

ITEM NO. 8 SPECIAL USE PERMIT; RUNAWAY PONY BED & BREAKFAST; 603 TENNESSEE ST (JSC)

SUP-14-00049: Consider a Special Use Permit to continue the bed and breakfast use of the property as Runaway Pony Bed & Breakfast, located at 603 Tennessee St. Submitted by Rainbow Works LLC, property owner of record. *Deferred by Planning Commission on 4/21/14.*

STAFF PRESENTATION

Mr. Jeff Crick presented the item.

APPLICANT PRESENTATION

Ms. Serina Hearn, Rainbow Works LLC, she read the letter she submitted:

The Runaway Pony B&B, at the corner of two main arterial streets, is across the road from Buford park. Public parking for 20 cars is less than a hundred feet away and takes 52 seconds to walk. 603 Tennessee is my primary residence and I have been operating the B&B under full legal rights and according to all ordinances and safety codes. Nearly seven years of my life have gone into the resurrection of J.G. Sands home from a dump to what is now a proud landmark of Lawrence's history. I have enjoyed my time living at 603, and being able to provide a safe, quiet and welcoming space to my guests. We have never had any reports of noise or disturbance. It seemed that it would be a simple routine procedure to renew the SUP to enable me to keep operating my home as a bed and breakfast. However, this has not been the case. When I first applied for permission to run a B&B in 09 it was for the FULL use. Despite the precedent set by Article 5 – Adaptive Reuse of Designated Historic Property Use/page 5 paragraph 20-504 No. 3, which states that: "Bed and Breakfast establishments operated as part of an adaptive reuse within a Registered Historic Landmark or within a property located within a Registered Historic District shall NOT be restricted to a number of bedrooms." OWL activists opposed and, not wanting a fight, I agreed to reduce my application to become an owner occupied B&B, and have been compliant since the SUP was granted. Today dangerous precedents are being demanded of the City to violate my 14-Amendment rights to deny me my means of livelihood. Arguments used against me are not based on evidence, but on hearsay and speculation. I have had to endure neighbors stalking my home with cameras, trespassing to take photos, poking their heads around my garage to peek, then withdrawing when they are seen. I have become a curiosity to the neighbors and other persons in the area who previously were undisturbed by me and left me alone. Last week, one man commented loudly "how boring" after boldly walking into my backyard; others have said to friends that "She needs to go back where she came from." Perhaps what is going on here is much bigger than a question of concerned individuals being protective toward their neighborhood. Perhaps this targeted attack on me and my livelihood is exactly what many in Lawrence would shudder to think is happening on their watch. There are twenty-two total bed and breakfasts advertised in Lawrence, several in Old West Lawrence. Only my unobtrusive place of residence has been labeled a "threat." My home, has never had a noise violation or any other complaint until this renewal of SUP was raised. To be code compliant with the SUP I borrowed an additional \$50,000 to put in a handicap accessible ramp, and fire-sprinkler suppressant system. Do those B&B meet code? A walk down almost any street in Old West Lawrence yields neglect far greater than my leaf pile including properties sharing the alley with me, my former neighbors and Mr. O'Malley; yet there are no complaints about their dead trees, their messy yards, the unsightly decay and home owners renting out to transients, who don't pay taxes. It is my home that is a threat to the investment of homeowners in Old West Lawrence. Despite concerns raised that the supposed negligence of my property would affect the value of the houses surrounding, the recent sale of the house next-door proves otherwise. It sold in three weeks at full price for over \$300,000, and was under contract when Mr. Clark's daughter came to meeting on April 21st making unfounded claims. No other property owner and manager, home owned businessman or woman has been harassed and attached and gossiped about in this town as I have been. I have tried to understand the repeated injustice I face as anything but what it is, but I have been left no other option than to call a spade a spade. I am not white. I am a foreigner. I grew up in Trinidad with my 'colored' family all who would be defined as 'black' here in the States. I have been a legal resident in this country for the last 25 years, I have US Citizens children. And yet, even though I am told I sound and think like an American when I go back to my country of birth, I find no other option than to call

this current attack on my person, my reputation, and my livelihood what it is: Xenophobic. It seems as though our tax dollars are going toward bigotry and targeted attacks on individuals who don't fit in with your status quo. A recent article posted by the ACLU describes the growing bigotry in America: "Longstanding values of equality and fairness are being challenged in our legislatures and courts. The legal system that was long used as a sword and a shield against bigotry is now being inverted to promote and enshrine intolerance..." Opposition to my SUP renewal claims that 'evidence' was presented casting doubt on the issues raised. This so-called evidence is based on hearsay from reviews in Trip Advisor. Trip Advisor, as the Daily Telegraph points out is 'awash with... - accusations that leave an indelible stain on the establishment concerned, but which can be made out without a shred of evidence....no checks are made on the identity of the people who post [reviews] and no proof of stay is needed. In fact, all that is required to upload these travel truths is an anonymous username and email address (which can easily be faked).' In this case it appears that the doubt of some has more merit than the many reputable people who have written in support and to testify to my primary occupancy status. It seems that what I'm hearing and seeing is what so many of my ancestors saw before me. Since 'doubt' is as good as 'evidence' then it is easy to penalize and undercut a hard working woman of color, who really should 'go back to where she came from.' Opposition recommends having at least ONE unannounced inspection by the City of my residence. I wonder if that should be done with or without a search warrant, and what the probable cause would be. On April 21st, at the last public meeting, I did not come prepared to defend myself. Due to exhaustion and recent illness, I failed to remember that my driver's license had been changed to 603. When asked how many vehicles I own I said one, but I own two, though I only drive one, that I attend a gym where 603 is listed as my residence. I am a member of the African Violet Society, and host meetings at my home, that my primary residence is listed on my taxes, and my life insurance is attached to 603. Some personal information which is no one's business, but I chose to share with you now, is that I have spent the last three out of five Christmases at 603 with my children and friends, and all other public holidays have been celebrated there when I am in Lawrence. I have repeatedly stated that I do not have a house manager. All bookings are made through my office and myself with the aid of my iPhone. The only other person who is regularly at the house is my friend, Vicki, who house sits when I am not home and provides a charming presence for B&B guests. As an owner occupant, I have the same rights of no more than three unrelated people living together in a single family home. I have been called an absentee owner, due to time I have spent outside of Kansas. Again it isn't the public's business, but I chose to share the information that I have two grown-up daughters who no longer live in Lawrence. One of them moved back to my country of origin, and I go to visit her and the rest of the family. This doesn't change where my primary residency is. See the recent ruling of Senator Roberts Kansas's residency status. I am simply a home and small business owner seeking to go about my business in peace and live my private life privately. As for the over-occupancy concerns, I have provided evidence of my monthly transient guest taxes paid to the State of Kansas. It shows that I have had a 45 percent on average occupancy rate per month and never have I reached capacity. This time I am calling upon you, the City Commissioners, to support my reasonable request for a renewal, one that would have already been granted if 'doubt' had not superseded proof. Please, do not help the doubters deprive Lawrence of a wonderful opportunity to enjoy staying at a historic home adjacent to all that makes Lawrence special. Support this adaptive reuse permit and respect my 4th and 14th Amendment rights.

PUBLIC HEARING

Ms. Katherine Tuttle, 713 Louisiana St, Old West Lawrence Association, said zoning laws played an important role in revitalization of the neighborhood. She provided a 53 year history in keeping the neighborhood single-family zoning. She said non-compliance with three conditions of the Special Use Permit were confirmed by staff. She said the B&B should be ancillary to its primary use of an owner occupied dwelling. She said non-compliance would set a precedence and impact Old West Lawrence. She expressed opposition to the Special Use Permit unless it was in compliance.

Ms. Denise Low, 1916 Stratford Rd, expressed support for Runaway Pony.

Mr. Jim O'Malley, 626 Ohio, said the questions regarding non-compliance were first raised by the next door neighbor to the west of Runaway Pony. He said this isn't racial or personal, it was business. He said single-

family residential zoning was the key factor in revitalizing Old West Lawrence. He did not feel that exceptions to single-family should be considered lightly. He said the conditions to the Special Use Permit were not technicalities. He said a bed and breakfast with four or more bedrooms was subject to State hotel and restaurant licensing, health, and safety laws. He said a bed and breakfast that does not comply with State law was subject to a higher 24% commercial tax rate. He said he had no idea if Ms. Hearn lived at 603 Tennessee but that owner occupancy was not a technicality. He said a bed and breakfast that was not owner occupied was a commercial business that had no place in a single family neighborhood. He said Planning staff found that the Special Use Permit was in violation of multiple conditions.

Mr. James Hicks said he looked at the house before Ms. Hearn purchased it and she invested a lot of money in restoring the house. He said the corner of 6th and Tennessee was not fit to be a single-family home with the amount of traffic. He said a bed and breakfast created memories for guests.

Ms. Trenda Fox said there were 22 bed and breakfasts in Lawrence and she was sure they were not in compliance. She said the Runaway Pony had never been over occupied. She said bookings were down significantly because of the amount of bed and breakfasts in town. She said the Runaway Pony hired KU students to help create information for the internet and some misinformation was posted in error, such as the entire house being available for rent. She said Serina was a property manager for about 100 students. She said Ms. Hearn was just trying to make an honest living for herself and her family. She encouraged Planning Commission to approve the Special Use Permit.

Mr. Tom Weso supported the Special Use Permit. He said Ms. Hearn provided him the opportunity to host an art show at no cost at the Runaway Pony.

Ms. Lydia Diebolt, 801 Arkansas, said she was renovating her home in Old West Lawrence. She spoke in support of Runaway Pony. She said 603 Tennessee would be difficult for a single-family owner to support.

Ms. Linda Keeler, 304 E 23rd St, spoke in support of the Special Use Permit. She said she had visited Ms. Hearn many times at her home at 603 Tennessee St. She said Ms. Hearn hosts guests from all over the world. She said she appreciated Old West Lawrence's concern about spending many dollars and energy in trying to provide a good neighborhood. She said Ms. Hearn had invested in 603 Tennessee. She said the location of 603 Tennessee was unique with no neighbors to the north and east.

Ms. Cathy Joritz expressed support for the renewal of the Special Use Permit for Runaway Pony. She said Ms. Hearn was one of the first people she met in Lawrence while staying at the Runaway Pony. She said the bed and breakfast was a gateway and tourist attraction to Lawrence.

Mr. Barney Warf, 940 Kentucky, said small businesses were vital to the economic health of Lawrence. He encouraged Planning Commission, from a cost benefit perspective, to renew the Special Use Permit.

Mr. Hume Feldman, 511 Tennessee, said he was Ms. Hearn's ex-husband and father of her children. He said rules were in place for a purpose and that Ms. Hearn would be the first to say that they should be enforced. He said Ms. Hearn would not have any problems with complying. He said there was no slippery slope, and that it was a bed and breakfast that operates at less than half occupancy and enhanced the neighborhood. He said there were two bed and breakfasts in Lawrence that the KU Physics and Astronomy Department sends visitors to and that the Runaway Pony was a fantastic place that drew people to Lawrence.

Ms. Marsha Hunter, 2225 Breckenridge Dr, expressed support for the Special Use Permit. She said she met Ms. Hearn when she moved to Lawrence and has stayed and visited the Runaway Pony many times.

Ms. Tresa Hill, 705 Tennessee, said Planning staff's review of 603 Tennessee found that it was operating in violation of the Special Use Permit. She said a bed and breakfast in a residential zone was to be operated as an incidental use of an owner occupied structure. She stated a bed and breakfast with more than three bedrooms had State hotel and restaurant requirements and oversight. She expressed concern about setting a

precedent for the future. She said it would establish a downward spiral away from a single-family well maintained and peaceful environment. She said Old West Lawrence residents were committed to single-family zoning which protected their way of life and investments. She said the single-family zoning had reversed declining property values and encouraged major investments in homes. She said they could live with bed and breakfasts in the neighborhood if they complied with the Development Code, Special Use Permit, and were truly secondary aspects of an owner occupied residence. She expected any Special Use Permit regulated owners would be good neighbors, supply adequate parking for their guests, and maintain the property. She said she expected compliance with the Special Use Permit and all State and local laws. She said she expected ongoing identification and enforcement of all problems and violations by the City.

Mr. Chris Schmid, 503 Elm, said Ms. Hearn had an office at 1941 Massachusetts Street but that anytime he has had to get ahold of Ms. Hearn it has been at 603 Tennessee. He supported approval of the Special Use Permit.

Mr. Dean Palos, 727 Tennessee, said all of the compliance issues were inconclusive. He said the Runaway Pony was a tremendous asset and great entry to the city. He said Ms. Hearn was an ambassador for the city and felt the Special Use Permit should be allowed to continue.

Mr. Phil Godwin, 603 Ohio, said he had no objection to the property or the use but did object to the regulations not being complied with. He talked about the improvements he's made to his own property and his personal investment. He said Old West Lawrence implemented the first neighborhood association and made huge efforts to get the neighborhood in the shape it was in now. He said it was easy to slip back to a neighborhood that wasn't nice.

Ms. Patty Ogle said her father, Mr. David Clark, previously owned the house to the west and told her about the condition of the Runaway Pony but never made any formal complaints. She said her father was never in support of the bed and breakfast and nobody ever approached her father for comments. She said without meeting the conditions of the Special Use Permit it was a commercial business in a single-family neighborhood and was essentially like living next to a Holiday Inn. She asked Planning Commission to give serious consideration to the appropriateness of the use in the neighborhood.

Ms. Karen Kressin, 630 Ohio, said it was the applicants own choice to purchase and spend the amount of money she had on the property. She said 603 Tennessee was not the only rehabbed house in Old West Lawrence. She said investments in property would not be reasonable if not for single-family zoning, which the residents had relied on. She said the harm was the domino effect and where would the line be drawn. She said there were State regulations that the City could not override. She wondered who's responsibility it would be to report an illegal hotel or restaurant to the State for enforcement. She wondered if the City could be held liable if something bad happened in an illegal hotel or restaurant that was permitted by the City. She said an owner occupied bed and breakfast was an expansion of the residential use permitted in an RS zone.

Ms. Vicki Hester said she lived with Ms. Hearn and helped her take care of 603 Tennessee. She said she shared the home with her friend, Ms. Hearn and was not an employee. She said nobody was regulating other bed and breakfasts in Lawrence. She felt that the Runaway Pony provided an important piece of history.

APPLICANT CLOSING COMMENTS

Ms. Hearn thanked her supporters. She said 603 Tennessee was a seven bedroom house and that it was her home and she was entitled to have friends stay with her. She wondered how much of her personal life she had to talk about and explain. She said she had seven beds in seven bedrooms and she had the right to have three unrelated people stay with her. She said she complies with the three bedrooms used for paying guests. She said the previous site plan that was drawn up when the Special Use Permit was first approved was drawn up by her ex-husband.

COMMISSION DISCUSSION

Commissioner Liese said he was very eager to see this come to a fair conclusion for all. He said the issue was about a Special Use Permit and whether or not to uphold the responsibilities upon the person who holds the

Special Use Permit. He requested staff provide a more thorough presentation at how they arrived at their decisions.

Mr. McCullough said much of what staff does is left to interpretation. He said with this specific request there was different testimony presented last month and Planning Commission directed staff to investigate the allegations. He said first staff listed the items of allegation in a table. He said the first item was the primary residence of the owner. He said information was submitted and staff checked on tax return items and district court case information. He said the primary residence information reflected on those documents conflicted so it was inconclusive. He said staff determined, based on documentation evidence, that it was not conclusive where Ms. Hearn resided. He the number of beds and rooms for guests was approved at three. He said the primary source of finding for that issue was the advertisements in multiple sources offering more than three bedrooms for rent. He said a bed and breakfast owner should be pretty sophisticated in the use of technology and advertisement tools and if it's being advertised in that fashion it may be operated in that fashion. He said it appeared that the operation would allow more than three guests. He said staff visited 603 Tennessee and did an interior and exterior inspection. He said staff found that the exterior yard conditions were in compliance. He said regarding the presence of an employee resident manager, it was the testimony from last month and blogs depicting a scenario where there was someone other than the owner there to greet and provide meals that led staff to find that people beside the owner were handling some of the operations of the bed and breakfast. He said this type of Special Use Permit did not accommodate an employee because the parking restricted it. He said the parking requirements were a little in flux and up to interpretation because if it was held to the framework of the approved Special Use Permit then it was compliant but if it was operated with the alleged employee it would be out of compliance. He said the employee would make the parking out of compliance. He said given all of the findings staff does not believe it's a deleterious use to the neighborhood if operated under the Special Use Permit parameters. He said staff does not believe it's being operated within the Special Use Permit parameters but have offered some options to get it back into compliance without stripping it of the use entirely.

Commissioner Liese said he heard a lot of positive things about Runaway Pony tonight. He said Planning Commission was land use body. He was happy to hear the neighbors were all in favor of the bed and breakfast under compliance. He said he would be in favor of any decision that would encourage the business of Runaway Pony with monitoring. He asked staff to comment on being able to monitor compliance in a fair way.

Mr. McCullough said the onerous would be on the owner to show compliance, which could include submitting a log of guests over a time period. He said staff could continue to monitor websites for advertisements to hold any owner accountable to compliance with the Special Use Permit.

Commissioner Liese asked if Planning had the necessary resources to monitor the Special Use Permit conditions.

Mr. McCullough said yes.

Commissioner Liese said he had spent much of his life fighting racism, prejudice, and hate. He said he was concerned about the accusation that some of the decision had to do with skin color. He invited the applicant to contact him directly if there was true racism going on in the process.

Commissioner Josserand agreed with some of the things that Commissioner Liese said. He said Planning Commission was not here to debate if Ms. Hearn was a great ambassador for the community. He said Planning Commission was a land use and zoning committee. He said Commissioner Liese talked about the ability of staff to monitor the conditions of the Special Use Permit. He suggested staff ask the applicant to provide the last few years of tax records for the two properties. He said it seemed like it would be existing evidence that could be used today. He said Ms. Hearn provided wonderful contributions to the community but she owned a lot of properties. He said the neighborhood rightly argued about the long history of their rejection of commercial purposes in the Old West Lawrence neighborhood. He said if the property was being deducted on taxes as a business it was a business.

Mr. Randy Larkin, staff attorney, said staff could ask Ms. Hearn for tax returns and she could choose not to provide them. He said certain portions of a house that are used for business could be written off. He said tax returns could provide evidence one way or the other.

Commissioner Josserand asked what evidence the City would want to make a determination.

Mr. Larkin said there was no smoking gun. He said sometimes it was a matter of some evidence being added to other evidence.

Commissioner Josserand asked if it was a requirement of the Code that was unenforceable.

Mr. Larkin said no. He said staff could ask for tax documents, but by themselves they would not provide a determination.

Mr. McCullough said the Special Use Permit was a discretionary permit. He said it was a balance of facts for a determination to be made.

Commissioner Britton said it was more of a totality of circumstances. He said 603 Tennessee was owned by an LLC and there was some discussion in the 2009 minutes that it could be lived in by the owner of the LLC or a corporate designee of the company. He said essentially it could be Ms. Hearn or someone she designates. He asked if this would be an adaptive reuse.

Mr. McCullough said no.

Commissioner Britton asked if the house had been given a Special Use Permit as a bed and breakfast inn could it be an adaptive reuse.

Mr. McCullough said no. He said there were three separate types of bed and breakfasts; bed and breakfast (up to three beds and owner occupied), bed and breakfast inn (over three beds and employee resident manager), or adaptive reuse of historic property. He said the adaptive reuse was not part of this proposal.

Commissioner Denney asked if the original request was for a regular bed and breakfast inn and then it was modified to bed and breakfast.

Mr. McCullough said originally the request was for adaptive reuse and was not seen as favorable so it was altered to bed and breakfast. He said he believed it was altered to gain approval.

Commissioner von Achen inquired about hiring services, such as a housekeeper.

Mr. McCullough said there were certain services that could be hired out for a few hours, such as food service. He said staff was looking at the general intent of the bed and breakfast operation. He said it was about the relationship with the owner occupied residence that made it a bed and breakfast.

Commissioner von Achen inquired about non-employed help, such as a friend.

Mr. McCullough said there was some interpretation and grey areas. He said staff was not disputing Ms. Hearn's ability to have friends over and host personal guests. He said staff determined there were technical violations of the Special Use Permit that were hard to prove. He said it was a balance of those impacts causing harm to the neighborhood. He said there had not been complaints since it opened.

Commissioner Kelly said it was nice to hear the bed and breakfast was doing nice things for the community. He asked about the original Special Use Permit site plan performance agreement and how one of the parts of that agreement was that the site would conform to what was in the plan.

Ms. Hearn said the layout had changed from 2009 to now. She said her ex-husband created the drawing and submitted it. She said she was not aware that it could not be changed.

Commissioner Kelly asked if she would be willing to remove the extra bedrooms to be in compliance with the three bedroom requirement.

Ms. Hearn said she had the right to have her own personal bedrooms.

Commissioner Kelly asked Ms. Hearn if she was willing to change the internet advertisements to not list more than three bedrooms.

Ms. Hearn said she the advertisement listing five bedrooms was an accident, as well as the advertisement for rental of the whole house for \$117.00. She said she would be more than happy to make sure there were no more confusing advertisements.

Commissioner Kelly said there were technical violations and in order for him to feel comfortable in renewing the Special Use Permit he wanted to feel comfortable that Ms. Hearn would pay attention to change some of the technical violations. He asked if she would be willing to provide tax documentation.

Ms. Hearn said she never did her own taxes so she had no idea what they would show. She said 603 Tennessee was her primary residence.

Commissioner Kelly said if the Special Use Permit was renewed for a trial period he had to believe that the owner would be in the level of compliance the site plan performance agreement stated. He said it seemed that the neighbors were fine with the bed and breakfast if the conditions were met. He said if the applicant agreed to meet the expectations of the Special Use Permit he would support a six month trial period. He echoed Commissioner Liese's comments earlier about racism. He said he took a lot of pride in the process of Planning Commission and he was troubled about racism being stated when he felt there had been an open process.

Commissioner Britton said the three guest bedrooms did not necessarily mean Ms. Hearn could not have seven bedrooms and use the extras for her own personal guests.

Mr. McCullough said that was correct. He said staff made a connection between the over advertisements and the number of bedrooms inside the house.

Commissioner Britton said regarding discrimination he did not feel Ms. Hearn's comments were directed at Planning Commission but rather the neighbors. He said the application was strange because it had taken on a life of its own. He said there were issues with compliance and he agreed with Commissioner Liese's characterization of staff's findings of fact. He said the table in the staff report regarding compliance was what he was going off of. He said the non-compliance issues could be easy to fix. He said the Special Use Permit was often limited by time and this was an existing business. He felt they should be looking for the opportunity to get it into compliance and move it forward. He said staff provided several options for figuring it out through a grace period.

Commissioner Liese said Planning Commission was a land use committee. He said he would support a motion to approve the Special Use Permit with monitoring. He said he would be in favor of some combination of options two and three from the staff report. He said he would support approval with "teeth." He felt there should be a willingness from the applicant to be transparent. He asked staff what would happen if the Special Use Permit was not in compliance.

Mr. McCullough said staff would investigate for compliance.

Commissioner Liese he said he felt like all the warnings had already been given. He did not want there to be room for wiggling anymore.

Commissioner Struckhoff asked what would have happened if a neighbor of the applicant had complained a year ago about too many cars in the alley or too many guests.

Mr. McCullough said there were complaints previous to the approval of the Special Use Permit and contact was made with the applicant, which was in part what prompted the bed and breakfast request. He said staff often relies on neighbors to observe and keep records.

Commissioner Struckhoff inquired about the timeframe to correct non-compliance.

Mr. McCullough said it varied but the revocation process would start if violations were found.

Commissioner Struckhoff said he wanted "teeth" in the Special Use Permit and felt the applicant should step into very clear compliance and staying there. He was inclined to support the request but only for a limited time, such as six months. He was concerned that the neighbors were not getting what they deserved in protection.

Commissioner Graham agreed with Commissioner Liese that she would vote for something with less wiggle room than before. She inquired about the website advertising the entire house being available for rent and asked if it had been removed.

Ms. Hearn said it had been disabled.

Commissioner Graham asked the applicant if the entire house was listed for rent.

Ms. Hearn said no.

Commissioner Denney agreed with Commissioner Britton. He said 603 Tennessee was a working business for five years and was a historical home that was restored. He said there was more benefit than harm. He said the complaints had nothing to do with disrupting the neighborhood. He said this was a business. He said it had benefited Old West Lawrence by restoring a home. He said it had been operating as a bed and breakfast inn from what he had heard and wondered if it should be changed. He said Old West Lawrence was justified in being proud and protective of the neighborhood. He said a bed and breakfast was not a slippery slope and was not a bar. He said the home was appropriate for something like a bed and breakfast inn and that was what he would like to see.

Commissioner Culver said conditions of a Special Use Permit were a special tool for a unique situation and when used appropriately could be a good tool. He felt the conditions needed to be clearly detailed and communicated to all parties, measurable and enforceable. He said there needed to be a willingness and agreement and resources for the user to comply and for the enforcer to monitor. He said this was a renewal of a Special Use Permit and he wondered what the difference would be of renewing the existing Special Use Permit and starting over.

Mr. McCullough said that was essentially what the renewal process was.

Commissioner Culver said he would be supportive of a temporary timeframe for the applicant to come into compliance. He felt there should be a willingness and agreement to come into compliance. He suggested capturing a list of paying guests and non-paying guests. He said the site plan did not seem to fit the performance review. He wondered if the applicant could provide a revised site plan.

Mr. McCullough said that was one of the components. He said staff did not disagree that a home could change. He said the home was part business and part private residence and it did demand a little more

scrutiny and the applicant gave up a little bit of the ability to change things around without the regulatory agency being a part of that process.

Commissioner Josserand said he would support a 6-12 month permit to allow the applicant to come into compliance. He said he would like to see City Commission seek to obtain information on taxes.

Commissioner von Achen said regardless of what the tax statements say it does not indicate the usage.

Commissioner Josserand said the manner in which a person treats their taxes would indicate the intention of the owner for its use.

Commissioner von Achen inquired about a six month trial period.

Mr. McCullough said the owner would have to reapply and go through the process of Planning Commission and City Commission. He said Special Use Permits were constantly under the potential of revocation because it needed to comply.

Commissioner von Achen asked if there could still be monitoring with a five year Special Use Permit.

Mr. McCullough said yes. He recommended the motion include a revised site plan for City Commission to review.

Commissioner von Achen echoed what Commissioner Denney said. She said one way to keep homes looking nice was through a bed and breakfast. She thought most of the complaints were based on fears of impact. She would be in favor of granting a five year Special Use Permit staff monitoring.

Commissioner Liese said six month or five years did not make a difference since the Special Use Permit could be revoked at any point.

ACTION TAKEN

Motioned by Commissioner Liese, seconded by Commissioner Britton, to approve the Special Use Permit for an owner-occupied bed & breakfast use for five (5) years, subject to the following conditions:

1. The Special Use Permit is granted for an owner-occupied bed and breakfast, with a resident manager/employees prohibited.
2. Establishment of a formal monitoring process to occur every 6 months for two years. Process will include:
 - a. Staff inspections of the interior and exterior of the premises.
 - b. Submittal by the applicant of guest logs every six months.
 - c. Staff will monitor booking and other similar websites for evidence of volunteers/employees and compliance with the conditions of the Special Use Permit.
 - d. Provision of a signed affidavit by the applicant that states the applicant is in compliance with the conditions of the approved Special Use Permit, and that 603 Tennessee Street is the applicant's primary residence.
 - e. Provision of a written report to the Planning Commission regarding compliance.
3. A Special Use Permit renewal granted for up to three (3) guest rooms per approved site plan. Use of additional guest rooms shall require a new Special Use Permit application.
4. A Special Use Permit is granted for five (5) years. A new Special Use Permit shall be required to continue the bed & breakfast use.

Applicant to provide a revised site plan indicating guest rooms for staff review prior to placement of the Special Use Permit application on the City Commission agenda.

Mr. McCullough asked if the motion included an interior inspection.

Commissioner Liese said yes.

Commissioner Kelly said he would be supportive of the motion as described but wanted to honor the fact that the Special Use Permit is not always monitored as it should be. He asked if staff could provide feedback to Planning Commission in six months.

Commissioner Britton applauded Old West Lawrence for their work over the years in protecting the neighborhood. He felt the bed and breakfast use on that corner made sense because it was a busy intersection. He said he had not heard many complaints about negative impacts on the neighborhood. He had confidence the applicant would work on the issues as needed.

Commissioner Josserand felt there should be some sort of condition included about the applicant providing income taxes.

Commissioner Liese said Mr. Larkin did not believe income taxes would be a good way to prove the address of where Ms. Hearn resides.

Commissioner Josserand felt taxes could easily be obtained from the applicant and would be non-intrusive.

Commissioner Liese said he supported the idea if staff was able to obtain that data.

Commissioner Josserand expressed concern about the duration of the Special Use Permit.

Commissioner Denney said he did not feel it was the right motion.

Motion carried 7-2, with Commissioners Denney and Josserand voting in opposition.