

CITY PLANNING COMMISSION
Regular Meeting Minutes
Ottawa, Kansas

City Hall – April 8, 2009

The City Planning Commission met at 7:00 p.m. on this date with the following members present and participating: Members Colbern, Jones, Davidson, Warren, Jackson, Wasko, and Chairperson York.

Chairperson York 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 York stated he received an e-mail from Cal Lantis and forwarded to city staff to distribute to the planning commissioners.

Site Plan for Bea Martin Peck Animal Shelter, 3173 K-68 Hwy.

Tom Yahl reviewed the findings and the site drawing with the planning commission. Mr. Yahl stated staff is recommending approval with conditions.

Chairperson York asked about the sign location as he was concerned with traffic going 50 miles per hour on the road. They could pass the sign before they saw it and would have to turn around to read it. Tom Yahl pointed out on the site plan where the sign was located.

Chairperson York stated he was concerned about security with people being able to drive around back and would there be any lighting.

Emily Mathis, Director, Bea Martin Peck Animal Shelter, stated the area in the back is for employee parking only.

Cara Hendricks, Taylor Design Company, stated she was not sure about the lighting. Wynndee Lee indicated there was some lighting on the building. Vickie Whitacre stated the lighting was on the engineering plans. Wynndee Lee indicated should they change any of the lighting, they would need to submit a new site plan for review.

Member Jones asked if there were any comments from the neighbors. Tom Yahl stated staff does not notify the neighbors on a site plan.

Member Davidson asked if the parking area is gravel. Cara Hendricks stated the parking area will be paved, however the driveway will be gravel. Wynndee Lee indicated staff found that acceptable as this is in the Urban Growth Area.

Chairperson York asked if the pens on the east side could be accessed from the inside. Vickie Whitacre stated yes.

Member Warren made a motion to approve the site plan with the following conditions: 1. Receipt of the approved NOI and KDOT permits; 2. Storm water easement and cross access easement; 3. Notation and installation of a “yield” sign at the driveway intersection; 4. Resolution of the sanitation issues and approval by the county and city, seconded by Member Colbern. The motion was

considered and Member Warren, yes; Member Colbern, yes; Member Jones, yes; Member Jackson, yes; Member Davidson, yes; Member Wasko, yes, Chairperson York, yes. Motion passed by a 7-0 vote.

Consent Agenda:

Member Jackson made a motion to approve the February 25, 2009 and March 11, 2009 study session meeting minutes and the March 11, 2009 and March 25, 2009 meeting minutes as typed, seconded by Member Wasko. All present voted yes. (7-0)

Public Comments:

There were none.

Public Hearing Items:

Held a public hearing on the proposed rezones in the Urban Growth Area from Franklin County R-3A Single-Family Residential Zoning District to City R-1 Low Density Residential Zoning District generally located at 1446 Eisenhower, 1506 Eisenhower, and 1504 Eisenhower, from Franklin County RE Residential Estate Zoning District to City R-1 Low Density Residential Zoning District generally located at 2426 Marshall Road, and from Franklin County RE Residential Estate Zoning District to City CS Countryside Zoning District generally located at 2220 Eisenhower and 2200 Eisenhower.

Chairperson York opened the public hearing.

Tom Yahl reviewed the findings with the planning commission. Mr. Yahl stated staff is recommending approval of the rezones.

Chairperson York asked if the planning commissioners had any questions, there were none.

Chairperson York asked if staff received any letters. Tom Yahl stated no letters were received however one of the homeowners came into the office.

Chairperson York asked for public comments.

Bill Wright, 1504 Eisenhower, asked for the planning commission to table this item until the property owners were given more information and understood the changes this would have on their properties. Mr. Wright also stated there are properties that have airplanes land and take-off, and what about building. Mr. Wright stated he lives in the county for a reason and does not want to be under city regulations. He also was concerned as the county was considering regulations for residential lots under three (3) acres.

Wynndee Lee stated the county zoning is more restrictive than the city zoning would be per size of the lot and that all current uses would be allowed.

Mary Lois Yates, 1446 Eisenhower, stated they also did not totally understand what changes will occur under the new zoning. Mrs. Yates asked if they could just be grandfathered in and that she was opposed to the rezoning.

Member Wasko asked staff if she understood that the rezoning does not change any use they currently have. Wynndee Lee stated the property owners by right and by law can continue to operate any uses they currently have forever, changing the zoning will not affect that.

Mary Lois Yates, stated they did not want their taxes going up. Wynndee Lee indicated their taxes would not go up as they are not in the city and the city has no plans on annexing them into the city limits on the near term.

Bill Wright, stated he would still request that this item be tabled until the homeowners are better informed. Staff indicated a meeting could be arranged and time was not a factor.

Motion was made by Member Davidson to continue the public hearing to the May 13, 2009 meeting, seconded by Member Jones. The motion was considered and Member Colbern, yes; Member Jones, yes; Member Jackson, yes; Member Davidson, yes; Member Wasko, yes; Member Warren, yes; Chairperson York, yes. Motion passed by a 7-0 vote.

Held a public on the proposed rezoning from C-1 Office & Service Business Zoning District and R-1 Low Density Residential Zoning District to C-2 Restricted Commercial Zoning District generally located at 109 W. 9th, 834 S. Main, and 840 S. Main.

Chairperson York opened the public hearing.

Tom Yahl reviewed the staff findings with the planning commission. Mr. Yahl stated staff is recommending denial of the rezone request based on the following:

- The proposal is not in conformance with the Comprehensive Plan.
- There are vacant available properties in the vicinity appropriately zoned for commercial development.
- The change in classification is not consistent with the intent of the regulations.
- The change is not consistent with the character of the surrounding neighborhood.
- The uses permitted as reclassified are not consistent with the uses permitted in the surrounding area.
- The property has been developed with the existing uses since before implementation of zoning.
- The protection of public interests outweighs the hardship imposed on the applicant by not allowing a reclassification.

The findings are as follows:

Summary: The applicant has submitted a request to rezone 834 and 840 S. Main Street from R-1 to C-2 and 109 W. Ninth from C-1 to C-2. The two Main Street addresses are currently developed with single family structures, which are rental property. The Ninth Street property is developed with a small church and residential structure.

It is the recommendation of staff that the rezoning request be denied.

Findings

When a proposed amendment would result in a change of the zoning classification of any specific property, the recommendation of the Planning Commission, accompanied by a copy of the record of the hearing, shall contain statements as to the present classification, the classification under the proposed amendment, the reasons for seeking such reclassification, a summary of the facts presented, and a statement of the factors upon which the recommendation of the Planning Commission is based, using the following guidelines.

1. Whether the change in classification would be consistent with the intent and purpose of these regulations;

The intent of the R-1 District is to provide primarily for one-family dwellings with accommodation for two- and three-family dwellings and related residential uses such as churches and certain public uses which tend to be located at the edge of higher density, and more centrally located residential areas.

The intent of the C-1 District is to provide for areas for public, quasi-public, institutional, social, philanthropic organizations or societies, professional service and office types of uses. Density and intensity of use may be considered moderate. This zone is primarily used to allow for non-residential uses which provide a direct service to the total community and still be compatible with adjoining residential districts.

The intent of the C-2 District is to provide for areas of convenient shopping facilities located to serve one or more residential neighborhoods. The types of uses permitted include the basic retail, office and service uses that are customarily located in a shopping center.

Staff Finding:

As the proposed change will expand an area that currently functions as a neighborhood commercial center, it is consistent with the intent of the C-2 district. However, the property currently zoned C-1 was zoned R-1, under the City's previous zoning map, in order to allow reuse of the church building when the occupant moved to another facility. The intent of the map was to reduce the intensity of activity at this intersection, and the proposal does not meet this intent. In addition, the size and configuration of the site is not adequate to develop retail uses, if fully developed per the allowances provided in the zoning regulations.

2. The character and condition of the surrounding neighborhood and its effect on the proposed change;

The neighborhood is a mix of long established commercial and residential uses. The subject property is a former church building and three residential structures. There are additional residential uses west and north of the subject property, as well as across Ninth Street and Main Street. The corner properties at the intersection are Ransom Hospitals' Gollier Center (former Apple Market), Subway sandwich shop, and Briscoe Drug.

Staff Finding:

Despite the long established commercial uses, the neighborhood surrounding the subject property is primarily residential. The inclusion of commercial uses in the development pattern at this intersection was intended to serve merely as a neighborhood center. The surrounding neighborhood has seen a great deal of reinvestment in the past five years. With a higher intensity of commercial use at this location, there is likely to be a disinvestment in neighboring residential uses, thus creating a negative impact on the proposed change.

3. Whether the proposed amendment is made necessary because of changed or changing conditions in the area affected, and, if so, the nature of such changed or changing conditions;

The area around the subject property has remained stable for many years. The most recent change at this location was the development of the Gollier Center in 2001.

Staff Finding:

The development of the Gollier center at 901 S. Main Street was a reduction of the intensity of use from a retail use to an office use, essentially changing if from a C-2 to C-1 type of use. This change is not supportive of the application.

4. The current zoning and uses of nearby properties, and the effect on existing nearby land uses upon such a change in classification;

The commercial uses (Gollier, Subway, China Palace and Briscoe) at the intersection of Ninth and Main are zoned C-1, Office and Service Business District. The residential uses adjacent to the subject property are R-1, Low Density Residential District, as are the properties south of Ninth Street. The subject property is also adjacent to the Prairie Spirit Rail Trail, which is zoned P, Public Use District. The residential uses on the east side of Main Street are zoned R-2, Medium Density Residential District.

Staff Finding:

The C-2 classification allows limited commercial uses, which is intended to be compatible with the surrounding neighborhoods. However, the size of the subject property does not allow for adequate buffering between the existing residential uses. In addition, the existing development pattern provides natural buffering between the church and neighboring residences. Removing the church and associated house will remove this buffer, creating an adverse impact on the adjacent residential structure.

5. Whether every use that would be permitted on the property as reclassified would be compatible with the uses permitted on other property in the immediate vicinity;

The C-2 district allows a wide variety of commercial uses at limited scale of development.

Staff Finding:

Every use permitted by the reclassification is not compatible with those existing on adjacent property. Some of these include restaurants, and retail sales and services. Although there are permitted uses that are compatible with the surrounding area. All new construction in the district is limited to 5,000 square feet of ground floor area, although the applicant has indicated a desire to build a project that exceeds the ground floor area permitted by the regulations.

6. The suitability of the applicants property for the uses to which it has been restricted;

Residential or neighborhood commercial uses are most compatible at this location at this time, and have been developed as such for a number of years.

Staff Finding:

While the corner property may be suitable for development of an office use, the interior of the property is most suited residential use.

7. The length of time the subject property has remained vacant or undeveloped as zoned;

The subject property has been developed with the existing structures since approximately 1910. Utility records show that, since 1986, the properties have been regularly occupied.

Staff Finding:

While the applicants have indicated a difficulty finding buyers or tenants, their properties have not had long periods of vacancy, and the residential properties are currently occupied. Thus, this factor is not applicable.

8. Whether adequate sewer and water facilities, and all other needed public services exist or can be provided to serve the uses that would be permitted on the property if it were reclassified;

There are adequate utilities and public services at this site to accommodate development. Ninth Street at this location is classified as a local street and is improved with only a brick surface. **The 2008 KDOT Traffic Count Map reveals an annual average daily traffic for this section of main Street to be a total volume of 12,700 vehicles. The 2007 Traffic Count map for Ottawa shows 1,055 vehicles along East Ninth Street. The Trip Generation Manual shows the weekday peak hour (one hour between 4 and 6 p.m.) trip ends to be an average rate of 13.60 per each 1,000 square feet of floor area.**

Staff Finding:

While utilities and public services are in place to accommodate redevelopment of the subject property, Ninth Street is a substandard street, particularly for more intense commercial development, due to the brick surface and width, which is only 22 feet. The current standard for a local residential street is 24 foot width, while the standard for a local commercial street is 26 feet. The street is not adequate to accommodate additional commercial traffic, although a Traffic Impact Study would best determine the effect additional commercial development would have on traffic at the intersection. Any increase in intensity would likely cause staff to review and, possibly, recommend removal of the on-street parking at the intersection. Preliminary analysis indicates that commercial development on the property, and resulting driveway access onto Ninth Street, will impact the functional area of the adjacent intersection, **which will result in vehicle accidents.**

9. The general amount of vacant land that currently has the same zoning classification proposed for the subject property, particularly in the vicinity of the subject property, and any special circumstances that make a substantial part of such vacant land available or not available for development;

There is a very small amount of property in the City that is zoned C-2. These locations include individual properties at the 1400 block of south Main Street east side, Seventh Street at Main and Beech streets, and the southwest corner of Wilson Street and Davis Avenue.

Staff Finding:

Although most of the locations currently zoned C-2 are developed, the property at Wilson Street and Davis Avenue is available for development. In addition, there are numerous undeveloped properties and vacant buildings zoned C-3 and C-4. Both districts can accommodate the type of development intended for the proposed change.

10. Whether the proposed amendment would be in conformance to and further enhance the implementation of the City's Comprehensive Plan;

There is consistency and conflict with the City's comprehensive plan in regard to the proposed rezoning. The Future Land Use portion of the Comprehensive Plan designates the corner property as commercial and the two

Main Street properties as residential. The narrative related to commercial uses specifically calls for retail activities to be located along Main Street. Other text describing the commercial category prescribes that “the scale and character of Commercial development should be compatible with the surrounding uses.” (Comp Plan page 4-6). Other recommendations related to commercial development show to “cluster neighborhood centers at the arterial roads that connect to the highways.” (p. 5-4) Another recommendation is to preserve the existing housing stock in the community.

Staff Finding:

Main Street (US 59) is the City’s primary arterial road. However, the proposal is not consistent with the Future Land Use Map. The proposed amendment is consistent for the corner property, but not for the two residential lots. While the map indicates an ability to reuse the corner property, the intent was not to grow commercial activity at this location. If the request were to be approved, the future land use map would need to be amended. Consistency with development standards would be expected during the development process if the area is rezoned.

- 11. Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed upon the applicant by not upgrading the value of the property by such reclassification; and,**
This factor is addressed in the finding below.

Staff Finding:

The findings above illustrate that the proposed location is suitable for commercial development, which is compatible with the surrounding area and would result in an increase in traffic on a substandard street. These are public interests certainly worth protection. As one of the lots is currently zoned for commercial use, the hardship that results from not recommending the change is outweighed by the harm that would result by allowing such change.

- 12. Such other factors as the Planning Commission may deem relevant from the facts and evidence presented in the application**

- 13. The recommendations of professional staff;**

It is the recommendation of staff that the request to change the zoning of the subject property be **denied**, based on the following findings:

- The proposal is not in conformance with the Comprehensive Plan.
- There are vacant available properties in the vicinity appropriately zoned for commercial development.
- The change in classification is not consistent with the intent of the regulations.
- The change is not consistent with the character of the surrounding neighborhood.
- The uses permitted as reclassified are not consistent with the uses permitted in the surrounding area.
- The property has been developed with the existing uses since before implementation of zoning.
- The protection of public interests outweighs the hardship imposed on the applicant by not allowing a reclassification.

If the application is successful, the following actions or issues must be addressed:

- Revision of future land use map to reflect the change.
- Review of on-street parking.
- Submittal and review of a site plan, including storm water study and Traffic Impact Study.

Wynndee Lee reviewed the commercial uses allowed in a C-2 District, infrastructure, square footage requirement, and traffic. Mrs. Lee indicated that a traffic impact study could be requested prior to action on the rezone. Mrs. Lee reviewed a drawing received from the applicant with a square footage of 7,000+ and noted that the drive on 9th Street would not be allowed as it was too close to the 9th and Main intersection and to move it to the west puts the drive next to the drive of the homeowners on 9th Street. Mrs. Lee indicated the Main Street access would be up to KDOT. Mrs. Lee indicated the primary concerns for staff were the intensity, land uses, and infrastructure issues.

Levi Dinkla, representative of Family Video, stated this is a family owned business and they own over 600 properties in 21 states and have sold fewer than 10 properties and this would bring 13 new jobs

into the city. Mr. Dinkla stated the other three corners are already zoned commercial and this would be consistent with those businesses. Mr. Dinkla stated there is an error in the site plan as the building has been reduced to 6200 square feet which would allow the building to be moved and thus the drive off of 9th Street would be moved west, but not on top of the neighbor's driveway. Mr. Dinkla felt this would be a visual upgrade by removing the structures and the neighbors would be protected by a fence.

Member Jones asked if there will be parking on the north side and if it would be lighted. Mr. Dinkla stated yes. Member Jones asked about the variance to allow the structure to be larger. Wynndee Lee indicated there is no guarantee that the variance would be granted.

Member Warren asked what other businesses they would be renting to. Mr. Dinkla stated a "Stay Fit 24" which is a 24 hour gym.

Member Warren asked about the hours of operation. Mr. Dinkla stated the video store would operate from 10 a.m. to midnight and the fitness center would be anytime as the clients would have their own keys to let them in.

Chairperson York asked Mr. Dinkla if he would do a traffic study. Mr. Dinkla he was not aware that one was needed for the rezone until just before the meeting.

Chairperson York asked Mr. Dinkla if they were willing to update the street. Mr. Dinkla stated sure if you give me a break on my taxes for the next ten (10) years. (laughter). Mr. Dinkla stated realistic looking at the intersection it should have been addressed a long time before he came here and he didn't think as "Family Video" should bear sole responsibility for upgrading an intersection that was in need before. Chairperson York stated the reason the current zoning is C-1 is because of the intersection inadequacies. Wynndee Lee indicated the street is too narrow for another commercial business on that corner and if the street was upgraded it could remove the on street parking which would have an impact on the current business on both sides of Main Street.

Member Wasko asked if the lighting would have an impact on the residential structures. Mr. Dinkla stated there would be angle parking and lighting. Wynndee Lee indicated the city has regulations they would have to follow on the lighting.

Wynndee Lee read the letter received from Cal Lantis which has been entered into the record. Mrs. Lee indicated a letter was also received from Blaine Finch, which also has been entered into the record, but Mr. Finch was present and would make a presentation.

Chairperson York asked for public comments.

Donald Morgan, 730 S. Main, stated there are a lot of commercial properties that are empty and have plenty of parking. Mr. Morgan stated he was concerned about alternative motives and did not want to see the rezone request approved.

Donald Turner, 742 S. Main, stated he agreed about the amount of empty commercial properties available including other video store with shelves even. He is not against progress, but does not feel this is the right place for this business.

Cathy Lee, 917 S. Walnut, stated the parking and traffic are bad in this area and feels the road is too narrow for another commercial business.

Parsram (Sammy) Venkatsammy, pastor for the church at 9th and Main Street, stated the church will become completely vacant in a couple of months when the new church is done and would like to sell the building before the year is over.

Harold Wingert, 1635 Lakeside, stated the city needs new commercial business and the city should figure something out.

Tom Weigand, 109 E. 2nd, Chamber of Commerce, stated his job is to recruit business for the City of Ottawa. His perspective is that this corner is already out of character with the neighborhood and the church is no longer in use, the houses in this area are in dilapidated condition and the area is blighted needing a higher and better use. He feels it is an ideal place for a commercial business. Mr. Weigand stated the street can handle the traffic and he understands from the applicant that KDOT will grant a right in / right out access from Main Street. Mr. Weigand noted the exit at the Bank of the West on 7th and Main Streets has not been a problem. Mr. Weigand stated the Future Land Use Map is just a guide and can be revised and that vacant property is not suitable. The rezone request matches well with the other corners and this will bring in commercial development.

Blaine Finch, 101 W. 2nd, attorney for the homeowners at 119 W. 9th Street, stated the planning commission needs to base their decision on the "Golden" rules. This is not a case of economic development but a case on whether this is a good fit for area. Mr. Finch stated the history of the location is this intersection is no longer a commercial area, that has moved out south from 15th Street on. Mr. Finch noted his clients will be affected by the lighting and the increase in traffic as well as the hours of operation. Mr. Finch believes a traffic study is necessary as there needs to be left turn lanes on Main Street. Mr. Finch asked the planning commission to consider future uses of the property and the long term impact this could have on the neighborhood. Mr. Finch asked the planning commission to take staffs recommendation and deny the rezone request or at least require a traffic study before making their decision.

Coleen Rector, 119 W. 9th Street, stated she wants to see the city grow, however there is no alley between them and the development, traffic on 9th Street is already congested, and with the fence around the property would make them feel closed in. Mrs. Rector also stated she visited the web site of Family Video and the web sites claims that Family Video is a development company which is a great concern to her and that they have 7 properties right now for sale. There site also indicated they had 149 spaces listed as build to suit.

Joe McFadden, 1017 S. Main, stated he thinks this would be good for the neighborhood as there is a lot of walking and bicycling traffic in this neighborhood.

Levi Dinkla as stated in Mr. Lantis letter about a decline in rental of videos, he feels this is not true as the rental industry is still growing. Mr. Dinkla stated he knows about the other commercial property available but they are not suitable for his project. Mr. Dinkla stated they were a Real Estate Company first and they owned a video company too. Mr. Dinkla stated the information he received is there has only been 2 accidents at this intersection in the past 15 months.

Chairperson York asked the planning commission for discussion.

Member Davidson stated he did not want to go through the findings one by one for a vote and Member Jackson agreed.

Member Warren stated he agreed with Mr. Wingert as they want to encourage developers to come into town, but also they need to protect the community. Member Warren believes 9th and Main needs to be developed but feels right now it is premature.

Member Jackson agrees with Member Warren and feels the parking and traffic is a big problem. Member Jackson stated the area at 7th and Main mentioned is a larger intersection, and this is different than the Walgreens development and that a traffic impact study would not produce any new evidence to influence his decision.

Member Wasko had concerns about the traffic.

Member Davidson stated he visits this area all the time and was surprised to find that the restaurants were non conforming for the area. Member Davidson said he likes the idea of neighborhood shopping areas. Member Davidson felt the infrastructure is inadequate and this would have a detrimental effect on the neighborhood.

Member Jones has concerns about the traffic.

Member Colbern stated he was in favor of the development and that this area is going to develop sooner or later, why not now.

Member Warren stated this would impact the neighbors to the west.

Levi Dinkla stated he would do a traffic impact study if this would guarantee him a yes vote, but did not want to spend the money on the study if it will not impact the outcome. Mr. Dinkla stated this is where their buildings are located in other cities.

Donald Morgan stated that if they wanted this project why don't he buy out the houses to the west to make it work.

Joe McFadden asked if the traffic impact study would factor in the change to US-59. Wynndee Lee indicated it would, however it would be at least 3 years before the US-59 Hwy. designation would change.

Harold Wingert stated this should have been done as a PUD. Mr. York indicated that was not the request. Wynndee Lee indicated that the minimum size is three (3) acres, which this site is not.

Wynndee Lee indicated staff had received information about the accidents at this intersection and between 2004 to now there have been 47 accidents 29 of them in the intersection.

Dan Hinman, Subway, stated most accidents seem to be on Hwy 59.

Delbert Jamison, 618 Spruce, stated he did not understand what was going on as they had a buyer for the property right now to develop the area otherwise the buildings will deteriorate and become a blight to the city.

Chairperson York asked the planning commissioners if a traffic impact study would influence their decision. Members Warren and Davidson said yes and Member Jones, Colbern, Jackson, and Chairperson York stated no.

Chairperson York closed the public hearing.

Member Davidson made a motion to accept staff findings as their own, seconded by Member Jackson. The motion was considered and Member Jackson, yes; Member Davidson, yes; Member Wasko, yes; Member Warren, no; Member Colbern, no; Member Jones, yes; Chairperson York, yes. Motion passed by a 5-2 vote.

Member Jackson made a motion to recommend to the City Commission to deny the proposed rezone request for an area generally located at 109 W. 9th St. from C-1 Office & Service Business Zoning District and generally located at 834 S. Main and 840 S. Main from R-1 Low Density Residential Zoning District to C-2 Restricted Commercial Zoning District, seconded by Member Wasko. The motion was considered and Member Davidson, no; Member Wasko, yes; Member Warren, no; Member Colbern, no; Member Jones, yes; Member Jackson, yes; Chairperson York, yes. Motion passed by a 4-3 vote.

Continue the discussion on the proposed conditional use for a preschool / daycare center at 503 S. Hickory in an R-2 Medium Density Residential Zoning District.

Chairperson York stated the applicant requested this be continued to the next meeting.

Member Wasko made a motion to continue this item to the May 13th meeting, seconded by Member Jackson. The motion was considered and Member Jones, yes; Member Colbern, yes; Member Warren, yes; Member Jackson, yes; Member Wasko, yes; Member Davidson, yes; Chairperson York, yes. Motion passed by a 7-0 vote.

Other Items:

None

Announcements:

Chairperson York stated the next regularly scheduled Planning Commission study session is Wednesday, April 29, 2009 at noon and the next regularly scheduled Planning Commission meeting is Wednesday, May 13, 2009 at 7 p.m.

Adjournment:

Chairperson York adjourned the meeting at 9:10 p.m.

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

From: Cal Lantis [mailto:william.lantis@century21.com]
Sent: Tuesday, April 07, 2009 8:24 PM
To: Ed York
Cc: Wynndee Lee
Subject:

Ed,

For the sake of full disclosure I want to first state that I represent the owner of a building that will work for Family video; and that is, in fact, exactly the dimensions and with the parking that Family Video first proposed.

As a former planning commissioner who has seen several Family Video stores in my travels around Kansas I know that the building proposed by Family Video for that corner will drastically alter the neighborhood, and it won't be in a good way. There are other alternatives, but I can only speak to one.

The owner of the Movie Gallery has drastically reduced the price of the building and wanted Family Video to know that. Last week I found the email address of Family Video's site development person, Levi Dinkla, and sent him a message regarding the price reduction. The response that I received said in part "I am very familiar with the site. We have determined the value of this site to be \$250,000 for our type of business as the access and parking are inadequate for a video store (which is why Movie Gallery went out of business there). "

Why would you value a 10 year old well built building that is zoned properly and could be opened tomorrow for both proposed uses (video & restaurant) at less than you are paying for the land at your proposed location? It is clear from Family Video's response that it isn't the video store that they want to open, it's getting a large commercial space at the 9th & Main intersection that is of prime importance.

The walk-in video business is a dying business. In a report available from Adams Media Research (RPT-901 Video Rental 2009) it states: "As the rental business reached its 30th birthday, it is still the most popular way to watch movies at home, with a total of 2.5bn rental turns in the U.S. last year. Coming in virtually flat in a year when everything else was down, the video rental market continues to be the target of innovative business plans ranging from Netflix and Redbox to iTunes and the Xbox Live Marketplace. The main reason: new and attractive forms of rental—online subscriptions and \$1/night kiosks—are making up for continued declines in traditional specialty-store rentals." Anyone in the video business knows that.

It was hard for me to write this, knowing that I will have blown any chance for my Seller to sell his building to Family Video when this email sees the light of day. However, I thought that you all should know that contrary to what's been portrayed, there are affordable alternatives out there, and the long term objectives of Family Video should be suspect.

William C. "Cal" Lantis
Broker
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"People will forget what you do, people will forget what you say, but people will never forget how you make them feel!" - Maya Angelou

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April 6, 2009

City of Ottawa Planning Commission
101 S. Hickory
Ottawa, Kansas 66067

In re: Dinkla request to rezone 834 and 840 S. Main and 109 W. Ninth Street

Dear Mr. Chairman and Honorable Members:

Our firm once again comes before you representing David and Coleen Rector, owners of the property at 119 W. Ninth, and once again joins with your professional staff in urging your denial of an application to rezone the properties above.

Though some would urge you to make a decision based on "economic development" or being "pro business" the simple fact is that such a decision based on these factors would be unlawful. The right basis for your decision is the rule of law. That rule is set forth by the Kansas Supreme Court in the case of *Golden v. City of Overland Park*, 224 Kan. 591 (1978). The Supreme Court outlines an eight factor test that should form the basis of sound, lawful zoning decisions.

Your professional planning staff has thoroughly applied the Golden factors in their staff findings distributed at your study session last week. After a thorough review my clients and our firm soundly endorse their suggested findings and their ultimate recommendation. My clients also respectfully offer the following for your consideration.

1. The proposed change to C-2 is not consistent with the intent and purpose of your zoning regulations. Your staff indicates that the purpose of C-2 is to provide areas of convenient shopping facilities to serve one or more residential neighborhoods. The only shopping facility at this intersection is the pharmacy. Ottawa has not had neighborhood shopping districts since the demise of its last neighborhood grocers fifteen years ago. Coincidentally that last store was located at 9th and Main. Since then the community has used centralized shopping districts in the downtown, south end and K-68 corridor. This change will not consistently add to a neighborhood shopping area, but rather expand what has been a steadily decreasing commercial area that was poorly designed as such to begin with.
2. The proposed change is not consistent with the character and condition of the surrounding neighborhood. As your staff notes, this area is primarily residential. The commercial properties are the exceptions and not the rule. The loss of the grocery store at ninth and main leaves only three commercial business, none of which can be rebuilt as

they are grandfathered in based on their existence prior to the current zoning classification.

3. The proposed amendment is not made necessary because of changed or changing circumstances. The whole area has become less retail and commercial oriented in the past decade.

4. The current zoning in the area is all low intensity commercial and low to moderate residential. The proposed change will have a negative impact on nearby properties, particularly the property of the Rectors. The increase in traffic, noise and light will all have deleterious effects on the Rectors' quiet use and enjoyment of their property.

5. There are uses permitted by C-2 that will not be compatible with the uses permitted on other property in the immediate vicinity. Changing the zoning of the parcel will allow virtually any retail business to locate in this area. As stated before the predominant use in the area is residential with light commercial uses. These commercial uses have become less intense. The additional uses permitted by C-2 will take this area in the opposite direction and are not compatible.

6. The suitability of the subject property is appropriate for its current zoning classification. The applicant seeks to impress the property into a use for which it is wholly unsuitable. The property does not have sufficiently wide nor improved side street access from Ninth Street. The increased traffic from a C-2 use will lead to increased stress on the Ninth and Main intersection including the backup of northbound traffic into the intersection as they wait for a left turn opportunity into the subject property. This location is not suitable for C-2.

7. The property has not been vacant for an extended period of time. It is my clients' understanding that the Church still makes use of 109 W. Ninth from time to time and the two residential structures remain viable residential rentals.

8. The recommendation of professional staff is denial. The Rectors agree.

Your staff has provided you with additional findings and upon review the Rectors agree with all of those findings.

As you consider this application tonight please remember that this is not an economic development question. This is not a decision to determine whether you or this community is "pro-business" or "open to development." This is a quasi-judicial decision, to be weighed carefully, prudently, legally and made based on the legally established factors given to you from a legitimate authority. Please weigh carefully the factors, the testimony, and the recommendations you hear tonight, and please consider the lawful bases for your decision, not the rancorous political ones.

Your staff believes that such a careful consideration leads to the conclusion that this application should be denied. My clients agree and tonight we urge you to deny this application and preserve this neighborhood. Thank you for your consideration.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Blaine Finch', written over a horizontal line.

Blaine Finch

cc: David and Coleen Rector

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04-06-'09 16:47 FROM-GREEN & FINCH, CHTD. 17852423058