

CITY OF CLEARWATER, SEDGWICK COUNTY, KANSAS

PLANNING COMMISSION MINUTES

December 7, 2010

The regular meeting of the City of Clearwater, Sedgwick County, Kansas, Planning Commission was held on Tuesday, December 7, 2010 at 7:00 p.m., in the Clearwater City Council Chamber, City Hall at 129 E. Ross Avenue, Clearwater, Kansas.

The following members were present: Lonnie Stieben, Mike Cass, Mike Machart, George Rudy, Ryan Shackelford and Billy Lane. The following City staff members were present: Kent Brown, City Administrator; Cheryl Wright, City Clerk; and Janet Amerine, City Attorney, Also attending, Phil Myer Baughman & Company and Bill Hammers, resident.

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1. Approval of Minutes of the Meeting of November 2, 2010

MOTION: The motion to approve the minutes was made by Ryan Shackelford seconded by George Rudy and passed unanimously.

2. Discussion of Proposed Restrictive Covenants on Dugan Property

City Administrator Brown explained that the property being discussed is the Dugan Property located from Diagonal Road to 95th S. along 135th W. Brown stated 2 – 3 months ago there was a public hearing requesting to change the zoning on a portion of the Dugan Property from R-1 to I-1 and the Planning Commission did not approve the proposal. The Planning Commission suggested taking to the Council changing the property from R-1 to Commercial C-2. Brown stated that there was a meeting with the property owner, himself, City Attorney Amerine, John Riggs, Planner and people from the Baughman Company concerning the plat and the zoning of the property. As a result of the meeting Phil Myer sent a proposal on restrictive covenants that gives a list of uses that would be restricted from the property, thus, trying to meet the Commission's concerns on the type of zoning. The restrictive covenants are for 50 years and extendable for 25 years thereafter. The covenants read that they cannot be altered or amended without a public hearing of the Clearwater Planning Commission. The Commission reviewed what is allowed in I-1 zoning and then reviewed the list of what would not be allowed. Brown stated that the questions for the Commission to answer tonight are whether the Restricted Covenants are enough to change the objection to the rezoning of the property or are there other restrictions that should be added to the list. Is there a tool for enforcement of the covenants? The second question is there enough interest for the Commission to hold another public hearing on the property. City Attorney Amerine stated that the document as presented will not alter the decision of

the Commission then there is no reason to have another public hearing. Amerine continued to state that the City cannot enforce the document. The enforcement of the City is zoning, the enforcement of restricted covenants is enforced by the property owner. Phil Myer stated that he has previously used this type of covenant. The covenants are written stating what is not allowed instead of trying to list everything that is allowed. It appeared that most of the objections centered on outside uses of the property. Lonnie Stieben stated that the Commission is not against zoning the property industrial, but the Commission wanted some direction in the use of the property. Bill Hammers, neighboring property owner, stated that he thinks that this is the direction to go. Hammers stated that he has a concern about a chem-process line or anything that would possibly have toxic run off like a terminal where fluids are being changed. Phil Myer stated that at this time the Commission can send the recommendation to the Council that all of the property should be zoned commercial, or the Commission can reconsider and with the covenants in place would industrial be more acceptable and the Commission could have another public hearing in January or February. Amerine questioned the Commission if they are willing to listen and possibly be persuaded to change their minds and go with industrial. Billy Lane questioned what the difference between zoning industrial over commercial. Stieben stated that industrial includes all of the uses in commercial plus additional uses in industrial. The restrictive covenant excludes some of the uses that are added in I-1. The Commission again reviewed the uses in industrial and the covenants list that eliminates some of the uses. City Attorney Amerine gave a scenario that if in 5 years Mr. Dugan decided to sell the property and the new owner decided to open a dog kennel; if the property was not given industrial zoning the building inspector would issue a stop work order because the dog kennel is not authorized in commercial. If the property is zoned industrial with a covenant eliminating dog kennels then it would be up to the property association to start a civil law suit against the property owner to stop the construction of the dog kennel. Brown stated the use of the property could be changed without a building permit and the same situation could be present. If there is only one lot sold then it would be up to Mr. Dugan to make sure of the correct use. Mike Machart suggested making another industrial zoning classification instead of having restrictive covenants then there would be the teeth of the zoning. After a brief discussion, Brown stated that he would have to discuss this with John Riggs. Phil Myer stated that other small communities use protective overlay on various properties to accomplish the same enforcement.

MOTION: Ryan Shackelford made a motion for a Public Hearing to consider I-1 zoning for lot 6 of the Dugan property. George Rudy seconded the motion and it passed 6 – 0 with a roll call vote.

City Administrator Brown suggested that he could have information available for the next meeting explaining the three different possible ways the property could be zoned. Each possible way for zoning be it a new zone in industrial, restrictive covenants or a protective overly would require a different type of hearing.

3. **Response from WAMPO (Wichita Area Metropolitan Planning Commission)**

City Administrator Brown stated that at the last meeting the Commission reviewed a recommendation by WAMPO concerning upgrading 167th W. and downgrading 95th S. The Commission discussed the changes and request Brown to contact WAMPO stating the concern that 95th S. should not be downgraded from Rural Major Collector to Local. Brown stated that he received a response to his e-mail. The transportation policy committee approved the functional classification amendment as recommended. Clearwater's comments were presented to the board prior to approval. Per the manual Rural Collectors should not parallel each other like 103rd S. and 95th S. spacing should be greater than a mile. Sedgwick County Public Works stated that the maintenance of the roads would not be affected by the change in classification.

4. **Adjournment**

With there being no further business to come before the Commission, Mike Machart made a motion to adjourn the meeting. The motion was seconded by Billy Lane and passed unanimously.

CERTIFICATE

State of Kansas }
County of Sedgwick }
City of Clearwater }

I, Cheryl Wright, City Clerk of the City of Clearwater, Sedgwick County, Kansas, hereby certify that the foregoing is a true and correct copy of the approved minutes of the December 7, 2010 Planning Commission meeting.

Given under my hand and official seal of the City of Clearwater, this 4th day of January 2011.

Cheryl Wright, City Clerk