

**Receive request from Inverness Park, LP, to reconsider the denial of the rezoning request (Z-7-11-09) to rezone approximately 10.97 acres, located on the SE corner of Inverness and Clinton Parkway, 4300 W. 24<sup>th</sup> Street, from RSO (Single-Dwelling Residential Office) to RM15 (Multi-Dwelling Residential). This item was originally heard by the City Commission on 10/06/09.**

Scott McCullough, Planning and Development Services Director, said this request included consideration of voting to rescind the October 6<sup>th</sup> motion which denied the zoning request. Procedurally, any of the City Commissioners could move to rescind the prior motion and the rezoning application could be reopened with a majority vote of the City Commission. If the rezoning request was reopened, staff recommended the City Commission move and vote to return this item to the Planning Commission for additional consideration of the issues. Staff understood a meeting with the neighbors had occurred and staff had notified neighbors of this evening meeting to provide input on the consideration of rescinding the City Commission's previous motion. The applicant's attorney desired to make comments and share information with the City Commission. Staff recommended the City Commission take public comment before considering moving and voting on this item.

Vice Mayor Amyx said if a decision was made not to have this item reconsidered, that decision would raise the issue of the time it took to file another application for Planning Commission consideration and ultimately, consideration by City Commission.

McCullough said the code required a 12 month wait unless there was a substantial change made to the application, if the former decision stood.

Vice Mayor Amyx said if development could occur under RSO zoning district, on this particular site.

McCullough said correct.

Cecil Kingsley, BG Consultants, said the public meeting was held with the intention of understanding whether or not there was a potential for consensus among the residents in the area and those interested in the development of the property. He said the meeting was over two hours in length and those present were knowledgeable about the site and the action that had been taken, after an hour of conversation, they tried to develop an understanding of what the potential for consensus on this site would be with the existing site plan.

As a result of that discussion, the laundry and office building would be moved from the corner of Inverness and 24<sup>th</sup> and a landscape and no build area in that corner would be created. In addition, they agreed a color rendering of that corner would be necessary, in order for people to understand what it would look like. Obviously, that work had not taken place and the process for engineering and architecture would be that if sending it back to the Planning Commission with instructions, then the work would be completed. He said there would be a procedure where the City Commission would conduct a process for public comment and after the City's process BG Consultants would have another meeting, prior to the submittals. A landscape plan would be included and a list of materials on the elevation so the public could see the construction elements of those buildings. The intention was to have luxury casitas with vaulted ceilings and a number of upgrades to the construction process.

Kingsley said there had also been questions regarding limiting the marketing banners on the corner and limiting the number of occupants per unit, and he believed they could limit the number of adult occupants per unit, but it spoke more to the covenant side rather than engineering. He said they wanted to commit to one story units, with one bedroom and other areas on the site plan.

Mark Anderson, Barber Emerson, representing Inverness Park L.P., said he was out of state on business and could not attend the neighborhood meeting, but wished he could have asked for this matter to be deferred. The matter was voted upon and the zoning application was denied. He said they were asking the City Commission for a motion to rescind the denial of the zoning, so they could work with City Planning Staff and the Planning Commission incorporating the neighbors concerns and conditions to address and ultimately,

come back to City Commission with another recommendation from the Planning Staff. This zoning application had an 8-1 recommendation for approval from the Planning Commission.

Anderson said there were six conditions of concern that came out of the meetings which were:

1. The applicant provided a landscape plan for the entire development, prepared by a licensed landscape architect;
2. The office/laundry building shown on the corner of 24<sup>th</sup> Place & Inverness be relocated across the street to the east;
3. The applicant's engineers provide a rendering or concept drawing illustrating that corner, showing the office/laundry building was removed and how it would be replaced by a landscape area;
4. The applicant would refrain from placing advertising banners at that corner;
5. The building elevations, prepared by BG Consultants, would label all exterior building materials; and,
6. The applicant agreed to limit the number of adult occupants in the development to 2 adults per unit. However, under federal HUD regulations it violated federal law to limit the number of family members under the age of 18.

In addition to the above six conditions, the applicant was proposing four more conditions. Those conditions were that:

1. Each building within the development shall be limited to one story above grade.
2. Each building unit shall be limited to one bedroom maximum.
3. The development shall be limited to 161 units maximum.
4. The City Commission place a condition that would require the applicant to record a declaration of covenants and restrictions on the entire development and that the zoning would not be allowed to become final, until a filed, stamped, and recorded declaration of covenants and restrictions were presented, to the City Commission, that prohibited the construction of any permanent structure on the corner of 24<sup>th</sup> Place & Inverness, would restrict the use of the property to the maximum 161 one story, single bedroom residential units, and the declaration identified the City of Lawrence as a third party beneficiary, such that from a legal perspective this declaration could not be modified, amended or terminated without the City's approval.

He said these conditions were an assurance to the City Commission and neighborhood that this particular site plan was going to be built, if the rezoning was approved.

Commissioner Johnson said prior to the zoning to file a declaration of covenants and restrictions, if that could reference a site plan.

Anderson said yes, those conditions could be drafted any way the City Commission desired. He said a site plan could also be attached as an exhibit, at the Planning Commission level, and it could be stated that substantial compliance was needed with that exhibit.

Mayor Chestnut said what the current zoning for RSO density was.

McCullough said a maximum of 15 units per acres.

Mayor Chestnut said what the translation was of the rendering of 161 units.

Anderson said it was 14.6 units.

Mayor Chestnut said at 35 feet, with RSO that was probably 2 or 3 stories.

McCullough said it was 35 feet height maximum in RSO and 45 feet height in RM15 and depended on the architecture.

Mayor Chestnut asked if three stories could be achieved with 35 feet.

McCullough said yes, but more common to go higher in a multi-dwelling type structure.

Mayor Chestnut said that he concluded that more density could be packed in that area with the current zoning.

McCullough said he did not know if more density could be packed in that area, because it depended on what was being defined as “density”. He said it was somewhat a variable. The project, as presented, was considered low density in terms of population and was more typical of a multi-residential project which would have multiple net terms.

Commissioner Dever said if McCullough could talk about the number of units that were allowed in RS15 zoning.

McCullough said that was how they arrived at the density cap. He said 15 units per acre would be the same in both districts, it was an exercise of design and the requirements of the RSO that required each unit be on an “individual lot” versus a “design as presented” where the lot stayed as one large lot and then multi dwelling structures on that lot with shared driveways and parking areas, it was a design exercise versus a dwelling unit count.

Commissioner Dever said theoretically, a single building 45 feet high with what ever would be appropriate on that individual parcel or unit, but there would be no direct correlation between the number of people that could live in that space.

McCullough said not in terms of how density was calculated.

Mayor Chestnut called for public comment.

Jamie Hulse, Lawrence, said she wanted to thank City staff for the increased perimeters in notification for reconsideration of this rezoning request which was not required. She thanked Cecil Kingsley and City Commissioner Johnson for reaching out to the neighborhood and offering their assistance to help remedy this situation.

The biggest concern was the legality of tying this site plan to the rezoning because it could be a much larger project. She said a neighbor who was an attorney involved in land development projects in Kansas City questioned if the rezoning was deed restricted and was legal.

Lori Sinclair, resident in the proposed rezoning area, said landscaping was important and when an area was developed, the first thing eliminated was the landscaping. She said there was no landscaping next to the southeast corner of Inverness and Clinton Parkway.

Kevin Wickliffe, resident in the proposed rezoning area, said even if the deed restriction was going to go through, he asked what the mechanism were to enforce and if the project defaulted, he asked if the City would sue the developer. He said everyone needed to understand the extent the City would be committed to being that 3<sup>rd</sup> party beneficiary.

Mayor Chestnut said the City’s legal staff felt comfortable with the structure that was designed for this dedication. He said the City would be a 3<sup>rd</sup> party beneficiary and the City was within its rights. The City had some compliance issues on landscaping and other issues. He said landscaping, quite often, took time depending on the weather which was always a challenge. He said the City Commission was fairly adamant about following up and driving by project to make sure there was no erosion.

The issue with landscaping was part of the site plan, down to what type of trees; where those trees would be placed; and height. If there were any modifications it would go through an administrative process and consult with the neighbors.

McCullough said yes and the site plan was one of staff's mechanisms for enforcement. There were a series of triggers to force compliance, one being the occupancy permits including landscaping. There were times, due to weather that staff would allow occupancy and then follow up with landscaping when the weather allowed landscaping to be installed. This was an area where a lot of effort had been put forth for the median in the road to the treatment of the property to the south with the apartment complex. It was a good thing to look at the issues and bolster the landscaping along that area for the neighbors and for the benefit for the corridor itself.

Commissioner Johnson said he appreciated the opportunity to go the neighborhood meeting and was impressed with the neighbors coming to the table to discuss issues.

He said the biggest concern and his reason for reconsideration of the rezoning was the uncertainty of rezoning to RM15. He asked what was to keep something else from being built than what was represented. He said the neighborhood demonstrated a good process to receive a win out of this issue.

He said with what the developer was proposing the traffic and number of people would be less than what could ultimately be built in that area. He said it also gave the neighborhood the ability to pick quality materials for quality landscaping.

Vice Mayor Amyx asked if the declaration of covenants ran with the property or the ownership of the property.

David Corliss, City Manager, said the covenants ran with the property.

Vice Mayor Amyx asked if the applicant was the builder and developer of the property.

Corliss said yes.

Vice Mayor Amyx asked if there were any situations in the past where that was a problem because the City Commission was depending on the developer's word.

Corliss said it was important to condition the zoning on the appropriate site restrictions. He said there was an additional level of assurance, particularly because one of the covenants was a no-build requirement with some of that property and that was appropriate for the deed restriction which provided an additional vehicle and had to be enforced through the court in a lawsuit. Staff typically enforced zoning regulations generally through local procedures as far as citation and adjudication in municipal court.

Vice Mayor Amyx said if the Commission were to consider the change in the zoning as requested along with safeguards in place, this was the only time it could be done along with the declaration of covenants and restrictions on this property. He said he was fine with this up to Anderson's last comment regarding the applicant being mindful there was no point in returning this matter to the Planning Commission. He said there was no genuine support for this project by the City Commission and the density that would be placed on this property. He said he understood the density was the same for the two different zonings the question was what it would look like under the RSO zoning and the RM15 zoning.

Commissioner Dever said when this rezoning was first discussed the Commission had concerns over making this change. He said the applicant did not own the property and the City Commission was going to make those changes without any consideration as to who might end up having this property and what might be constructed in that area. He said with making this change there were things that could occur that would make the area unsightly and a more difficult site for neighbors to co-exist with. He said the City Commission needed to discuss ownership in tying some of those issues to actual ownership. He said that would lead the City Commission to the next step where they could encumber this property with those covenants and have control over what the area would look like. To just rescind a rezoning without identifying who would the owner would ultimately be, he was uncomfortable. The initial discussion indicated they would put something in writing that the rezoning would be contingent on ownership of the property.

Overall, this was a rare opportunity for the neighbors of an undeveloped piece of property to shape the future look and feel of that property. Any time moving into a property near an undeveloped piece of land, a person would run the risk of being something that was not wanted. In this case, the neighbors stepped forward and made some concessions to shape the way the area looked. If that was something to protect the neighborhood, then that would be a positive for agreeing to rescind the rezoning.

Commissioner Cromwell said in October, the City Commission repeatedly discussed how the site plan looked great and could not possibly tie the zoning to the site plan. He said it was asked clearly several times the zoning was tied to the property and not to a particular site plan.

McCullough said the application being considered at that time did not include the protections the development code had the opportunity to use such as the Planned Development Overlay for example which gave staff the vehicle to tie site plans to zoning districts. He said he did not recall the exact discussion, but as presented staff was talking about the fact that the site plan was administrative and was a normal site plan process. This was a straight rezoning request with no planned development overlay, no conditional zoning tied to it. It came to the City Commission with a recommendation from staff and the Planning Commission with that opened zoning, but there were ways to tie site plans to zoning, but there was no healthy discussion at that time, because the application did not include any of those items.

Mayor Chestnut said the City Commission considered situations on industrial zoning where the use table was taken and taken certain things out to make it conditional. In other words, the zoning was approved, but those things were restricted. He said certainly the City Commission was not setting any precedent by the fairly conditional rezoning, but the City had rezonings where conditions were placed on the rezonings under negotiations between the applicant and a number of times the stakeholder and neighbors where concerns were expressed, but he did not know if that process took place before the City Commission heard this matter in October. He said with a fairly sizable majority on the Planning Commission approving the rezoning with staff recommendation, notice was brought up and the neighbors caught up in October.

Commissioner Cromwell said the other question was reassurance from staff that those restrictions were doable. He said there was a good level of confidence that with restrictions there was some amount of control and the City would be receiving what they were buying.

Corliss said staff articulation was they believed they could condition the zoning with reasonable condition based on a site plan. There was not a lot of history of being either a participants or enforcers of restrictive covenants. To some extent the declarations in the restrictive covenants were belt and suspenders. He said there was the zoning in place with the site plan restrictions and staff would enforce conditions of zoning on the site plan. In addition, the proposal was to have restrictive covenant on the property that ran with the property to limit some of those uses and staff could advise the City Commission on its appropriateness. Staff had a comfort level in conditioning site plans, but conditions were not brought up with every zoning that came before the City Commission, particularly if it was not proposed by the Planning Commission, the applicant, or staff. The legal restriction was the reasonableness of the restrictions. He said Anderson pointed out the issue of familial occupancy and those types of things.

Anderson said the City Commission questioned the ownership in prior discussion, but wanted the Commission to understand that if the City Commission was so inclined, the applicant would be willing to revise the contract of purchase of the property to expressly provide the contract that the requested rezoning could not become final unless or until the applicant removed all contingencies to close under the contract.

Commissioner Dever said that was his reason for bringing this issue up, because no information was given about the owner.

Commissioner Cromwell said the option was to send this issue back to planning and continue the discussions that were occurring between the neighbors and developer. It sounded like a serious good faith effort was occurring between the neighbors and the developer and that engagement should be encouraged to achieve a consensus. He said the City Commission needed to analyze the merits of the final project and zoning.

Mayor Chestnut said he agreed with Commissioner Johnson in that the challenge was always trying to develop a consensus on what direction to take which took effort and organization. The outcome, as far as referring this rezoning back, was a good step in seeing if the public process worked.

Vice Mayor Amyx said there was an opportunity to have a restricted residential development on this particular corner. He said his concerns were with the discussions that took place in October. Again, this was the only time the City Commission could place restrictions on the appearance of that development because there was zoning on that property.

**Moved by Dever, seconded by Johnson,** to reconsider the October 6, 2009 denial of rezoning request Z-7-11-09 and refer the request back to the Planning Commission for consideration of conditional zoning, based on restrictions contained in the December 15, 2009, letter from Mark Anderson, Barber Emerson, representing Inverness Park L.P.; and that the contract for purchase of the property be revised to provide that the rezoning not be final unless and until the applicant has removed all contingencies to close under the contract; and, that the site plan, as finalized, be attached to and made a condition of the rezoning. Aye: Chestnut, Cromwell, Dever, and Johnson. Nay: Amyx. Motion carried.