PLANNING COMMISSION MINUTES
DATE: FEBRUARY 12TH, 2020

The Planning Commission of the City of Shawnee, County of Pottawatomie, State of Oklahoma, met in the Commission Chambers, at City Hall, 9th and Broadway, on Wednesday, February 12th, 2020, at 1:30 p.m., pursuant to notice duly posted as prescribed by law.

AGENDA ITEM NO.1: **Roll Call**

Upon roll call the following members were present:

Present: Deem, Matthews, Walker, Bergsten, Rowell, Melot
Absent: Kienzle

Meeting was called to Order.

AGENDA ITEM NO.2: **Consideration of approval of the minutes from the regular meeting of the Planning Commission on December 4th, 2019**

Chairman Bergsten asked Commissioners for any comments, questions, or a vote. Commissioner Deem made a motion to approve the minutes; seconded by Commissioner Melot.

Motion passed:
AYE: Deem, Walker, Bergsten, Melot
NAY:
ABSTAIN: Matthews, Rowell

AGENDA ITEM NO.3: **Citizens' Participation**

Chairman Bergsten opened the public portion of the meeting and announced that this is an open time for discussion for those with questions on topics not on the Agenda and asked if anyone would like to come forward.

No one came forward and Chairman Bergsten closed the public portion of the meeting.

AGENDA ITEM NO.4: **Case #P01-20 – Public hearing and consideration of approval of a rezone request from A-1 (Rural Agricultural) to a PUD (Planned Unit Development) for a 40.08-acre property, located 630 feet west of the northwest corner of North Bryan Avenue and East 45th Street**

Applicant: Mass Architects

Chairman Bergsten elected to move this item further into the meeting.

AGENDA ITEM NO.5: **Case #P02-20 – Public hearing and consideration of approval of a rezone request from R-2 (Combined Residential) to C-3 (Highway Commercial) for a 0.11-acre property, located 60 feet east of the northeast corner of North Harrison Avenue and East Whittaker Street**

Applicant: Judy Akerman

Planning Director Rebecca Blaine presented staff report. She noted there are no current commercial plans, but that the property owner would like to market the property as commercial for future development. She stated this rezone aligns with the 2019 Comprehensive Plan, and that staff recommends approval.

Chairman Bergsten opened the public portion of the meeting and asked if anyone speaking against the item would like to come forward.

No one came forward and Chairman Bergsten asked if anyone speaking in favor of the item would like to come forward. No one came forward and Chairman Bergsten closed the public portion of the meeting.

Chairman Bergsten asked if there were any comments or questions. There were no comments or questions and Chairman Bergsten asked for a motion. Commissioner Matthews made a motion to approve the rezone; seconded by Commissioner Walker.

Motion passed:
AYE: Deem, Matthews, Walker, Bergsten, Rowell, Melot
NAY:
ABSTAIN:

<u>**AGENDA ITEM NO. 6:**</u> **Case #P03-20 – Public hearing and consideration of approval of a conditional use permit for a cell tower for a 0.29-acre property, located at 1310 North Kickapoo Avenue**

Applicant: Troy Williams

Planning Director Rebecca Blaine presented staff report. She described the current conditions of the property as vacant with only a billboard on the premises, having cracks in the concrete, and grass as overgrown. She noted this proposal went to the Zoning Board of Adjustment in December of last year to obtain a variance for the setback requirements and height. She stated the Planning Department has not received a protest letter and noted that there are letters of support in the packet.

Chairman Bergsten opened the public portion of the meeting and asked if anyone speaking against the item would like to come forward.

No one came forward and Chairman Bergsten asked if anyone speaking in favor of the item would like to come forward. Troy Williams, the applicant, came forward to speak. He stated the proposal has received approval from the Federal Aviation Administration (FAA). He stated they are leasing the entire property in order to maintain it. He stated the site is unique and that because of the existing billboard, which cannot be obstructed from view, a variance was necessary in order to place a cell tower on the property. He stated that the property is in the flood plain, and that they had to have a flood certificate done. He stated there are plans to beautify the property. He stated the tower would have support for data, broadband, Wi-Fi, and FirstNet. He clarified that the cell tower is a monopole.

Chairman Bergsten asked Mr. Williams if this proposal is similar to the cell tower on East 45th Street in that it is self-collapsing. Mr. Williams confirmed that it is.

Commissioner Deem thanked Mr. Williams for making the tower on East 45th Street a Monopine. Mr. Williams noted there is a presentation about that Monopine planned.

No one else came forward and Chairman Bergsten closed the public portion of the meeting.

Chairman Bergsten asked if there were any comments or questions. Commissioner Walker asked what the setbacks do to the rest of the corner. Director Blaine stated the surrounding properties will not be affected, but the subject property will be. She noted the Zoning Code was written before this type of engineering design was created. There were no more comments or questions and Chairman Bergsten asked for a motion. Commissioner Walker made a motion to approve the conditional use permit; seconded by Commissioner Matthews.

Motion passed:
AYE: Deem, Matthews, Walker, Bergsten, Rowell, Melot
NAY:
ABSTAIN:

<u>AGENDA ITEM NO.7:</u> **Case #S01-20 – Consideration of approval of a preliminary plat for Hyatt Addition, Section IV, a 6.57-acre property located east of North Harrison Avenue and south of East 45th Street, for the purpose of a single-family development**

Applicant: Hyatt Development, LLC

Planning Director Rebecca Blaine presented staff report. She stated staff recommends approval. She briefly summarized the characteristics of the area and the previous phases of the development. She noted the ownership of the development has changed since the previous phases began development. She stated the road that runs south of the development in the original plats was going to require improvements of that roadway. She stated the applicant is not required to improve that roadway at this point in time. She stated there would be buffering from the commercial areas.

Chairman Bergsten opened the public portion of the meeting and asked if anyone speaking against the item would like to come forward. Chuck Glave came forward. He stated that in 2013, for Phase III of the development, the Planning Commission and City Commission approved language that would require the developer in the next phase to improve 42nd Street for the length of the development for half the street. He stated that in the Agenda there is a letter that states improvements would not be required until developing adjacent lots. He stated this is in direct conflict with what was approved in 2013. He asked the Planning Commission to not let the developer go another seven years before improving 42nd Street. He stated the street is in deplorable condition. Director Blaine stated that phase was agreed upon with a different developer. She noted Phase III encompassed Phase IV, and that it was going to go all the way back to 42nd Street and would have included access off that road. She stated that anytime a development is going to pour a higher traffic volume onto a road, they would consider an improvement of that roadway. She stated this phase has redefined what Phase IV is, and is not adjacent to 42nd Street, and that there will be no access onto that roadway. She stated when that is the case, they will be required to uphold that end of the agreement.

Chairman Bergsten asked Director Blaine if she was aware of any plans for that area on the south end that would run adjacent to 42nd Street. Director Blaine she has not received any such plans. Commissioner Matthews noted he did not see any access to 42nd Street. Director Blaine stated that in the original approved plat the original developer had promised to improve 42nd Street, but that the new plat was changed and now has no access on 42nd Street. She stated that if they propose a plat that does propose access on 42nd Street, they would be required to improve the roadway. Chairman Bergsten asked if the developer owned the property south of the plat. Director Blaine stated she would confirm this. Mr. Glave stated there is only one access for the fire department, and that the original design called for that road to be extended to 42nd Street.

Commissioner Deem asked if there is a requirement in terms of access for fire engines. Mr. Glave stated that in 2013, it was required that when the next section of Hyatt is developed, it will be required to provide street paving to city standards to 42nd Street, and 42nd Street will need to be improved.

Commissioner Matthews stated while 42nd Street is in poor condition, he also struggled to see how the City could hold the developer accountable for the conditions of 42nd Street when the development is not currently going to affect it. Director Blaine confirmed the developer does own the property abutting 42nd Street all the way to the Harrison Avenue frontage. Commissioner Deem expressed concern about that not being developed. Commissioner Walker expressed concern about 45th Street and the traffic volume. Director Blaine stated they do not have provisions for that in the Subdivision Regulations.

Commissioner Melot asked how long the development of Phase III took. Director Blaine stated it has been developed for several years, and that the Planning Department still have open permits out on Phase III. Commissioner Melot stated developers invest a lot in the community and if this was done because it needs to be a financial incremental decision as a developer grows a neighborhood and a business, then the City should try to support that. She stated it does not make sense to hold up an incremental development.

Commissioner Matthews asked if there is a precedent of requiring a developer to redo a City street. Director Blaine stated there is if they are adding traffic volume onto a road. Mr. Glave stated that when they built their church in 2005, the City required them to bring a new water line from Harrison to the church, and that they had to size it big enough to create a loop. He also stated the church paid for it. He asked if there was a bond system to ensure the developer eventually does improve the road. Chairman Bergsten stated that if the area along 42nd Street is developed, it would come before the Planning Commission.

Mike Taylor of the New Beginnings Church came forward. He stated the City and his church have worked together on infrastructure improvements before. He stated in 2005 the church applied for a building permit to begin construction for a new building housing a worshipping center, fellowship home, library, prayer room, nursery, and preschool facilities. He stated the City granted the permit on condition that an adequate supply of water would be available to provide a fire suppression system and to support two fire hydrants. He discussed the water line improvements the church had to make. He stated both parties benefitted from the collaborative effort. He requested that everyone work together to improve 42nd Street.

No one else came forward and Chairman Bergsten asked if anyone speaking in favor of the item would like to come forward. Richard Whitecotton, the applicant, came forward. He stated that at some point he would like to develop 42nd Street, but that the phase being discussed at this meeting does not come off that street. He stated he did not have knowledge of the prior agreement made by the previous owners. He stated Phase III was already finished when he bought the development. He stated 42nd Street is a private street. Director of Engineering Michael Ludi confirmed this to be the case. Mr. Whitecotton asked why he should have to pay to develop a private road.

Commissioner Walker asked if 42nd Street was improved, would the houses in Phase IV have access. Mr. Whitecotton responded by stating that Hyatt Road is intended to go out to 42nd Street at some point. Commissioner Walker asked if he would have to both finish Hyatt Road to 42nd Street and redo 42nd Street for this to make any difference. Mr. Whitecotton confirmed this. He also added that he does not own the land all the way to Harrison; he stated Vision Bank owns that land. Chairman Bergsten asked if Mr. Whitecotton intends to develop the part of 42nd Street that he does own. Mr. Whitecotton confirmed this.

Commissioner Melot asked if it is known who owns 42nd Street. Director of Engineering Ludi stated multiple property owners have ownership of that road. Commissioner Deem asked if it is the property owners' responsibility to maintain that street. Mr. Ludi stated the City does not have any easements or right-of-ways. He noted that the City has helped citizens out there by patching the road up, but that the City has no obligations. Commissioner Melot asked how they can make agreements on improving a road the City does not own. Commissioner Matthews asked if there is a homeowner's association. Mr. Ludi stated it is not a subdivision. Commissioner Matthews asked what process the City must go through to make 42nd Street a city street. Mr. Ludi stated that was pulled from the books. Mr. Whitecotton stated it is not cost effective for him to build an entire street. Director Blaine asked if the intent of the agreement was to build out the street to city standards and the City was open to taking over the maintenance. Mr. Ludi stated it would have been half the street, the portion adjacent to the road. Mr. Whitecotton said it does not make sense to only improve half the road. Mr. Ludi stated that at that point the City would have considered doing the second half.

Commissioner Deem asked if this is a problem appropriate for the Traffic Commission to discuss. Mr. Ludi stated it was not appropriate for them to discuss. Commissioner Melot stated it seems the development and 42nd Street are two separate issues, and that the City does not seem to have any stake as it relates to the road. She stated the private street is not a Planning Commission issue because the street does not belong to the City. Chairman Bergsten agreed, and noted that the City could only possible require improvements of the part of the street that the applicant owns. Mr. Whitecotton asked if a possible solution would be the City supplying the labor for the improvements and the owners supplying the materials and the cost. Mr. Ludi stated that he could not speak to that. Commissioner Matthews suggested the City and applicant could get things in place so that the next development phase will be ready for it.

Mr. Glave stated that Justin Erickson, the former City Manager, wrote to him in an e-mail April, 2018 that Engineering has prepared the easement documents needed to be signed by all property owners, that he intended to hold a meeting with stakeholders, and that the plan would be to stabilize the base and do an asphalt overlay. Mr. Glave also stated that Mr. Erickson stated there would be no charge to abutting landowners. Chairman Bergsten stated that was on an earlier budget that this expenditure was removed from.

No one else came forward and Chairman Bergsten closed the public portion of the meeting

Chairman Bergsten asked if there were any comments or questions. There were no comments or questions and Chairman Bergsten asked for a motion. Commissioner Matthews made a motion to approve the preliminary plat with the condition listed on the staff report; seconded by Commissioner Rowell.

Motion passed:
AYE: Deem, Matthews, Walker, Bergsten, Rowell, Melot
NAY:
ABSTAIN:

AGENDA ITEM NO. 8: **Case #S02-20 – Consideration of approval of a final plat for Rolling Hills South Addition, a 3.00-acre property located on the southeast corner of Bryan Avenue and East Main Street, for the purpose of a single-family development and for the construction of the Friendship House**

Applicant: TLP Associates, Inc.

Planning Director Rebecca Blaine presented staff report. She briefly discussed the characteristics of the Friendship House and that of the proposed final plat. She stated staff recommends approval, but with the condition that the required maintenance bond is submitted and that it should be submitted before the upcoming City Commission Meeting on February 18th, 2020. If the bond is not submitted in time, this item will be pulled from that meeting's Agenda.

Commissioner Deem asked for clarification on which tribe was part of this development. Director Blaine clarified that the Absentee Shawnee is part of this development.

Chairman Bergsten opened the public portion of the meeting and asked if anyone speaking against the item would like to come forward.

No one came forward and Chairman Bergsten asked if anyone speaking in favor of the item would like to come forward. No one came forward and Chairman Bergsten closed the public portion of the meeting.

Chairman Bergsten asked if there were any comments or questions. There were no comments or questions and Chairman Bergsten asked for a motion. Commissioner Deem made a motion to approve the final plat with the condition listed on the staff report; seconded by Commissioner Walker.

Motion passed:
AYE: Deem, Matthews, Walker, Bergsten, Rowell, Melot
NAY:
ABSTAIN:

AGENDA ITEM NO.4: **Case #P01-20 – Public hearing and consideration of approval of a rezone request from A-1 (Rural Agricultural) to a PUD (Planned Unit Development) for a 40.08-acre property, located 630 feet west of the northwest corner of North Bryan Avenue and East 45th Street**

Applicant: Mass Architects

Planning Director Rebecca Blaine presented staff report. She briefly described the characteristics of the surrounding area. She stated the proposed Planned Unit Development is for the National Institute on Developmental Delays. She stated that this is a unique development, and that this is more appropriate as a Planned Unit Development than any one zoning district due to the uniqueness of the application. She stated the campus would be a retreat area that would have no permanent housing but would be a place where families could come with their children that have developmental delays and equip them with tools to be successful. The applicant submitted a conceptual plan that would be phased. The submitted plans discuss walking paths or horse trails, and at some point, an indoor swimming pool facility and a children's museum, which could be open to the public. Director Blaine noted there is a 100-year flood plain that traverses through the property, and that there would be no development in the flood plain. She stated this area would be a perfect place to have trails and nature options.

Chairman Bergsten opened the public portion of the meeting and asked if anyone speaking against the item would like to come forward.

No one came forward and Chairman Bergsten asked if anyone speaking in favor of the item would like to come forward. No one came forward and Chairman Bergsten closed the public portion of the meeting.

Chairman Bergsten asked if there were any comments or questions. Commissioner Deem asked about the nature of the organization proposing to develop the subject property. The applicant, Duane Mass of Mass Architects came forward to answer Commissioner Deem's question. Mr. Mass went into further detail about the proposed development. He stated there would be an administrative building, gymnasium, and small programs building. He stated the campus will feel more like a park.

Chairman Bergsten expressed concern for the residents in the adjacent residential subdivisions. He expressed particular concern about the arena and the horse trails. He asked what kind of buffer there would be between the development and the residencies. Mr. Mass stated there would be landscape buffers. Mr. Mass stated the arena would be more for horse therapy. Mr. Mass stated the National Institute on Developmental Delays is a private organization, and that the funds for this campus are raised dollars.

Commissioner Matthews stated this is a worthy program. He asked if the Interstate-40 frontage was in the flood plain and expressed concern about the added traffic volume the campus would create. Mr. Mass stated the Interstate-40 frontage is in the flood plain. Mr. Mass stated they will not be putting a lot of parking on the facility and that it will not be a high traffic area.

Commissioner Melot asked about what kind of demand there will be, why Shawnee is an attractive community with which to bring these services, and if Shawnee can support another significant investment in the area. Mr. Mass stated the land is being donated. Commissioner Melot asked if there is justification for this facility. Mr. Mass stated there is justification, and that it is sustainable, and they could partner with other organizations in the area. Mr. Mass stated the project will not begin until the funds for it are raised. He stated the demand is sustainable.

Brad Henry came forward to speak. He stated he inherited the property from his father. He discussed the background of how this development was conceived. He expressed his appreciation for the natural beauty of the general area. He gave detailed information about the organization behind this proposal. He stated there will be a chapel on the property at some point.

There were no more comments or questions and Chairman Bergsten asked for a motion. Commissioner Deem made a motion to approve the rezone; seconded by Commissioner Melot.

Motion passed:
AYE: Deem, Matthews, Walker, Bergsten, Rowell, Melot
NAY:
ABSTAIN:

AGENDA ITEM NO. 9: **Consideration of approval of an amendment to the City of Shawnee Code of Ordinances, Chapter 22, Zoning Code, Section 155, Agricultural Uses, Subsection 4, Dimensional Standards, amending the agricultural dimensional standards for minimum street frontage (feet) and minimum lot width (feet)**

Planning Director Rebecca Blaine presented staff report. She described the amendment as a housekeeping item. She stated the proposed changes are removing the exception from lot width requirements for A-1 zoned tracts of land that are more than ten acres in area and changing the street frontage requirements from none to 330 feet, the same as the minimum requirements for lot width. She stated the past interpretation was that the lot width requirement of 330 feet also meant that if a tract of land has the minimum 330 feet of lot width, it would have 330 feet of street frontage, but that this interpretation was challenged recently. She stated she wants this change reflected in the Zoning Code so that oddly shaped lots that are subdivided below the minimum standards in the Zoning Code can be prevented. She stated one of her top priorities for the next fiscal year is to get a new Zoning Code and Subdivision Regulations written. She stated the codes are very old. However, she stressed the urgency of making the proposed amendments.

Commissioner Matthews asked Director Blaine if this amendment would prevent renegade developers from finding loopholes in the Zoning Code. Director Blaine confirmed this to be the case. She provided an example of flag lots that could be created in the Zoning Code's current form without the proposed amendment. She stated all lots created in the A-1 District need to be required to have at least 330 feet of width and street frontage.

Commissioner Deem asked when a new Zoning Code may happen. Director Blaine stated the fiscal year starts on July 1st. She hopes to start that process this summer. She stated the Planning Commission would be an intricate part of that process, or a subcommittee could be created.

Chairman Bergsten opened the public portion of the meeting and asked if anyone speaking against the item would like to come forward. Seth Koenig came forward. He stated he is not against changes to the Zoning Code. He stated he has had multiple conversations with Director Blaine. He stated he owns a property on Walker Road that is 104 acres and has a little over 500 feet of frontage on Walker Road. He stated that property could not be split if this amendment were passed. Director Blaine stated that this is incorrect; that he could split it, but he would have to follow the Subdivision Regulations and provide adequate road infrastructure to service the lots created by this split. Mr. Koenig stated a lot that only has 650 feet of frontage could not be split. Chairman Bergsten stated they could, but that they would have to provide the infrastructure and access. Mr. Koenig stated notification should be given to property owners. Chairman Bergsten stated this can be hard to do because the City cannot always know when transactions of properties have taken place. Mr. Koenig stated people who have bought property in this district could be stuck with properties they had intended to develop but now cannot if the amendment were passed.

Commissioner Matthews asked Director Blaine if the City posts notices of the Agenda online. Director Blaine stated the City does do this. She stated there is no requirement for noticing everyone who owns property within 300 feet of A-1 zoned properties and that this would be impossible to provide. Mr. Koenig stated there should be more notification for this. Chairman Bergsten stated there is notification of public meetings. Mr. Koenig stated he would not be able to sell his property if this amendment were passed.

No one else came forward and Chairman Bergsten closed the public portion of the meeting.

Chairman Bergsten asked if there were any comments or questions. Commissioner Melot stated it is hard to operate the City on an antiquated code but asked if the City can change the code and notify property owners the change will be effective at a certain date. Director Blaine stated Mr. Koenig's attorney and the City Attorney are discussing Mr. Koenig's tract of land and what is a reasonable course of action for that issue. She stated the City Attorney's office supports the amendment to the Zoning Code.

There were no more comments or questions and Chairman Bergsten asked for a motion. Commissioner Melot made a motion to approve the amendment to the Zoning Code; seconded by Commissioner Walker.

Motion passed:
AYE: Deem, Matthews, Walker, Bergsten, Rowell, Melot
NAY:
ABSTAIN:

AGENDA ITEM NO.10: **Planning Director's Report**

Planning Director Rebecca Blaine did not have a report. She did note that the City Commission Meeting will be on a Tuesday in observance of President's Day.

AGENDA ITEM NO. 11: **Commissioners Comments and/or New Business**

Commissioner Melot stated she noticed the light pole near the park is now gone.

Commissioner Deem stated Planning Director Rebecca Blaine had stated to her that the house with the tree laying on it at Tucker Avenue and 10th Street is on track for demolition. Director Blaine noted the Planning Department will be requesting a larger demolition budget for the upcoming fiscal year.

Commissioner Deem asked for a progress report for the fencing on Highland Street. Director Blaine stated she did not believe any progress had been made. She stated the City is looking at a quote to see what it would cost to make the changes the City has repeatedly asked the property owner to do.

Commissioner Matthews asked if the City has learned who owns the Cinderella Hotel. Director Blaine stated a bank owns it. She stated the City is working on getting quotes to determine what it would cost to demolish that building. She stated the City spends a lot of time and resources securing the building. She stated it is unlikely that the City will be able to get the property owner to do something about the building. Commissioner Matthews asked that if a bank owns the property, then would the bank have assets the City could charge them for the demolition. Director Blaine stated the City has not been able to gain traction with the owner, and so that is something that will probably be looked at for a future project list.

AGENDA ITEM NO.12: **Adjournment**

Meeting was adjourned.

Paul Bergsten
Chairman/Vice-Chairman

Joseph Barker
Planning Commission Secretary