

**MINUTES OF
CITY PLANNING COMMISSION STUDY SESSION
OTTAWA, KANSAS**

City Hall – May 28, 2008

The City Planning Commission met at 6:00 p.m. on this date with the following members present and participating to wit: Members Colbern, Jones, Hatfield, Jackson, York, Wasko, and Chairperson Warren. All members were present.

Chairperson Warren asked the Planning Commission Members to make a declaration of any conflict of interest or of any Ex parte or outside communication that might influence their ability to hear all sides on any item on the agenda so they might come to a fair decision.

Chairperson Warren stated he received letters from the attorney for East Gate Development and from the Underwood's attorney.

Member York stated he would recuse himself from the East Gate Final Plat and Site Plan as his bank is working with the developer on a loan and he felt he could not be objective.

Member Jackson stated he would recuse himself from the conditional use for 424 S. Poplar as ECKAN would be the owner of the daycare center.

Information and Discussion Items:

Review April 23, 2008 study session meeting minutes:

Chairperson Warren asked if there were any changes or corrections needed. There were none.

Review May 14, 2008 meeting minutes:

Chairperson Warren asked if there were any changes or corrections needed. There were none.

Discuss the proposed conditional use for a child daycare center at 424 S. Poplar in an R-1 Low Density Residential Zoning District.

Tom Yahl reviewed the staff findings with the planning commission. Mr. Yahl stated staff is recommending approval of the conditional use permit with conditions on hours of operation.

Wynndee Lee indicated this daycare facility had been in operation and staff had not received any complaints concerning the facility.

Member York left the meeting at 6:15 p.m.

Final Plat

1. East Gate North

Tom Yahl reviewed the memo with the Planning Commission. Mr. Yahl stated staff is recommending approval of the final plat.

Chairperson Warren asked the Planning Commissioners if they had any questions for staff. There were none.

Darron Ammann, Bartlett & West Engineers, introduced Harold Wingert of J & J Development, Nathan Bergman of Bartlett & West Engineers, and Matt Gough, an attorney with Barber Emerson.

Mr. Ammann reviewed with the Planning Commission other sites J & J Development has located other travel centers. Mr. Ammann also reviewed what possible types of businesses could develop on the other parcels.

Matt Gough, reviewed the different attempts they have made with the Underwood's to give them access to their property. Mr. Gough stated the Underwood's want Snyder Drive extended to their property as a dedicated street. The applicant preferred not to do that as the layout would cause foot traffic cross Snyder drive from the parking lot to the building. Mr. Gough stated the applicant feels they have been reasonable with the Underwood's and there are limits to what the applicant will do. Mr. Gough stated this development is centered around the travel plaza and if its not developed this may prevent other development from happening. Mr. Gough stated he would hope the Planning Commission would weigh the harm to J & J Development today compared to the harm that could be in the future to the Underwood's.

Chairperson Warren asked if the developer considered moving the project to the west. Darron Ammann stated yes, but this layout was the best fit.

Chairperson Warren asked if the city had plans for a road to the west. Wynndee Lee stated in the area plan it did show a road to the west but not to the east and this design was more in keeping with the area plan.

Member Hatfield stated he had a problem with the access and asked if a frontage road was considered. Darron Ammann stated yes, but it was not feasible and KDOT would not allow it.

Wynndee Lee stated KDOT had a problem with the access right as you came into the development as they were concerned about traffic coming into the travel plaza from Underwood's property instead of going to the signal. Mrs. Lee indicated that both parties asked if the entrance could be made an in/out entrance which would be similar to a frontage road. However, it wasn't feasible giving the traffic counts.

Member Jones asked about KDOT's study. Wynndee Lee indicated that KDOT surprised everyone during the initial meetings and since then everyone has been trying to deal with those statements of the closing of access and crossovers. Mrs. Lee stated the project does have an approved KDOT permit with conditions, most of which have been met, one of them being access to the Underwood's property. Mrs. Lee indicated based on the applicants current design, they do have an approved KDOT permit which does conform to KDOT and the City's access corridor plan for K-68. Mrs. Lee stated KDOT has indicated it would depend on traffic counts, which they have not stated a number, before any access/crossovers would be affected or closed.

Rod Richardson, attorney with Wallace Saunders, stated there has been a lot of time spent by all parties dealing with this situation. Mr. Richardson stated they sought outside advice from experts not to advocate against the project but to make sure they were making good decisions. Mr. Richardson stated they asked a Real Estate consultation firm, Dillon & Witt, how would another buyer or user of this site respond if the highway access was closed and the only access was from an easement? Mr. Richardson stated, in a nut shell, it would be extraordinarily detrimental to the Underwood's tract and

have a profoundly negative impact on any future buyers of the tract and advised them to be cautious before accepting that solution.

Mr. Richardson stated the other firm they retained was TranSystems Corp., which is a transportation consulting firm. Mr. Richardson stated after talking with Mike Walsted, TranSystems Corp., they felt better since their discussions with KDOT revealed KDOT did not have a time table as when the closure of the access would take affect. Mr. Richardson stated the existence of the easements could certainly accelerate the closure of the entrance which would have a profound affect on the existing tenant.

Mr. Richardson stated there should have been an area access plan developed before the initial plat was approved that took in consideration access to other properties. Mr. Richardson stated KDOT, when asked, stated it is the City's responsibility to make sure there is adequate access to other properties. Mr. Richardson stated he feels the correct zoning decision would be to develop Snyder Drive as an open street to the Underwood's property. Mr. Richardson indicated with an easement, they do not know who is going to maintain it, pay the insurance on it, who is going to construct it, is it going to be able to support large heavy vehicles, who will do snow removal, what about accidents, which they do not have any answers to. Mr. Richardson stated the decision was made that if they can not get a legitimate dedicated access then they will close the property off and come in and out of the K-68 access and if and when KDOT closes the entrance they will have to take the whole property.

Larry Witt stated as a real estate appraiser, appraising the Underwood's property in the absence of a public street when the access is closed this property will become an uneconomic remnant. Mr. Witt stated only an open street is the best way to access the Underwood's property. Mr. Witt also stated when the access is taken this property would become blighted.

Member Jackson stated that when KDOT would take the tract KDOT would have to compensate the Underwood's for it. Member Jackson also noted that this property would not necessarily become blighted like Mr. Witt stated.

Mike Walsted stated the City did a good job with their K-68 Corridor study, however this property was left out. Mr. Walsted stated no one knows when and if the access will be closed but once closed and the development done the access situation can not be fixed.

Wynndee Lee stated at the time the developer and the Underwood's did their studies it was based on the access to the property on the northeast side and the narrow easement. Mrs. Lee indicated because of that study it was requested the easement be at least 50 feet in case a street would be built, there would be enough of an easement there to build a street.

Member Hatfield asked if a frontage road would be acceptable. Mr. Richardson stated they would be okay with a frontage road. Member Hatfield stated all the other options were coming in the back door of this development and he felt if they moved the development to the north and gave a public access and shorten the island, this would be a solution to this problem. Mr. Walsted stated that KDOT probably would not permit it because of the locations of the intersections.

Darron Ammann stated KDOT would not allow a frontage road as Wildcat drive was moved to conform to the K-68 Corridor study.

Matt Gough stated he agrees with Mr. Richardson that the taking the access to the Underwood's property, would be not be detrimental to the Underwood's because of the condemnation proceeds available to them in the event of a total taking of the property.

Member Colbern stated during the study session it was made known how important it was to get the access situation figured out was. Member Colbern indicated he thought the approval of the preliminary plat was based on the access situation being settled. Wynndee Lee indicated there was no specific condition on the plat about the Underwood's access, however there was a great deal of discussion about it. Chairperson Warren stated he reviewed the minutes from previous meetings and there was no mention that the applicant needed to provide access, however Chairperson Warren did send a letter to KDOT asking them to reconsider closing the Underwood's access. Wynndee Lee indicated that she wanted everyone to realize that the applicant and the Underwood's have met several times to work this issue out.

Member Jackson stated a lot of what has been said depends on what might happen in the future, and no one knows what KDOT will do and there is a recourse for the Underwood's if they take the land.

Member Jackson made a motion to approve the final plat for East Gate North, seconded by Member Wasko. The motion was considered and Member Jones, no; Member Jackson, yes; Member Hatfield, no; Member Colbern, yes; Member Wasko, yes; Chairperson Warren, no. Motion failed by a 3-3 vote.

Wynndee Lee asked the commission if there was a direction they would like the applicant to proceed.

Chairperson Warren stated that he would like to see the extension of the street as he did not like the up and over access and did not see the walking in the parking lot and across a street a problem.

Member Jones did not like the idea of land locking a piece of property.

Member Hatfield would like to see a frontage road, move the development to the north, as this would be good access to the Underwood's front door, and make a public gateway park in the area between.

Member Colbern stated he feels the developer has done everything the city has asked them to do.

Member Jackson agreed with Member Colbern.

Member Wasko feels that both parties have worked diligently to come to some agreement and feels it is not up to the planning commission to make that determination.

Bob Bezek asked those who voted no what their main concern was, and each of them agreed it was the access situation.

East Gate Travel Center Site Plan

Wynndee Lee indicated that most of the items were discussed during the final plat. However since the final plat was not approved it would be staffs recommendation to table this item until there is redirection of the final plat.

Reorganization of Planning Commission. This item was tabled to the Planning Commissions next meeting on June 11, 2008.

Discussion Items: None

Announcements:

Chairperson Warren stated the next regularly scheduled Planning Commission meeting is Wednesday, June 11, 2008, at 7 p.m. and the next regular scheduled Planning Commission study session is June 25, 2008.

Adjournment:

Chairperson Warren adjourned the meeting at 7:20 p.m.

Respectfully submitted, Wynndee S. Lee
Director of Planning & Codes Administration