

MINUTES OF THE PLANNING COMMISSION MEETING

APRIL 27, 2020

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****Note** When the recording started, the meeting was already in progress.**

The regular meeting of the Mission Planning Commission was called to order by Chairman Mike Lee at 7:00 PM Monday, April 27, 2020. Members also present: Robin Dukelow, Frank Bruce, Charlie Troppito, Brad Davidson and Stuart Braden. Burton Taylor, Pete Christiansen and Jordon McGee were absent. Also in attendance: Brian Scott, Assistant City Administrator, Kaitlyn Service, City Planner, and Audrey McClanahan, Secretary to the Planning Commission.

Approval of Minutes from the February 24, 2020 Meeting

Comm. Dukelow moved and Comm. Troppito seconded a motion to approve the minutes of the February 24, 2020, Planning Commission meeting as amended.

Comm. Dukelow had the following corrections to the February 24, 2020 minute:

- Page 6: Comm. Christiansen was the unidentified Commissioner.
- Page 7: In regarding the trash dumpster enclosure, Comm. Dukelow commented that it should be fully grouted CMU walls with top cap & gate per City Requirements.
- Page 7: Comm. Dukelow's comments were made with the intent to provide low landscape screening for the parking lot that fronts Martway and not the entire south side of the property.
- Page 10: The motion included an amendment for the Applicant to work with City staff to provide landscape screening for parking along Martway, detail the dumpster enclosure, and provide rooftop screening for mechanical equipment per City Requirements.

The vote was taken (6-0). The **motion carried**.

New Business

Case #20-02 Second Amendment of Final Site Development Plan for The Gateway Development – 4801 Johnson Drive

Mr. Scott: ...fall of 2019. The developers managed to plan another tenant for the office building, which essentially necessitates adding another floor to the building. So, they have submitted an application for consideration by you all this evening to add a fifth level to the office building. That would essentially bring the overall square footage to about 103,557 square feet. Other than the fifth floor, everything else in the office building is the same. All of the exterior that was first presented to you in October for your consideration is still the same. Nothing has really changed with the layout of the building or the shape of the building at all. All that is still the same. So, that's really a summation of my staff report. I know the architect is here this evening, as well as the developers, so I will let the architect share a little bit more the intent of the plan while I try to find the actual – there it is – the FDP, the site plan that he has submitted. Steve, do you have anything to add?

Mr. Steve Salzer, Eldorado Architects: Not really. I can go through the basics. It's a pretty simple add. We want to add a floor plate to the office building, like Brian said. It's in the

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same position and shape in general and superior layout. It just is going another story higher. If you remember from previous presentations, you can drive through the ground level. The very ground level, at level one, is mostly service space. The office floor plates are two, three, four, and now five. The total square footage went up about 27,000 square feet. As Brian said, the exterior is very similar, just a bit taller. We've tweaked the proportions of the balconies just a bit to make it look nice. The glazing is still similar, materials for screening and so on. I think from a parking perspective, we have surplus capacity, and even with this floor add, I think we still are showing a pretty good surplus of parking overall against the minimum requirement. That's kind of it in a nutshell, really. Are there any questions?

Mr. Troppito: Mr. Chairman, I have a question. Can you review the parking and how the parking has changed since last approved?

Mr. Salzer: Since last time we presented the parking garage, we pulled it in on the north and south ends of the site and gave it some more breathing room to the residential building on the north and the hotel on the south, and we went a story higher. The parking garage has a level 2 connection to the hotel to the south and four level 3 connections to the residential building, and then the office building has connection – these are pedestrian connections I'm describing – pedestrian connections at levels 2, 3 and 4.

Mr. Troppito: Excuse me, but I was wondering about the number of spaces.

Mr. Salzer: Oh, number of spaces. The number of spaces is the same, providing 1,457. Based on the calculations, the required number of stalls is only 1,364, so we have, with the added floor level of the office requiring an additional 77 stalls. So, we're still showing a surplus of 93.

Mr. Troppito: Great. Thank you.

Mr. Salzer: Sure.

Chair Lee: Any other questions?

Ms. Dukelow: No questions, Mr. Chairman.

Chair Lee: Very good. Well, thank you. Would the applicant like to speak?

Unidentified Speaker: I don't think we have anything to add, Mr. Chair.

Chair Lee: Okay. Well, are there any discussion or questions in general for staff?

Ms. Dukelow: I have no questions, Mr. Chairman.

Mr. Braden: No questions here.

Chair Lee: Charlie?

Mr. Troppito: No further questions.

Chair Lee: Brad?

Mr. Davidson: No further questions. Congratulations on signing up another client.

Ms. Dukelow: Yes.

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Chair Lee: If there are no further questions or any discussion, then we would entertain a motion.

Ms. Dukelow: I'll make a motion –

Mr. Troppito: I recommend and approve Case #20-02 Second Amendment of Final Site Development Plan to Gateway Development Project at 4801 Johnson Drive for the addition of the fifth floor to the office building, with conditions as outlined in the staff report.

Ms. Dukelow: Second.

Chair Lee: Call the roll please.

The vote was taken (6-0). **The motion passed.**

Chair Lee: Great. Congratulations.

Unidentified Speaker: Thank you very much.

Old Business

Chair Lee: And then, Brian, we're going to have the discussion of the...when the lender is not part of the project?

Mr. Scott: Yes. We can have that discussion now, or we can wait until we meet in person, whatever you'd like to do.

Chair Lee: I'm open. I can go either way.

Ms. Dukelow: I'm sorry. What is the subject?

Chair Lee: Brian, why don't you share that information with everybody?

Mr. Scott: Well, if you recall, last time that we met in October, Commissioner Troppito requested that I look into – Commissioner Troppito, you'll have to help me if I'm missing the mark on this – but the question was, in absence of a sophisticated lender on a project, can staff require a Phase I environmental survey in accordance with [inaudible] standards. Is that correct?

Mr. Troppito: Actually, it's ASTM standards – American Society of Testing Materials.

Mr. Scott: Okay. ASTM standards, yes. I did discuss that with our land use attorney, Pete Heaven, and he basically advised against that. He said that if we start requiring environmental studies of that nature, we're getting out of our zone, our jurisdiction within the Zoning Regulations that are adopted by the City, and case law, and we're opening ourselves up to potential liability.

Mr. Troppito: All right, so that came from Pete Heaven, right?

Mr. Scott: Correct, yeah.

Mr. Troppito: That was the legal opinion, right?

Mr. Scott: Yes. Correct.

Mr. Troppito: Was it written?

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Mr. Scott: I got an email. It's not a formal memo, but I got an email that I'd be happy to share.

Mr. Troppito: Well, why I brought this up was, it's pretty obvious that the former Pride Cleaners project there at Johnson Drive and Nall that was presented to us was contaminated from the beginning, was going nowhere. There was no sophisticated lender involved. The idea there was to save the staff and the Planning Commission time for projects like this that obviously aren't going anywhere until they're financed. As it turns out, there was no sophisticated lender involved. There was no...And the developer that presented it – correct me if I'm wrong – is now listing it for sale. Is that correct?

Mr. Scott: Sale or lease. That was the last I talked to them.

Mr. Troppito: Well, the point is, projects like this, where there's no contamination and this site has been on the KDHE clean-up list for quite a while. There's several others in the city that's in the same situation, let's say. So if the City really doesn't want to do this, if it's the administration and city attorneys' opinion that this is overstepping our bounds, well, I certainly respect that. So I won't pursue this any further, except to say that one thing I would like to know – it might be good question for staff to put on the development application form – is if the project that's being submitted is being self-financed, or financed by a lender. That might trigger the commissioners' interest in pursuing that further at the meetings.

Ms. Dukelow: I just want to chime in that I thought that was probably the intent, Charlie, and I appreciate what Brian shared from the land use attorney, but I agree it would be...I think it would be worthy of our time to find a way to help ensure that the applicant is informed and that somehow we're not spending time and staff isn't spending time on potential projects where the applicant is not informed, where the proper procedural steps haven't already been taken – due diligence, if you will, might be a better phrase for that.

Mr. Troppito: Environmental due diligence, right?

Ms. Dukelow: Environmental due diligence, yes. I mean, and maybe the environmental issue is what is making this more difficult, because we do want the site assessment. But is there a way that we can accomplish the due diligence regardless of the overlying issue that we might be able to include the environmental issues with all of that? Did that make sense in a roundabout way? Sorry, Audrey, the notes are going to get messy, aren't they?

Mr. Troppito: Well, I'd like to see, obviously, a way to do that, but I was hoping staff would come up with a suggestion for that. But I'm interested in the legal rationale, which is why I wanted to see the written opinion on that and maybe discuss that further with Pete. There's always another way to accomplish things. If nothing else, then for Planning Commissioners to start asking questions, whether proper environmental due diligence has been done when the developer presents, or when staff presents, the case and the recommendation to the Planning Commission. I intend to do that on every development coming forward, but there's quite a bit of time wasted by staff to get to that point, and City resources, and I was hoping to eliminate that. But if staff doesn't have an interest in that, well, I wish you did, but if you don't, you don't.

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Mr. Scott: Yeah, it's not to say we don't have an interest in it, but like everybody else, there's guardrails that we have to operate within in accordance with the Zoning Regulations and with case law. When we start getting out of those guard rails, when we start imposing conditions on an applicant that are not necessarily tied to the development, per se, we go beyond the impact that a development could have on surrounding property or the road system or infrastructure, that's when we start to open ourselves up to... And that's where the attorney's concern is, that if the Planning Commission were to deny an application based on something that does not necessarily pertain to the impact that the development is going to have on the surrounding properties or on the community, then you're opening yourselves to possibly a lawsuit for a faulty zoning decision.

Mr. Troppito: Well –

Mr. Scott: That's not to say I disagree with what you're saying, Commissioner Troppito, but there are just boundaries that we have to operate within. It's probably worth exploring a little further. How can we kind of push those boundaries, if you will? But –

Mr. Troppito: Well, I wish you would, because, as you know, in Zoning code, staff is required to make certain environmental decisions and look at environmental conditions, so I don't see how requiring a phase I environmental assessment for a project would be in violation of that. Again, that goes back to the legal thinking that I requested to see. But to me, it seems that falls right within the responsibility that the City has passed by ordinance onto the staff to consider as a part of development projects.

Mr. Scott: Yeah, so when we're looking at –

Mr. Troppito: And if that's not the case, I'd like to know why.

Mr. Scott: So when we're looking at a development project, we're looking at the impact maybe of noise, or of additional stormwater, or if it's something really hideous, air pollution of some sort, the impact that that development is going to have on the surrounding properties and the community as a whole. When we look at whether the property is already "environmentally damaged," if you will, that's where it's kind of questionable. It gets a little grey there, and that's what's concerning the attorney. So, it's not like we're going to be opposing something –

Mr. Troppito: It's worth discussing it some more. This isn't something that has to be decided tonight. This has been going on for months. But if you do a little due diligence and look at the sites list and map them out of the different sites that are on KDHE's clean-up list in the City of Mission we'll see that this isn't likely to be an isolated incident.

Mr. Scott: No. Yeah, there are several sites on that list.

Mr. Troppito: It's likely it will come up again, so I'd like you all to reconsider.

Ms. Dukelow: I have a question. Would it be possible and legal to just require the applicant to do the independent research to determine whether or not the site is on the KDHE clean-up list? And then, perhaps provide the City with some sort of – I don't know – documentation/verification that they are aware and they have done that due diligence without requiring, of course, the environmental assessment? The phase I assessment.

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Mr. Scott: Yeah, I think if you even go down that road with the applicant, even asking, we're opening ourselves up.

Chair Lee: So basically what you're saying, Brian, is that if a decision, if the applicant were turned down and that was the reason he was turned down, then we're subject to that.

Mr. Scott: Right. And even to ask, "Can you show us whether you're on a KDHE list, or any other list?" kind of pre-supposes something. Okay, so they are on the list, so then what? If they choose not to do anything and we ultimately present that to Planning Commission and the Planning Commission turns it down, that's opening us up for liability.

Ms. Dukelow: My understanding, though, is that if they know that the property is on that list, they don't get choose whether or not they ultimately are going to do anything. It's my understanding that they aren't going to have a choice as to whether or not they're going to ultimately conduct the test. They just wouldn't be doing it under our directive in this case. Will KDHE require...? KDHE will require the site assessment and the clean-up, won't they?

Mr. Troppito: They'll require, if it's on the state clean-up list, then they'll require a Phase II environmental assessment. But there's no requirement...By that time the Phase I is just not pertinent anymore. They would go directly to Phase II once...To even get on the state clean-up list –

Mr. Scott: You have to have had a Phase I –

Mr. Troppito: You have to have a Phase II to begin with, okay?

Ms. Dukelow: You mean a Phase I to get on the list?

Mr. Troppito: No. There has to be a Phase II, which is defined as testing on the site to determine that the site is polluted or contaminated with something on one list or another, possibly even lead from lead in gasoline. So that's what's involved in the Phase II. Then once the determination is made by the analytical testing, then it goes from there into the clean-up under the clean-up list.

Mr. Davison: I have a question for Brian. You mentioned, you alluded to, there's already a list of hazardous properties, or something, in the city of Mission. I guess question number one is, how many are these different sites that are on a list with the City, and how many of them on that list are undeveloped properties, and are there existing developed properties with hazardous waste just sitting about?

Mr. Scott: Yeah, the City does not have a list. If anybody would have a list, it would be KDHE. We know of a handful of properties that are on that KDHE list. One is that site that we looked at last year at the corner of Nall and Johnson Drive, and there's at least two, maybe three, former dry cleaners that are on that list.

Mr. Davison: Okay, so I guess – and I understand completely what Charlie is getting about as far as the reasoning for trying to have a trip cord, so to speak, when these properties come about, but if we're only talking three, four, five, six properties or fewer, we just needed Charlie on the Planning Commission. He's like the hawk, you know, and he will

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bring it to our attention. Of course, we all will now, since he's educated us on this. Anyway, that's all I had.

Mr. Troppito: Let me clarify something there. The list that we're talking about on the KDHE clean-up list, there's not just one list. What we were looking at was the KDHE groundwater contamination list. But there's other lists of contaminated sites that would not be reflected in that, like leaking underground storage tanks and possibly – well, not possibly, but – chemical spill sites where chemical spills have been reported. Sites like the former Neff property. That was on a different clean-up list for different types of contaminants. There is a way to get a list like that if the City wanted to do it, or a list of lists. You would have to order and pay for a report, but there's companies out there that put those lists together, that map the sites and put together a report. My best recollection – you'll have to check prices if there's interest in this – but for the City as a whole, for a radius of that size, you could be looking at around \$1,000. That would depend on the company you were dealing with, what you selected that you wanted to get reports on. But the City could get a report like that annually.

Mr. Davidson: Brian, I have another question for you. Are there any other cities that you know in Johnson County that have some type of checks and balances on environmental waste that you know of - ?

Mr. Scott: No. None that I know of, no.

Mr. Davidson: Okay.

Mr. Troppito: One option is I can keep bugging Brian until he gives up. What do you think about that one, Brian?

Mr. Scott: I'll be here for a while, so that's fine.

Mr. Troppito: That's all I had to say. Thank you.

Chair Lee: Okay, anyone else have anything tonight?

Ms. Dukelow: I have a question. Why did the staff report include 300 pages of a traffic study?

Mr. Scott: They actually updated their traffic study. It doesn't look much different than the last traffic study but... Because they were adding another floor, for official traffic, we asked for an updated traffic study, which they provided.

Ms. Dukelow: Thank you.

Staff Updates - None

ADJOURNMENT

With no other agenda items, **Comm. Braden moved and Comm. Dukelow seconded a motion to adjourn.** (Vote was unanimous). The **motion carried.** The meeting adjourned at 7:35 P.M.

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Mike Lee, Chair

ATTEST:

Audrey M. McClanahan, Secretary