

**LAKESWOOD PLANNING COMMISSION
REGULAR MEETING
MINUTES
November 18, 2020**

COMMISSIONERS PRESENT:

Johann Cohn
Alan Heald
Cathy Kentner
Dale Miller
Rhonda Peters
Theresa Stone

STAFF PRESENT:

Paul Rice, Manager, Planning-Development Assistance
Kara Mueller, Planner
Aaron Schultz, Secretary to the Planning Commission

Following are the minutes of the November 18, 2020 Lakewood Planning Commission Special Meeting. A permanent set of these minutes is retained in the office of the City Clerk.

Minutes are not a verbatim transcription, but rather an attempt by the Secretary to capture the intent of the speakers.

ITEM 1: CALL TO ORDER

ITEM 2: ROLL CALL

The roll having been called, a quorum was declared and the following business was conducted:

ITEM 3: CASE MO-20-001 – 2301 S MCINTYRE ST. SOLTERRA CENTRE OFFICIAL DEVELOPMENT PLAN MODIFICATION NO. 1

COMMISSIONER HEALD provided information about providing public comment during the online meeting.

KARA MUELLER, Planner, provided the staff presentation for case MO-20-001 – 2301 S. McIntyre St.

COMMISSIONER STONE stated she wanted to see additional public input before deciding on the request. She inquired whether Council provided staff with any direction for public outreach. She inquired about the decrease in number of units and whether any of the new units would be affordable or would have incentives to create affordable housing. She stated that the public might not understand that an Official Development Plan (ODP) modification was a rezoning.

MS. MUELLER stated that the number of units would decrease from 1,630 to 950 units. She stated an ODP was not intended to prohibit uses and the modification would allow additional unit types including single-family and duplex. She stated that affordable housing was not required, but that the Zoning Ordinance contained affordable housing incentives.

PAUL RICE, Manager, Planning - Development Assistance, stated notification requirements for a legislative rezoning were found in the Zoning Ordinance. He stated that Council discussed ODP changes in a public setting with public input but there was not a required neighborhood meeting.

COMMISSIONER COHN inquired whether this was a rezoning that changes the zoning or just modifies the ODP and inquired about whether there had been previous cases where uses were added to a zone district that did not previously allow them.

MS. MUELLER stated that neither the current ODP nor the base zoning of Mixed-Use Employment Suburban (M-E-S) allowed single-family or duplex units. She stated that the proposed ODP modification would alter the zoning to allow previously prohibited uses (single-family and duplex) and reduce the number of units. She stated that the ODP could be changed to allow uses without changing the base zone district.

COMMISSIONER COHN stated that Plan Rooney Valley noted three different planning areas impacting the area under the Solterra Centre ODP, but that the changes are consistent with the plan. He inquired whether ordinance O-2020-25 adopted by City Council authorizing an addendum to the Development Agreement for Solterra Centre ODP was broad enough to capture the intent of the modification.

MS. MUELLER stated that the addendum contained more information about the intent of the modification, and that the ODP modification restated this information from the development agreement for ease of use when referencing the document in the future.

COMMISSIONER COHN inquired about the proximity of residential uses to the C-470 highway and Bandimere Speedway. He inquired about existing infrastructure at the site and the transmission lines along South McIntyre Street.

BRIAN CONNOLLY, Property Owner Representative and attorney with Otten Johnson Robinson Neff + Ragonetti, stated that the original vision for the site included an office park, but demand office has not materialized. He stated that residential uses are permitted in the area. He stated that existing decaying infrastructure would be replaced and relocated as the area is replatted, but that the transmission lines would remain.

MS. MUELLER stated that the transmission lines were major transmission lines and that Public Service Company had a large utility easement in the location of the transmission lines.

COMMISSIONER COHN stated that the area lacked a supermarket and that a supermarket would be permitted with the current zoning.

MR. CONNOLLY stated grocery stores choose to locate based on the number of residences within a given radius, and that the Rooney Valley had a lot of open space. He stated that more residences might lead to a grocery store, but that there were other sites in the valley that might be better suited for grocery stores.

COMMISSIONER MILLER stated his interest in addressing the food desert in the Rooney Valley. He stated that he understood the lack in interest for commercial uses and inquired why the planning area was not modified to encourage commercial use.

MS. MUELLER stated that land for commercial uses had been reserved within unincorporated Jefferson County and that could serve as a location for a grocery store.

COMMISSIONER MILLER stated that it appeared that the City of Lakewood was relying on outside entities to provide services for Lakewood residents and that omitting commercial uses was not consistent with the Comprehensive Plan. He stated that despite intent to include a mix of uses, the area would be primarily housing. He inquired about commercial uses in Solterra.

MR. CONNOLLY stated that the property in question was separate from the area traditionally considered as Solterra. He stated that commercial uses were permitted and would be built if it could be supported by the market.

COMMISSIONER KENTNER stated that she had concerns regarding the notification requirements for a legislative rezoning and inquired about notification requirements for a quasi-judicial rezoning.

MS. MUELLER stated that the notification requirements include property owners and tenants within 500 feet and registered neighborhood organizations within one half mile. She stated that there would be 322 properties representing 140 property owners/tenants including vacant lots, and three (3) neighborhood organizations. She provided a map of the area.

COMMISSIONER KENTNER stated that she did not think it would have been burdensome to provide notice to the neighborhood to demonstrate neighborhood support. She stated that the modification would allow a mix of uses, but no longer require it. She inquired whether the request for an addendum intended to clarify the vested rights under the Residential Growth Limitation Ordinance and inquired about recommending to Council that the modification include a commercial, retail, and office requirement as required under the current ODP and base zone district.

MS. MUELLER stated that the addendum was an agreement between the developer and City Council, and that a legislative rezoning was a method to enact the agreed upon changes.

MR. CONNOLLY stated that provision 3F of the addendum precludes the City Council from making additional changes to the ODP and an approval of changes beyond the request would be in breach of the agreement. He stated that the vested rights include the entire property and allowed mixed-use including residential in planning areas 1-3.

MS. MUELLER stated that the base M-E-S zone district allowed residential uses and was not subject to the maximum 50% residential requirement as formal development applications were submitted prior to the zoning change to limit multifamily residential uses in M-E-S zone.

COMMISSIONER KENTNER stated she would like to see the existing land development application dates and stated that rights were vested with the ODP and not the base zone district. She inquired how the base zone district could be vested after the ODP.

MR. CONNOLLY stated that the vested rights agreement vests the ODP as a site-specific development plan, and to the extent the ODP overlaid the base zone district, the underlying zone district standards would be encompassed within the vested rights.

COMMISSIONER KENTNER stated that the standards of the underlying zone district were not vested and that the plan calls for non-residential uses. She stated that Council might not agree with their recommendation, but that the Commission could amend the recommendation and inquired about the process for doing so.

MS. MUELLER stated that the Commission could amend the recommendation.

COMMISSIONER PETERS inquired about school land uses in the area and about the acreage that would be dedicated for schools, and if the land was memorialized in the ODP.

MS. MUELLER stated that the Jefferson County School District had requested land as opposed to fees in the subject and adjacent properties. She provided a vicinity map. She stated that the agreement was not memorialized in the ODP but that the developer was aware that the school district required a land dedication.

MR. CONNOLLY stated that he had not been involved in agreements with the school district.

COMMISSIONER PETERS stated that she would like the ODP modification to remove an option for fees in lieu of land dedication and that the need for a school was well known.

MS. MUELLER stated that the school district determines whether land or fees were required and staff implemented their request as a project moved through the development process.

COMMISSIONER PETERS stated that not requiring commercial development in the area was not consistent with the Comprehensive Plan. She stated that a lack of public input could create a bad precedent. She inquired about the setbacks from the overhead utility easement and whether there would be residential development near the overhead utilities.

MR. CONNOLLY stated that there was no setback from the easement.

MS. MUELLER stated that the easement was generally the width of the street from backs of curb on South McIntyre Street, with the utility poles located in the center median. She stated that Xcel would not allow development within the easement, that the easement extends

beyond the arms of the utility poles, open space often abuts the easement, and there were required building setbacks from the back of curb of the street.

COMMISSIONER PETERS inquired about public transportation in the planning area. She inquired whether a rezoning would have required the input from the school district to determine whether land or fees in lieu were desired.

MR. RICE stated that service to the Rooney Valley was reduced after the introduction of the light rail and a subsequent service study, and that he did not believe RTD had plans to increase service in the Valley.

MS. MUELLER stated that the school district provided input on a more site-specific level, and the school district told staff what the school district would require. She stated that Jefferson County School District would also require land an adjacent development in Jefferson County, Red Rocks Ranch.

MR. RICE stated that a recommendation should allow the school district to decide.

COMMISSIONER PETERS stated that she felt strongly that land should be required as the area was isolated and land could be sold by the school district in the future and was worth more than fees.

COMMISSIONER COHN inquired whether additional metro districts were desired. He stated that he understood the ODP modification to be a conciliation between the Residential Growth Limitation Ordinance and state law regarding vested rights.

MR. CONNOLLY stated that no additional metro districts were desired and confirmed Commissioner Cohn's understanding of the request.

COMMISSIONER HEALD stated that he believed the purpose of an ODP and Plan Rooney Valley to be a balance of land uses to create a productive city. He stated that the proposed modification appears to shift focus to residential uses without considering the balance of uses. He stated that balance included schools and stated that from his experience, a grocery store would locate where residences are planned, not only where they already exist.

COMMISSIONER COHN stated that there was a metro-wide housing shortage that additional units might mitigate. He stated that he could not speak to noise from Bandimere Speedway, but that noise from C-470 could be mitigated, and proximity to a highway was an advantage for homes. He stated few immediately adjacent residents could explain low public comment. He stated that he did not know whether the Commission would be able to influence retailers, but that there was still an opportunity to allow retail.

COMMISSIONER STONE stated that she is generally supportive of the modification but stated her concern that notification was not sent and that it was not made clear that the modification was a legislative rezoning. She stated wanted additional public input and inquired about

avenues to solicit public feedback. She recommended changing finding C to include a recommendation for additional public engagement.

COMMISSIONER HEALD stated that the legislative rezoning was not a process that fit the request exactly and asked for guidance in modifying the findings of fact and order.

MR. RICE stated that if the Commission disagrees with findings provided by staff, the findings proposed by staff could be modified or added to, or the findings could be denied.

COMMISSIONER KENTNER asked COMMISSIONER STONE for clarification on her request for additional public input.

COMMISSIONER STONE stated she believed the expectation of the Commission was to say whether they agreed with the decision, but that if the City was obligated move forward and Council would ultimately decide.

COMMISSIONER KENTNER stated that it would have been beneficial for the Commission to hear the ODP modification prior to the agreement of vested rights as additional rights were being requested.

MS. MUELLER stated that the agreement precluded amendments to the requested ODP modification and included single-family and duplex uses and removed multi-family, which had been requested by Council and initiated by the City.

COMMISSIONER KENTNER stated that a specific residential developer had a desire to build residential uses, but that did not mean there was no desire to build commercial developments.

COMMISSIONER PETERS stated that it was incumbent on the elected and appointed officials to encourage partnerships to create a mix of uses, and that the move to lower density was desirable but the lack of commercial development was undesirable.

COMMISSIONER COHN stated that additional public notification may not lead to more public comment. He stated that commercial development included economic development beyond planning and noted that City Council would also hold a public hearing.

COMMISSIONER HEALD inquired how the City would achieve a balance of uses and attract commercial development.

MR. RICE stated that economic development could be a topic of discussion for the upcoming Planning Commission retreat. He stated that development was cyclical and that though there was not a current demand for commercial uses, there may be other opportunities for commercial uses elsewhere in the valley.

COMMISSIONER MILLER stated that the reduction in density spread out a smaller number of units over a greater area, but that denser development could allow for fewer units with space for commercial development.

COMMISSIONER HEALD stated that he wanted to see the homes built but did not want to see commercial uses diminished.

COMMISSIONER PETERS stated that she would support an amendment to recommend setting aside land for commercial uses and that land dedication be required for schools.

MR. RICE stated that the purpose of the staff report was to analyze the request and provide recommendations for findings for the Commission. He stated that the Commission could adopt the findings from the staff report or the findings could be modified or replaced.

The Commission discussed the wording of the facts of finding and recommendations for a motion and the process for including the Commission's amendments in a motion.

COMMISSIONER KENTNER clarified the intent recommending Council require commercial.

COMMISSIONER COHN stated that he was unsure of the authority of the Planning Commission regarding requiring uses.

COMMISSIONER MILLER reiterated the recommendations including requiring school land dedication and commercial uses, and that the request for notification could be satisfied with the City Council public hearing.

COMMISSIONER STONE made a recommendation to modify language in the finding regarding notification requirement.

COMMISSIONER PETERS stated her desire to utilize strong language in the request, and that the Commission was generally supportive of reduced density but not supportive of eliminating the requirement for commercial uses and inquired whether a minimum 50% commercial uses could be required while allowing single-family and duplex.

MR. RICE stated that the request for a change in allowed uses could not be changed by the Commission. He stated that the Commission could approve with or without recommendations, deny, or ask for more information, but changing the request before the Commission was not under their purview. He stated that if the Commission is not satisfied with the request, they could recommend denial of the request.

COMMISSIONER MILLER clarified that City Council was not required to follow the recommendation of the Commission.

The Commission discussed the provision in the current zoning ordinance requiring a maximum of 50% residential uses in the Mixed-Use Employment Suburban (M-E-S) zone district.

MR. RICE stated that the ODP and the legislative rezoning providing a base zone district of M-E-S for the development area predated the 50% requirement.

COMMISSIONER STONE stated that the language in finding F regarding notifications was the language in the zoning ordinance and retracted an earlier request that the language in finding

F be modified. She inquired about recommending incentives for commercial development to City Council as opposed to requirements.

The Commission discussed possible modifications to the findings and recommendations regarding public notice requirements and the procedure for making the proposed amendments.

COMMISSIONER COHN made a MOTION to adopt the findings of fact and order, A through H, as presented in the staff report and recommends that the City Council APPROVE Modification Case No. MO-20-001 as amended.

The motion was SECONDED by COMMISSIONER MILLER.

COMMISSIONER KENTNER made a MOTION to amend the recommendations to City Council provided in the staff report to include a recommendation to require that planning areas 1, 2, and 3 of the Solterra Centre ODP require non-residential uses in addition to allowed residential uses.

The motion was SECONDED by COMMISSIONER MILLER.

The Commission was in consensus that each amendment receive a roll call vote.

VOTE TAKEN –

Five Ayes – Commissioners HEALD, KENTNER, MILLER, PETERS, and STONE.

One Nay – Commissioner COHN

MOTION PASSED

COMMISSIONER STONE made a MOTION to amend the recommendations to City Council provided in the staff report to include a space and a forum for public comment on the request.

The motion was SECONDED by COMMISSIONER KENTNER.

COMMISSIONER COHN stated that he believed the existing requirement for a public hearing before City Council was adequate and did not believe additional comments would be received.

COMMISSIONER PETERS inquired whether the intent was for a neighborhood meeting or an additional public hearing.

COMMISSIONER STONE stated that having multiple public forums was beneficial to encouraging comment and that she wanted to clarify that an ODP modification is a type of rezoning and that this should be clearly stated.

COMMISSIONER KENTNER offered a friendly amendment to replace “include a space and a forum for public comment on the request” with “provide a notice of a public hearing to adjacent property owners subject to the mailed notification requirements for a quasi-judicial rezoning in Section 17.2.2.3.B of the Lakewood Zoning Ordinance prior to the City Council public hearing.” The friendly amendment was accepted by the motion maker and second.

MR. RICE stated that staff would include the statement that the modification was a legislative rezoning in the mailed notice.

VOTE TAKEN –

Four Ayes – Commissioners HEALD, KENTNER, PETERS, and STONE.

Two Nays – Commissioners COHN and MILLER

MOTION PASSED

COMMISSIONER PETERS made a MOTION to amend the recommendations to City Council provided in the staff report to recommend they remove an option to provide fees in lieu of land dedication to satisfy the requirements for school land dedication.

The motion was SECONDED by COMMISSIONER HEALD.

VOTE TAKEN –

Six Ayes – Commissioners COHN, HEALD, KENTNER, MILLER, PETERS and STONE

No Nays

MOTION PASSED unanimously.

The Commission discussed how to provide a notice prior to the public hearing before Council.

MR. RICE stated that he would approach the Director for guidance with the mailed notice.

The Commission restated the original motion on the floor with approved amendments stating:

The Planning Commission adopts the findings of fact and order, A through H, as presented in the staff report and recommends that the City Council APPROVE Modification Case No. MO-20-001 subject to the following recommendations:

1. Require that planning areas 1, 2, and 3 of the Solterra Centre ODP include non-residential uses in addition to residential uses;
2. Provide a notice of a public hearing to adjacent property owners subject to the mailed notification requirements for a quasi-judicial rezoning in Section 17.2.2.3.B of the Lakewood Zoning Ordinance prior to the City Council public hearing; and
3. Remove an option to provide fees in lieu of land dedication to satisfy the requirements for school land dedication.

VOTE TAKEN –

Six Ayes – Commissioners COHN, HEALD, KENTNER, MILLER, PETERS and STONE

No Nays

MOTION PASSED unanimously.

ITEM 4: APPROVAL OF MINUTES OF THE JUNE 3, 2020 PLANNING COMMISSION SPECIAL MEETING

COMMISSIONER STONE made a MOTION to approve the minutes of the June 2, 2020 Planning Commission Special Meeting.

The motion was SECONDED by COMMISSIONER HEALD.

VOTE TAKEN –

Six Ayes – Commissioners COHN, HEALD, KENTNER, MILLER, PETERS and STONE
No Nays

MOTION PASSED unanimously.

ITEM 5: GENERAL BUSINESS

MR. RICE stated that staff would be preparing a draft calendar with dates and topics for a series of short presentations to be provided to the Commission in December.

COMMISSIONER COHN inquired about the Intergovernmental Agreement (IGA) between the City of Lakewood and the City of Morrison.

MS. MUELLER provided an update to the Commission on the Rooney Valley IGA and stated that through disconnections, the Town of Morrison no longer has jurisdiction in the majority of the Rooney Valley and Lakewood no longer has jurisdiction on the West side of C-470. She stated that there may need to be a conversation between the Town of Morrison and City of Lakewood regarding whether the IGA was still warranted.

COMMISSIONER PETERS inquired about the cost-sharing provision in the IGA for sales tax-revenue on Morrison properties within the Rooney Valley and stated that she was aware of a lawsuit between the City of Lakewood and Town of Morrison.

MS. MUELLER stated that she was not aware of the specifics for any litigation.

COMMISSIONER HEALD had stated that he was aware of litigation but had not received an update and asked that staff provide a copy of the amended IGA.

ADJOURNMENT

Meeting adjourned at 10:33 PM.

Date Approved

Aaron Schultz, Secretary
to the Planning Commission