

LIBERTY PLANNING AND ZONING COMMISSION

March 10, 2015

Meeting Summary

7:00 p.m.

I. Call to Order

The Liberty Planning and Zoning Commission met on Tuesday, March 10, 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, Ann Waterman and Larry Wepler. 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. 50 members of the public were in attendance.

III. Approval of Minutes

Commissioner Holt moved to approve the minutes from the February 10, 2015 meeting and Commissioner Reinier seconded the motion. The minutes were approved 6-0-2. Commissioners Gary Armstrong and Larry Wepler abstained.

IV. Case 15-03SUP: Special Use Permit to allow an event center with (up to 150 people) at the old St. James Church, 342 N. Water Street. Chairman Rosekrans stated that this application would be postponed to the next meeting, Tuesday, April 14.

V. Case 14-50R&PDP: Rezone and Preliminary Development Plan for a 2-3 story, 45 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 said that although the applicant had received a favorable recommendation from the Planning Commission in January, they met one final time with the neighbors in attempt to address their concerns. She said those changes were significant enough for the case to be remanded back to the Planning Commission and then she described the changes made to the plan by the applicant since the last proposal came to Planning Commission. The building had been moved further away from the existing homes, from a 50 foot setback to a 100 foot setback on the west and from a 20 foot setback from the alley to the south to a 30 foot setback. This changed the maximum proposed height from 37 feet to 42 feet. She said parking confusion was clarified to allow only one car behind a garage. The existing office building on site will now be demolished and a new clubhouse will be built, and a fountain has been added to the main entrance. Carports were added to help address some neighbor concerns about a lack of covered parking. The courtyard was centralized and resident amenities added such as a hot tub. And the number of units went from 50 to 45.

Chairman Rosekrans asked if there were any questions for staff.

Commissioner Armstrong asked for clarification about changes to the parking spaces.

Ms. Sharp said concerns about the proposed south parking stalls not lining up with the garages, or showing too many spaces behind each garage drove changes to the layout to show one stall behind each garage.

Commissioner Armstrong asked if those who owned garages would have unhindered egress.

Ms. Sharp said that garage owners will also own the stall behind garage.

Commissioner Holt asked if there is a requirement that the units be condos and not rentals.

Ms. Sharp responded that the application is for condos but that owners could rent their units just as any homeowner could. She said the project is not an apartment building on the whole.

Commissioner Holt asked whether the developer could be the landlord if only some of the units were rentals.

Ms. Sharp said that could be discussed now and further analyzed with the plat application.

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

Mr. Fielding Staton, 1113 Aspen Drive (the applicant) said that he met with a Councilman and also the neighbors about the project in order to get positive movement and neighbor support. He described the larger setbacks, 10% fewer units, and nicer feel with the courtyard. He said he believed the proposal was a better and more attractive plan than before.

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.

Doug Day, 131 N Morse, said he represents the neighbors. He said their concern is density, which continues to be significant. He said the Comprehensive Plan (hereinafter Comp Plan) states that the ideal number for the block is 7-10 units. He said that Mr. Staton's project is 7-10 times greater than this number.

Mr. Day said he wanted the Commission to feel comfortable denying the application because it doesn't comply with the Comp Plan and because it's too dense. He said that the project far surpasses most comparable developments in Kansas City north of Missouri River and in Liberty.

Mr. Day described density as dwelling units per acre (du/ac) as defined by a real estate appraiser. He said that with 45 units on 1.7 acres, the Heritage Club density represents 26 du/ac. He said an arbitrary sampling of nine developments (shown on slides) shows that 13.4 du/ac is the average in the Kansas City Northland. He added that larger developments like Briarcliff are higher density but usually do not adjoin existing homes, and that lower density should accompany reduced distance from single family homes. He said that 11 multifamily developments in Liberty have an average density of 15.2 du/ac. He pointed out on the screen that many developments at this density do not directly adjoin homes and that even the largest developments are only 19 du/ac. He said that

comparable developments are much lower at 12 du/ac.

Mr. Day concluded by saying that Heritage Club is denser than all developments in Liberty, even those that don't adjoin existing homes. He added that greater sensitivity should be shown to the adjoining historic area. He reiterated that the proposal is more than double the density of comparable developments. He stated that the Commission should feel comfortable denying the application.

Robert Capps, 130 N Morse said he's glad the developer now believes he has better product and that he should thank the neighborhood meetings for the improvements. He added that the opposition shown to the project has inspired "better", but that he wants to inspire "best."

Mr. Capps said that parking is a byproduct of density issue, and that variances required by the City for reduced parking deserve closer scrutiny. He asked how a garage with parking behind it counts as two spots, and said that they shouldn't count in an already dense development. He said that city comments indicate staff wants conversations regarding the trash receptacle, and that he hopes a relocated dumpster won't steal parking. He asked if the applicant plans to bury utilities along the alleyway. He said that at least three existing telephone poles would be compromised by the proposed south parking spaces.

Mr. Capps went on to say that he has 30 years of experience in residential lending, and that in his experience condo financing is different than home financing. He said it requires standard fixed rate long term financing, set by Fannie Mae and Freddie Mac, with 50% presale required. He added that there are no midrise condos north of river except for Briarcliff, and that even if financing were available, it would still require appraisals subject to review by regulatory bodies, which would have to show value and marketability. He said that underwriting such loans depends on comparable sales, and there are none in the Northland or in Liberty. He said that a developer can't simply expect to sell units to a special demographic in this market, and that if Mr. Staton can't sell to 50 and over then the argument for parking and density crumbles. He questioned the applicant's assertion that 70% of the condo owners would be women who prefer limos and shuttles. He questioned whether these women would not drive just as much as men.

Mr. Capps summed up by saying that the proposed parking is inadequate, the development is too dense, and that the applicant can't deliver on the proposal.

Justin Mathis, 222 W Franklin, said the Planned Development proposed allows votes to be bypassed. He said that he's spent past meetings focusing on the 3 design criteria found in the UDO section 30-24.3. He asked why the criteria for approval of a rezoning are so cut and dry. He said it's because decisions about rezoning have 100 year consequences, so the criteria are designed to remove emotion, hopes, and fears from consideration. He added that this consideration should remove unforeseen influences, threats from the developer about storage units, overzealous city government, and the selling of hopes instead of presenting facts.

Mr. Mathis said the proposal is not compatible with the Comp Plan, as the City admits, is not guaranteed to be age-restricted, and that the City is desperate to approve the application and so has isolated sections of Comp Plan. He said that even this has not made the plan compliant. He said the issue of the Comp Plan has been ignored in four staff reports, and it's evident that time has been spent cherry picking aspects to ensure compatibility. He added that the neighbors have pointed out many incompatible aspects of the plan and that the Commission should feel comfortable recommending denial.

Mr. Mathis said that project supporters will say they don't like Comp Plan and that it's outdated. He said opinions about the Comp Plan do not matter because this is the plan in effect. He said that the

Heritage Club does not comply with Comp Plan. He added that the process to change the Comp Plan is intentionally long and participatory because these are 100 year decisions.

Mr. Mathis asked the Commission to put themselves in the neighbors' shoes. He stated that the building height is 52', not 42' as the applicant and staff have said. He said this ignores the lower 10'. He asked the Commission to imagine a structure 4' shorter than downtown courthouse and the highest du/ac in Liberty in their backyards with only a 30' buffer. He added that due to the sensitivity with Dougherty Historic District, he hoped the Commission's threshold for approval would be especially high.

Mr. Mathis went on to say that the amount of parking provided is inadequate for the development, and that the City's own downtown master plan calls for parking garages that have never been built. He stated that it was acknowledged many times that public parking would need to be made available for the project to function. He asked why parking is not part of the public infrastructure section in the staff report, since it is the most precious commodity in downtown Liberty. He added that even if plan had the 2 stalls per unit that are required, the proposal is still irresponsible, and the densest development in Liberty.

Mr. Mathis said that he wanted to clarify comments he made in a previous meeting when he said he wanted storage units instead of apartments. He said that doesn't want that, and that no one does, not even the developer. He said what he and the neighbors want is housing that's appropriately dense for the area. He requested that no business developments be approved administratively, and that he's confident staff will act transparently.

Mr. Mathis concluded by saying that the HDRC referred to the development as a blank check or wild card. He said that multiple members asked Planning Commission not to give the applicant a blank check. He said the developer is requesting a blank check, and that the desire to succeed does not equal qualifications necessary to succeed. He added that the applicant has never built high-end multistory housing before and is claiming credit for work done by others.

Mr. Mathis showed photos of Mr. Staton's developments. He said there are no photos of developments like this and that he has no applicable experience. He said the most applicable is in Columbia (Mr. Mathis showed slides of the Columbia development.)

John McFarland 400 W 115th Terrace, KCMO, said he represents the surrounding owners. He said the current plan is essentially unchanged from before, therefore the round of criticisms are either unchanged or more acute. He added that he and the neighbors had hoped the lengthy evolution of the project would present a unique opportunity for further evaluation and more nuanced analysis by staff. He said that any opportunity has been squandered, and that only cosmetic changes and adjustments have been made. He said staff comments have been lifted from previous reports.

Mr. McFarland said the proposal is supposed to be an age-restricted development for financially secure Baby Boomers in the downsizing phase of life, where they will abandon automobiles to walk even in the winter. He said the prospect of this happening is a reassuring idea but completely illusory. He said there is no age-restricted special zoning through a legislative process. He said there is no process for analyzing this proposal, simply a promise by the developer. He said it is unenforceable, and the City cannot hold developer to this promise. He said the developer could reverse the restriction on Day 2 without meaningful recourse.

Mr. McFarland stated that the likely scenario is that no one knows the prospect of filling these condos as promised. He said the developer's claims amount to anecdotal storytelling and wishful thinking that experience has taught will lead to deterioration. He said there are many examples of insufficient condo sales, markets being misread, unexpected vacancies leading to rentals by

developer or owners of units who struggle to fill with age and demographic targets, which diminishes funds to support the facilities, leading to increased turnover and falling demographics. He added that Baby Boomers who are forced to rent are not the target population for downtown. Mr. McFarland said there would be disquiet among condominium owners who bought early and live/owned the units, who will then sell at lower prices or rent out. He said this is the beginnings of a Downward Death Spiral. He said that with more and more rentals would come increased noise and traffic, and less investment in and identification with the downtown district. Mr. McFarland said the foregoing describes the Life and Death of the Age Restriction. He said the development at the end of this process will be a ghost of what was envisioned, while the adjoining neighborhood would be irreversibly damaged.

Mr. McFarland identified himself as a Commercial and Business Litigator who is familiar with picking up the pieces of projects where assumptions all proved unfounded. He said that adverse consequences go far into the future, and that the negative effects pulse out into the community.

Mr. McFarland concluded by saying Liberty has taken great pains to map out future growth and development, and that the Downtown Master Plan and Blueprint For Liberty are great examples of civic planning. He asked how the City could back project like this against the recommendations of those Plans. He said the incongruity should give the Commission cause to reject and disapprove the proposal.

Julie Day, 131 Morse, said the neighbors agree that the current lot has untapped potential and that wonderful things could go on there. She added that the parcel should be developed because it is a great piece of land. She said the neighbors also agreed that bringing in a varied and new population is good for the area.

Ms. Day said her biggest concern last time was the depiction of the project as being a "last chance to restore downtown." She said this felt like unhealthy desperation, which rarely leads to good decisions. She said that because it is the last piece of land in the Dougherty area, the community should make sure what goes on there fits in density, style, and purpose in order to enhance reasons people live in this area. She said she wants future officials will know we spent a lot of time making sure we have the best possible plan. She concluded by saying that for this reason and others she was asking the Commission for strong denial.

Holly Mills, 427 E Mississippi, said she is a member of the Appraisal Institute with ten years' experience as an appraiser. She said she wanted to provide numbers and facts, and speak to marketability. She said that 776 condos had been sold in Kansas City since January 2014, though she did not know how many were age-restricted.

Ms. Mills said she wanted to dispel the "Density is Doom" idea, and said that density is typical with suburban multifamily. She said that to apply suburban density to a transitional area of town with adjacent commercial uses is unfounded. She said other examples showed no bad outcome, including a multifamily project in Midtown Kansas City with a density of 46 du/ac adjacent to single-family homes. She said people find the mixture appealing, and that this proposal could produce a micro example of Midtown in Liberty.

Ms. Mills concluded by saying that the development would not be as misplaced as it sounds. She said that the theoretical should not determine rational decisions. She added that 28 single story residences are available in the Liberty city limits, so there was a need for this type of housing for seniors.

Tom Mendel (applicant's representative), said he has offices at 20 E Franklin but resides at 213 Camelot Dr. He said his sense is that the current application would be the last iteration of Heritage

Club plan. He said it is an improvement over the previous plan, and was based on feedback received through meetings with the neighbors.

Mr. Mendel said he wanted the opportunity to respond to previous points made by opponents. On the issue of density, he said that the developer has made repeated compromises, scaling the development down from 80 units to 57, to 50, and finally to 45. He said the Commission had recently considered and approved Forest Ave Apartments, and that the density there is low because the tract is forested. He said the buildable area was extremely dense and adjacent to single-family. In reference to Mr. Day's examples, Mr. Mendel said Camelot Commons was a single-family development. He said that the Wilshire Apartments is another example of dense multi-family next to a single-family neighborhood in Liberty.

He said this proposed project sits on a unique piece of property, an infill property that does not adjoin neighborhoods on all sides. He said that existing apartment buildings, a park, fire station, and commercial buildings adjoin the property on two sides and that the Liberty Square is nearby. He said the proposal contains 45 units with 27% open space. He said that every effort had been made by the applicant to compromise on density. He added that the Commission had previously approved the proposal with higher density, and asked that they would again approve with a 10% reduction in density.

Mr. Mendel said that the buildings are 42 feet tall, not 52 feet as Mr. Mathis thinks, and that this is not any taller than the surrounding homes. He added that some of the nearby homes are actually taller when topography is taken into account. He said that Mr. Ed Korff (the project architect) has built 50 senior living facilities, and that he values his opinion on parking. He added that Mr. Korff has designed similar development with lower parking ratios. He said that John Knox Village is less than 1 stall per unit. He said Residences at Liberty Place is 1:1, and that despite this there is a waiting list for residences. He said that a similar development in Excelsior Springs use a 1:3 ratio, in St. Joseph a 1.5:1, and in Leavenworth .75:1. He concluded that the current ratio for Heritage Club is more than adequate for this type of facility, and that the applicant has fixed any other issues. He said further contentions by opponents amounted to red herrings.

Mr. Mendel referenced section 30-24.3 of the UDO as the criteria for rezoning. He stated that there is no 4th criteria which says "do we trust developer?" He said this is not what the City considers, but rather conformance to other "adopted planning policies" in addition to the Comp Plan. Mr. Mendel then referenced section 30-25.3 regarding criteria for approval of Special Use Permits, which say such permit shall not be approved unless all criteria are satisfied. He said that the rezoning criteria do not say "unless" like the SUP, but give broader latitude when considering a rezoning.

Mr. Mendel continued by saying that a rezoning decision must gauge conformity to the Comp Plan, but that this conformity is not absolute or restrictive, and that the proposal does not have to meet every criteria of the Comp Plan. He said the Comp Plan is not the law, it is a policy document, and that UDO section 30-24.2 doesn't say that every box in the Comp Plan has to be checked. He said the proposal substantially complies with the intent of the Comp Plan, as staff has said. Mr. Mendel said he was offended with continued accusations that City staff is incompetent or in the bag for the developer.

Regarding criticism about criteria #2 (effect on general vicinity) Mr. Mendel said that those speaking against the project seemed to consider themselves the only stakeholders involved. He said the Liberty Square is also involved and that the Commission should consider the positive effects the development will have on the Square.

Mr. Mendel said that they were not going to bring up storage facilities, but since Mr. Mathis brought it up, a storage facility is Plan B. He stated that the land is currently zoned for commercial

development, and that storage units are an acceptable use in this CBS district. He stated that no vote would be required by the Commission if storage facilities were proposed because a compliant plan would require an administrative process if made according to standards.

Mr. Mendel said that the project opponents are speaking against progress, and then try to take back words said in emotion. He said Mr. McFarland's doomsday scenario makes storage units sound like good idea. Mr. Mendel asked the Commission to have some faith and give the proposal a chance.

Mr. Mendel concluded by saying he hoped his comments had corrected some inaccuracies regarding the plan. He said nothing has changed since last approval except that the project has gotten better, and lowered in density. He said the neighbors who have refused to compromise are disingenuous, that they don't like Mr. Staton, and that matters have become personal. He asked if the neighbors should be able to dictate to everyone else about future of Liberty. He stated that we get the city we deserve and nothing more. He asked that the Commission consider this above anything else and vote in favor of the plan.

Heather Murphy, 418 E Mississippi, said the neighbors aren't against progress. She said in a few years she'd be eligible to live in the development. She the City has to go by codes and numbers but also has to consider aesthetics. She said she thought there was room for compromise and that she would love to meet with the developer in a friendly and neighborly way and discuss options for the property. She said it's not the neighbor's intention to tell somebody how to make their city better and that she hopes everyone can live together as friendly neighbors.

Dan Wehmueller, 242 W Franklin, said he agreed with the neighbors that the development is too dense with not enough parking. He said that behind his house is a two story 4-plex, which he felt is of reasonable size and density. He said there is nothing personal regarding the applicant, but also that he represented others who wouldn't have moved into the area if 45 units were in their back yards. He said he didn't think someone could sell 45 single-family homes there, let alone condos.

Mr. Wehmueller said he found it offensive to say "I suspect", and to speak only in veiled threats. He said the Commission and neighbors shouldn't be worried about what's behind door #2, when door #1 is what should be the focus. He concluded by saying the project was gradually getting better, but was not there yet.

Sal Dimacelli, 7603 NE 74th Ter, KCMO, identified himself as a commercial banker, had dealt with applicant number of years as a customer, and said he supported Mr. Staton. He distributed a Kansas City Star article and said it correctly stated (paraphrasing) that everyone should be bending over backwards to help this developer improve a blighted and tax-abated area. He said it seems like some neighbors are more interested in personal attacks than seeing what could happen on the property. He said he was offended that neighbors would disparage a developer or banker willing to put a lot of money into the property. He reiterated that the developer was using all private money, and no public money.

Mr. Dimacelli said Mr. Staton has extensive development and building experience, including funeral homes and a rental house on Franklin that he redid. He said there is no question that Mr. Staton can be trusted, and as a banker he agreed with the Star article that politics had influenced the project. He said that other towns would be happy to support the proposal.

Landon Whitsitt, 116 W Franklin, said he was opposed and stood with the neighbors. He said he was not against progress, but agreed with the Comp Plan that 7-10 units was appropriate to the area. He said the situation is personal in that homeowners want to continue the integrity of neighborhood.

Scott Brant, 303 S Missouri, said he helped to run a store at 15 E Kansas store, was a 34 year resident. He said the store was 4th generation, and that the first generation lived on Franklin across the street from this proposal. He said he supported the development and that Liberty does not have enough apartments or shopping downtown. He added that Mr. Staton could take his money elsewhere if this application was not approved.

Gordon Haddon, 1613 Hampshire Ct, said he lived in downtown from May 1971 to June 2013, and owned 2 old properties that were restored, along with property at College Place West. He said he's the current owner of 12 W Kansas, and is involved in HDLI. He spoke of the City of Wheaton, IL which changed policies to encourage up to four stories downtown and to minimize parking to a 1.75 ratio. He said that as a result of the policy change, in a 20 year period Wheaton constructed 12 projects which include 700 du within blocks of downtown. Mr. Haddon said Liberty is the rest of the story, and that in 20 years Liberty has constructed 5 new loft apts, 2 duplexes, and a handful of single family houses. He said Mr. Staton has gone above and beyond in making significant changes. Mr. Haddon said he was appealing for approval from the Commission.

David Fulk, 227 W Kansas, said he was opposed to application. He said that though the applicant had reduced the density from 47-26 du/ac, the project was still too dense. He said that it was very shortsighted to say the neighbors are not stakeholders, and that what was at stake was their single largest investment. He added that he was at the age where he could live in the development, and that he thought it misguided to believe that well-off retirees would downsize where they may not have a garage, to a development which sits across the street from other busy and noisy commercial uses.

Mr. Fulk said he didn't think those who would invest in \$225k in a condo would want to live next to these facilities. And that transit or high-end stores would be necessary to attract the type of buyers envisioned since the price is more than most single-family properties near this location. He pointed out that the applicant had already admitted the units might become rentals.

Mr. Fulk concluded by saying that if the project becomes rental, the track record of property owner regarding upkeep was not good. He said that if the prospects for condos are in doubt, the City should not risk creating an unsightly looking apartment complex. He said it's not enough to hope the plan works when there are too many reasonable doubts and too many people to cram into such a small area. He asked that the Commission deny the application in order to maintain a cherished area and the viability of downtown.

Pat Miller, 1955 Kings Highway, said there was nobody in the room who didn't want something on the property. She said the project could work well somewhere else, but not on the proposed location. She added that there are no grocery stores or pharmacies for residents to walk to. She said she would like to see something like townhouses or something that would fit. She concluded by saying she didn't think multi-family or storage were only possibilities for the property.

Matt Pozel, 503 E Mill, said he is not adjacent to the project but is neighbors with those who do. He said it's easy to support progress in Liberty but that he doesn't support this development. He said he read about when it was denied and the developer said his only recourse was check cashing or storage, and that he felt it was disrespectful to reduce neighbors to naïve bystanders who only want to hold up progress.

Mr. Pozel said the City needs to establish restrictions that regulate the plan because smart development takes time and effort. He added that development is messy and takes patience and creativity, and that interested had to align and remain involved throughout the process. He concluded by saying that the Comp Plan was not perfect but did manage to bring together interests

and concerns, and that all came together and outlined a path forward. He said this plan should also balance the interests of everyone who lives and works in Liberty, and said that reason and judgment should compel the Commission to deny the proposal.

Beth Stiefer, 425 W Kansas, said she represents the future of Liberty and that she was not born or raised here but moved from Arizona. She said she is not a developer, but is spending money to fix up her house. She said that she loves her community and notices how people's faces change when entering her neighborhood. She said that her neighbors were not all in the same age or financial bracket as her but still comprised a complete neighborhood.

Ms. Stiefer said she was on the fence about the project because she wants the Square to succeed, but that she agreed the density was too high. She said the buildings should be lowered and the general idea of the proposal changed. She added that she would not buy a property in front of the fire station. She concluded by saying there had to be a way to use property to the benefit of everybody in the neighborhood.

Seeing that no one else wished to speak, Chairman Rosekrans closed the public hearing.

Staff responded to questions and concerns from the hearing:

Ms. Sharp said a question from Mr. Capps was whether utilities would be buried and that the answer was yes if possible.

Ms. Sharp responded to a general procedural question by saying that a rezoning requires the public hearing process, but not all applications do.

Mr. Kapke said a rezoning proposal gave the Commission broad discretion to consider what's been presented by the applicant and the public and to decide what they thought to be significant. He said the decision to be made is whether the Commission thought the proposal was the highest and best use for the property. He added that a plan proposed within the current zoning would not grant the Commission the same latitude if it met the defined terms of the current zoning district regulations.

Mr. Kapke added that if the proposal varies from the Comp Plan, the Commission had broad discretion to approve the plan or defer to the Comp Plan. He pointed out that Council directed staff to look into updating and modernizing the Comp Plan. Relative to the Comp Plan, Mr. Kapke said the UDO involves fixed regulations which grant less discretion, and where the Commission's task is to determine whether the requirements are met. If so, he said, there is little discretion to issue a denial. He said that rezoning consideration grants the Commission the broadest discretion possible .

Chairman Rosekrans asked whether broad discretion or restrictions of the UDO was driving the Commission's consideration of the proposal.

Mr. Kapke said the applicability of the Comp Plan and considerations of highest and best use are the driving considerations.

Commissioner Armstrong said the last thing that should be built on the property is storage, and that he wanted to rezone the property in order to stop storage units. He asked if a vote to approve would accomplish this.

Mr. Kapke said that the PD zoning requested is the broadest the City can have, but that it is totally contingent with the plan which is approved. He said that if PD is approved with a residential component, an amendment is required to change the plan to storage units. A PD approved with

commercial uses which is then proposed for storage units would depend on the directions of UDO to determine if it is a sufficient change to warrant an amendment.

Commissioner Armstrong asked whether the City approving the PD as proposed would eliminate the possibility of storage units.

Mr. Kapke said it would eliminate the possibility only if a proposal for storage units was a significant enough change to require amendment to the plan. He added that if the developer wanted enough flexibility to allow for storage units, that he should not go for a PD zoning as requested.

Commissioner Armstrong asked whether architectural details proposed on this rezone would govern what could be approved under a Final Development Plan (hereinafter FDP.) In other words, he asked, was it reasonable that he could vote no on a FDP if the architectural details diminish compared to the PD.

Mr. Kapke said that if there is enough variation with the PD approved, a Commissioner could vote against the FDP.

Commissioner Armstrong said the current proposal includes a shuttle in order to address parking concerns; but if the shuttle is removed, he asked, would it be reasonable to vote no on the FDP.

Mr. Kapke said that it would be up to individual Commissioners to decide what was important on a plan, and that the Commission had some discretion with regard to the compatibility of an FDP to an approved PD. He added that the City may not have legislative control over certain elements, shuttle probably included, and that he was aware of no ordinance where a City could require a developer or anybody else to provide a shuttle.

Commissioner Howard asked if feasibility studies had been performed in advance of the proposal.

Mr. Staton said no feasibility studies were performed, but that their research suggests it would sell.

Commissioner Wepler asked what could be built under the current zoning.

Ms. Sharp said the CBS district would require a minimum 50 foot landscaped buffer from residential, but that the remainder could have any type of business use, including retail, funeral home, or storage units.

Commissioner Wepler asked whether anything short of manufacturing could be built in the CBS.

Ms. Sharp said the uses are broadly defined, except for warehousing or industrial.

Commissioner Wepler asked if a proposal would involve working with staff on the design.

Ms. Sharp said that any proposal under the current zoning would be an administrative consideration as to whether or not it met the technical standards of the district, and that there would not be as much latitude to deny an application that otherwise met the standards.

Commissioner Armstrong asked whether a building or buildings totaling over 10,000 square feet would come before the Commission.

Ms. Sharp said it would but that it would still require an administrative type of review.

Commissioner Personett asked whether staff believed the parking provided was adequate, and if

there were times of day when no parking stalls are available in downtown and areas adjacent.

Ms. Sharp said that during the day there are fewer stalls available in public parking, but that the proposal will allow for adequate parking on the site. She said the parking ratio is very high and the applicant believes the project will not utilize public parking.

Commissioner Personett asked whether the building height was 42' or 52'.

Ms. Sharp said that from grade the height is 42', not including the basement.

Mr. Ed Korff (applicant architect) confirmed that the 10 feet shown below grade is not visible from the sidewalk, but below grade.

Commissioner Personett said that economic viability is a big topic, and asked how much weight the Commission should give to monetary considerations.

Mr. Kapke said the Commission's discretion left such considerations to the judgement of individual Commissioners. He added that a general rule is that the City is not in that business of economic forecasting unless the City is involved in incentives. If that were the case, he said the Commission would be an entity involved, but economics should not be a principle issue generally.

Chairman Rosekrans asked whether the project was eligible for incentives.

Ms. Karan Johnson said that the project is within the 353 tax abatement area and is eligible for abatement. She explained that with any project approved for 353, the plan approved by City Council is attached to the abatement. She said that no feasibility studies are done for a 353, and that the main focus is monetary investment or jobs created. She added that the investment is still primarily from the private side, so it's in the best interest of the developer that the project succeeds.

Chairman Rosekrans asked for examples of the City's oversight in the project.

Ms. Johnson said that if the project isn't built according to approved plans, the tax abatement could be pulled back.

Chairman Rosekrans asked whether the age restriction could be made part of the requirements for a 353.

Ms. Johnson said it could be a requirement, and compared the situation to requirements for job creation for commercial and industrial developments. She said the City's regulations could be applied in a similar fashion with the age restriction, including the requirement that the developer provide rent receipts or certifications from unit owners or renters. She said the City has the ability with incentives to audit projects for compliance in terms of jobs, age, or rent, and that such an audit report is required to certify compliance with the 353. She said that what's promised and approved has to match reality, and that the Building Department can issue Stop Work order if what's being constructed doesn't match the approved plan.

Commissioner Personett said he could envision a scenario where some units are compliant and some are not, and asked whether units would be assessed individually.

Ms. Johnson said that whether the units are owned or rented, the City doesn't want vacant units. She said that a certain level of rent dictates a certain level of upkeep, and the City would be able to regulate the age restriction through the management or ownership of the building.

Chairman Rosekrans asked if the developer was required to apply for a 353 abatement.

Ms. Johnson said that was not a requirement.

Commissioner Personett asked staff to touch on the rights of the private property owner.

Mr. Kapke said that, as a general rule, a property owner has absolute of control over ownership of the property. He said there are situations where rules and regulations are applied either publically through zoning or PD, or privately through covenants. He said that public restrictions depend on the ability of the City to regulate, and that there are some things they can and can't regulate. He said that no one can restrict sales based on race, religion, and other factors under the Fair Housing Act, but that a property owner could restrict sale based on age or other factors.

Mr. Kapke explained that private restrictions are up to the owner/developer initially, and can go above and beyond City requirements, but not FHA. He said that a requirement for private ownership or prohibition of rental or tenants below 50 was possibly enforceable. He said that all properties effectively start with a clean slate, and that then restrictions are piled on. He added that these are piled on equally to a certain extent for all properties, to which are added the reasonable restrictions of PD, most of which are proposed by the developer.

Commissioner Wepler asked if the Commission would see a future plan for the property that dealt with aesthetic considerations not shown in the PD.

Ms. Sharp said that if the plan does go to an FDP that staff doesn't anticipate much change from the current application. She said staff expected what was presented and approved by Council with the PD would be substantial similar in an FDP.

Mr. Kapke said the PD carries more discretion and that if an FDP is close to the PD then much discretion for approval or denial is gone.

Commissioner Wepler asked staff to address the impact of 45 units, and whether the concern comes from the change of use. He asked if staff was comfortable with recommended 45 units.

Ms. Sharp said the property lies in a transitional area, close to the Square, and is compatible with many planning documents and policies. She added that the Downtown Task Force recommendations support the concept, along with staff. She pointed out that the project front Mississippi and Prairie Streets, not Franklin, and that the nature of those streets is mixed and transitional. She said the project is close to services, includes a large amount of open space, 1.5 parking stalls per unit, and is supportable from the perspective of staff.

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 Armstrong seconded the motion.

Commissioner Personett said he wished the case wasn't so divisive, and the he felt the discussion

was getting more emotional and the sides further apart. He said that the highest and best use for the property is a matter of opinion, that the Commission has broad discretion, and that the Comp Plan does not handcuff consideration of the proposal. He said the impact of the development to the neighbors depends on who you talk to. He added that there appear to be adequate facilities to serve the property and that he would be voting in favor because it's a good use for the property.

Commissioner Armstrong said he had voted no for the original 80 unit proposal, but yes on last two. He said that tensions between Comp Plan and Downtown Master Plan that staff has pointed out indicate that the Commission should move the application up to elected officials, and that he would vote yes.

Commissioner Armstrong added that almost everybody had said they'd prefer residences, and that the current zoning is a danger to that possibility. He said he supports rezoning to residences and away from commercial.

Commissioner Armstrong concluded by saying the property could become a gateway to the Square with interesting features that promote a sense of arrival to a special area. He pointed out that arched windows, cement siding, and interesting rooflines contribute to this aesthetic and sense of arrival. He said that if the FDP turns out to be different, he would happily vote no. He said continues to have concerns about parking, and that the double slot behind the garages wasn't reasonable and shouldn't count. He said he expects this issue to be worked out in FDP phase.

Commissioner Holt said he is in favor of this kind of project, though he is concerned about density. He said the opposition presented good facts that were slanted to one side, and he encouraged Mr. Staton to do research to support his claims and to provide a rebuttal to the opponents. He said he was even more concerned about density after hearing the neighbors' presentation, but that he'd reconciled his concerns about parking. He said the application needs to go to Council and so he would vote yes with the caveat about high density.

Commissioner Howard said the developer had tried to make concessions but that she didn't think they were sufficient. She said she would again vote to deny the project. She indicated her concerns were density, parking, and the sensitivity of a very important piece of property. She said she also worried about the economically viability of the project.

Commissioner Wepler said he is not concerned about parking, because there is street parking available, and downtowns function with a mixture of parking. He said the density factor is a little concerning, but that his is not as concerned as Commissioner Holt. He said he's confident staff has taken all this into consideration. He added that he voted no the first time (80 units) but yes to subsequent proposals He said the only changes to the plan since the January presentation were positive and that he would vote yes.

Commissioner Reinier said he would vote yes. He said that he agreed with Dr. Armstrong and Mr. Personett that the proposal was the highest and best use of the property.

Chairman Rosekrans said that, as a human resources professional, he always looked for best fit in a candidate, but added that he'd never come across the perfect fit. He said the proposed project is not perfect, and that he'd voted against it twice. He said that what made voting yes difficult is the type of housing the proposal represents, which he said was greatly needed in Liberty. He said the property does lie in a transitional area and also that he recognized an added compromise has been made by the applicant. But, he said, the density still isn't quite acceptable, even though parking is a little less of a concern. He said he would continue with no vote but that he wanted to let the process work and that he believed elected officials should decide the fate of the project.

Vote: Motion passed 6-2

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

No: Commissioners Howard, Rosekrans

Abstain: None

Chairman Rosekrans informed the audience this case will be heard by City Council on Monday, March 23, at 7:00 p.m. in the Council Chambers.

VI. Case 15-04R&PDP: Rezone and Preliminary Development Plan for William Jewell College property located north of Doniphan St and west of Lightburne St [Public Hearing]

Commissioner Armstrong recused himself and left the meeting.

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

Mr. Jones presented the proposed rezone request as described in the staff report, including the stipulation that the zoning be changed if the College sells the property in the future.

Chairman Rosekrans asked if there were any questions for staff.

Commissioner Personett asked what is allowed under College zoning.

Mr. Jones said there were no prescribed standards but that the allowance was not carte blanche, since each building was required to meet specific building and fire code as well other safety concerns and the requirements of the UDO applicable to all zoning districts. Mr. Jones referenced the Pryor Learning Center constructed in 2013 as an example of a building approved and constructed in land zoned for College use.

Mr. Jones said the current proposal was intended to align the zoning of built property north of Doniphan Street with the rest of the College, and that if the property were currently vacant, the College would be required to submit a more extensive Preliminary Development Plan, to which future development would be tied.

Chairman Rosekrans pointed out a residence in the middle of the property, and asked how it would be affected with the addition of the bleachers and restroom.

Mr. Jones said that the PDP portion of the proposal included a 1,000 square foot restroom and concessions building and paving the existing gravel parking lot.

Ron Mullinex, 814 Blueberry Lane, said Mr. Jones did a nice job of explaining the situation and that he, along with Jason Rombalski with William Jewell were available to answer any questions.

Chairman Rosekrans asked if there were any questions for the applicant or staff. Seeing none, he opened the public hearing.

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

Commissioner Holt moved to approve with the stipulation as presented by staff. Commissioner Wepler seconded the motion.

The motion carried 7-0-1.

Chairman Rosekrans informed the audience this case will be heard by City Council on Monday, March 23, 2015 at 7:00 p.m. in the Council Chambers.

Commissioner Armstrong returned to the meeting.

VII. Case 15-05PDP-A: Final Development Plan amendment to Whitehall Addition to allow construction of a single-family dwelling one 3.78 acre lot on White Oak Lane [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 Plan Amendment as described in the staff report including proposed variance for riparian and floodplain variance.

Mr. Findlay described the riparian buffer ordinance, streamside buffer zone and riparian edge buffer zone, and the nature of the variance into the riparian edge buffer as requested by the applicant.

Chairman Rosekrans asked if there were any questions for staff.

Commissioner Reinier asked if the 3.78 acres included the bulb out.

Ms. Sharp said it included the entire property, part of which was to be dedicated as right of way under the prior PDP and plat. She said the bulb out is only seen on paper.

Commissioner Armstrong asked for clarification on the new FEMA maps.

Mr. Findlay said the proposed floodplain replaces studies done in the 80s, and is part of a revision done for the entire state. He explained that many floodplain areas are shrinking on the new maps due to more accurate techniques. He said the expected floodplain is shown on the PDP and should become official August 3, 2015.

Commissioner Personett asked about the two buildable areas on the PDP.

Ms. Sharp said the applicant intended to build a detached garage in the upper area. A PD application requires something that shows buildable area in the form of a plan.

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

John Davis, 110 N Stewart Ct, said he and his wife wanted to build a single-family home on the property, which was currently encumbered by the existing floodplain. He said that a collapsed train trestle caused the creek to back up onto the property when the existing floodplain was mapped, and that the trestle since been removed. He said he wanted to make certain the home was situated correctly, with a minimum 2 feet above proposed flood boundary.

Commissioner Holt asked what the applicant planned for the riparian area.

Mr. Davis said a large oak tree sits within the area, adjacent to which he planned to build an L-shaped house with a walk-out basement. He said the buildable area indicated on the plan provides

some latitude on the final location of house. He explained that the buildable area encroaches 36 feet into the 50 foot buffer and constituted the extent of the riparian buffer variance.

Chairman Rosekrans asked if there were any questions for the applicant or staff. Seeing none, he asked for a motion.

Commissioner Wepler moved to approve with the variances for riparian buffer and floodplain buffer. Commissioner Holt seconded.

The motion carried 8-0.

Chairman Rosekrans informed the audience this case will be heard by City Council on Monday, March 23, 2015 at 7:00 p.m. in the Council Chambers.

VIII. Case 15-06FP: Final Plat of Whitehall Acres, 1st Plat

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

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

Commissioner Personett asked for clarification of the on-site sewer extension.

Mr. Findlay described a manhole on the site which staff investigated and found to be either a private facility or a public facility which was never activated into the public system. He said the extension is not feasible for use, and that the applicant has the option to connect a new extension to other facilities to the east and north. He added that the existing facility will be abandoned.

Mr. Davis pointed out a conservation easement which was added to the plat to protect sensitive areas of the site for posterity.

Chairman Rosekrans asked if there were any questions for the applicant or staff. Seeing none, he asked for a motion.

Commissioner Holt moved to approve. Commissioner Howard seconded.

The motion carried 8-0.

Chairman Rosekrans informed the audience this case will be heard by City Council on Monday, March 23, 2015 at 7:00 p.m. in the Council Chambers.

IX. Case 15-08PDP-A: Amendment to the Preliminary Development Plan for North Haven Center at 421 N 291 Highway

Mr. Jones presented the proposed Preliminary Development Plan request as described in the staff report.

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

Art Aiken, 405 S Leonard (applicant representative) said he and Roger Strickland of Attic Storage were available to discuss the application if needed.

Chairman Rosekrans asked if there were any questions for the applicant or staff. Seeing none, he asked for a motion.

Commissioner Wepler moved to approve. Commissioner Waterman seconded.

The motion carried 7-0-1. Commissioner Holt abstained.

Chairman Rosekrans informed the audience this case will be heard by City Council on Monday, March 23, 2015 at 7:00 p.m. in the Council Chambers.

X. Case 15-09PP: Preliminary Plat for replat of North Haven Estates, lots 26-30 (North Haven Center and Attic Storage)

Mr. Jones presented the proposed Preliminary Plat request as described in the staff report.

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

Chairman Rosekrans asked if there were any questions for the applicant or staff. Seeing none, he asked for a motion.

Commissioner Waterman moved to approve. Commissioner Reinier seconded.

The motion carried 7-0-1. Commissioner Holt abstained.

Chairman Rosekrans informed the audience this case will be heard by City Council on Monday, March 23, 2015 at 7:00 p.m. in the Council Chambers.

VII. Public Comments

There were no public comments.

VIII. Other Business

Ms. Sharp went over upcoming planning cases which may come forward for the next meeting, which include a proposed development at Liberty Hospital, a new phase of Clay Meadows subdivision, the event center at the old St. James Church on Water, and SUP applications for fireworks tents and a shaved ice stand.

IX. Adjournment

Chairman Rosekrans adjourned the meeting at 10:25pm.

X. Future Meeting Schedule

The next regular session is scheduled for Tuesday, April 14, 2015 at 7:00 p.m.