

Planning and Zoning Commission Meeting Minutes of January 10, 2017:

16-341Z Conduct a Public Hearing to Consider/Discuss/Act on a Request to Rezone the Subject Property from "SF5" - Single Family Residence District to "TH" - Townhome Residential District, Located Approximately 3,200 Feet South of U.S. Hwy 380 (University Drive) and on the East Side of Lake Forest Drive

Ms. Melissa Spriegel, Planner I for the City of McKinney, explained the proposed rezoning request. She stated that Staff received two letters of opposition and one informational letter. Ms. Spriegel stated that the applicant was requesting to rezone from "SF5" – Single Family (detached) Residence District to "TH" – Townhome District, generally to allow for single-family attached residential uses. She stated that the site had previously been seen and rezoned to "SF5" – Single Family Residence District. Ms. Spriegel stated that at that time Staff expressed concerns regarding the ability to develop the property due to the extensive flood plain and potential removal of quality trees on the site. She stated that ultimately the property could not be developed for "SF5" – Single Family Residence District. Ms. Spriegel stated that Staff had no objection to the townhome use itself on the property given the properties mid-block location and nearby similar residential uses; however, Staff had concerns regarding the ability to develop the property given the extensive flood plain and potential removal of quality trees. She stated that Staff has asked the applicant to submit an updated flood study and tree preservation plan to ensure that the property can be developed. Ms. Spriegel stated that the applicant has chosen to go forward with the rezoning request prior to the submittal of these documents. She stated that it was unknown at this time if the property can be developed. Ms. Spriegel stated that Staff is recommending denial of the proposed rezoning request and offered to answer questions.

Commission Member Smith asked Staff to explain why the property could not be developed under the “SF5” – Single Family Residence District. Ms. Spiegel stated that based on the plat, tree preservation plan, and tree survey that were submitted, they found that due to the number of quality trees in the flood plain that would need to be removed development was not feasible.

Commission Member Cobbel asked if that was based on budgeting items due to the number of trees that would have needed to be removed. Mr. Brian Lockley, Planning Director for the City of McKinney, suggested that the applicant would be better at answering that question.

Ms. Spiegel stated that the Tree Preservation section of the Zoning Ordinance has a requirement that no more than 30% of quality trees in a flood plain could be removed and any additional trees beyond the 30% would require a variance. She stated that trees removed in general require mitigation.

Mr. Adam Buczek, Skoburg Company, 8214 Westchester Drive, Dallas, TX, explained the proposed rezoning request. He gave a brief history of the previous proposed development under the “SF5” – Single Family Residence District and the tree variance request that was denied. Mr. Buczek stated that it was not a budgeting issue as to why they were not able to develop under the “SF5” – Single Family Residence District. He stated that they could not develop the property within the existing tree ordinance and were not granted a variance to remove additional trees on the site. Mr. Buczek stated that they were confident that the subject property could be developed as townhome uses without needing to request a variance. He gave a PowerPoint presentation. Mr. Buczek discussed some of their previous developments in McKinney. He discussed some of the surrounding development around the subject property. Mr. Buczek stated that roughly 8 – 9 acres of the 27 acres of land would be disturbed under the proposed request. He

stated that the approximately 42 townhomes would be even further away from the nearby subdivision than the previously proposed single-family development. Mr. Buczek stated that they were requesting straight zoning with no variances. He offered to answer questions.

Commission Member Smith stated that there was a letter discussing an issue with access to the eastern property line. She asked if Mr. Buczek could address it. Mr. Buczek stated that the property to the east rezoned to "SF5" – Single Family Residence District as well. He stated that they were more than willing to provide any right-of-way dedication as needed for them to develop their property.

Commission Member Mantzey asked if they plan to lift part of the property out of the flood zone. Mr. Buczek stated that it would be a smaller portion of land, that there would still be reclamation, and that they would need to submit an updated flood plain study and tree preservation plan. He stated that they did not want to pay for the study twice, if the proposed rezoning request was not approved. Mr. Buczek stated that it would be a much smaller disturbance area than they previous request.

Commission Member Mantzey asked if the fill would be from the site itself. Mr. Buczek stated that was the intent; however, he might have to get some clean fill offsite due to the tree requirements.

Commission Member Smith wanted to clarify that Mr. Buczek stated that they would not be coming back to request a variance to the Tree Preservation ordinance. Mr. Buczek stated that they would not be asking for a variance on the Tree Preservation ordinance.

Chairman Cox opened the public hearing and called for comments.

Ms. Melissa Lindelow; Shupe, Ventura, Lindelow & Olson, PLLC; 500 Main Street; Ft. Worth, TX; stated that she represented Carlisle Grace, Ltd., which was the property

owner to the east. She stated that she was glad to hear Mr. Buczek state that the access issue to the east had been resolved. Ms. Lindelow stated that if this proposed rezoning request is approved that it include a similar advisory as to the one that was attached to their 2015 zoning approval, requiring that they provide access to the neighboring property to the east.

On a motion by Commission Member Kuykendall, seconded by Commission Member Smith, the Commission voted unanimously to close the public hearing, with a vote of 7-0-0.

Commission Member Kuykendall asked if Staff was still recommending denial of the proposed rezoning request after hearing the applicant's presentation. Ms. Spiegel said yes.

Vice-Chairman Zepp stated that the southeast corner of the property had a significant amount of trees and he questioned how they could place a road due to these trees. Mr. Matt Robinson, Planning Manager for the City of McKinney, explained that if the trees were disturbed due to the other property needing access in this area when they were developing their property, then the removal of trees would count against their total percentage.

Commission Member Mantzey asked if approximately 1/3 of the subject property was being proposed to be scrubbed. Mr. Buczek stated that was correct.

Commission Member Cobbel asked if Staff had an issue with the proposed townhouse use on the property. Mr. Robinson stated that Staff did not have an issue with the use itself. He stated that Staff had concerns not knowing all of the information to make a reasonable judgement call. Mr. Robinson reminded the Commission that we have already recently gone through one rezoning request on this property, which did not work out.

Commission Member McCall stated that he had concerns regarding the flood plain area and how the proposed townhome development might affect flooding upstream or downstream. Mr. Robinson stated that during the platting process the City's Engineering Department would evaluate it. He stated that the applicant could address how they plan to develop the property and address those issues.

Commission Member Smith stated that if the applicant had submitted a tree preservation plan and flood study that showed that the property could be developed as proposed, then she would not have any objections to the request. She asked if they have to submit these studies to the City at a later time in the development process. Mr. Robinson stated that if the zoning is approved by City Council, then the applicant would need to submit the updated flood study and tree preservation plan during the platting process.

Commission Member Smith stated that she understood Staff's recommendation wanting to have all of the information and not just rezoning the property for the sake of rezoning. She stated that Harry J. Hickey with the Creekview Owners Association submitted a letter of opposition and that they represented over 200 members. Commission Member Smith stated that the surrounding residents had valid concerns, at the previous rezoning request, about potential flooding that developing the site might create. She stated that the residents stated that they currently have flooding issues in the area. Mr. Robinson stated that Staff could follow-up with the Engineering Department to see if there had been any additional complaints or if there had been anything done to address the flooding concerns.

Commission Member Mantzey stated that there were a number of parties involved, including the Jesus Christ of Latter-Day Saints church that wants to sell the land and the neighbors wanting to protect the trees in the area. He stated that he could see why Staff

wanted the tree preservation plan and updated flood plain study upfront. Commission Member Mantzey stated that he could also understand why the applicant did not want to spend the money to do that first. He stated that it was a beautiful area. Commission Member Mantzey felt that townhomes on the site would have the least impact on the area. He stated that he would not be interested in having another Tree Preservation Board meeting regarding a variance request.

Commission Member Cobbel stated that she did not see an issue with rezoning the property to "TH" – Townhome Residential District. She stated that she would like to see the owner be able to develop their property as long as they follow the City's ordinances. Commission Member Cobbel stated that she did not see an issue with townhome uses on the subject property once they have their updated flood study and tree preservation plan completed that shows they would be in compliance with the City's ordinances.

Chairman Cox ask the applicant for insight on how the property might look differently if a townhome development occurs. Mr. Buczek stated that the current proposal would be disturbing less than half of what the previous request would have disturbed. He stated that it would be tucked furthest up against the corner where it would not affect the flood plain as much. Mr. Buczek reiterated that they would not be asking for a tree variance. He stated that during the platting stage they would not submit something that did not meet the letter of the law. Mr. Buczek stated that the previous tree preservation plan and flood study were not worthless. He stated that the impact on the subject property would be even less with the proposed changes. Mr. Buczek stated that they would have to comply with all of the requirements of the City. He stated that there was no downside in rezoning the property. He stated that when they could not get the

tree variance that they offered \$100,000 in reforestation funds; however, still could not get there.

Vice-Chairman Zepp asked for clarification on what Mr. Buczek means when he says they would be disturbing the property. Mr. Buczek stated that he means they would be scraping the property and/or taking a tree out. He stated that they were talking about a total area of approximately 8 – 9 acres of the 27 acre property that would be excavated.

Vice-Chairman Zepp asked if they were willing to allow access to the property to the east. Mr. Buczek said yes. He stated that the property to the east did not have a high percentage of trees and should not have any issues complying with the City's tree preservation ordinances.

Commission Member Smith asked Staff if the barriers to a favorable recommendation were the studies and not the proposed townhome uses. Ms. Spiegel said yes.

Vice-Chairman Zepp stated that there was a general process for development and that the expenses of the studies was on the applicant. He stated that the proposed rezoning request was compatible with the area.

Commission Member McCall concurred with Vice-Chairman Zepp's comments.

Commission Member Smith stated that she would be supporting Staff's recommendation for denial.

Commission Member Kuykendall stated that she was not a fan of rezoning single-family residential property to townhomes. She stated that it sounded like Staff had worked extensively with the applicant on this request, that there was no new information presented during the meeting, and that Staff was sticking with their recommendation for denial of the proposed rezoning request. Commission Member Kuykendall stated that she would be supporting Staff's recommendation for denial.

Vice-Chairman Zepp stated that he could appreciate that point of view; however, the cost burden for the requested studies is on the applicant and was out of order of the normal application process. He stated that these types of studies were generally done after the zoning was in place.

Commission Member Kuykendall stated that we have considered this before and know what we are dealing with on this property. She stated that Staff had done a lot of work on what could and could not be done here.

Commission Member Smith stated that she did not feel that she owed anybody an explanation when following Staff's recommendations and agree with them. She stated that we all weigh the information presented, make our own decisions, and respect each other's decisions.

On a motion by Vice-Chairman Zepp, seconded by Commission Member Cobbel, the Commission vote to recommend approval of the proposed rezoning request as requested by the applicant with the requirement that they allow access to the property to the east, with a vote of 5-2-0. Commission Members Kuykendall and Smith voted against the motion.

Chairman Cox stated that the recommendation of the Planning and Zoning Commission will be forwarded to the City Council meeting on February 7, 2017.