

ITEM NO. 1 SPECIAL USE PERMIT FOR ROCK CHALK PARK; 6100 ROCK CHALK DR (MKM)

SUP-15-00334: Consider a Special Use Permit for an *Active Recreation* use, an indoor/outdoor KU Tennis Facility, at Rock Chalk Park, located at 6100 Rock Chalk Drive (associated with 100 Rock Chalk Lane). Submitted by Paul Werner Architects, for RCP LLC (City of Lawrence equitable owner, IRB), property owner of record.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

APPLICANT PRESENTATION

Mr. Paul Werner, Paul Werner Architects, agreed with the staff report conditions.

PUBLIC HEARING

Mr. Rick Hird, Petefish, Immel, & Heeb Law Firm, representing Mr. Jack Graham. He said when the Special Use Permit (SUP) for Rock Chalk Park was approved by City Commission there was an issue with the lighting. He said the lighting was installed with poles that were higher than allowed by Code, without filing a photometric plan, and in violation of the terms of the SUP. He said the City Commission granted the SUP, approved the photometric plan, and by the time it got to City Commission the lights had been up for a long time. He said he asked City Commission to require the most effective glare control for the lights. He stated Commissioner Farmer said he was tired of the nit picking and whining. He said his client was not objecting to Rock Chalk Park because it was a done deal. He felt Planning Commission had an obligation under the ordinance that says the lighting shall be designed to the maximum extent feasible to minimize adverse impacts on traffic safety and nuisance impacts. He referenced an email sent on April 21, 2014 from Mr. Stephen McDowell to the City Commissioners, which talked about the glare and light trespass being unacceptable. He felt it was important to mitigate the impact to the maximum extent feasible. He wondered if there were potentially better shields available. He said the photometric plan did not measure glare, only the footprint on the ground below. He said his client appreciated the building location but it did not block the glare. He asked Planning Commission to make sure that the inquiry and research had been done that these were the best possible fixtures. He said additional shields could be installed to not adversely impact neighbors. He showed a shield example on the overhead.

APPLICANT CLOSING COMMENTS

Mr. Werner said Mr. Hird's assessment that this was discussed at City Commission was right. He said a special consultant reviewed the photometric plan. He said the lights needed to work for Rock Chalk Park to work. He said the Sports Pavilion tennis court lights impacted Mr. Graham the most. He said the lights for this tennis facility were ½ mile away and the tennis court lights were only 50' tall. He stated the time would be limited for use. He said tennis was not really a winter sport so when the trees have lost their leaves it would probably not be in use.

COMMISSION DISCUSSION

Commissioner Liese said the lighting in the past had not been reviewed as much as he would have liked. He felt the request was a reasonable one but he was not sure how to achieve it. He felt they should figure out the very best way that all parties could get what they wanted and the community could get what they need.

Commissioner Butler asked if the design that Mr. Hird showed on the overhead was available now.

Mr. Hird said it was his understanding that the shield was available now.

Mr. Werner said that information was not shared with him. He said the photometric plans did not show glare. He said even with a shield the lamp would still be seen from certain angles. He stated shields might require

more lights to be installed. He stated the consultant could look at it again. He said these lights were the farthest away and not as tall.

Commissioner Butler asked if the lighting had been designed to the maximum extent possible.

Mr. Werner said it was a reasonable solution and the City Commission made that call when they approved the plans. He said Free State High did not have shields at all. He said glare was hard to measure and putting something on the lamps would probably require more lights.

Commissioner Liese asked staff about each party paying for half of the fees for an expert and have that expert be the deciding factor.

Mr. McCullough said the glare was a biggest concern with the lights. He said there were houses much closer to the west, for example, that shared the full brunt of some of the lights that faced west. He said the impact depended on the location of where you were compared to the light fixture and topography. He said when they looked at this the first time they had the benefit of different types of lights in a brochure. He said the way they approached this then and now is looking at the location of the tennis facility building with the light poles themselves, knowing the building would shield most of the glare from the lights. He said the conditions dictate cut off times and light levels. He could not say whether this was the best of the best in terms of cutoff fixtures. He said staff recommended feasible conditions to mitigate the impact.

Commissioner Liese asked what would protect Mr. Graham from choosing a consultant that would be paid by someone with a stake in it.

Mr. McCullough said there was a consultant the first time and the outcome of that was mixed. He said there was a recommendation from Mr. Graham to employ better shields. He said the lights were already up so staff employed cutoff times as well. He said it was impossible to screen field lights but they could be mitigated in a feasible way.

Commissioner Liese asked Mr. Hird about the essence of his client's request.

Mr. Hird said the essence of the request was that his client wanted to know that this was the best possible alternative shield. He said the lights at Rock Chalk Park on the 100' poles created intrusive glare into his home. He said his client wanted the lights to mitigate the glare to the maximum extent possible.

Commissioner Liese suggested a consultant agreed upon by all parties that would be neutral.

ACTION TAKEN

Motioned by Commissioner Liese, seconded by Commissioner Struckhoff, to approve the Special Use Permit, SUP-15-00334, for the additional *Active Recreation* use at Rock Chalk Park subject to the following conditions:

1. Provision of an executed Site Plan Performance Agreement.
2. Dedication of utility easement by separate instrument for the sanitary sewer main.
3. Prior to the item being considered by the City Commission, Staff will review, in consultation with lighting designers, the shielding specifications proposed for the tennis court lights to insure that the lighting has been designed, to the maximum extent feasible, to minimize nuisance impacts (glare) on residential property.
4. Provision of a revised plan with the following changes:
 - a. Addition of the following note: *"The KU tennis court lights shall be shut off no later than 10:30 PM Sunday through Thursday and no later than 11:00 PM on Friday and Saturday nights; unless there is a tournament that runs past that time."*

- b. The plan should note the type of screening to be used for the trash receptacles/dumpsters and mechanical equipment.
- c. Revised water and sanitary sewer lines per the City Utility Department's approval.
- d. Show and label the 20 ft Landscape Easement on the south side of Rock Chalk Drive right-of-way.
- e. Show the easement for the sanitary sewer main and note the Recording Information (Book and Page Number).

Commissioner von Achen asked Mr. Hird to put the shield picture back on the overhead. She asked if they were clip on and would be added to the existing lights.

Mr. Hird said he did not know.

Mr. McCullough said he thought they were designed as a series of light fixtures that were attachments to the bare fixture.

Mr. Werner said shields would require adding more lamps. He stated the lighting consultant that Gould Evans used found it met the Code. He said separate photometric plans were submitted for each field individually. He said the Sports Pavilion lights were the closest to Mr. Graham's house.

Commissioner von Achen asked if the lights could be directed more downward.

Mr. McCullough said the taller the lights were the more direct downward they could be pointed, but would depend on the topography. He said there were a lot of variables with light design.

Commissioner Culver asked staff to elaborate more on process regarding a consultant providing info to City Commission.

Mr. McCullough preferred not putting the applicant and neighbor in the position of agreeing on an outcome. He said staff would be more comfortable with looking into better shielding options to present to the City Commission. He said that could have additional impacts, such as more fixtures.

Commissioner Sands asked if the lighting on T3 was the concern (referring to plan that Mr. Werner had on the overhead).

Mr. Werner said T3 was the lighting Mr. Graham was concerned about. He said T5 and T6 would not impact Mr. Graham.

Commissioner Kelly asked about the brightness of a foot candle.

Mr. McCullough said a foot candle was pretty dim..

Commissioner Kelly asked how often KU televised tennis matches.

Mr. Werner said their existing facility was not lit so it was not an option currently.

Commissioner Kelly asked how often the high lighting would be used.

Mr. Werner said rarely and that they would not be on when not needed since they would be paying the electric bill.

Commissioner Kelly asked how often a game might go past the amount of time listed.

Mr. Werner said very rarely.

Commissioner Liese asked if the applicant would be comfortable with a consultant taking another look at the lights.

Mr. Werner said yes. He said he preferred the word 'appropriate' for lighting, versus 'best.'

Commissioner Denney asked if these were the same lights used elsewhere in Rock Chalk Park.

Mr. Werner said yes, but on much lower poles.

Commissioner Denney said he was not sure about the difference between brightness and glare. He asked if they were really talking about glare or about where the lights were aimed. He wondered if it was really a shielding issue they were talking about.

Mr. Werner said he was comfortable with how low the lights were and where the building was.

Commissioner Culver said there may not be full agreement on both sides for what was the best possible lighting.

Mr. Hird said he was in favor of having an independent consultant look at this. He stated the ordinance said to the maximum extent feasible.

Commissioner Culver said he would like to see the language maximum extent feasible in the motion.

Commissioners Liese and Struckhoff were comfortable with that language as part of the motion.

Commissioner Struckhoff asked if any consideration had been given to a remedy such as a tree line between Mr. Graham's property and Rock Chalk Park.

Mr. McCullough said essentially there were trees between the two properties. He said his assumption was that the fixtures could not be seen when the trees had leaves. He said at certain angles the lights could be seen because the trees were not dense enough.

Commissioner Britton said he was having trouble with the idea of a consultant instead of trusting staff to look at it. He said it seemed like this could be one of those things that staff can determine and he would rely on their expertise. He trusted staff and he felt they had done a good job. He did not want to set a precedent for a second lighting study.

Mr. McCullough said Mr. Hird was asking for an exercise in reviewing options to see if a longer shield would help. He said originally the City paid for the consultant to look at the design. He said if the issue was Mr. Graham seeing a lightbulb a ½ mile away then staff would concentrate on the T3 area and eastern poles to see if longer shields could be installed.

Commissioner Britton asked who would be deciding the best feasible option.

Mr. McCullough said staff had employed full cutoff fixtures, time limits, and a ½ mile distance between the concerned property and the lighted site. He said staff did not pursue all the different detailed options by all the different manufacturers. He said the City did have some expertise with the topic, especially Parks & Rec, with all the different courts and fields the City lights. He said he was not sure a third party would be as helpful. He

said what would be helpful was to document the facts of the proposed lights, fixtures available, and why they could or could not be employed.

Commissioner Britton asked if the motion was to have consultant decided whether lighting design would mitigate the adverse effects to the maximum feasible extent. He said he was concerned about giving the consultant the job of deciding that instead of staff. He said he would be more comfortable if a consultant advised and allowed staff to actually determine it.

Commissioner Kelly said he did not want to lose context of all the things that had been done to mitigate the glare. He stated this project had history and the City was the applicant. He said he was more comfortable with a consultant providing input.

Mr. McCullough clarified the City was not the applicant and it was not a City driven project. He said the City was an owner listed because of the industrial revenue bonds associated with it. He said KU was the owner.

Commissioner Denney asked if staff felt like they had looked at this to the degree that they could say the maximum feasible system was being recommended.

Mr. McCullough said staff felt it was a reasonable package of mitigation applied but that they could provide additional information and options to present to the City Commission.

Commissioner von Achen asked if the lights would be on when the courts were not in use.

Mr. McCullough said it was his understanding no since it would cost money to run the lights.

Commissioner von Achen noted the staff report recommendation of 5,300 parking spaces but the applicant had another parking study which reduced it to less than half of that to 2,100 parking spaces.

Ms. Miller said the 5,300 was the amount of parking for a bigger event, such as relays. She said the bigger events would not all be accommodated by parking on site and would include a shuttle. She said there were 2,500 parking spots on site. She stated there would never be an activity in all the facilities at one time, they would be staggered.

Unanimously approved 9-0.