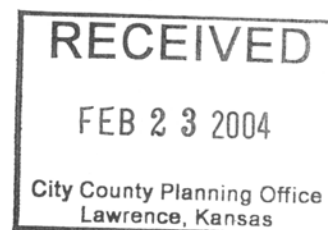


SOUTHWIND CAPITAL, LLC

Item 13



February 23, 2004

David Burress, Chairman
Ernest Angino
Grant Eichhorn
John Haase
Tom Jennings
Bonnie Johnson
Dennis Lawson
Terry Riordan
Myles Schachter
Roger Schenewerk

Re: Planning Commission Agenda, February 25, 2004
Item No. 13
Downzoning of NW corner, 6th & Wakarusa

Dear Chairman Burress & Planning Commissioners:

I'm writing to provide an update to my January 26, 2004 letter on this agenda item, which was deferred from your January meeting. We are requesting that this item be indefinitely deferred until the litigation has been resolved.

I ask that you keep the following in mind in consideration of this item:

- With a Final Development Plan in place and a user applying for a building permit, this City Commission-initiated downzoning is unprecedented in Lawrence history.
- The City Commission is asking you to overturn zoning that received a 9-0 Planning Commission approval. There is no evidence that there has been any change in circumstances to warrant a downzoning of our property.

Background

In September 2003, the Planning Commission made revisions to the Northwest Area Plan that -- if similar action is taken on this item -- will constitute a downzoning.

Even with a condition that it is only effective if our Development Plan were to go away, we are adamantly opposed to such action. We did not purchase this property until we had Planning Commission and City Commission approval of this Development Plan *and* zoning -- zoning approval that *did not* have the size and use restrictions which are being proposed by the City Commission herein. We relied wholly on this exact zoning to buy the property and make the sizable investment that we did. Passage of this rezoning would constitute a change in the rules, without *any* change in the underlying conditions to warrant an alteration to the zoning in place.

This item, placed on the agenda by the City Commission, is an attempt by the City Commission to disguise legal maneuvering as a planning matter. If it was truly a planning matter, why did the act of Wal-Mart filing a building permit application trigger the initiation of this downzoning as well as other acts (revised Area Plan, building permit moratorium) on the part of the City Commission?

Litigation Update

The District Court denied a City motion in late January to stop discovery in the case. Depositions of four members of City staff will take place in the next few weeks.

Since the September Planning Commission meeting, appeals of the BZA decisions have been filed by 6Wak and Wal-Mart. 6Wak has also filed separate lawsuits in response to the City's assessments of Congressional Drive and Overland Drive road costs tied to the City's failure to honor 6Wak's Development Plan that the obligation for the road assessments were part of.

Overview

This downzoning request is the latest example of the City's on-going bad faith in this matter.

First, the City, in an attempt to give the City Commission time to pass a building permit moratorium and initiate this downzoning, chose not to follow its own written regulations in responding to 6Wak and Wal-Mart's building permit applications. Second, the City was unsuccessful in an attempt to shield certain staff members from providing explanations (in depositions) as to why the building permit applications were not granted. A third example is the City's blatant disregard for the litigation process by initiating the downzoning of our property instead of letting the matter move as expeditiously as possible through the judicial system. This downzoning matter has caused involvement from the District Court as well as expenditures of legal costs by both sides.

Request

We recognize that this issue has been forced upon the Planning Commission by the City Commission. Dave Corliss indicated in a January 26, 2004 letter to me that the Planning

Commission has a "required task" of forwarding a recommendation to the City Commission.

A recommendation of deferral is not only taking an action and meeting its "required task", it is acting in the best interest of the citizens of Lawrence by not creating the need for litigation necessary to protect our interests. A passage of this downzoning will expand the scope of litigation and will continue to increase the price tag of this matter to the citizens of Lawrence.

The intent of the City Commission action is to make Wal-Mart go away. Wal-Mart, of course, is not going away, and the result is instead a waste of City resources -- Staff, Planning Commission and, of course, taxpayer-borne legal bills.

Regardless of your opinion on the merits or lack thereof of downzoning our property, the only reasonable and equitable action to take is to defer this matter until after the litigation has been resolved. If circumstances warrant, we would be happy to debate the merits of a change in zoning at such time as the litigation has been resolved.

The Planning Commission is in place to serve the interests of the citizens of Lawrence, not the interests of the City Commission. The interests of the public are best served by deferring this matter so the litigation can move through the judicial process as quickly as possible.

Thank you for your consideration.

Sincerely,

6WAK LAND INVESTMENTS, LLC

A handwritten signature in dark ink, appearing to read "Bill Newsome", with a long horizontal flourish extending to the right.

William R. Newsome

Memo

To: Planning Commission
From: Planning Staff
CC:
Date: February 25, 2004
Re: Deferral requests/recommendations

Staff has gathered the following input regarding the property owner deferral requests:

- The City Commission indicated at their Tuesday, February 24, 2004 meeting that, as the applicant in Items 10, 13, 14 and 15, they would like the Planning Commission to proceed with all Items as presented by Staff.
- Regarding Items 7A & 7B, Stonegate IV Addition, the applicant's representative stated a preference for deferral over denial, but would like the opportunity to speak to the Commission prior to deferral action.

Since these Items are on the Consent Agenda, they would have to be pulled from the Consent Agenda in order to allow the requested presentation time. Staff recommends a time limit be set for this presentation if it is allowed.

If the Commission wishes simply to defer without the presentation, the Items may be left on the Consent Agenda with Staff's recommendation for deferral.

- Regarding Item 10, Alvamar Realty (property owner) stated to Staff that it would like to retain the deferral request for Item 10 and a representative would be present to provide information about the continued request.
- Regarding Items 14 & 15, the property owner's representative had requested time to present a concept plan for the subject areas. Staff has not reviewed this plan as it has not been formally submitted.
- It should be noted that allowing presentation of information that has not been reviewed by Staff is contrary to the recently adopted revised Planning Commission By-Laws. (Re: Items 7, 10, 14 & 15)
- The Commission has a precedent of dealing with ALL deferral requests prior to the Consent Agenda for the benefit of the public.