth Designation, which would allow commercial and industrial uses.

Chairman Zvers asked if anyone in the audience wanted to speak in favor or opposed to the request.

There were none.

The public hearing was declared closed.

Jensen questioned the CGM change proposal and if a Neighborhood Center might be a better suggestion. Hunter noted the uses along Buttry Road and the type of development that might occur in the future with the close proximity to the airport. He also said the non-conforming subdivisions would continue to exist as nonconforming legal uses.

Community Development Director John McCurdy stated that the city's intent is to recognize that airports are almost always surrounded by an industrial buffer. The staff opinion has evolved because a problem with the CGM was identified, he said. The current zoning districts allowed within the existing Growth Designation around the airport are not compatible with the airport. Any residential neighborhood that locates adjacent to an airport ultimately becomes a long-term problem for the residents and the city. The city has no plans to expand the airport property, he said denying a previous statement concluding that was the reason for city opposition. But, he said, the airport will continue development of the airport and housing nearby isn't compatible. He noted the west side of the airport is the location for the international ramp for the largest airplanes that use the airport. It "doesn't make sense" to allow residential use on the other side of the perimeter fence for the airport and, in hindsight, residential should have been limited more around the airport in the past, he said. Limiting residential development to the west side of N. 2nd Street makes sense now. He noted that "it's really more about protecting future residents from the airport, than it is about protecting the airport from future residents."

Airport Manager David Krutsch was recognized to speak. He said the issue is compatibility with the airport as stated by Mr. McCurdy. He noted that there have been numerous studies about that incompatibility of airports and housing, adding that having a jet aircraft operating at two or three in the morning within close proximity to a residential neighborhood is not compatible land use and what the city is trying to avoid. The FAA has "very clearly stated" that residential neighborhoods are not compatible with the airport, along with places of worship and other places of assembly.

Krutsch noted a contractual obligation the city has to protect airport compatibility with surrounding land use. Each of the city's federal grants for airport infrastructure development,

require the city to sign an agreement ensuring it will provide compatible land use just to avoid those specific issues, he said. There has been “a significant local, state and federal investment in the airport” that shouldn’t be jeopardized, he added, noting that once development begins on the west side there could be community opposition that might jeopardize the airport’s ability to continue development.

Commissioner Dennis Ferguson questioned if the Commission is overstepping by applying FAA rules. Krutsch said the FAA doesn’t have regulatory authority to control zoning, but requires the airports that receive federal grant funding to control incompatible development.

Watkins responded that the Planning Commission’s job is to ensure the highest and best use of the land. He said industrial development isn’t happening out there and noted the existing subdivisions already existing near the airport.

Krutsch noted that the subdivision Watkins said was closer to the airport than this planned development was built in the 1970s before the FAA had the regulations it does now for receipt of funding, etc., but the airport is now barred from developing its property between the runway and to that residential neighborhood. The airport plans to put hangars and aprons and that type of infrastructure within close proximity to that perimeter fence adjacent to the property in question for the rezone, Krutsch noted.

Myers objected to what he called “changing the rules in the middle of the game.”

Spann said there are really two issues: one is that it should have been looked at when the CGM was being developed; and, two is the change in the staff’s opinion on the rezone. It isn’t fair to deal with both issues at the same time and it should be looked at in committee, Spann said.

Zvers suggested the Plans & Policies Committee would be the best place to debate the issue. Commissioners discussed the land use around the airport, with Myers stating that it’s more residential in neighborhood. He said an airport hangar isn’t much different in disturbing nearby residential than a typical warehouse, and argued that the airport is an existing use that is in place.

Krutsch responded that if housing development is allowed, there will be complaints litigation, and other negative consequences for the city going forward.

Commissioner John Schmelzle said the item needed to go to committee for more detailed discussion of the issues discovered. He made a motion to table it.

Spann questioned what Schmelzle wanted to table. Attorney Bonnie Bridges informed Commissioners that once a motion is made to table an item, it has to be voted on without discussion.

Zvers asked for a second, second by Samuels to table the item for further discussion.

Roll Call: 3-5 (No votes – Ferguson, Jensen, Myers, Noblin, Samuels, Spann) **Motion failed**

DENIED

Commissioners discussed the pending item with Commissioner Tony Noblin stating that he didn't personally believe Employment Center was a "good fit" for that neighborhood and asked what else could be done with the property.

Motion by Spann, second by Jensen to approve the request and defer amendment of the Comprehensive Growth Map to committee for study.

Roll Call: 5-3 (No votes – Crawford, Schmelzle, Zvers) ***Motion carried***

APPROVED

PUBLIC HEARINGS:

- 1. A request by Betty Wood to consider a rezone of 1.83 acres south of W. Lilac Street at S. 22nd Street from A-1 (Agricultural) to the R-SF (Residential Single Family) zoning district.**

Betty Wood represented the request. Staff stated that this request is consistent with the Comprehensive Growth Map, as R-SF is an allowed zoning district for the Neighborhood Growth Designation. Community Development recommends approval of this request.

Chairman Zvers asked if anyone in the audience wanted to speak in favor or opposed to the request.

There were none.

The public hearing was declared closed.

Motion by Jensen, second by Myers to recommend the rezone as presented to City Council.

Roll Call: Unanimous ***Motion carried***

APPROVED

- 2. A request by Sunil Panchal to consider a rezone of 1601 S. 8th Street from C-2 (Highway Commercial) to the I-1 (Light Industrial) zoning district.**

Zvers announced the item had been withdrawn by the applicant.

- 3. A request by Mi5 Investment to consider a rezone of 620 W. Cypress Street from NR (Neighborhood Residential) to the NBT (Neighborhood Transition) zoning district.**

Hunter presented the staff report, noting the recommendation for R-O (Residential Office) rather than the C-3 request. Commissioners discussed the fact that the request doesn't comply with CGM, but R-O would. R-O zoning would give DeLeon the reduced setback she noted was needed for a porch expansion. Commissioners discussed whether she would be better off requesting a variance for the 65-foot setback for C-2 zoning. DeLeon agreed to change the request to R-O as recommended.

Chairman Zvers asked if anyone in the audience wanted to speak in favor or opposed to the request.

There were none.

The public hearing was declared closed.

Motion by Myers, second by Noblin to recommend the amended rezone request to R-O to City Council.

Roll Call: Unanimous *Motion carried*

APPROVED

4. A request by Tracy DeLeon to consider a rezone of 105 N. 11th Street from C-2 (Highway Commercial) to the C-3 (Neighborhood Commercial) zoning district.

Hunter presented the staff report, noting the recommendation for R-O (Residential Office) rather than the C-3 request. Commissioners discussed the fact that the request doesn't comply with CGM, but R-O would. R-O zoning would give DeLeon the reduced setback she noted was needed for a porch expansion. Commissioners discussed whether she would be better off requesting a variance for the 65-foot setback for C-2 zoning. DeLeon agreed to change the request to R-O as recommended.

Chairman Zvers asked if anyone in the audience wanted to speak in favor or opposed to the request.

There were none.

The public hearing was declared closed.

Motion by Myers, second by Noblin to recommend the amended rezone request to R-O to City Council.

Roll Call: Unanimous *Motion carried*

APPROVED

NEW BUSINESS:

1. LOT SPLIT, Bolin Storage Units, a proposed lot split at 414 E. Nursery Road (in the city's Extraterritorial Jurisdiction) in violation of Sec. 14-722 requiring lots to include a minimum of 1.5 acres and 120 feet of road frontage when both septic system and water well are planned for use.

Hunter presented the split explaining that it exceeds the staff's authority to approve due to the inconsistency with Sec. 14-722. Staff recommended approval of the lot split with consideration of the variance requested regarding the size of lot and lack of 120 feet of road frontage. He pointed out that Rogers Water Utilities had provided a letter with no objections to the split.

Surveyor David Platz noted that the division of the lot is similar to a split of land across the road, and admitted that it does create a flag lot.

Spann said the buildings there are all warehouse in nature and the lot being split off is one acre with no utilities in use. He said the plan is to build a storage unit facility there, adding that the county has approved the lot split as well. Nursery Road is not a city street, it's a county road, Spann said, questioning why the Commission was reviewing the split. He he'd never heard of "extraterritorial" and it "sounds like a takeover" to him.

Hunter explained the city only exercises its authority over the subdivision of land in its growth area. Commissioners went on to discuss the 30-foot easement accessing the lot.

Motion by Jensen, second by Schmelzle to approve the request including the variance to Sec. 14-722 requiring lots be a minimum of 1.5 acres and 120 feet of street frontage.

Roll Call: 8-0 (abstain – Spann) **Motion carried**
APPROVED

2. LSDP Revisions and Variance Requests, Founder's Plaza, a previously approved project located at 3747 S. Champions Drive and 4001 S. Pinnacle Hills Parkway in the U-COR (Uptown Core Mixed Use) zoning district.

Commissioners and staff discussed the variance requests and the requirements of the URDC with Crafton Tull Engineer Daniel Ellis and Architect Dusty Graham. Ellis explained the developer is "trying hard to meet the intent" of the Uptown Code but found it difficult with the parking garage development. He said the centralized parking structure will help meet the needs of the area development, including the AMP.

Jensen made a motion to approve the revisions to the Large-Scale Development Plan, along with the following variances:

- **VARIANCE** from Sec. 14-732(5.6) to allow architectural metal as a primary exterior building material on primary and secondary street facing façades.
- **VARIANCE** from Sec. 14-732(5.2)(d) requiring certain design elements at the primary entrance.
- A **VARIANCE** from Sec. 14-732(5.3)(a)(i) requiring certain façade articulation standards along Pedestrian-Friendly frontages..
- A **VARIANCE** from Sec. 14-732(5.3)(a)(iii) requiring 50% minimum glazing for ground floors and 20% minimum glazing for upper floors along Pedestrian-Friendly frontages of commercial or mixed-use buildings.
- A **VARIANCE** from Sec. 14-732(5.5)(b) which requires certain shading features for sidewalks and entrances along Pedestrian-Friendly frontages.

Second by Spann.

Roll Call: Unanimous **Motion carried**
APPROVED

3. A proposed use schedule amendment to establish "Contractor's Office" as a conditional use in the C-3 (Neighborhood Commercial) zoning district.

Ethan Hunter explained the request Attorney Will Kellstrom is making on behalf of Tim Janacek. However, he noted, staff preferences for the new use, if Commissioners agreed to adding the use, that could make it work in certain zones.

Kellstrom explained the recent history of the property being rezoned to C-3 and that being part of the effort to make the ongoing Janacek Construction use fit with zoning, and address a violation in the previously issued Home Occupation Permit. There isn't a use in C-3 that allows it. The change in the schedule of the use would address a "gap in zoning," he added. He also objected to some of the limitations staff requested be placed on the proposed use, including limitations to truck size and the maximum size of allowable storage space.

Commissioners discussed with staff the process of adding the use, if it's appropriate, and Kellstrom's request to amend the staff recommendations. Jensen questioned staff's recommendation that the additional use be labeled "Business and Professional Office, Major" rather than just "Warehouse Office." He said conditionally in C-2 and C-3, and by right in W-O, makes sense. Approving it in this location will be a way to get them where they want to go, Jensen said. Commissioners discussed the suggested limitations and agreed such limitations could be considered during the Conditional Use Permit hearing for each request.

Motion by Myers, second by Jensen to approve the change in use schedule to allow "Warehouse Office" by Conditional Use in the C-2, C-3 and C-4 zones, and By Right in the W-O zone.

Roll Call: Unanimous **Motion carried**

APPROVED

The issue may have to go to the City Council for approval, Hunter said, noting that this is adding "a new use," rather than just adding an existing use to another zone. He questioned the wording of the definition Warehouse Office and asked for clarification.

After a brief discussion, Jensen made a motion to add to the schedule of uses a new use called "Warehouse Office" that is a secondary use classification encompassing office uses for companies and nongovernmental organizations that require limited on-site storage and company vehicle parking. This use may include: indoor material and equipment storage, and on-site parking of commercial vehicles. The use would allowed by Conditional Use in the C-2, C-3 and C-4 zones, and By Right in the W-O zone

Schmelzle seconded the motion.

Roll Call: Unanimous **Motion carried**

APPROVED

There being no further business, Chairman Zvers adjourned the meeting at 7:17 p.m.

ATTEST:

APPROVED:

Rachel Crawford, Secretary

Eriks Zvers, Chairman