

MINUTES OF THE PLANNING AND ZONING COMMISSION

Date: May 3, 2012

Time: 6:30 p.m.

The regular meeting and public hearing of the Planning and Zoning Commission was held on the above date and time at the Busch Building fourth floor conference room, 840 Boonville, with the following members and staff in attendance: Shelby Lawhon (Chair), Matt Edwards (Vice-Chair), Jim Hansen, Gloria Roling, Phil Young, and Jason Ray; Ralph Rognstad, Director of Planning & Development; Michael MacPherson, Principal City Planner; Thomas Rykowski, City Attorney; Paula Brookshire, Engineer, Public Works; Cody Marshall, Engineer, Public Works; Sandy Goddard, Administrative Assistant, Planning. ABSENT: Tom Baird, King Coltrin and Jay McClelland.

ROLL CALL:

APPROVAL OF MINUTES:

The minutes of April 5, 2012 of the Planning and Zoning Commission were approved unanimously.

COMMUNICATIONS:

Mr. MacPherson commented on the use of the new I-pads and that Commission could contact Mr. Michael Sparlin for assistance with questions or additional training if necessary. Regarding an administrative note on the agenda, there are two cases on the agenda that are dependent on one another; the Shoppes at James River under Preliminary Plats and conditional Use Permit 398, which deals with the same topic. A report will be done on both cases separately, but at the same time, you will see the connectivity. If the Plat is not approved, then the Conditional Use Permit is not helpful.

CONSENT ITEMS:

1. **Relinquish Easement 775**
(3536 W. Mt. Vernon)

Wal-Mart Real Estate Business Trust

2. **Relinquish Easement 779**
(1231 E. Norton)

Robert & Laura Weddle

Mr. Ray motioned to approve the Consent Agenda items. Ms. Roling seconded the motion. The motion carried as follows: **Ayes:** Lawhon, Edwards, Hansen, Roling, Ray, and Young. **Nays:** None. **Abstain:** None. **Absent:** Baird, Coltrin, and McClelland.

HEARINGS:

Zoning:

3. **Z-9-2012**

Wilson Properties Inc.

(1832 S Campbell & 220 & 320 West Sunshine)

Mr. MacPherson stated the purpose of the request is to rezone approximately 2.7 acres of property located at 210 – 230 West Sunshine Street and 1832, 1840, and 1844 South Campbell from a GR, General Retail District, to an HC, Highway Commercial District, with Conditional Overlay District No. 51. This would allow a prospective tenant to operate a flea market in a portion of the existing space. A flea market has occupied the building in the past, however, Building Development Services has advised the applicant that the property must be rezoned to HC, Highway Commercial to allow a flea market as a permitted use.

Mr. MacPherson directed Commission attention to Exhibit C, page 5, of the staff report to the Conditional Overlay District No. 51 which is relative to the zoning and pointed out the number of uses, adding those are the typical uses you will see in Highway Commercial Districts that deal with outdoor activity with regard to automobile sales, boat sales, trailers, storage, etc. It basically restricts things in the district that are either not appropriate at the location because of the size of the property itself, or too intense for that particular area. In addition to that, the Conditional Overlay District includes a cross access easement that will need to be provided along the frontage of the lot to the adjacent lot to the east and adjacent to the lot to the west. As you look at this particular property, you would think there are three lots involved within the property. In the property there is a convenience store, and it appears there are two other lots. The reason that is so, is because the assessor's records show the way the Trust is set up with the family, there are two different ownerships. However, having said that, the City only recognizes the whole space as one lot and thus the need to acquire a cross access easement. The client has been advised that if they ever sell the property that they would have to do a major subdivision if they intend to divide it, or would have to sell the lot in its entirety.

Mr. MacPherson commented that he mentioned that in case there is any confusion looking at that particular element of the case. There was a neighborhood meeting held, relatively unattended, and there was not opposition expressed to the request and a copy of that information is attached to your report. It was also noted that when this was done, typically the City the mailing list and we add the Neighborhood Association, which in the particular case was Seminole-Holland Neighborhood, as we failed to so that because the list was generated off-site from another source and they did not include it, and staff failed to catch it. Once staff was made aware of the occurrence, a complete staff report was provided to the Neighborhood Association, along with the Comprehensive Plan because they asked questions about how that worked at the junction of two primary arterials. The applicant, Mr. Tim Wilson, attended a neighborhood meeting last evening and an attendance list has been provided for review. Mr. Tettenhorst, who is the President of the Association, did not express any objection to the zoning and was comfortable that the requirements had been met by providing the information.

The findings for staff recommendations are the approval of this request will permit a prospective tenant to operate a flea market in a portion of the existing space which has been vacant for some time. A Conditional Overlay District has been established to prohibit any inappropriate or more intense uses on the subject property. The Conditional Overlay District also provides for a cross access easement to be provided along the frontage of the lot to the adjacent lot to the east and the adjacent lot to the west. The Growth Management and Land Map of the Comprehensive Plan shows the subject site as being developed as high

intensity retail, office or housing. The Plan further identifies this site as an Activity Center located at the intersection of two primary roadways. Staff is recommending approval of the zoning request.

Mr. Ray asked if the property was ever sold in the future, what would be the process to remove the conditional overlay.

Mr. MacPherson commented the owner would have to make an application, just as is being done here, and it would have to go through the same process.

Mr. Lawhon opened the public hearing.

Mr. Tim Wilson, P. O. Box 1019, Nixa, commented he is available for questions.

Mr. Roling asked Mr. Wilson if he had had a meeting with the current tenants or just the neighborhood association.

Mr. Wilson commented that he had not have a meeting with the tenants, but he believes it would be a good fit for the center and the adjacent businesses close by.

Mr. Lawhon closed the public hearing.

Mr. Ray motioned to **approve** Z-9-2012 w/Conditional Overlay District No. 51. Mr. Edwards **seconded** the motion. The motion **carried** as follows: **Ayes:** Lawhon, Edwards, Hansen, Roling, Ray, and Young. **Nays:** None. **Abstain:** None. **Absent:** Baird, Coltrin, and McClelland.

CONDITIONAL USE PERMIT:

4. **Conditional Use Permit 398**
(4155 S Nature Center Way)

Republic Road, LLC

5. **Shoppes at James River**
(2124 E. Republic)

Republic Road, LLC

Mr. MacPherson stated he would begin with the Condition Use Permit and then go into the Plat and after that, the two can be separated to make motions and have discussions. The purpose of the application is to adopt an ordinance to approve a use permit to allow the floor area ratio to the increased form a maximum of 0.40 to 0.56 within a GR, General Retail District at 4155 South Nature Center Way. As a matter of record, .4 is the generally accepted (FAR) floor area ratio for a General Retail District and an application can be made up to a FAR of 1.0. In this particular case the 0.56 represents the actual existing property as it sits today, in connection with the new plat and the w ay the property would be subdivided.

The Hilton Garden Inn is an existing hotel located on the subject property. Currently the hotel, Houlihan's, and the undeveloped area between the two uses are all part of the same tract of land. The property owner would like to subdivide the tract of land and create a separate lot for the existing Hilton Garden Inn, Houlihan's and then a third lot which would consist of the undeveloped area and the City-owned property to

the southwest. The maximum floor area ratio (FAR) permitted in the GR, General Retail District is 0.40. When the proposed new lot is created, the resulting FAR for the existing Hilton Garden Inn will be 0.56. Approval of this application will permit the existing hotel to remain as is and exceed the permitted FAR in the GR district once a separate lot is created. If any additional development is desired on the lot in the future, approval of another Conditional Use Permit will be required. All other requirements of the GR zoning will be met including height, setbacks, and open space. The applicant will provide a six (6) foot tall solid wood fence south of the building and parking area as shown on Exhibit III. The fence was requested by some of the adjacent property owners at the neighborhood meeting to shield the residences from light, noise and to provide a visual screen between the uses. The fence will be placed at the edge of the parking area to provide for better screening for the residents. Because of the topography of the site, a fence at the property line would not be effectively screen the light and noise of the parking area. In addition, the normal bufferyard required between GR-zoned property and single-family residential will be maintained.

Staff has reviewed the applicant's request for a Conditional use Permit and has determined that it satisfies the standards for Conditional Use Permits outlined in Section 3-3310 of the Zoning Ordinance. Exhibit 1 spells out the requirements for the Conditional Use Permit which is the maximum floor area ratio (FAR) for the hotel shall not exceed 0.56. The location of the structures, green space, parking and drives, shall be in substantial conformance with Exhibit III. A minimum six (6) foot tall solid wood fence shall be provided as shown on Exhibit III. All other standards of the Zoning Ordinance, and other applicable ordinances, shall be adhered to.

Mr. Lawhon asked if the fence will be on the property line, asking to be shown on the map, where the fence will be located.

Mr. MacPherson said the fence would not be on the property line.

Mr. Lee pointed out the property line and where the fence would be located.

Mr. MacPherson moved on to the Shoppes at James River and commented that the applicant is proposing to subdivide 20.51 acres into a three (3) lot commercial subdivision, including two subdivision variances. The boundaries of the existing hotel will be different so it requires a floor area ratio adjustment, thus the need for the Conditional report. Lot number two (2) is the middle lot and currently undeveloped. The final site is the Houlihans site which is located on the west side of the property. Staff has reviewed the applicant's proposal and determined it is consistent with the City's Subdivision Regulations if the two subdivision variances are approved. If approved, the preliminary plat will be active for two (2) years. All City departments support the proposed subdivision as shown with conditions. The applicant is seeking approval of a Conditional Use Permit to allow an increase in the permitted FAR in the GR, General Retail District when the separate lot is created. That application accompanies this Preliminary Plat and must be approved in order for this Preliminary Plat to be in conformance.

The variance is only regarding the required right-of-way on Reed Avenue. The City requires the owner to give up 5' feet of right-of-way on the existing Hilton Garden Inn site. The owner originally constructed the site assuming it would not be subdivided. A wall was placed 10' feet from the existing right-of-way. The site was graded at 3:1 to the wall and a new gas and water line were placed in the area which would become right-of-way. Lease and loan documents were signed based on the existing right-of-way. Due to the existing improvements, an irrevocable consent to dedicate the right-of-way is requested in lieu of dedicating the

actual right-of-way. The City does not have any plans to improve Reed Avenue. An irrevocable consent to dedicate the right-of-way will be provided if plans are prepared where the right-of-way is required in future. The other variance requested is asking for a subdivision variance from Section 410(6) of the Subdivision Regulations which established the requirement for sidewalks. The Subdivision Regulations requires sidewalks along Harvard Avenue, Swallow Street, Gentry Avenue, Lark Street, Nature Center Way and Reed Avenue. The applicant is requesting Commission approve a variance to allow an alternative sidewalk system be provided throughout the property. The intent is to constructing sidewalks throughout the interior of the development which would replace the need for sidewalks along the roads. As you know, the area the City is proposing to convey, as part of this project is a detention facility but it takes on the image and appearance of a public park area and the internal sidewalks helps facilitate the use of the property for that purpose. The proposed internal system is thought to provide more connectivity than the City's proposed sidewalks which are around the perimeter. The community will benefit more because the hope is that the sidewalk system will eventually connect into the Nature Center Way and into the Nature Center and then on to the west to the YMCA as well as other projects. With those two variances, staff is recommending approval of the Preliminary Plat. All other elements of the plat are in place that are necessary and staff finds that the applicant's proposal with the conditions listed is consistent with the City's Subdivision Regulation.

Mr. Lawhon opened the public hearing.

Mr. Derek Lee, Lee Engineering, representing the owner, commented he is available for questions or comments.

Mr. Hansen asked about the sidewalks currently on Republic Road, the proposed path system within the development and how pedestrians would walk down Harvard to where the path would come out.

Mr. Lee pointed out on the map an existing sidewalk and showed how it would go through the center plaza area of the development what the amenities within the area would be. By making the connection this will be a desired location where pedestrians can go; he commented they would still have to go around Houlihan's.

Mr. Hansen asked if sidewalks were not required on Republic Road at the time Houlihan's was built.

Mr. Lee stated that MoDOT did not allow sidewalks at that time; the intersection was just put in and now there has been a shift in MoDOT philosophy and they actually said they now want sidewalks.

Mr. Hansen asked if sidewalks were planned on the east end of the Hilton Garden Inn, and asked about a crosswalk at Lark and Reed.

Mr. Lee pointed out an existing sidewalk on the east side of Houlihan's and where they will be building sidewalks. He asked for an aerial of the area; it showed an existing sidewalk that goes all the way down to Lark.

Mr. MacPherson asked Mr. Lee to demonstrate the internal circulation of the planned sidewalks.

Mr. Lee commented that they are building a sidewalk along Harvard, and it will go up the slope and into the plaza area. He pointed out the farmers market stating how it would connect from other sides of the development. He also said the sidewalks will be 6 feet wide instead of 5 feet wide.

Mr. Lawhon closed the public hearing.

Mr. Hansen motioned to **approve** Conditional Use Permit 398. Mr. Edwards **seconded** the motion. The motion **carried** as follows: AYES: Lawhon, Edwards, Ray, Young, Roling and Hansen. NAYS: None. ABSTAIN: None. ABSENT: Baird, Coltrin and McClelland.

Mr. Young motioned to **approve** the Preliminary Plat of the Shoppes at James River. Ms. Roling **seconded** the motion. The motion **carried** as follows: AYES: Lawhon, Edwards, Ray, Young, Roling and Hansen. NAYS: None. ABSTAIN: None. ABSENT: Baird, Coltrin and McClelland.

PRELIMINARY PLAT:

6. Westport Woods Revised (200 block North Hilton)

Charles Chappell

Mr. MacPherson stated the purpose of the request is to approve a preliminary plat to subdivide 7.74 acres into a two (2) lot subdivision and stated he would start with the staff comments as they are somewhat detailed. The applicant's proposal has changed since it was approved in July of 2011. The applicant is requesting to eliminate the College Street connection across their proposed lot two (2). If Planning and Zoning Commission approved the revised preliminary plat and subdivision variance, the plat will be forward to City Council for acceptance of right-of-way and easements. If Planning and Zoning Commission denies the revised preliminary plat and subdivision variance, then the applicant has a choice to appeal the decision of City Council or utilize the existing Preliminary Plat of Westport Woods. An approved preliminary plat is active for two (2) years.

Mr. MacPherson stated staff does not support the proposed subdivision variance, because one of the goals of the City's Comprehensive Plan is to provide an adequate system of thoroughfares that will insure logical development of the community, safe and efficient movement of people and goods, and economical expenditure of public funds. Section 403. 4 of the Subdivision Regulation requires that, when a new subdivision adjoins un-subdivided land susceptible to being subdivided, new street shall be carried to the boundaries of such tract. It is important to provide interconnections between parcels as they develop to ensure logical compact, contiguous development. In this case, the undeveloped lot to the east will need proper access in the future for development and the connection of College Street would provide that access. The applicant's proposal does not meet this requirement by eliminating the connection of College Street to the east property line. Also, there is not east-west local street connect between Hilton Avenue and Golden Avenue forcing all internal neighborhood vehicular, bicycle and pedestrian traffic to Chestnut Expressway and Mt. Vernon Street. This increases travel distances for internal neighborhood vehicular traffic (which in turn increases gas consumption and air pollution); puts pedestrians and bicyclists on street that have more traffic volumes and higher speeds; and increases traffic congestion on the major streets. The extension of College Street would also facilitate access for emergency vehicles. If an emergency vehicle was responding to a call in the area via Chestnut Expressway or Mt. Vernon Street, and the street was blocked between Hilton Avenue and Golden Avenue, the emergency vehicle would have to travel ½

mile north or south to the other major street to continue on the call. This could waste valuable time in responding to an emergency situation. The extension of College Street would begin to provide the connection between subdivisions and the existing neighborhoods for internal neighborhood traffic and emergency vehicles. The connection would not be complete until the land to the east develops. The College Street connection would primarily serve neighborhood traffic. There is no reason for external traffic to use the street, so there should not be a significant increase in traffic on existing College Street.

Mr. MacPherson said one other point he would like to make that is quite clear is how this demonstrates that the area of development, pointing to the map showing the lot that would remain as a potential point of connectivity, would occur off College Street to some future development of the property. You as Commissioners know generally we do not allow access off of expressways so if we do not make that connection here we would then in effect, by other policies, land lock that piece of property making it difficult for the owner to develop. The applicant has made arguments that the housing project is funded by Federal and State tax credits as well as loans from both he and the City and the State of Missouri and rents are strictly controlled. The cost of the extension will exceed \$60,000 and thus sap needed funds from the construction of the project that cannot be made up through rent increases. The property to the east will not be developed in the foreseeable future; it is owned by a trust and attempts to reach the trustee(s) have been unsuccessful. Additionally, the size, configuration and zoning do not lend itself to future commercial or residential development. The extension of College would only serve to connect a street with what is, in essence, a cul-de-sac and the extension of the street through the parking lot would put special needs tenants and children living the apartment at risk.

With regards to the economics of this issue, it has been explained in the staff report why that is so important for safety considerations and, as we have done so many times before, we would have to do these as properties developed. This will occur in incremental steps and if they are not completed, and one is missed, that leaves a gap in the connectivity level. It is always important to address that issue when there is the opportunity. The applicant has talked about safety concerns from another perspective; they feel increased traffic by extending the street cause traffic concerns but staff feels it is more important to address the traffic concerns for emergency responders. The main purpose of connectivity is public safety. We do not concur with the applicant's response that College Street will in fact create a safety hazard because unnecessary traffic would be channeled into the housing project even though there is no outlet on the other side, and that the housing project is being developed in conjunction with the Southwest Center for Independent Living and make it more difficult and less safe for handicap individuals to access Westport Park. Mr. MacPherson stated again that staff does not concur. He continued by reviewing the Traffic Division Comments with Commission to make certain that they were aware of those comments. Staff's findings are that the applicant's proposal, with the conditions mentioned are not consistent with the City's Subdivision Regulations and the Subdivision Regulations require the extension of College Street across the subject property and the recommendation to Commission is the request is denied because the Design Standards for Public Improvements have not been met. If Planning and Zoning Commission finds that the standards for subdivision variance approval have been met, the conditions listed shall govern and control the subdivision of the land shown on Exhibit A. Mr. MacPherson commented he is available for questions or comments.

Mr. Lawhon asked to be show the location of College Street and asked if connectivity for College Street was part of the plat that was approved last year.

Mr. MacPherson said yes.

Mr. Lawhon commented that what the applicant is saying then is we don't want to do that for the reasons cited.

Mr. MacPherson stated that was correct.

Mr. Hansen asked if the original plat contained the street extension within their parking lot, adding it would be easier to visualize if they had a drawing of the proposed project.

Mr. MacPherson stated no it was north of the detention basin pointing out the basin area on the map, and added that was to meet the radius requirement. As for the drawing he does not have a way to show it.

Ms. Roling asked about the future College Street connection, asking who would be responsible for paying for it.

Mr. MacPherson said the development. It is not proposed in this plan. It is in the existing plat which is on file now. They are asking to re-file this plat to remove the requirement.

Mr. Lawhon opened the public hearing.

Mr. Ralph Tate, Tate Engineering Consultants, 4054 W. Page Place, 65802 representing the owner, stated there is another representative who will speak also. As indicated, the existing Preliminary Plat and zoning change were approved last year. Those are on the book, we can develop based on that. During the hearing processes for those two, there were quite a few comments from the neighborhood. Many of those centered on the depth of the storm water detention area on the sought side and the other concern was the increase of traffic through the neighborhood due to the extension of College Street. The way things are sitting now, if we do extend College Street it will stop at our property line, there will be a gap on this property in there. I think most of the comments from the neighborhood were the ultimate scenario for where the other parcel gets developed. College Street will extend all the way back from the east all the way up Hilton and will tie in to the cul-de-sac on College Street, west of Hilton. There were many comments both from people that live on the cul-de-sac on College Street and the neighborhood on the other end about the increase traffic through there and the people on College Street cul-de-sac were concerned about people coming through there thinking they can get over to Chestnut Expressway, pulling up to the cul-de-sac and having to turn around. That was a lot of the concerns there and when we went through City Council, a few of the council members encouraged the owners to come back and run it through by eliminating that and see how that would work, so that is basically why we are here. During those discussions, there was talk about eliminating College Street. Some of the comments City Staff has voiced are about safety, and some of our concerns are safety and we are saying the same thing on different sides. Our concerns are relative let's say, to the storm water detention first. By eliminating College Street in there, we would eliminate a fifty (50) foot wide right-of-way. Our storm water detention area can extend a little bit further north, spread it out a little bit and won't be quite as deep so we feel we have mitigated one of the neighborhoods concerns there. The other is, by eliminating College Street we have eliminated a potential street barrier from our apartment complexes getting to the park and Westport School which is now being greatly expanded. Whereas, if College Street is there, it creates the potential for pedestrian/traffic interchange that we don't need to have. Another aspect is we have no idea when that property will develop. As has been stated, it is in trust and we have tried to

establish contact and have been unsuccessful. That parcel does have access similar to what lot one (1) would. It's wide enough up at Chestnut to do one lot with another access. He asked if Commission had questions or comments.

Ms. Ashley Powell, 3216 W College Street, commented she lives at the cul-de-sac Mr. Tate referred to asking Commission to deny the applicant's request being that the apartments, in her opinion, should never have been approved. Mr. Tate stated that College Street would bring more traffic. His development will bring more traffic to the neighborhood. She feels it is ironic that they are asking to revise the plat so they won't have to build College Street. That is the reason the neighborhood said they didn't want the development in the first place. She commented that she believes it all comes down to money; they don't have the money to build College Street through and they don't want to spend money to do that. She expressed concern, stating that the apartments cannot be changed now; however, she does want it to be done the safest way possible and feels that having College Street go through would make it feel the safest. They will already have an entrance off College Street, across from the cul-de-sac so to actually put the street through will not change much. She added that the applicant is saying College Street adds a barrier between the residents of the apartments and the school and the park, but she would like to point out that is where the basin is and where they are putting fencing up and she doesn't see that as a valid point. The points they have made, in her opinion, are not valid, that it comes down to money and they are not willing to pay the money to put College Street through.

Ms. Roling asked Ms. Powell about the drawing she presented, asking where it came from adding Commission did not receive that drawing.

Ms. Powell stated she got it from Daniel Neal.

Mr. MacPherson stated that Mr. Neal is a Senior Planner with the City and that particular document is an exhibit that was part of the zoning case.

Mr. Lawhon said that the document Ms. Powell had is what Commission approved last year which included College Street going through.

Mr. MacPherson said that is correct.

Mr. Paul Schmitz, Sr., 3230 W Olive, commented that where the cul-de-sac starts is where his property is located. He asked if anyone had been out to the site to see the detention area. It is a very large basin along Mt. Vernon. It goes along the tennis courts, from Westport Avenue to Hilton. There has been discussion about lowering or expanding or whatever it is they need to do to catch the water. The water is going to go down the ditches to the retention so whatever they do will be a minor step. They just brought in 10,000 dump load trucks of dirt to build the property up high enough to build the school. Hilton is the only access right now, north and south. If something happens, we are gone. Eventually, when they do this they are going to have to have an east/west street. He asked Commission to deny the request stating that they need to do what they said they were going to do, that is to build the road.

Vivian Schmitz, 3230 W Olive, commented that she has the same concerns and comments as Mr. Schmitz.

Eric Anderson, Affordable Homes Development, Inc., 4407 W La Casa St., commented he wanted to address the site plan that Ms. Powell passed around and answer any questions from Commission about the project. To address some of the comments that have been made, the project is allotted a certain amount of money; it's not that we can't pay for the road, it a matter of if we don't have to build it, we can use the money on another part of the project. We feel the funds can be used better than building the road through. If there are any questions about the site plan that has been passed around he will address them. The only difference in the site plan Ms. Powell has is there is not a road on one of the site plans and added the fire access has to be put in the plan.

Mr. Young asked if there has been any attempt, other than the road, value engineering if you will, money out of the project by changing the architecture, change materials and save the \$60,000 in other spots. What other areas have you changed in the program of the building other than just the road.

Mr. Anderson said when they moved the road the fire access wasn't as wide as the road so they reduced the size of the depth of the detention which raised it up about a foot which is about 20% of what the depth would be. Those are the only two changes.

Mr. Hansen asked if the request was not granted, would it stop the development.

Mr. Anderson said no, they will just have to put the road in, apply the \$60,000 to the road.

Mr. Tate asked to address the comments on the detention area that is on Mt. Vernon. That is a storm water detention area that has to do with Westport School and they have nothing to do with that and it is huge. Our detention is up to the right where College is and it will not be that big. The other comment is relative to what we want to do to the street. At the beginning of the project we did not want the street in there, and the record will show that when it first came to staff over a year ago they did not have the street there. It was indicated to us that according to City regulation they had to do the road. That is why they were there and why they went through the process and got everything approved. As I commented earlier, this is basically due to some encouragement from City Council members and the conversations we had with them. They knew we didn't want the street and some of the neighborhood was very vocal about not wanting the street, so that is why we have come back with this proposal.

Mr. Lawhon closed the public hearing.

Mr. Hansen asked if the detention around Westport School is a regional detention, not just for the school.

Cody Marshall, Engineer, Public Works said he would address that question. The detention they are discussing around Mt. Vernon is the Westport School Park Facility for complete ultimate developed condition for the school. It takes into account what the school is doing currently as well as proposed future development of the school. That is why it is so large.

Mr. Hansen asked if part of that area will be covered with flow.

Mr. Marshall said yes, on the school and park property. The flow from Westport Woods would actually go in a ditch along the east side of Hilton and drain south. It is not connected to the detention basin for the school. They are both draining into the same place, which is a box culvert that runs under Mr. Vernon.

Mr. Edwards stated he was part of the group that approved this originally last year and there was quite a bit of discussion, a lot of blow back from the neighborhood on the traffic issue and it is ironic that now we are trying to take the position of the neighborhood as to why we should not build this road. Going into this, the developer knew what the requirements were going to be and City Council knows what the regulations are supposed to be as well. I think given the fact that we have set these standards and voted on these standards, I cannot see why we would want to go back now and allow a change. It's opening the flood gates to every developer coming back after we have approved something, wanting to change the agreements. I would say that given the fact that we have already approved this and given where our neighborhood representatives are today, saying they were told they were going to get this street and lets build a street. I say we vote against this and just go in as it is already voted for. I will be voting against it.

Mr. Lawhon stated he agreed with Mr. Edwards comments and strongly believes in the validity of the original decision made.

Mr. Young commented on the connectivity issue, keeping that whole concept going is vital and important to development and doesn't see that piece of land being land locked, adding that is not right. I feel the road is very important so I will be voting against this.

Ms. Roling said she agrees and believes that connectivity is important.

Mr. Young motioned to **approve** the Revised Preliminary of Westport Wood. Ms. Roling **seconded** the motion. The motion **failed** as follows: AYES: None. NAYS: Lawhon, Edwards, Ray, Young, Roling and Hansen. ABSTAIN: None. ABSENT: Baird, Coltrin and McClelland.

7. **GR Outdoor Activities Amendments**
(City-Wide)

City of Springfield

Mr. MacPherson said the purpose of this request is to adopt an ordinance to amend Section 4-3100, General Retail District, in the Springfield Zoning Ordinance. City Council approved a resolution on July 25, 2011, to initiate amendments to the Zoning Ordinance regarding outdoor or activities in various zoning districts with appropriate restrictions. Since the current Zoning Ordinance was adopted in 1995, one of the distinguishing differences between the GR, General Retail District, and HC, Highway Commercial District, zoning is the ability to permit outdoor storage, display and activities associated with a primary use. The GR zoning district restricts outdoor activities to a minimum. The only outdoor activities permitted in the GR District are automobile parking lots, permitted drive-in, pick-up window and drive-thru facilities and temporary accessory seasonal outdoor sales and related storage. In contrast the Highway Commercial District allows automobile display and sales to major event entertainment uses including, but not limited to, stadiums, sports arenas, rack tracks and fairgrounds.

Staff is proposing fewer restrictions on outdoor activities where they are not adjacent to residential zoning districts. The proposed amendments will continue to prohibit new and used are display and sales that are conducted outdoors. It will allow other outdoor accessory uses that are not specifically permitted with a conditional use permit if the property abuts a residential zoning district such as, but not limited to, playgrounds, volleyball courts, swimming pools, etc. If the property only abuts non-residential zoning districts, the proposed outdoor activity may be permitted. For example, an outdoor swimming pool for a

hotel in the GR District is currently not permitted, but with this proposed amendments this outdoor activity would be permitted by right next to non-residential districts and with a conditional use permit next to residential districts. Public and private parks, day care centers, commercial gardens and/or farmers markets, commercial off-street parking lots are examples of permitted uses that have outdoor activities that are specifically permitted and with the proposed amendments will clearly be allowed as an outdoor use or accessory use. Outdoor storage will continue to be prohibited except as provided in the permitted and conditional use permit uses of the GR District. Staff discussed the proposed amendments to the Development Issues Input Group (DIIG) at their regular meeting March and one concern was brought up. DIIG is a committee which has been formulated by the Chamber of Commerce that includes developers, design specialists, attorney's, real estate people and various other members of the community. One member of DIIG felt the language was not clear enough in its intent and needed to be clarified which uses were allowed outdoor storage or activities and which were not. After that meeting staff has made changes to clarify the language and notified DIIG. Staff has received no comments or objections to date. Staff findings are the proposed amendments will allow more accessory outdoor activities to be permitted unless located adjacent to a residential district, in which, a conditional use permit will be required to mitigate any compatibility issues. Staff is recommending approval.

Mr. Hansen commented after reading the report, that the text is the same that was had in a committee last year with Mr. Straw and the Committee approved of all these ideas, adding it makes a lot of sense.

Mr. Lawhon closed the public hearing.

Ms. Roling motioned to **approve** the GR Outdoor Activities Amendments. Mr. Ray **seconded** the motion. The motion **carried** as follows: AYES: Lawhon, Edwards, Ray, Young, Roling and Hansen. NAYS: None. ABSTAIN: None. ABSENT: Baird, Coltrin and McClelland.

8. Temporary Vendors Amendments (City Wide)

City of Springfield

Mr. MacPherson expressed his appreciation of Mr. Hansen's comments about the Planning and Zoning Committee because the next issue to be reviewed was also discussed at that Committee. It deals with temporary vendors and the concept was to amend section 5-1200, Temporary Uses and add a new definition of a mobile vendor to Section 2-1100, Definitions, in the Springfield Zoning Ordinance. This too was initiated by City Council. There has been an increased interest the last few years from mobile food vendors to provide services in additional zoning districts in the City. The Zoning Ordinance, including the temporary vendors subsection, only addresses issues and requirements on private property. The City Code covers public right-of-way requirements for sidewalk vendors and is not included in these proposed amendments.

Mr. MacPherson said he wanted to make the clear distinction at this point that this is a private contractual relationship between two private parties and it doesn't involve or use the public right-of-way. This amendment proposes to permit these vendor sites on private property in the following zoning districts: Government and Institutional (GI), Center City (CC), Commercial Street (COM), Light Industrial (LI), General Manufacturing (GM), Heavy Manufacturing (HM), and Industrial Commercial (IC). Additionally, there is not a current definition or subsection regarding mobile vendors. The proposed definition classifies a

mobile vendor as a food or vendor service operation that operates from a motorized vehicle. The proposed subsection will clarify that mobile vendors must be on an approved temporary vendor site and, certain standards have to be met, cannot be located at a particular site for a period of time greater than one hundred eighty (180) days in a calendar year. Since they are considered a temporary use or structure by ordinances and codes, this will limit the amount of time that any one temporary or mobile vendor can be located at an approved vendor site. The proposed amendment add site plan standards to the current requirements which are the same site plan standards that are currently being used by Building Development Services to permit temporary vendor sites.

The Urban District Alliance (UDA) has expressed concerns regarding unfair competition between temporary vendors and bricks and mortar businesses in the Center City District. Staff does not believe the same requirements for sidewalk vendors on public right-of-way (three hundred (300) foot spacing requirement between another vendor and/or existing business selling the same merchandise or product) are appropriate for temporary vendors on approved private vendor sites. For example, a hotdog stand that operates on a public right-of-way. Staff further believes that the private property owner and free market should dictate whether a vacant lot is used for a new building, parking or a mobile vendor. The City would also have difficulty enforcing a spacing requirement for a mobile vendor for obvious reasons. Building Development Services, Health Department and Fire Department have been directly involved and support the proposed amendments. Staff findings are the proposed amendments will provide better clarification and more flexibility for temporary and mobile vendors to locate on private property within the City. Staff is recommending approval of the amendment.

Mr. Hansen asked that the vendor sites be explained.

Mr. MacPherson apologized, stating he was going to review the standards and skipped them. In order for a temporary vendor to establish a site, they have to have an agreement or a private vendor who owns the site or a private person who owns that particular site. Then a site plan providing the following information should be submitted to Building Development Services showing conformance with the requirements and standards of the Zoning Ordinance and other city codes. The legal description, a site plan showing the proposed location of the temporary vendor site and showing that the site does not encroach into the required setbacks of site triangles, submit a parking schedule indicating the total number of parking spaces for the site, the total spaces required for the permanent business and the use of the permanent business as well as show the location of the accessible restroom facilities for each gender. They must be located within five hundred (500) feet of the temporary vendor site and within a permanent structure.

Mr. Hansen discussed some of the locations of the designated vendor sites such as Smillie's on Glenstone and Fremont and Sunshine adding that those vendor sites are known to the City and approved by the City; there won't be any springing up in the middle of the night.

Mr. MacPherson said that is correct.

Mr. Lawhon asked if what was being accomplished through the amendments was just expanding those places where these temporary vendors can set up business.

Mr. MacPherson said yes.

Mr. Lawhon opened the public hearing.

Rusty Worley, Urban District Alliance, 807 W. Walnut stated he had a few comments. They have been meeting with some of the business owners over the past several months and getting some feedback on this issue. Some of the comments are that downtown has a wide variety of food options and several are represented here today. We have 46 restaurants, 20 pubs and clubs down town and last year alone we did 20 million dollars in sales from food and beverage. We are not under served downtown for food options. Our patrons have lots of choices and options. Current opportunities from mobile vendors this weekend being a perfect example between Arts Fest and Arts Fiesta that will have lots of mobile food vendors on Walnut Street and Founders Park will have the Aviary's new mobile unit there. There is also the opportunity for temporary vendors on the sidewalk cafes and the Sidewalk Vendor Ordinance, Jeff helped prepare that several years ago; he has one of the hotdog vendors so we have the ordinance which is the only place in town where that is utilized. In our discussions, timing was an issue. Center City is often used as an opportunity for pilot projects. The latest project was the Taste of Springfield and being able to serve alcohol on the square. The Sidewalk Vendor Ordinance was originally a pilot project of Center City, in this particular case the feedback received from the businesses is there are other areas in town that are under served with food options and we would prefer those area be given this expanded option and hold off in Center City. The consensus was not necessarily no, but not now for Center City. Parking is always a premium and we are very appreciative the ordinance does not allow mobile food vendors on the street because we already have very limited parking options. We also have concerns about losing some of the parking spaces in the premium private lots. If the Planning and Zoning Commission feels that this is important to include mobile food trucks in Center City right now, we would ask the same distance requirements as the current Sidewalk Vendor Ordinance be included in this ordinance. This provides a buffer for our brick and mortar businesses who are there on site 365 days a year and have significant investments. St. Louis just recently passed a vendor ordinance with a 200 foot buffer that included both the public right-of-way and temporary vendors with 200 foot buffers. I there is some precedence that underscores our concerns not too far away. The market in St. Louis has a lot more competition for the fool trucks and they had to play out these wars on a bigger stage than we have and worked them out. He commented he is available for questions.

Mr. Lawhon commented that one of the statements Mr. Worley made was not necessarily that you object to this but it sounds like you are saying now is not a good time to do this. With that in mind, when would that time occur and how would you determine that.

Mr. Worley said part of the feedback received is there is still quite a bit of capacity in a lot of the restaurants; the Av airy is bursting at the seams, but if you look across the 46 restaurants at lunch or different times of the day, there is quite a bit of capacity. When there is growth in office for the lunch and there are loft apartments for the evening, that growth would bring about a point where we could add this more comfortably.

Mr. Lawhon noted there were comments about talking with the businesses on the Square. The impression is that was primarily restaurants or exclusively restaurants.

Mr. Worley said they have brought this up at DSA and CID meetings, a couple of our restaurant meetings and that's where we got the feedback.

Mr. Hansen asked if there is a problem with too many mobile vendors there now.

Mr. Worley said there were originally hotdog wars but that passed. Mr. Bear has two or three carts depending on activities in the area, but he is the main food vendor right now, but he does not see that as a problem.

Mr. Hansen commented that it is not a problem now, but you see the amendment as an opening that up to more activity.

Mr. Worley said that it is not a problem currently because of the distance requirements that are in place that helps give some protection between the brick and mortar and the mobile vendor. An example of that is South Street and McDaniel. You can have a mobile food vendor come in and have an Italian presence on the parking lot. There is the concern of trash and debris. They have had to ask that areas be picked up.

Ms. Roling said that basically the concern is the Center City area, not city-wide, but more concentration downtown.

Mr. Worley said mobile trucks are really the rage right now. There is a lot of activity nationally and we see there are a lot of areas in town that are under served, so we think there is a lot of opportunity across the city.

Debra Burgess, 2549 E Ottawa, 65804 commented that she represents both sides of this issue. She and her husband own the Aviary on Jefferson and Walnut, right in the heart of downtown. We have been open for one year and Springfield really loves us. Recently we purchased a new food truck, very beautiful. We did it for three reasons. One was advertisement for the Aviary, it is a big mobile kitchen for catering jobs and wedding receptions and third, just to have a food truck. Crepes are street food and very social food. Her daughter lives in Portland where there are whole neighborhoods of food trucks. We really believe strongly that Springfield is up and coming and becoming very urban and food trucks are very right now. When they first got the truck, which is called "Aviary on the Fly", we looked around town for a location and we thought maybe where the court house is, government plaza, there aren't many restaurants in the area. We made arrangements with a Bail Bondsman to park in his parking lot across from the court house and pay him a certain amount every month. When we went to get a permit, we found that part of the area is Center City area and it wasn't allowed. We feel that if someone has private property and the owner agrees to allow us to be on their private property to sell food, we believe that should be allowed even if it was in a location down on the Square.

Mr. Lawhon asked if she would be in favor of that being allowed even if it was at a location downtown on the Square.

Ms. Burgess said yes, competition is a good thing. She sees Springfield as growing and Center City as growing and absolutely yes.

Mr. Jeff Bear, 916 E Canterbury, 65810 commented that he has a different opinion. There is a lot of empty, vacant buildings downtown. We downtown need to focus on filling these buildings. When it comes to food downtown, we are well served; therefore he is against bringing in more food trucks into the community. There are several concerns and issues that were addressed. Mr. Bear said that he personally contacted close to 40 restaurants and businesses, ranging from Hair Salons to the Shrine Mosque and

overwhelmingly it was conditional or no for downtown at the current time. We do believe in the future there would be an opportunity for the amendment, but ask that downtown be removed at this point.

Mr. Lawhon asked Mr. Bear when he spoke to the businesses, if he could be more specific to what their objections were.

Mr. Bear commented the concerns were the trash accumulation, that CID taxes were paid properly, and the condition or the appearance of the units themselves. The current businesses have to pay utilities and these people can come in and roll right back out in our area downtown. Those were a lot of the conditionals.

Mr. Hansen asked Mr. MacPherson about the CID as it relates to any sub-renting of locations.

Mr. MacPherson said if they are operating in the district, they are subject to the tax, and when they come in for a business license they are supplied with the tax rate in the district where they are located. There is no guarantee that they pay it, but there is no guarantee that the others do either.

Mr. Sean Kisner, stated he is at 220 West Walnut and also own the empty lot at 304 West Walnut and he too is on both sides of the issue just as they are because we would have a lot that currently would be eligible. To address a couple of issues that he heard that he doesn't believe were cleared up. Someone asked if they were having a problem with vendor's downtown right now. Currently, downtown is not allowed to have them because it is not one of the zones that are allowed. That is part of what this amendment would do is open downtown. What the amendment is designed to do is open up all of the other zones within the City. He spoke with Chris Straw yesterday and he explained it so I will give you some of what he told us. One of the reasons the City sees this as important is it would allow someone to park at Mueller's, for example, and this would open this up and he can see where they are going on that. Chris Straw said that we have to have the same laws for the whole City. Center City is subject to all kinds of laws and regulations that no one else in the City is. The City knows what they have to deal with downtown, and when he looks at some things that is not included in this; I have 304 W Walnut and there is not a vendor in the City that would pass the Walnut Street regulations for their group and yet, are you going to make them subject to that. As far as the taxes that are generated one of the things currently in process is we are attempting to get downtown designated as a convention and visitors district, entertainment district which allows different financing options but it also allows the City to collect a extra cent in tax. If a mobile vendor comes in at breakfast or lunch and locates someplace else for dinner, is he really going to separate it out and pay that tax? Mr. Kisner discussed the accessibility of toilets and the 500 feet rule, stating it is not realistic. There are multiple restaurants going through tough time and there are so many empty building. He asked that the amendment be changed to exclude Center City.

Mr. Hansen said to be clear Mr. Kisner, you accept the amendment as is except you want Center City exempted from it.

Mr. Kisner said yes, and added that the amendment will be good when all the buildings are full and there is a line out the doors on businesses.

Mr. Mark Burgess, 2549 E Ottawa commented that he is on both sides of the issue. The only reason this issue came up for them was the opportunity to bring the food truck to Government Plaza. The demographics they got are there are 10,000 people within a block and no food service here, so we felt it

would be a good opportunity. He does have concerns about the so called "Roach Coaches", and other rigs, but his price tag is up to \$95,000 for our truck. It is 30 feet long and it is completely wrapped, has a fire suppression hood system, a full kitchen, a generator, external power, and I understand when you open this can of worms up you can get all extreme situations. He understands the last gentleman's situation as well, because he would like to have his cake and eat it too, but he does not want someone outside his door at Aviary, but I would also like to have my truck next to you guys so people can come eat lunch. The situation with downtown is unique in that if I was trying to put my truck downtown, I don't think he could find some place to put it. Public parking is not part of this deal so I can't park it on public parking, it big enough that you are not going to want to go inside a parking garage on public property because no one will find you and if you are doing crappy work, they won't find you anyway. So I am not really concerned with a hotdog stand taking business from me. Could I set up across from his property, yes, but I'm not going to. It is a long way from where everybody is. I don't see that as a big issue, but I do see the issue of maintaining the standards that they are required to maintain through all downtown, Walnut Historic area. If you are going to put something up you are going to have to continue to meet those requirements in that situation once this passes down that direction. So that is the reason we looked at that situation in the first place. The location we were talking about with the bail bondsman across the street, we also have to pay them a fee, we are doing things above board, we are paying our taxes, we are paying our fees, we are jumping through the hoops and not everyone does that, again that is another area whether we do this or not. We are in favor of opening up this situation. We never thought of it as a competition for us downtown but we try to come in here and find out the Government Plaza is part of the area we couldn't get to. We can't get to certain areas because of the way the zoning and the current situation is, so we don't see it as competition. We want to be more urban, be more City, and this is the move of the future. It is added revenue if he can get his truck out; generate more revenue for the license fees, revenue, more employees for the City. Since they have opened their business, they have 25 employees working for them and the food truck will put 5 more employees to work.

Mr. Hansen asked how many places downtown within the Center City would actually be a viable vendor site.

Mr. Burgess said that Rusty could probably address that, but he believes there are very few. If the restrictions are still held as they are now, I can't see a food vendor having much luck trying to make that work in the downtown area right now. I feel you are limited downtown.

Mr. Worley said there are a limited number of sites. The most high profile would be at Walnut and McDaniel, next to Nonna's; down at the Great Southern lot on South Avenue and Pershing, that area. On Walnut Street, Sean's lot, across the street from Queen City Cycle; there is an L shape parking lot that fronts on to Walnut Street and the private parking lot across from Little Theatre on Walnut; the Sertoma lot that is on South Campbell, so around half a dozen. You don't have the parking restrictions elsewhere that you would in Center City.

Mr. Lawhon closed the public hearing.

Mr. Edwards commented that some of the remarks he heard were surprising, but the Burgesses have the right of the matter, that when it comes down to it, the market really is what should dictate here on what can fly and what can't fly. We heard a lot about businesses that have gone out; they didn't go out because a hotdog stand was across the street; they went out because some didn't pay their bills or run their business

model right. Simply waiting on buildings to fill up before we start working the streets doesn't make a lot of sense to him. He commented that he has been to several large cities around the world and some of the best food he has had, has been in parking lots or on the streets. Personally, he looks forward to falafel wars, or pizza wars or whatever you want to call it for different vendors around here. Let's just let the market decide. It is a rare case for Commission to deregulate something, for us to make business easier and if it is easier for a young person to start a small business, perhaps they will move into a brick and mortar restaurant one day. The idea of making it more restrictive just to protect small interests here, I just don't think that works for me. I say let's just pass it as it is, let the market decide and go from there.

Mr. Lawhon commented he agrees with Mr. Edwards. He is a great believer of competition and the less regulation the better, and the market regulates itself in its own sort of way as time goes by. I am very much in favor of this.

Mr. Hansen thanked the audience for their comments; you approached this in a very professional manner which is greatly appreciated by Commission. Everyone presented valid points on both sides, and after hearing all the points he is in favor of the amendment.

Mr. Hansen motioned to **approve** the Temporary Vendors Amendments. Ms. Roling **seconded** the motion. The motion **carried** as follows: AYES: Lawhon, Edwards, Ray, Young, Roling and Hansen. NAYS: None. ABSTAIN: None. ABSENT: Baird, Coltrin and McClelland.

Michael MacPherson

Michael MacPherson
Principal Planner