

**PLAN AND ZONING COMMISSION MEETING**

**December 19, 2016**

Direction: CITY1705.DSS

Chairperson Erickson called the regular meeting of the Plan and Zoning Commission to order at 5:30 p.m. on Monday, December 19, 2016, in the Council Chambers of the West Des Moines City Hall, located at 4200 Mills Civic Parkway, in West Des Moines.

Roll Call: Andersen, Costa, Crowley, Erickson, Hatfield, Southworth.....Present  
Brown.....Absent

**Item 1 - Consent Agenda**

**Item 1a - Minutes of the meeting of December 5, 2016**

Chairperson Erickson asked for any comments or modifications to the December 5, 2016 minutes.

Moved by Commissioner Andersen, seconded by Commissioner Crowley, the Plan and Zoning Commission approved the December 5, 2016 meeting minutes.

Vote: Andersen, Costa, Crowley, Erickson, Hatfield, Southworth.....Yes  
Brown.....Absent

Motion carried.

With agreement of the Commissioners and in deference to the potential length of public hearing item #2b-the Sign Code Amendment, the two new business agenda items were addressed first.

**Item 2 - Public Hearings**

**2a - Fox Valley, Generally north of SE Fox Valley Drive and approximately 900' west of SE Beaverbrook Trail - Amend Comprehensive Plan Land Use Map to change approximately 13 acres from Medium Density Residential (MD) to Single Fa9) to Single Family Residential (R-1) consistent with the Comprehensive Plan Land Use designation - Charles I. & Ruth Colby National Development Trust - CPA-003290-2016/ZC-003292-2016**

Chair Erickson opened the public hearing and asked the Recording Secretary to state when the public notice was published. The Recording Secretary indicated that the notice was published in the Des Moines Register on December 9, 2016.

Chair Erickson asked for a motion to accept and make a part of the record all testimony and all other documents received at this public hearing.

Moved by Commissioner Andersen, seconded by Commissioner Costa, the Plan and Zoning Commission accept and make a part of the record all testimony and all other documents received at this public hearing.

Vote: Andersen, Costa, Crowley, Erickson, Hatfield, Southworth.....Yes  
Brown.....Absent

Motion carried.

Melissa Hills, Civil Engineering Consultants, 2400 86<sup>th</sup> Street, Urbandale, representing the applicant, commented that this piece had been before the Commission when it was conceptually planned for multi-family development. With the alignment of Veterans Parkway and the area being located next to the Great Midwest Trail, it was decided to leave two large outlots as a buffer and for a storm water

detention pond. Ms. Hills pointed these out on a location map. Currently, plat 3 has two wet bottom ponds which are to be entrance features to the development. In summary, Ms. Hills commented that a single family development would allow space for features and accommodate the adjustments that have occurred with the Veterans Parkway alignment.

Planner Portz had no further comment.

Chair Erickson asked if anyone from the audience would care to speak to this item; seeing none, closed the public hearing and asked for continued discussion or a motion noting that there would be two votes.

Comprehensive Plan Land Use Map Amendment

Moved by Commissioner Hatfield, seconded by Commissioner Crowley, the Plan and Zoning Commission adopt a resolution recommending the City Council approve the Comprehensive Plan Land Use Map amendment for approximately 13 acres from Medium Density Residential (MD) to Single Family Residential (SF).

Vote: Andersen, Costa, Crowley, Erickson, Hatfield, Southworth.....Yes  
Brown .....Absent  
Motion carried.

Rezoning

Moved by Commissioner Andersen seconded by Commissioner Southworth, the Plan and Zoning Commission adopt a resolution recommending the City Council approve the rezoning request to amend the Zoning Map to designate the same 13 acres from Medium Density Residential (RM-12) to Single Family Residential (R-1) zoning consistent with the Comprehensive Plan Land Use designation, subject to the applicant meeting all City Code requirements.

Vote: Andersen, Costa, Crowley, Erickson, Hatfield, Southworth.....Yes  
Brown .....Absent  
Motion carried.

2b - Sign Code Amendment, Title 7: Public Ways and Property, and Title 9: Zoning, Chapter 18: Signs, to adopt new regulations, and Title 9: Zoning, Chapter 10: Performance Standards, and Chapter 18: Signs, to adopt new regulations for the placement of signs within the corporate City limits – City initiated - AO-003191-2016

Chair Erickson opened the public hearing and asked the Recording Secretary to state when the public notice was published. The Recording Secretary indicated that the notice was published in the Des Moines Register on December 9, 2016.

Chair Erickson asked for a motion to accept and make a part of the record all testimony and all other documents received at this public hearing.

Moved by Commissioner Hatfield, seconded by Commissioner Crowley, the Plan and Zoning Commission accept and make a part of the record all testimony and all other documents received at this public hearing.

Vote: Andersen, Costa, Crowley, Erickson, Hatfield, Southworth.....Yes  
Brown.....Absent  
Motion carried.

Sign and Zone Administrator Kevin Wilde stated that staff had been working on an update to the sign code for almost ten years, and that updating the sign code was in response to changes in court cases during the last few years dealing with content regulation, coupled with signs that have been worked through in Valley Junction.

Mr. Wilde continued that the draft sign code provided to the Commission was a rewrite of the entire sign ordinance. He commented on the key issues with the redraft. The Public Ways and Property section will now accommodate issues in Valley Junction which have not been previously addressed. This section will be amended to legally incorporate language to determine how to place benches, planters, displays, sandwich boards, etc., in the public right-of-way through an annual permit process. Also, incorporated in this section will be the ability to have sidewalk cafes. Discussions regarding these provisions have taken place as part of the Valley Junction Master Planning as ways to incorporate more activity in the area.

Mr. Wilde expressed that the current sign code regulations are based upon the location of the public street. This has been modified to include private streets; thus, there is a need to accommodate properties where there are larger parcels and a private street had been constructed. Setbacks needed to be accommodated and acknowledged that there was a public thoroughfare even though located on private property.

Mr. Wilde informed the Commission that design criteria had been added to the draft ordinance to accommodate staff requests for architectural continuity, but did not have code provisions to establish, i.e., regulation of illumination of signs which would state that shut offs, lower intensity lighting, etc. would be required.

Because of court cases dealing with content regulation, Mr. Wilde expressed that there has been concern with issuing a permit for a 32 square foot real estate temporary sign for as long as needed. Currently, a sign could be allowed for all perpetuity which means that anything could be allowed; thus, the City has had to reign back on how long real estate signs are being allowed. The draft ordinance states that two long-term temporary sign permits would be allowed for 45-day periods in a calendar year. So, the longest timeframe that a hard board sign, whether a real estate sign or an advertisement, would be two 45-day periods. The short-term sign permits were kept at the current standard of four 4-day events, i.e., banners, flags.

Chair Erickson commented that given that the sign code was all encompassing, he asked that Mr. Wilde speak to the process of engagement and how were stakeholders, property owners, real estate brokers, sign companies, etc. were engaged in this dialog. Mr. Wilde stated that primarily staff was responding to court cases and their dictates. Information was sent out to many of the sign contractors, but input has not been solicited.

Chair Erickson questioned if it was fair to address the Valley Junction aspect along with the sign overhaul. Mr. Wilde replied yes as it was difficult to deal with one without the other. Staff has been trying to bring the Code up-to-date so issues would not have to be addressed through a Planned Unit Development (PUD) when not allowed by Code.

Chair Erickson expressed concern that without involving other entities and groups, he felt a process needed to be identified that would engage participation.

Commissioner Crowley asked to discuss real estate signs in terms of timing and how it would affect many owners, especially with the two 45-day limit. He commented that commercial real estate signs had a six to twelve month life span. He would like to go back and revisit this item.

Commissioner Hatfield requested an example of a portion of the ordinance which would help with

understanding property owner signage. Mr. Wilde stated that this was referred to as a project identification sign which could be tied to a specific active project and last the duration of the building permit. This is part of the current ordinance as written today.

Chair Erickson asked how pieces specific to Valley Junction would be tied to a specific zoning designation. Mr. Wilde responded that Valley Junction has no setbacks and all improvements would be located in the City right-of-way. For private property, six square feet is allowed one temporary sign without a permit and could be left up indefinitely. There would be no regulations, but the owner would be limited to one sign per public street frontage. Mr. Wilde mentioned that the City cannot regulate non-commercial or political signs versus commercial signs more stringently than for commercial signs. A section has been incorporated into the sign draft ordinance regarding non-commercial and political signs noting that more latitude has been given to signs on a property without a permit.

Chair Erickson asked if anyone from the audience wished to speak to this item.

Jeremy Christiani, 1100 50<sup>th</sup> Street, Unit #1102, stated he had serious concerns and questions regarding this ordinance, especially the repeal and replacement of the current sign code. The State of Iowa Code 414.7 exclusively delegates the police power of granting variances to the Board of Adjustment. The Plan and Zoning Commission does not have the police power to delegate the police power that would allow the Director to grant minor exceptions to the zoning code. Variances of all sizes are exclusive to the police power of the Board of Adjustment. City Code 9-2-1 Rules of Construction and 9-2-2 Definitions states explicitly how terms and words shall be interpreted. The word "shall" means mandatory. Empowering the Director to interpret zoning code in an alternative way for single individuals to avoid compliance with zoning code does not comply with the procedural requirements mandated by Iowa Code. Due processes denied in Section 9-18-18 subsection C, Enforcement. The Iowa Supreme Court has made it clear that the constitutional requirements of due process is far more important than non-emergency abatement of local zoning ordinances. Depriving a person of property and charging him for abatement should not happen before a reasonable time for the opportunity to be heard has expired. Many parts of this draft ordinance are vague and unclear. What does "allowed with design consideration" mean in regard to CVC zoning within 300 feet of a dwelling. What is neon signage or what does it mean by unique neon designs? Can a neon blade bar sign, exactly like those driven out of the City by past City Council, be erected in the CVC zoning adjacent to Mr. Christiani's home? Is the only requirement an undefined consideration by an undetermined entity? City Code 9-4-3 definition of districts states that in Neighborhood Commercial and Convenience Commercial zoning, signage control shall be suitable for a residential neighborhood. Specifically, the limitation on the design and operation of uses shall include residential exterior design. How do neon and blade signs fit into these code definitions. Bar owners want blade signs and neon; residents do not need or want them.

In summary, it has been Mr. Christiani's personal experience that interpretations by the Director always favor the developer. He asked the Commissioners to please not allow inappropriate signage to become the new law. The most significant benefit a sign code can give to the community would be to reduce the impact of alcohol marketing on young people. This is an important public health goal since underage drinking is a significant contributor to youth alcohol related motor vehicle crashes and other forms of injury, i.e., violence, suicide, and other problems associated with school and family. There is no constitutional protection for false or misleading advertising, and any advertisement that appeals to underage persons can be interpreted as misleading because it is inviting an illegal transaction. No consideration has been given to this important issue. Mr. Christiani reiterated that the Commissioners should consider restrictions on outdoor alcohol advertising in locations where youth are likely to be present. Baltimore City has a model ordinance in place that a federal appellate court has held was constitutional. This proposed sign code is disappointing and may be unconstitutional. Please do not send this draft ordinance forward until it truly preserves the rights of freedom of speech and expression while protecting the safety and welfare of the community.

Chair Erickson stated that the Commission appreciated all the information provided by Mr. Christiani, but requested that he state his biggest concern. Mr. Christiani responded that his biggest concern was the interpretations by the Director and that the Board of Adjustment should be granting variances, and that the code should not state that the Director should be allowed to interpret individually when granting variances. Mr. Christiani's personal concern was with locating neon bar signs in residential areas.

Chair Erickson commented that when it comes to signage, part can be technology, part art, and the messaging can get blurred. He understands Mr. Christiani's concerns and wanted to know if he had any suggestions on how to address these concerns. Mr. Christiani stated that neon should not be allowed in districts that have residential characteristics, specifically, Neighborhood Commercial and CVC zoning designations. Also, he had the strong belief that alcohol advertisement and the density of retail alcohol distribution had extremely negative and empirically proven effects on neighborhoods and should not be allowed. Mr. Christiani stated that he was a poor man with poor kids and has always lived in poor neighborhoods with no one standing up to say "please don't."

Jim Miller, Historic Valley Junction Foundation, 137 5<sup>th</sup> Street, noted that he and six people on his design committee (five of which are retailers) and have not had a chance to review the proposed draft sign ordinance. He was in favor of moving forward with the ordinance, but requested additional time for review.

Chair Erickson asked if anyone from the audience would care to speak to this item; seeing none, closed the public hearing and asked for continued discussion or a motion.

Commissioner Hatfield motioned that action not be taken on this item, but that the timeframe for review be extended.

Commissioner Crowley commented that he also needed further time to review and discuss the ordinance with the affected stakeholders.

Chair Erickson asked how this information could be disseminated to a broader number of constituencies

Mr. Wilde stated that this item was published in the newspaper, but that the challenge is that this ordinance was all encompassing across the City. Twenty to 20 and 30 sign contractors were given this information, but he was not opposed to having the item continued.

Commissioner Crowley suggested that the managers of West Glen and Jordan Creek Town Center, as well as other major developers, be included in the discussions and be given time to digest the information. Perhaps public meetings would be appropriate to include businesses that us signage.

Commissioner Southworth expressed that the information needed to be accessible to the general public.

Chair Erickson stated that the Commission has respect for staff time spent, but because of the comprehensiveness of the ordinance and that no one wants to allow for unintended consequences, he was supportive of allowing for more time to insure that various voices had a chance to be involved and had adequate opportunity for comment. He thought that a work session may be warranted to obtain adequate opportunity for input.

Mr. Wilde stated that there was a City Council workshop at which time staff was directed to come back with a recommendation.

Director Twedt suggested that the City's website could be used to post the ordinance with a deadline to respond which may draw out the process, but the comments could be incorporated into the ordinance. She did inform the Commission that this ordinance was so detailed that the average person to

understand may have more questions rather than providing guidance.

Commissioner Costa stated that the best way to comprehend the changes would be to compare the draft to the existing ordinance. Ms. Twedt responded that the reformatting is not conducive to cut and paste and may be more confusing. Staff can attempt to have photos to demonstrate what was trying to be achieved. She cautioned that staff may not have a draft back before the Commission until February 2017.

Chair Erickson commented that having the draft ordinance on the City’s website would meet the intent of what trying to be accomplished. He asked if there was a process where stakeholder groups were identified that could be engaged and then create a process for discussion and determining issues. Chair Erickson volunteered to have further dialogue with staff regarding this issue in determining direction to move this item forward.

Commissioner Hatfield motioned to defer this item to the January 16, 2017 meeting to allow additional time for Commission review and comment.

Commissioner Crowley left the meeting at 6:16 pm.

Mr. Wilde suggested that this item be continued for a month to allow for Commission review.

Commissioner Hatfield amended his motion; Commissioner Southworth seconded; that this item be continued to the January 30, 2017 Plan and Zoning Commission to allow additional time for Commission review of the proposed ordinance, as well as to allow time for staff to engage the public.

Vote: Andersen, Costa, Erickson, Hatfield, Southworth.....Yes  
Brown, Crowley.....Absent  
Motion carried.

Chair Erickson stressed that this deferral was not a criticism of what was brought forward tonight, but an acknowledgement of the complexity of what was being asked of the Commission to approve.

**Item 3 – Old Business**

**Item 4 – New Business**

**Item 4a - Westport Preliminary Plat 1, 33346 V Court - Subdivide property into 55 lots for single family development, 5 public street lots and 4 outlots – Westport Development, LLC– PP-003107-2016**

Eric Cannon, Snyder & Associates, 2727 SW Snyder Boulevard, Ankeny, representing the applicant, requested Preliminary Plat approval to construct 55 single family lots. This would be the first phase of a residential development and will include temporary paving on both Wendover Drive and Mills Civic Parkway to provide access to the site. Parkland will be dedicated to the southwest portion of the development with green space dedicated to the north.

Planner Portz provided a location map pointing out the first phase of the development located to the east.

Moved by Commissioner Crowley, seconded by Commissioner Costa, the Plan and Zoning Commission adopt a resolution recommending the City Council approve the Preliminary Plat to create 55 lots for single family development, 5 lots for public streets, and 4 outlots, subject to the applicant meeting all City Code requirements and the following:

1. No combustible construction or storage shall occur on the Westport Plat 1 designated property until the necessary streets and water mains are installed to provide access and water for use by emergency services.
2. The applicant acknowledging that the associated Final plat must be approved and released for recordation by the City and recorded with the County prior to the issuance of any building permits, including footing and foundation permits, for any lot within the plat.
3. The applicant receiving City approval of Public Improvement Construction Plans for any public improvements prior to implementation. Additionally, the applicant acknowledging that public improvements must be constructed and accepted by the City prior to issuance of any occupancy permits, including temporary occupancy permits for any dwelling within the plat.

Vote: Andersen, Costa, Crowley, Erickson, Hatfield, Southworth.....Yes  
 Brown.....Absent

Motion carried.

**Item 4b - Reed Warehouse, 1611 Fuller Road – Construction of a 5,940 square feet warehouse for vehicle storage – Kendall Reed – SP-002347-2016**

Pat Shepard, Civil Engineering Consultants, 2400 86<sup>th</sup> Street, representing the applicant, requested Site Plan approval to construct a warehouse for car collection storage at the intersection of S. 16<sup>th</sup> Street and Fuller Road. There will be no outdoor parking, and a buffer is planned to screen residential to the west.

Planner Tragesser provided updated project elevations in response to architectural comment in the staff report. She commented that the property is a triangular piece. The latest architectural update has revised material colors and added window and door treatments.

Chair Erickson confirmed and was informed that the Board of Adjustment approved the variance for this property.

Moved by Commissioner Hatfield, seconded by Commissioner Southworth, the Plan and Zoning Commission adopt a resolution recommending the City Council approve the site plan to allow construction of a 5.940 sq. ft. warehouse at 1611 Fuller Road, subject to the applicant meeting all City Code requirements and the following:

1. Continue to work with staff to address outstanding comments, prior to release of a building permit.
2. Submit proof of payment to MidAmerican Energy for street lights, prior to release of building permit.

**Item 5 – Staff Reports**

There were no staff reports.

**Item 6 - Adjournment**

Chairman Erickson asked for a motion to adjourn the meeting.

Motion by Commissioner Hatfield, seconded by Commissioner Southworth, to adjourn the meeting.

Vote: Andersen, Costa, Erickson, Hatfield, Southworth.....Yes  
 Brown, Crowley.....Absent

Motion carried.

The meeting adjourned at 6:20 p.m.

\_\_\_\_\_  
Craig Erickson, Chairman

\_\_\_\_\_  
Kimberly Taylor, Recording Secretary