

LIBERTY PLANNING AND ZONING COMMISSION

January 13, 2015

Meeting Summary

7:00 p.m.

I. Call to Order

The Liberty Planning and Zoning Commission met on Tuesday, January 13, 2015 in the Council Chambers, City Hall, 101 East Kansas Street. A quorum being present, Chairman Rosekrans called the meeting to order at 7:00 p.m.

II. Roll Call

Commission members answering roll call were: Gary Armstrong, Walt Holt, Amy Howard, Ken Personett, Tom Reinier, Dee Rosekrans, and Ann Waterman. Commissioner Larry Wepler was absent. Representing staff were Katherine Sharp, Planning and Zoning Manager; David Jones, Planner; John Findlay, Development Review Engineer; Karan Johnson, Economic and Business Development Manager; and George Kapke, City Attorney. 37 members of the public were in attendance.

III. Approval of Minutes

Commissioner Waterman moved to approve the minutes from the December 9, 2014 meeting and Commissioner Reinier seconded the motion. The minutes were approved 6-0-1. (Commissioner Armstrong abstained)

IV. Case 14-49A: Amendment to the Future Land Use map for 28 acres near Liberty Hospital from Business to Mixed-Use [Public Hearing]

Commissioner Reinier recused himself because he is an employee at the Hospital.

Chairman Rosekrans said the case would require a Public Hearing.

Ms. Sharp presented the case as described in the staff report.

Chairman Rosekrans asked if there were any questions of staff. Seeing none, he asked the applicant to speak.

Mr. Christopher Cole, 2505 Anderson Avenue, Manhattan, KS (applicant's representative) said he is happy to answer questions. He said the design team is three years into a project to create the first integrated wellness community, consisting pre-acute (with the existing clinic), acute, and post-acute care, short term rehab, long-term care, assisted living, and memory care. Mr. Cole said that independent living will constitute an additional element, along with quasi-retail space in the first phase for the use of wellness regime participants. He said the community would include about 50,000 square feet of construction in the first phase. Mr. Cole summarized the delivery schedule by saying a rezoning application would be submitted in March/April 2015 along with the Preliminary Development Plan, and that construction would begin later in 2015, with completion in 2016/2017.

Chairman Rosekrans asked if there were any questions for staff or the applicant. Hearing none, he opened the public hearing. He requested that each speaker limit their comments to three minutes

and that multiple speakers should not repeat what has already been said. Chairman Rosekrans added that during the hearing Commissioners will not engage in discussion with speakers or audience, and that the Commission's role as an advisory board is to listen and decide.

Harry Boggess, 1901 H Hwy, Liberty, asked whether land was set aside for the adjoining graveyard.

Chairman Rosekrans asked if any other members of the public wished to speak. Seeing none, he closed the public hearing.

In response to Mr. Boggess' question, Mr. Findlay indicated the area set aside for the cemetery, that it was parceled off into a separate piece of land under separate ownership from the hospital, and that it would remain protected throughout the construction process.

Chairman Rosekrans asked for a motion.

Commissioner Holt made a motion to approve the application. Commissioner Armstrong seconded the motion.

The motion carried 6-0-1.

Chairman Rosekrans informed the audience this case will be heard by City Council on Monday, January 26 at 7:00 p.m. in the Council Chambers.

Commissioner Reinier returned to the meeting.

V. Case 14-50R&PDP: Rezone and Preliminary Development Plan for a 2-3 story, 50 unit, age-restricted independent living facility known as Heritage Club at W Mississippi Street and N Prairie Street [Public Hearing]

Chairman Rosekrans said the case would require a Public Hearing and reiterated procedures for those wishing to speak.

Ms. Sharp presented the proposed rezone as described in the staff report. She enumerated and described the changes made by the applicant to the plan since the last proposal was withdrawn.

Chairman Rosekrans asked if there were any questions for staff.

Commissioner Holt asked about the HDRC comments in the staff report, remarking that they are vague, with Commissioners saying that they like the concept but are concerned about the project's scale and density.

Ms. Sharp said she could not expand upon those comments because she was not at the meeting but that the comments in the staff report came from the Community Development Manager who was in attendance at the HDRC meeting.

Chairman Rosekrans asked if there were any further questions for staff. Hearing none, he invited or the applicant to speak.

Tom Mendel, 20 E Franklin, (applicant's representative) identified himself as an advocate of both the proposed project and the downtown. He said he attended William Jewell and maintains a practice on the square. He added that he attends church on the square, and is a Cub Scout master

on the square, and has a stake in the future of downtown Liberty. He said that Mr. Staton (the applicant) has lived in Liberty since 1999, and is an entrepreneur who owns and operates small business, including Classy Chocolate, Install Everything, and the Fish Market. Mr. Mendel added that Mr. Staton has developed funeral homes in Kearney and elsewhere, and that his partner John Miles is an MBA, orthopedic surgeon, and mechanical engineer, and that they operate an events center in Carrollton in a 100 year old mansion.

Mr. Mendel described the project as a \$10m investment in downtown Liberty, with 50 units of upscale housing, deed restricted to residents 50 years of age and older. He said that instead of blighted land, developing the 1.7 acres will put 50 affluent households near downtown. He added that part of the land is currently zoned commercial, with allowed uses that include a strip mall and funeral home. He described the two vacant homes which would be torn down on the property, and that they were left out of the historic district. He described the surrounding RNC district as having a mix of density, including a four-plex on Morse Avenue. He added that the remainder of the area included a fire station to the north, the AT&T building, the County Election Board building, and large high-density residential on Morse and Mississippi Street, and also at Franklin and Water Streets. Mr. Mendel said that to put 50 units in this location is not inconsistent with neighboring uses.

Mr. Mendel added that this is the third time the project has been in front of the Commission, and that numerous changes have been made as a result of neighbor feedback. He said that elected officials have been engaged, and that a sustained effort has taken place to satisfy concerns of neighbors, a time consuming and expensive process for the developer which has resulted in the project undergoing substantial changes seven times. He said this illustrates the desire of the applicant to engage with the neighbors, and that the engagement process has not been a two-way street, and that no mediation has taken place. He said the project started out at 80 units and has been reduced to 57, and again to 80, along with additional landscaping, and a reduction in scale. Mr. Mendel produced drawing which showed that adjacent homes are 42 feet tall and are taller than portions of Mr. Staton's project. He added that the project would include quality materials because the residents will expect it, and that the project will be superior to existing high-density complexes.

Mr. Mendel stated that the number of spaces has increased to 79, for a 1.58 ratio. He added that parking was the only variance the applicant requested. He identified other apartment projects in the city as having a lower parking ratio, and said the applicant's project is unique because it is marketed toward seniors who will not all drive. He added that the actual count of spaces is more than 79 with off-site parking in the lot on the other side of the alley and on-street parking on Prairie Street the ratio is closer to 1.86. Mr. Mendel spoke of similarities between this project and the Forest Avenue Apartments which were approved the previous night by City Council without any issue, and that that was a 5 story, 300 unit complex, six times larger than the applicant's project. He said that parking will not be an issue for this project, and that the stalls provided were consistent with other similar complexes with demographics similar to this project, and that a shuttle will be available. He added that the project will qualify for a 353 tax abatement which will reduce taxes for those who purchase a unit.

Mr. Mendel described the architect, Ed Korff and Associates of Prairie Village, KS, as having done more than 50 senior living centers in US. He said each of these used low parking ratios. He added that the project has been endorsed by HDLI and an editorial in the Liberty Tribune. He concluded by saying that the lots will be developed at some point, with the only question being what they will look like. Mr. Mendel said he believes it is a great plan, both as an advocate and a citizen, and that he respectfully requested that political concerns not be considered and that the plan be judged on its own merits.

Chairman Rosekrans asked if there were any questions for the applicant or staff.

Commissioner Personett (referring to the exhibit boards provided by Mr. Mendel) asked about vantage point for tall houses on Morse.

Mr. Mendel said the vantage was from Prairie Street.

Commissioner Personett asked if the topographic slope caused some of the height discrepancy between the houses and the proposed development.

Mr. Mendel confirmed this was the case.

Commissioner Armstrong asked about the north elevation.

Mr. Fielding Staton, 1113 Aspen Drive (the applicant) said the vantage from the fire station shows the shorter building with the taller houses behind it.

Mr. Mendel added that stalls behind the 20 garages were counted in the parking totals and would be owned by those who own the garages.

Commissioner Holt asked what the unit size would be.

Mr. Staton said the units would be one and two bedroom between 900-1150 square feet.

Chairman Rosekrans asked if there were any further questions of the applicant or staff. Seeing none, he reminded citizens to keep comments brief and concise, that the staff would be responding to comments at the end, and to avoid repetition of previous comments.

Chairman Rosekrans opened the public hearing.

Harry Boggess, 1901 H Hwy, Liberty, said he supports the proposal. He said he worked at the Fire Station on Mississippi for 30 years and would appreciate the improvement to the property. He said there are many positives to the project, that it would have a sprinkler system, be within walking distance to Fire and EMS services and the bus stop, residents could vote across the street, and visit Ruth Moore Park with grandchildren. He said with the Clay County building and AT&T being nearby, a \$10 million investment on the block is considerable. He added that the 50 residents wouldn't bring additional children in to overload the school system. He concluded by saying that providing parking is the problem of the City and County's.

Mr. Boggess asked for clarification about the 353 abatement mentioned by Mr. Mendel. Chairman Rosekrans indicated questions would be answered following the public hearing.

Robert Capps, 130 N. Morse, said the Commission does not need to be reminded of the outcome in October, which was a 7-0 motion by the Commission to reject the proposal. Mr. Capps summarized the reasons given for the October motion, which included concerns about density, parking, and stormwater retention. He said the new plan proposes to address issues, but does not. He indicated that the building used the same footprint as before, which would result in the same stormwater problem. He said that density has gone down to 50 units, but the project still sits on 1.7 acres. He stated that the truth about plans or maps is that common sense should dictate the decision on this project, as it did in November. He said that parking is now 79, which is a significant increase. However, Mr. Capps indicated that the 18 new stalls in front of the garages are driveways not parking spaces. One owner would control both, resulting in a 2.21 ratio for the lucky few. He

said that 35 units with 46 spaces remain, at a ratio of 1.31, so that no additional spaces are truly added. He added that the 6 adjacent spaces mentioned in the staff report were approved through a Temporary Use Permit in the historic district and shouldn't be used to calculate the ratio. Mr. Capps asked whether the units would be for sale or rental and whether the development would be apartments or condominiums. He said he wanted clarification because the demographics are different for each.

Tom Underwood, 1305 S Lafrenz, identified himself as the President of Historic Downtown Liberty, Inc. He read his op-ed published in the Liberty Tribune supporting the applicant's proposal.

Mr. Underwood added that he and his wife acquired properties on Water Street 15 years prior with hopes of seeing a revitalized downtown. He said he since seen many small businesses come and go, with a lack of foot traffic being a large factor. He said that he feels a change has been happening over last couple of years, and that to stonewall this project would call into question the level of support Liberty gives to businesses in downtown. He added that no decision can please everyone and that, inevitably, someone will say in five years "I told you so." Mr. Underwood asked the Commission to give the project a chance to succeed.

Andre Gray, 501 Franklin, expressed tentative support but questioned whether the development would consist of apartments or condos. He added that the distinction would make a huge difference because the price point for condos would be a significant increase for the neighborhood to the north. He said the current property is not visually pleasing, nor are the adjacent apartments. Mr. Gray said the proposed project has potential if the applicant does what he is proposing to do.

Sal DiMicelli said he lives in Kansas City but shops in Liberty and does business with Mr. Staton and Mr. Miles. He said he is surprised and disappointed at the negativity shown toward the project, and that if someone is willing to invest millions in blighted property, he believes they should get help and support from the neighbors. He said that having a nice property next to the existing homes will help resale value. He added the development seems to be well thought out with the changes that have been made, and that he doesn't know the last time anyone spent this kind of money on this type of project in Liberty. He said the project should be supported because it will increase traffic in downtown and all properties in downtown would benefit. Mr. DiMacelli concluded by saying he has dealt with Mr. Staton before and can vouch for his work and maintenance of his properties.

Gordon Haddon, 1613 Hampshire Ct, said he lived downtown for 42 years in historic homes, and that he currently owns the Ginger Sue's property on the Square. He said he has \$200,000 invested in downtown. He stated that he and his wife have travelled and looked at lots of old communities. He said they recently came back from Wheaton IL, where son in law is on P&Z as architect. Mr. Haddon described Wheaton as having no downtown square, but rather 8 linear blocks of commercial district. He said Wheaton has many downtown condos and apartments and is vibrant and flourishing with restaurants, a theater, and lots of traffic. He explained that in 1990 the County Government chose to move all its facilities out of downtown Wheaton, with horrible results for the area. He said that part of the resulting plan was a Main Street program with a strategic plan to emphasize development for downtown living. He described Wheaton's parking regulations, which require 1 stall per unit, plus 2.5 visitor stalls for every 10 units. For senior housing, he said the requirement was .5 stalls per unit, plus 2.5 stalls per 10 units. As a result, Mr. Haddon said that Wheaton has constructed 758 residential units in its downtown, or an average of one project every other year.

Mr. Haddon said that 20 years ago the Blueprint for Liberty was created, which envisioned a balance of living units and retail in downtown. He added that the Downtown Task Force issued a report in 2011 which stated that land use density should be higher in downtown and adjacent areas than in other parts of the community. Mr. Haddon said he drove around town in all directions

looking for units which had been constructed since the Blueprint for Liberty was created, and found 2 duplexes for 4 units, 5 new homes built as infill, and 5 loft apartments. He said this equates to 14 residential in downtown in the last 20 years. He asked how the city can improve downtown if it doesn't approve projects like the one proposed by the applicant. He said \$10 million is probably the most that has ever been invested in downtown and that the decision made by the Commission should not scare off future investment.

Justin Mathis, 222 W. Franklin St, said he wanted to thank the Planning Commission for their service to the community. He said that he and his wife moved back to Liberty to become 8th generation property owners in Liberty, and that he still keeps his ancestor's original land deed framed in his living room. He said that previously they intentionally lived in downtown Kansas City and avoided the temptation to buy a modern home even though they could afford it. He said they looked at the property on Franklin Street with some concern about the unused lot behind (the applicant's lot), but looked at the Comprehensive Plan at the advice of his father and was reassured to invest in the property upon seeing that the Plan recommended small-scale development for the neighboring property. Mr. Mathis said he wondered if Mr. Staton made same responsible judgment in looking at the city's plans before investing in his property.

Mr. Mathis said he wanted to go back to the last meeting in October, where his specific concern was the lack of a stenographer to take notes, because he felt the notes taken by staff would not adequately reflect the content of his speech. He said he wanted City Council to review his concerns about codes and ordinances. He said he felt the staff report had neglected important concerns in which the plan did not comply with codes and ordinances. He said that despite his request, staff did not include his concerns verbatim in the minutes of the October meeting. He said the minutes written by staff made it seem like the opponents to the project are angry neighbors, when in reality the opponents are citing code which has been overlooked in staff's analysis. He added that he believed staff sugarcoated the HDRC's concerns in the staff report. He said he did not intend to simply complain, but wanted to make the Commission aware that staff had not been unbiased in its analysis and had left out key information in the staff report.

Mr. Mathis presented graphs to demonstrate how little the plan had changed since October. He said the project needed an 82% decrease in density to be compliant with Comprehensive Plan, and 21-26 additional parking spaces to meet code. He said the parking stalls which had been added were "shingled" because the 12 additional stalls don't line up with the 8 garages to which they are supposed to correspond. Mr. Mathis described this as a sleight of hand that produced no substantive change. He added that the buildings carried the same footprint as before with the same setbacks meaning that concerns had not been addressed. He added that the green space provided by the applicant is far less for this project than the Forest Ave apartments.

Mr. Mathis added that he and his wife had a business plan to open a local grocery store in the Ethan Allen building on Water Street. He said that because of a lack of parking, he couldn't make the business plan work. Despite this, he said, it is not the Government's responsibility to make an investment whole.

Steven Anderson, 127 N Morse Ave, said he would distribute comments to put into the record. He said there is an assumption built into the proposed plan regarding the senior living aspect, and that the age limitation is not city-controlled issue. He explained that deeds change, and nothing prevents the owner from changing it the day after approval.

Mr. Anderson said he would outline three areas of concern: That the plan does not comply with City Code, that it is out of scale with the neighborhood, and that there is a high risk in making a 100 year decision in light of unanswered questions.

He said that the staff report raises doubts about the rezone in the analysis section, including the conformance to the Comprehensive Plan. He said the Future Land Use map cannot be split from the Comprehensive Plan, so that if a plan doesn't comply with the map, it doesn't comply with the Comprehensive Plan. He said the Comprehensive Plan is intended to guide all future land use decisions. He added that the Downtown Master Plan indicates the single-family use on Mississippi Street is to remain, which he speculated was to buffer the other homes from more intense uses in the downtown. He said the Comprehensive Plan and the Downtown Plan showed the balance of the site was to be redeveloped as attached single-family of 7-10 units. He said the recommendations of these City plans are not irrelevant or inconsistent and that he took issue with the findings of the staff report. Mr. Anderson said the proposal does not comply with first test because it is suburban in design, does not contribute to form or function of the neighborhood, does not blend in or have same elements as the existing homes, and doesn't meet street or deemphasize garages.

He said the proposal fails the second test because it will have an adverse effect upon the neighborhood. He said that, with one exception, all the neighbors believe the project will have a negative effect on their property values and their way of life. He added that the staff report acknowledges this, and that any positive impacts from the project, including increased customer traffic downtown, are irrelevant to the concerns of the Comprehensive Plan.

He said the proposal fails the third test because stormwater concerns remain as before, including the use of an inverted berm for buffering. He said the status of the alley vacation is still unknown and that he does not believe the alley serves as an adequate buffer to the properties along Franklin Street. Mr. Anderson also stated that the alley way cannot support the amount of traffic which will be generated by the development.

Mr. Anderson continued, saying the use of the Planned Development district to facilitate the proposal is inappropriate, because Planned Development should facilitate unique development on a unique lot. He said the proposed development doesn't fit on the site, and that height and setbacks should reflect the surrounding neighborhood. He said the building does not conform with the design principles required in the UDO, which include increased open space in PD districts, and minimal adverse effects on surrounding communities. Mr. Anderson added that if phase two doesn't happen, then building 1 would not face the public street as required in the design principles. He added that parking is inadequate, there is no guarantee of senior housing, and that high-income couples would likely have two vehicles, not one.

Mr. Anderson concluded by saying that a review of plans and code does not support this non-compliant plan. He said that Mr. Staton's claim that the applicant has collaborated with the neighborhood is inaccurate, and that at the first neighborhood meeting an 80 unit complex was presented and that the applicant threatened that the design was as good as it's going to get, and that other, less desirable uses would be built if the proposal was not approved. Mr. Anderson said that the last meeting was held after two days' notice, and that he felt the applicant was checking a box before submitting the application. He said that if the applicant claims the property is blighted, then the owner has to take some responsibility for the blighted condition of the property.

Doug Day, 131 N Morse Ave, said he speaks for the vast majority of neighbors around the development. He said the fact that the plan is too big is abundantly obvious, and that the Comprehensive Plan and Downtown Master Plan are unified in saying that no more than 7-10 units should be built on the site. Mr. Day said that the conversation should have started at that density rather than at 80 units.

Mr. Day asked what would happen if the development doesn't work? He said that he recognizes the benefit of a stable situation with more residents downtown, but asked what would happen if the

proposal underperforms. He said the risk of failure is immense, and that the entire area suffers if the development underperforms, including the neighbors' homes. He said the decision is a historic one, that it is a 100 year decision, whose effects will be felt immediately and decades on. He said that the neighbors needed the Commission to be confident in whatever plan is approved.

Mr. Day said that the HDRC believes the development will have negative impact on the historic district, that they were emphatic in their opposition to the proposal, and wanted to be quoted saying the proposal is "obnoxious." He said the City just spent \$1.5 million improving Franklin Street and making it look terrific, but that a vote in favor of this plan by the Commission will not strengthen downtown.

Mr. Day concluded by saying the applicant and the neighbors can find common ground. He said he agrees the lot has potential and that it should be developed. He said he agrees with the concept of increasing population of downtown, but that he said he wants a plan that can be supported. He said that three months ago 7 of the Commissioners couldn't support the applicant's proposal, and that HDRC couldn't support it either. He said the plan poses high risk and jeopardizes a thriving historic district. Mr. Day said the neighbors should be the ones waving a flag of support for any development proposed in the neighborhood, and not be leading the opposition. He said a compatible development should be proposed, and that there should be no more chiseling away at an 80 unit plan.

Amy Gray, 501 W Franklin Street, said she has an architectural practice downtown and is an urban designer and project architect who has worked on the City View Apartments in North Kansas City and also projects in Columbus Park near downtown Kansas City, Missouri. She said that designers used a 1.5 parking ratio in City View and a 1.3 ratio in Columbus Park. She said the ratio is typically lower for senior housing. She said she is in support of the project both as a citizen and a small business owner.

Charles Small, 249 W Kansas Street, said he is a former Planning Commissioner, and that he participated in the process to create the Comprehensive Plan. He said that many citizens and officials had input, and that during the process pictures were shown on a screen asking what participants preferred, where picture A would be something "good", B would be "bad", C "ok", and D "better." He said the issue of cost to develop was not discussed, and that the things presented to participants, and later included in the Comprehensive Plan, are ideas of something the city might strive to be. He said they were not intended to prescribe what has to be. He said the decision on the applicant's proposal is a 100 year decision, but that the Comprehensive Plan has already made a 20 year decision because it put restrictions on the property which are now contrary and not current to the market. He said what is proposed by the applicant is exactly what was intended when the pictures were shown to the participants during the Comprehensive Plan process. He said this should be plan A for the property.

Mr. Small continued, saying that sometime later the Future Land Use map was put in place with the Comprehensive Plan, and that over and over the reaction from property owners in the area was surprise that the plan showed buildings on their property they didn't know about. He said there had to be an idea for certain properties, but that the plan is flexible. He added that the applicant's property is not platted or mandated as a plan, and that the Comprehensive Plan is merely a place to start.

Mr. Small concluded by saying he hopes the City Council passes the application with any conditions necessary to ensure performance, and that the Commission should let the proposal go forward with a chance.

Holly Mills, 427 E Mississippi Street, said she was a local relator, and that she thought the proposal

was the best Liberty could hope for at the location. She stated that the existing commercial zoning could allow for something less appealing to be constructed. She said the density proposed with the development is not uncommon for residential developments in downtown and that the parking provisions are also not uncommon.

Ms. Mills handed out figures from the United States Census and said there was a measurable need for Baby Boomers to shift into more suitable housing types. Ms. Mills said that Esri projections show an increase in homeowners over 55 years old in Liberty, and that the condos proposed by the applicant have been shown at a price point consistent with existing housing. She said that Multi-Listing Service showed that 23 ranch houses were available in Liberty, and that with 766 more seniors projected by 2019, Liberty does not have the housing inventory to meet the need. She said the proposed project would help meet the need.

Ms. Mills added that most houses in Liberty don't have a bedroom on main floor. She said that she personally would be delighted to buy a condo and age in place. She added that other communities are competing for developments such as this, and that one had recently broken ground in Gladstone after a contentious process. She said a study by the Mid-America Regional Council called for "communities for all ages", and that Liberty is not equipped to provide the housing that seniors citizens need. She added that multifamily has not been built in Liberty since the 80s. She said that downtown Liberty is a strong and appealing place thanks to investment, and could be better with 50 new units compared to the 14 built in the last 20 years. She said the proposal meets an established need.

Mike Bedinger, 650 N Lightburne Street, said he owns the property 232 W Franklin Street. He said the house was built in 1951 so it was allowed to go up on an infill lot. He said it bothered him to see city staff belittled and treated as incompetent after seeing their effort, work, and diligence on the Franklin Street and other projects. He asked what Liberty will be in the future. He said that he thinks the proposal will stabilize the property. He asked what else the city would like to have on the property, if not this. He said opposition to the proposal amounts to sour grapes because any of the neighbors could have bought the property when it came up for sale. He said no one can complain if they didn't buy the ground. Mr. Bedinger said no one complained about the four-plex he owned, and that he thinks the opposition is personal.

Mr. Bedinger said maintain property values is the responsibility of the property owners, not Mr. Staton, and not the city. He stated that the property is not in the historic district, and should not effectively be dragged into it or evaluated as if it were in the district. He said that downtown needs development such as this. He stated that Walmart left Liberty to go to Kansas City, and now generates \$10,000 in taxes every day. He asked if the city would also see the source of tax revenue leave if the proposal is not approved. He said that the Comprehensive Plan screams for this type of development, on a site with existing infrastructure where nothing needs to be invested by the City. He said that a half-dozen communities would love to have such a development, and that other towns would be competing for it. He said it is a hard decision which will impact downtown. He added that Mr. Staton shouldn't need to subsidize parking and that the site has plenty for what the applicant wants to do.

Fielding Staton, 1113 Aspen (the applicant), said that he and his partner are not required to build a development of this use and quality, and that the property is already zoned for uses similar to their existing businesses. He said that he owns many properties in the county. He said that no concerns were voiced over parking for Forest Avenue Apartments, even though it utilizes on-street parking. He said that if the development on his property spread out its density, it would take up all the ground. He said that the opposition has moved the goal posts. He said that he would develop the land, and asked what it could be. He said that the opposition is personal, and that he was embarrassed to hear how the neighbors have spoken to staff. He said that the project is as good as

it would get, and that the houses on Morse now towered over the proposed buildings. He said that he would appreciate the Commission's vote.

Chris Milne, 202 W Franklin, said he is a supervisor at Install Everything (the applicant's business.) He said that the applicant does good quality work and is a man of his word. He said the project was good for the community, even if it does not make everyone happy. He said that he loves the downtown area, that his family lives in Liberty and his kids go to school there. He asked the Commission for a favorable vote.

Mr. Mendel mentioned Scott Brandt, who had to leave before the public hearing, but who Mr. Mendel said wanted to express support for project.

Chairman Rosekrans closed the public hearing.

Staff responded to questions and concerns from the hearing:

Ms. Johnson said the project would qualify for the 353 tax abatement. In order to retain eligibility, materials, layout, and infrastructure must be done according to the approved plan. She added that if the project is built in phases and the second building isn't completed, the project becomes ineligible for 353.

Commissioner Armstrong asked if the City Council approves the tax abatement.

Ms. Johnson said that they approve 353s but hadn't yet for this project because construction numbers haven't been submitted.

Commissioner Personett asked whether there was a maximum amount available for credit.

Ms. Johnson said there are different levels depending on the amount of investment, but that the investment quoted by the applicant this would exceed the top level.

Ms. Sharp said the stormwater concerns would be examined more fully in the Final Development Plan phase, that the site would be required to meet all standards. She added that the plan provides 24% open space, in excess of City requirements.

Mr. Findlay said the applicant submitted preliminary calculations that indicated the site is able to meet the stormwater management ordinance. He said detention is proposed in the form of two basins along with the parking area. He said City specifications allow for temporary detention in parking areas in cases where stormwater depth doesn't exceed 7 inches. He added that more detailed calculations and plans will be required with the Final Development Plan.

Ms. Sharp said that parking is available on the adjacent lot because it is owned by applicant. She deferred the question of whether the units would be apartments or condos to the applicant.

Mr. Staton said the units are intended to be sold, but that the owners could rent in the future because it would be their property. He said that deed restrictions on age would still apply.

Mr. Kapke, in response to Mr. Mathis' concerns, said that most City Boards and Commissions do not use verbatim minutes, and that the expense of doing so would be a burden on the city for a very slight value. He said that the minutes belong to the Commission, and that if there are additions or changes desired by Commissioners, they are free to make them. He said that any comments in minutes from the October case relate to an application that was withdrawn and is not currently under consideration, and that the value of those comments would be limited in relation to this

current case. He said that staff can be directed to add or leave out whatever comments are desired or not desired by the Commission.

Ms. Sharp added that the HDRC comments as summarized in the staff report came from Community Development Manager, and that there was no attempt to change the tone or content of the comments. She said that the alley vacation would not be pursued by the applicant.

Chairman Rosekrans asked the Commission if they had any further questions.

Commissioner Armstrong asked if the HDRC merely comments on an application such as this or votes to recommend approval/denial.

Ms. Sharp answered that, as this is not located within a historic district, the HDRC merely comments on the proposal and does not approve or disapprove.

Commissioner Armstrong asked if an owner of a unit in the development could later decide to rent that unit to someone else.

Ms. Sharp said that they could.

Chairman Rosekrans asked if a property deed could include an age restriction and whether the deed can be changed later.

Mr. Kapke said that if the development is a condominium that there would likely be a declaration. He said that if the declaration restricts the entire property in some way, that the only way it could be changed is if all of the owners who are under the declaration agree to change it, or if a provision is included in the declaration facilitating such a change in a different way. Mr. Kapke added that, technically, prior to the declaration being in place, the owner would have the power to amend the deed. He said that staff expects to see the deed restriction included in the presentation to Council.

Chairman Rosekrans asked if such a restriction were beyond the purview of the City.

Mr. Kapke said the City can require restrictions on a plat, but not a deed restriction.

Commissioner Armstrong asked if a deed restriction could prohibit renting by an owner.

Mr. Kapke said that it probably could, but that there are constitutional limitations on restricting use of property. He added that it is fairly common in upscale projects to prohibit lease or rental arrangements, except for some short-term arrangements.

Commissioner Holt asked if the project would be phased.

Mr. Staton said that that it would be built in phases and that as Building 1 is sold out, Building 2 will be under construction.

Commissioner Holt asked what would constitute each phase, particularly relating to infrastructure.

Mr. Staton said the clubhouse, swimming pool, and Building 1 would be built first, along with infrastructure for building 2. He said that he anticipates Building 1 will sell out quickly due to interest in living downtown.

Commissioner Holt said that he has scale and density concerns, but that he didn't know exactly how to quantify them. He asked if there was some industry standard that establishes an average

per acre density for an apartment complex.

Mr. Staton said that the Morse Avenue Apartments contain 30 units on a property much smaller than his. He added that the proposal contains 20% green space, a walking trail, and a maximum of 3 stories.

Commissioner Waterman asked for a definition of Planned Development.

Ms. Sharp read line 2 under the rezoning assessment criteria section of the staff report:

The purpose of the planned development district is to facilitate the development of unique, large scale or mixed use developments, or for the development of difficult sites due to topographical or other environmental considerations. The PD district allows a mix of land uses, densities, setbacks, and building heights for a defined area. This zoning district is intended to encourage innovative and creative design and to facilitate a mix of uses in the development of a balanced community.

Chairman Rosekrans said that the Commission is a recommending body and must determine conformity to existing regulations and plans. He said it is not within the role of the Commission to discuss what-ifs or politics, which are the domain of elected officials. He complimented every presenter for being clear and making comments that were well thought-out. He said the Commission understands the emotion and heart involved in the decision, but that the Commissioners needed to see the black and white in the issue.

Chairman Rosekrans asked for a motion.

Commissioner Waterman made a motion to approve as presented. Commissioner Personett seconded the motion.

Commissioner Personett said he would be in favor of the motion because it is innovative and creative, and better than alternatives which would be allowed under the current zoning. He identified his objections as density, scale, and parking availability, and that he still have concerns even though he is voting in favor of this revised plan. He asked how much revision would be enough, since the number of units has decreased from 80-57-50, with a 40% decrease being considerable. He said that, at this point, he believed a good effort had been made and that he is comfortable with recommending the project.

Commissioner Howard said she would be against the motion because the scale is too great and the blending of architecture doesn't transition well between the neighborhood and downtown.

Commissioner Holt said he would be voting for the project, though he was not sure it fit architecturally. He said he was unsure of his comfort level on the question of density and parking, and understood that the additional parking spaces might not function as such. He said that if were going to introduce a motion, that he would add that there be a prohibition on leasing or rental. He said that he would still vote in favor of the existing motion.

Commissioner Reinier said that he is torn, since he had owned a business on the Square for nine years. He said that the parking question is difficult to answer, but that it would be handy for someone to be able to walk instead of drive. He added that he lived in Cherokee Village apartments, and that parking there is difficult. He said that he wanted to straighten out the question of parking behind the garages, but that he wouldn't let that deter a nice project. He said that architecturally the proposal is good but might not fit, and that he is also not sure of the density he'd

be comfortable with. He said that he felt the proposal meets most of the criteria the Commission was looking for in a project and that he would vote in favor.

Commissioner Armstrong said he's felt this type of housing is needed in downtown, and that the developer has gone a long way to make the development more appropriate to the area. He said he believed there were still questions that needed to be answered in the subsequent Final Development Plan phase when it comes before the Commission, but that he would vote yes on the rezone.

Commissioner Waterman said that the project sat on a unique site, and that she thought the developer had been innovative and creative. She said that the Comprehensive Plan and Downtown Plan encouraged this type of development in Liberty, and that she also agreed that the property owner owns the land and is working hard to make use of the land and his investment. She said that she would vote yes.

Commissioner Rosekrans said the question kept him up at night, that he loves the project because of the option of another type of housing close to downtown, and that he is 100% in favor of anything that makes downtown more vital. He said that the proposal could be one of those pieces. He added that he wished there was more common ground with the size, and that there were a few too many unanswered questions. He said he believed that the neighbors had approached their engagement in a logical way, and that the developer had made concessions. He said he would vote against a motion with no stipulations, but that he believed the players could make the project work if it is ultimately approved by City Council.

Vote: Motion passed 5-2

Yes: Commissioners Armstrong, Holt, Personett, Reinier, Waterman

No: Commissioners Howard, Rosekrans

Abstain: None

Chairman Rosekrans informed the audience this case will be heard by City Council on Monday, January 26, at 7:00 p.m. in the Council Chambers.

VI. Case 14-52A: Amendment to Sections 30-85 and 30-90 of the Unified Development Ordinance to remove restriction regarding canopy and umbrella signage [Public Hearing]

Chairman Rosekrans said the case would require a Public Hearing.

Mr. Jones presented the proposed UDO amendment.

Chairman Rosekrans asked staff to clarify what is meant by vertical face.

Mr. Jones replied that the vertical face is anything that doesn't function as the roof of the canopy but still hangs above the ground.

Chairman Rosekrans asked if there were any other questions of staff. Seeing none, he opened the public hearing.

Chairman Rosekrans asked if any members of the public wished to speak. Seeing none, he closed the public hearing.

Chairman Rosekrans asked for a motion.

Commissioner Holt made a motion to approve the application as presented in the staff report. Commissioner Reinier seconded the motion.

The motion carried 7-0.

Chairman Rosekrans informed the audience this case will be heard by City Council on Monday, January 26, at 7:00 p.m. in the Council Chambers.

VII. Public Comments

There were no public comments.

VIII. Other Business

Ms. Sharp said she had been contacted by Mr. John McFarlane who requested that the Commission amend their meeting summary from the October 2015 Planning Commission meeting to include a verbatim account of Mr. Mathis's comments during the public hearing for the previous rendition of the Heritage Club which is now withdrawn. She said the meeting minutes are not written verbatim and a summary of Mr. Mathis's comments were included in the minutes. She said Mr. McFarlane had requested that staff make this change, but as they were already approved by the Commission, she did not feel she had such authority.

Chairman Rosekrans stated that the case had been closed.

Mr. Kapke said the meeting summary is for the Commission and they can amend if they chose or not if they chose. If approved this becomes the official record of the meeting.

Ms. Sharp went over upcoming planning cases which may come forward for the next meeting, which include a Future Land Use Amendment on Lightburne and a fireworks tent.

IX. Adjournment

Commissioner Armstrong made a motion to adjourn the meeting and Commissioner Reinier seconded the motion. The motion carried unanimously and the meeting was adjourned at 10:25pm.

X. Future Meeting Schedule

The next regular session is scheduled for Tuesday, February 10, 2015 at 7:00 p.m.