

Bobbie Walthall

From: Jonathan Douglass
Sent: Monday, March 09, 2009 5:12 PM
To: Bobbie Walthall
Subject: FW: Misquote in 2-24-09 City Commission Minutes

From: Robert Lichtwardt [mailto:licht@ku.edu]
Sent: Saturday, March 07, 2009 10:32 AM
To: David L. Corliss
Cc: Carrie Lindsey; Black, Alan
Subject: Misquote in 2-24-09 City Commission Minutes

To David Corliss, City Manager

David, I apologize for bothering you with this issue but I don't know whom to contact about a wording correction in the City Commission 2-24-09 Minutes. There is one critical wording change needed to clarify the League testimony. It is shown underlined in blue in the second paragraph excerpted below:

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City Commission Minutes

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She said the problem with this rezoning was a use category, in the district, that was being adopted for this rezoning case. There were also two conditions that excluded two uses which had happened with staff and the Planning Commission for several years. She said they could not figure out how staff would handle the property once the property was sold and the use was supposedly reverted back to conditional zoning. She said what they realized, in reading the Planning Commission minutes, was staff's interpretation that this was a permanent change which changed the zoning district without proper procedure. This was actually a new district that was being created when staff recommended a condition on a zoning district. She said there was concern that staff was not following process.

The word should have read "original" zoning, meaning original conventional zoning. The use of the word "conditional" here is a misstatement [I was probably not heard correctly] and changes the whole meaning of the testimony.

Explanation: the one zoning provision that allows conditioning the zoning to eliminate uses is the Planned Development Overlay District (and the former Planned Unit Development Districts). The Special Use Permitting process allows adding a specific use to a zoning district not ordinarily permitted and attaching conditions to this use. In the first case both the zoning and the uses can be conditioned. In the second case it seems that mainly the use or use category is conditioned.

In the testimony of the lawyer from Overland Park supporting conditioning the CN1 District limiting it to the Krause Restaurant, he said that Conditional Zoning was legal in Kansas. When questioned further, he said "conditional zoning" was limited to Planned Unit Developments or Special Use Permits.

The League testimony would be more clear if it read: "She said the problem with this rezoning was a use category in the district that was being adopted for this rezoning case. There were two conditions that excluded two uses [in the Zoning Ordinance adopting the District on this property]. Excluding uses from a zoning district had happened with staff and the Planning Commission for several years. She said they could not figure out how staff would handle the property once the property was sold to someone else and the use was supposedly reverted back to its original zoning district. She said what they realized, in reading the Planning Commission minutes, was staff's interpretation that this was a permanent change which changed the zoning district, and without following proper procedure. This was actually a new district that was being created when staff recommended a condition on a zoning district that eliminated uses. She said there was concern that staff was not following the proper process."

Thank you.

3/9/2009

