

MINUTES OF THE REGULAR PLANNING COMMISSION MEETING

**PLANNING COMMISSION/
BOARD OF ZONING APPEALS**

February 17, 2009

Commissioners Present: Cowman, McLean, Gage, Wrischnik, Bonner

Commissioners Absent: L. Smith, King

Others Present: Amy Barenklau, Dave Smail, Clint Stewart, Matthew Ghafoori, Barbara Webb

Item 1: Consider minutes from the January 20, 2009 meeting

Chair Cowman called the meeting to order with the first order of business the consideration of the minutes from the January 20, 2009 meeting.

Commissioners McLean and Bonner made a motion to approve the minutes as submitted, with all commissioners voting in favor.

Item 2: 09-PLAT-01 Preliminary Plat, Paola Commons (Jerry White): Consider an application from Taylor Design Group, P.A. for Jerry White, Grubb & Ellis for a preliminary plat at the southeast corner of the Baptiste Drive/US 169 interchange.

Amy Barenklau stated that Clint Stewart with Taylor Design was in attendance, and then presented the staff brief. Development of 'Paola Commons' is proposed for 58.81 acres of property located in the southeast corner of the Baptiste Drive and 169 Highway interchange. The preliminary plat shows a total of four (4) lots are being platted.

The Planning Commission tabled their decision on the preliminary plat during the January meeting so that the re-zoning could be completed. The Miami County Board of Commissioners approved the rezoning request on February 4, 2009 and the Paola City Council approved the rezoning on February 10, 2009. There were 2 parcels annexed into the Paola City Limits on January 28, 2009.

The parcel is currently zoned Thoroughfare Access (TA). TA zoning allows a wide variety of land uses such as retail, office, services and others. Minimum lot size in Thoroughfare Access zoning varies from 8,500 square feet to 15 acres, depending on use.

STREETS AND SIDEWALKS:

Access to the development, at least during the first phase, will be from Baptiste Drive. Baptiste Drive is an improved street with curb & gutter and the required of right-of-way. Staff will be

working with the developer and his engineer to keep access on Baptiste Drive to a minimum and to ensure that ingress/egress for this development is adequate through all phases.

Table 11.130 indicates that special standards for access spacing exist along Baptiste Drive and the developer is to work with public works. Additionally, Section 11.233 of the LDO allows for exceptions on access spacing standards when “conditions arise in which the standards do not fit the context of the topography, land ownership or existing conditions.” Due to existing conditions, and the location of the property on Baptiste Drive, the developer will continue to work with public works throughout the project.

Sidewalks are not shown on the preliminary plat. Section 11.152 of the LDO states “sidewalks shall be installed on both sides of all arterial, collector, and commercial streets and shall be required on one side of all residential streets.” A separate sidewalk plan must be provided with final plat.

LOT STANDARDS:

Parcel sizes in the proposed development range from 1.16 to 54.34 acres. All uses allowed in the TA district, except for manufactured home park (with a 15 acre minimum), planned (4 acre minimum) and institutional residential (2 acre minimum) could be developed on Lots 1-3. All uses allowed in the TA district could be developed on Lot 4.

Specific lot standards, such as setbacks, density, and open space are dependent on the type of use for each parcel and will be reviewed in the development plan process. The general requirement for the street yard setbacks in the TA district is 25’ and staff has asked that this be designated on the final plat.

QUALITY AND MONTONY:

This area falls within our city entrance standards and as such, all structures are subject to a design review by the Planning Commission.

PARKING:

Parking requirements are specific to the use intended for each lot in the development. The requirements for individual parcels will be determined and verified during development plan and site plan approvals for each lot.

LANDSCAPING:

A landscaping plan has not been provided at the preliminary plat stage. Landscaping required of the developer includes:

The developer must provide 1 plant unit per 100 linear feet of street frontage in the development and possibly a bufferyard between the development and U.S. 169. Other landscaping requirements will also be determined in the development plan process.

OPEN SPACE:

The open space requirement for the proposed development in the TA zoning district for retail, office or ‘all other’ uses is 20%. There are requirements for individual parcels which will be determined and verified during the development plan and site plan approval.

RECOMMENDATION:

Staff has had contact with Taylor Design in regards to the status of the preliminary plat. Staff understood that a revised plat was going to be submitted in time to be presented for this meeting. However, staff has received an update and they would like to receive comments from their construction plans prior to making any additional changes to the preliminary plat.

Staff recommends denying the preliminary plat until changes can be made and submitted for review, as there are changes that should be made to the preliminary plat prior to its approval.

Amy stated that she had met with Clint Stewart prior to the meeting and after reviewing the changes Taylor has made prior to the meeting and with the few outstanding items, she felt comfortable with approving the preliminary plat contingent upon resolution of detention, sidewalks and building setbacks.

Mr. Stewart spoke about the status of the project and indicated that the developer has quite a large investment in this project already and would like to keep moving forward with this project. He requested the Commissioners approve the preliminary plat with the condition that the remaining items be completed. He felt that the items remaining were able to be resolved.

Commissioners Gage and Bonner made a motion to approve the preliminary plat, contingent upon resolution of detention, sidewalks and building setbacks. All Commissioners voted in favor.

Item 3: 09-CUP-01 Conditional Use Permit Renewal – 1 year review; Family Auto, LLC. Consider an application to renew CUP at 809 and 811 South Silver for Heavy Retail and Service.

Amy Barenklau stated that the applicant, Matthew Ghafoori was in attendance, and then presented the staff brief. Matthew Ghafoori requested and received a conditional use permit for Heavy Retail & Service in October, 2007. One of the conditions of approval was that the Planning Commission reviews the CUP after one (1) year to ensure compliance.

The conditions that were placed upon this conditional use are defined below, and the current status of each requirement is indicated in *italics*:

- 1) An approved landscaping plan to be submitted to city staff. *This has not been completed.*
- 2) An approved lighting plan to be submitted to city staff. *This has not been completed.*
- 3) An approved signage plan to be submitted to city staff. *This has not been completed.*

- 4) The applicant shall satisfy all required corrections to the structure. *Applicant has removed the deteriorated wall, and obtained a building permit to perform work in a small portion of 809 South Silver in early February. Staff has not been inside either building to determine if any additional corrections are required.*
- 5) The applicant shall repair or replace the rear fence to provide the required opacity to the property. *Fence is in good condition at this time. It will need ongoing maintenance to maintain the required opacity.*
- 6) An approved paving plan shall be submitted to staff and only those areas paved shall be used for customer and vehicle parking. *Staff has not received. Original paperwork from 2007 shows 19 spaces were to be provided per the submitted site plan. According to LDO requirements, 16 spaces, 1 of which is required to be ADA compliant are required. All required parking shall be hard surfaced; current parking is gravel or concrete that needs repair work.*
- 7) After one year, the conditional use permit shall be reviewed by the Planning Commission to ensure compliance. *This is the one-year review.*

Recommendation:

Planning staff has been in discussions with the applicant, and there are some other uses being considered at this location. The heavy retail and service is not the use that the applicant intends to pursue as a priority at this time. The applicant has requested renewal of the CUP so that it can be allowed if he chooses to pursue.

If the Planning Commissioners choose to renew the CUP, staff would recommend a six-month extension at this time. If the remaining conditions are met at that time, staff would recommend renewing the CUP for one year to determine if the property remains compliant. If an extension is considered, staff recommends that the conditions be amended to read as follows:

1. A landscaping plan shall be submitted to staff for approval prior to installation.
2. A lighting plan shall be submitted to staff for approval prior to installation.
3. A signage plan shall be submitted to staff and sign permits obtained prior to installation.
4. The applicant shall obtain a list of required corrections to both structures, and perform any necessary corrections.
5. The applicant shall repair, replace and maintain the rear fence as required for opacity.
6. All required parking spaces to be hard surfaced, striped and marked according to development requirements.
7. The Conditional Use Permit shall be reviewed at the end of the six-month extension period.
8. At any time, the City may institute revocation of the conditional use permit for violations of the conditions of approval, expiration, or the reasons specified in Section 21.225 of the Land Development Ordinance. The City shall provide notice to the landowner and public in the same manner as was provided for the establishment of the conditional use permit.

Mr. Ghafoori stated that his plans still are to have auto sales at this location, but due to budget, improvements and the business have been delayed. He stated that the wall and fence items have been resolved, but he decided to wait until he was ready to move forward with the business to make additional improvements to the site.

Commissioner Cowman stated that due to the economy, he was comfortable with a one-year extension.

Commissioners Cowman and Bonner made a motion to extend the Conditional Use Permit for 809 and 811 South Silver for one year with the recommended conditions. All Commissioners voted in favor.

Item 4: Staff Items

Amy Barenklau presented the staff items and presented information on the horse zoning violation to the Commissioners. Barbara Webb, neighbor of the property spoke to the Commissioners about the conditions, smell and her concerns about the subject property. She stated there was a period of time that the property owner did not have horses. The Commissioners advised her to present documentation supporting that statement for their consideration and to keep working with county agencies on her other complaints.

- 1) **Kodiak nuisance/zoning violations:** Staff is still monitoring the situation and hopes to send a letter prior to the next meeting.
- 2) **Illegal signs - ongoing:** When staff is out of the office, staff is visiting with business owners in regards to flashing signs and other illegal signs. As necessary, letters are sent as reminders. Staff is also making a list of off-site advertising signs and those businesses will be notified of regulations and asked to remove them.
- 3) **Expired Conditional Use Permits:** Staff has been working on the list of expired CUPs and as time allows will continue to work on list to be presented to you. This is taking longer than anticipated as staff reviews the list of CUPs and researches files for expiration dates. A preliminary list is included with this brief for your information. There is still much research and follow through to be done before any action.
- 4) **Concept Plat:** The construction plans for 'Paola Commons' have been reviewed and review notes have been given to the engineering firm. Revised construction plans have been submitted to staff and are currently being reviewed. Staff feels that once a preliminary and final plat is approved, construction will begin.
- 5) **Paola Girls Softball Assn:** This has been an ongoing project. Staff has spoken with their engineer and he was to provide a plot plan so that the exact floodplain zone could be determined. As of February 11, 2009, staff has not received a plot or site plan. During

the month of January a building permit to replace the existing canopy was approved, as it was presented to staff as little more than a re-roof. Upon inspection, it was found to be a total removal and replacement of the structure. It appears that the structure size may have increased and there has been speculation of plans to enclose and build a concession stand. Community Development staff has posted a 'stop work' order and is monitoring the situation.

- 6) **Zoning violations:** After several discussions with the owner of the horses that appear to be in violation of current LDO requirements, staff has is better informed about the situation. 1.) The owner states that they have had the horses for an extended period of time. 2.) They were not aware of any regulations on farm animals/pets.

Staff has received letters and additional documentation from the property owner. Staff feels there is sufficient evidence to provide proof that the owners bought and occupied the property **prior** to adoption of the LDO. The owners can show that they owned horses prior to moving to this location and staff feels comfortable that horses were brought to this property when the owners moved in. (Copies of letters and horse registration are included.)

It is staff's opinion that this use existed prior to adoption of the LDO and should be considered a non-conforming, but legal use of property. If the use ceases for a period exceeding 6-months, any new uses shall come into compliance with current zoning standards.

- 7) **Consultations:** Staff held consultation meetings with the following this past month. 1) Yara Morgan – plans to move fitness/gym from Hospital Drive to Lewis Drive building. 2) Troy Allen – plans to add 2 more commercial apartments to building at 202 West Wea Street. 3) Troy Allen – interest in obtaining CUP and building addition in NC-R1 on west side of Paola. 4) Matthew Ghafoori – has not had 'official' consultation but has had several conversations about a retail store and possibly a pawn shop. 5) Sarah Preston (My Father's House) – interest in opening a thrift shop in the former carpet store on North Silver Street.
- 8) **Re-Zoning Update:** On February 4, 2009, the Miami County Board of Commissioners approved the re-zoning request for the approximately 240 acres. The request was submitted to the Paola City Council on February 10, 2009 and was approved. The property is now zoned Thoroughfare Access. Additionally, two parcels have been annexed into the city limits.
- 9) **Paola Crossing:** Staff is working to get the landscaping and fence requirements completed by the builder/property owner. Staff has been made aware that there are some financial issues and this may be an uphill battle, but staff will continue to work to get the outstanding issues resolved in a timely manner. Staff has become aware that another center owned by this property owner is in financial trouble; a restaurant owned by the

builder has closed and equipment is now stored in the empty portions of this building. Staff will keep you informed.

- 10) Other items:** 1) Cross Point Assembly of God – remodel to sanctuary will require submittal of site plan to accommodate increase in parking. 2) Lakemary office building – staff continues to work with the owners/builder to approve their proposed landscaping plan. (The Paola Crossing fence is an item that has made this process more time consuming and difficult.) 3) Staff continues to receive a large number of zoning inquiries, partially due to the properties in foreclosure and partially due to re-financing opportunities. 4) Staff has submitted variance information to potential buyers of the former body shop on Old KC Road and continues to research questions as they are submitted. 5) Staff is working with a homeowner located in the floodway on Osage Street, as he desires to build a storage shed. 6) Staff has begun researching wind turbines. 7) Staff has spent a considerable amount of time researching Right-Of-Way ownership for the Paola Commons project.
- 11) Next Month:** 1) Staff has received a sign deviation request for Miami County Medical Center which will be on March’s agenda. 2) A variance has been submitted for a reduction in setback and size requirements for a sign at the ‘Sutherland’ building on North Pearl Street.

Staff reviewed the remaining items and answered questions posed by the Commissioners.

Item 5: Items from Commissioners

Steve Wrischnik voiced his concern about the stoop in the alley at Molly’s Table. He stated that prior to the alley reconstruction there was a stoop. He feels very strongly that the stoop should be allowed to remain for exiting purposes.

Amy assured Steve that this item would be brought to the building inspection department for resolution.

Item 6: Adjournment

Commissioners Cowman and McLean made a motion to adjourn with all Commissioners voting in favor.