City of Columbia, Missouri

Meeting Minutes

Planning and Zoning Commission

Thursday, February 21, 2019 7:00 PM	Regular Meeting	Council Chambers Columbia City Hall 701 E. Broadway

I. CALL TO ORDER

MS. LOE: Call the February 21st, 2019, Planning and Zoning Commission meeting to order.

MS. LOE: May we have a roll call, please.

MS. BURNS: Certainly. We have nine; we have a quorum.

MS. LOE: Thank you, Ms. Burns.

Present: 9 - Tootie Burns, Dan Harder, Sara Loe, Joy Rushing, Lee Russell, Anthony Stanton, Rusty Strodtman, Brian Toohey and Michael MacMann

II. INTRODUCTIONS

III. APPROVAL OF AGENDA

MS. LOE: Mr. Zenner, were there any additions or changes to the agenda?

MR. ZENNER: No, there are not, ma'am.

MS. LOE: Thank you.

MS. BURNS: Move to approve.

MS. LOE: Thank you.

MR. STANTON: Second.

MS. LOE: Second by Mr. Stanton. Thumbs up on approval of agenda?

(Unanimous vote for approval.)

Thumbs up approval of Agenda

IV. APPROVAL OF MINUTES

February 7, 2019 Regular Meeting

MS. LOE: Everyone should have gotten the February 17th -- or 7th -- sorry -- 2019 regular meeting minutes. Were there any changes or edits to those? I'll take a motion for approval.

MR. MACMANN: Move to approve.

MR. STRODTMAN: Second.

MS. LOE: Thank you. Mr. MacMann moved; Mr. Strodtman seconded. Thumbs up for approval?

Thumbs up approval of Meeting Minutes

V. PUBLIC HEARINGS

Case # 51-2019

A request by Engineering Surveys and Services (agent) on behalf of Jeffrey E Smith Investment Co Inc. (owners) for approval to rezone 15.68 acres of property from PD (Planned Development) zoning to 9.91 acres of M-N (Mixed Use-Neighborhood) and 5.77 acres of M-C (Mixed Use-Corridor) zoning. The subject site is generally located at the southeast corner of Nifong Boulevard and Bethel Street

MS. LOE: May we have a staff report, please.

MS. LEE: Madam Chairperson, I need to recuse myself from this case, so I will leave until the staff comments.

MS. LOE: Thank you, Ms. Russell. Any additional Commissioner comments before we have a staff report? Seeing none. Mr. Smith?

Staff report was given by Mr. Clint Smith of the Planning and Development Department. Staff recommends approval of the requested rezoning to M-N.

MS. LOE: Thank you, Mr. Smith. Just one clarification. The slide says Case 40-2019, and just -- MR. SMITH: Uh-huh.

MS. LOE: -- did the number change?

MR. SMITH: The number did change and I did not change it.

MS. LOE: All right.

MR. SMITH: So I apologize.

MS. LOE: So just the agenda says 51 -- we're voting on 51- --

MR. SMITH: That is correct. Thank you.

MS. LOE: Before we go to any Commissioner questions of staff, I would like to ask any Commissioner who has had any ex parte prior to this meeting related to Case 50-2019 [sic] to please disclose that now so all Commissioners may have the same information to consider on behalf of this case in front of us. Seeing none. Are there any questions for Staff? I see none. Nice presentation, Mr. Smith.

MR. SMITH: But for the case number, thank you.

MS. LOE: Well, if there is no Commissioner questions or discussion, I'm going to open the floor for public comment.

PUBLIC HEARING OPENED

MS. LOE: If you can give us your name and address for the record, we would appreciate that.

MR. KRIEDE: Matthew Kriede with Engineering Surveys and Services, offices at 1113 Fay Street, and civil engineer for the project. And again, I'll say Mr. Smith also did

a great job with the report. I'm impressed he made some changes at the last minute, as well, so that's greatly appreciated. I apologize for such a late change to things. So with that, you know, staff provided a good summary. I believe all the concerns that were primarily noted in staff report related around the M-C uses. That being removed, I think there is not as much to be concerned about there as we've agreed to, you know, go all M-N. I think there was some missed opportunity with some -- the 15,000 square foot restriction, I think, misses some opportunity on uses, but -- and some users, but I think we can find a way to make that work or we'll come visit you again. A couple of things on convenience stores. If you think of your traditional convenience store, you think of a gas station, filling station. Those are conditional uses under M-N. So again, while that was a prohibited use before, we're going to have to be back here and in front of Council to get approval on a conditional use permit. I think given the past history, I'm pretty certain that's going to go down an aisle where there's going to be a lot of restrictions on how that's done. So I think I'm not terribly concerned about that. And with the alcoholic beverage sale side of things, there are specific restrictions that are associated to that as well. While we have the use -- the old Code just had a use, this one specifically states, you know, it's got to be part of a restaurant or part of others -- ancillary sales, it's not the primary sales for the business. And then, second, when it's adjacent to residential, it can't -- it can't be sold outside, it can't be consumed outside, so there's restrictions on that again. So as you look at the properties on the western portion, you know, we're surrounded by residential or bordered by residential on the south and on the west, and so you watch that and there's kind of that L-shaped portion that's going to be prohibited for any sort of outside display or sale or consumption. So, again, the UDC really brings in a lot of new conditions that the Code doesn't. They have the -- the existing PUD and C-P and, you know, districts did not provide or the old zoning district, less the use of the UDC to remove a lot of the needs for these planned districts and really get the protections we need for our neighbors. So with that, I'll be happy to answer any questions you might have.

MS. LOE: Any questions for this speaker? I see none. Thank you.

MR. KRIEDE: Thank you.

MR. FARNAN: Good evening. My name is Mark Farnan, 103 East Brandon, Columbia, Missouri. And I'm here on behalf of the applicant. You have in front of you a letter that we all received this -- or it was addressed to me and to Mr. Zenner, and I think it's been shared with you, and I am mentioned in that letter, so I thought I should explain. We did meet with the Bedford Walk Homeowners Association on the date that the letter states and, at that time, we had a very nice meeting -- not adversarial. It was funny

because I had been involved with this original project years ago and, at that time, it was a little more confrontational. Many of us have become friends since that time. In that meeting, it's stated in this letter that Mr. Farnan was directly and explicitly asked whether the proposed rezoning would remove any of the restrictions in the existing development plan that had originally been negotiated, and this letter characterizes my response by saying that I did not believe that any restrictions would be changed. That is inaccurate. I will tell you exactly what I said. When they asked -- and they did ask me that, will this remove any of the restrictions in the existing development plan that originally had been negotiated. My answer was it will remove all of them. They will all go away because we're moving from a planned district and that plan will be abandoned, and that'll be replaced with the new restrictions and new uses that are allowed within the zoning designation that we are requesting which primarily was M-N and primarily was what they were concerned about. Now there was at that time when we had the meeting the back M-C part as it showed on that map, the pink and blue -- or the blue and pink -- that one -- the blue and purple map. We showed that same map that day. And when we negotiated the original deal, the primary restrictions were on development area A and development area C. And the things that we specifically talked about that day was there were some exemptions that -- that had been included in there and one of them was in development area A, which is on the corner of Bethel and Nifong, that one, and it had to do with drive-throughs and the orientation of speakers in a drive-through, and should they be internally focused or not. And I said that -- that old negotiated rule where that was very specifically set out in the old planned district would not be enforced, but the new Code with its M-N restrictions puts additional new rules on -- on the use of speakers and their orientation toward neighborhoods, as well as makes drive-throughs conditional use. So the explanation was that, yes, you would still have restrictions and you would still have protections, but the original answer to the question was, no, they all go away and they are replaced. Same thing went for development area C. One of the things that we negotiated years ago was that there would be no convenience store on the corner of Nifong and the new road that's to be built. And because we are going into an M-N area, we specifically talked about that and I said that would not be an allowed use, or you would have to have a zoning change or, depending on what you put in there, it would be a conditional use, so you would retain protections. We did not go through the exhaustive list. We didn't go down through the whole list of things that were prohibited uses and permitted uses, and I missed one -- I missed two, and those are noted in the report. Under the M-N zoning that we are requesting now, yes, you could build a payday loan store, and we didn't talk about that that day. And, yes, you could have some residential

uses, and we didn't -- we did talk about it that day. One person asked us could you build student housing there, and I said you could, but that's not what Jeff does. That was my answer. And even one of the people on the homeowners association explained to the other person who asked that question, yeah, that's not what they do, don't worry about that. And I characterized this as a sideways move, that, yes, none of the -- none of the old planned development agreement would be enforced anymore, but the new rules of M-N and that zoning designation and those protections that are built into the new Code would be enforced and that they could rely on those. It is difficult -- we enjoyed meeting with the neighbors actually. I -- I find it fun. But we're dealing with a new Code, and it is hard to understand, and particularly for people who don't do it every day or do it every two weeks like you guys, or do it once a month like I do. And what we are in a position of now is not just explaining our project, but we have to explain the Code, too. And I think that there is a lot of -- I think there is a lot of opportunity for people to not understand what each other says. That is not what we did in this case. I thought I was pretty clear. We spent about an hour. We talked about a lot of the specific things -- specifically, those things that had been most controversial when this originally passed. I did leave out some that aren't covered or they're variously covered or now they're conditional use and they didn't used to be. I did explain to them that if it was conditional use, you have to come back, do another hearing like this again, that they would have those protections. And we didn't really talk much about that M-C in the back, and since that time, we've agreed with staff and amended our application. If you look at the staff report, most of the things that they complained about were the M-C.

MS. LOE: Mr. Farnan, you're -- their concerns were really more about the M-N zoning, not the M-C?

MR. FARNAN: Their concerns were about uses that would appear that are in the M-N area that we are now asking for.

MS. LOE: All right.

MR. FARNAN: They weren't that we were going to M-N, they were that the things that they had agreed to under the old plan would now be allowed. If you read the report, most of the things that are listed as reasons to deny this request focus on the M-C aspects of -- of this.

MS. LOE: Yes. I've read the report.

MR. FARNAN: And so, yeah. You're right that the drive-through up on that corner and the convenience store up on the other corner, yes, those are in that M-N area, but those are -- we -- what we believe is is that those are dealt with efficiently by becoming either conditional uses or not allowed uses in those areas under the new M-N, but we did

specifically say that the old planned rules all go away. But I would be happy to answer any question here because I understand how this doesn't look very good.

MS. LOE: Are there any additional questions for Mr. Farnan? I see none at this time. Thank you, Mr. Farnan.

MR. FARNAN: Thank you.

MS. LOE: Mr. Smith?

MS. SMITH: Thank you, Ms. Chairman. If I might have another moment. I did want to mention one other aspect of this case, and I had mentioned it at the end of the report. But this site is subject to a development agreement, and the development agreement was approved along with the C-P zoning when it was approved. It specifically addressed some of the concerns that came out of the development of the site or of the possible impacts of this site. And, generally, along with, you know, the -- the planned zoning, it also required some stormwater work and also some traffic and circulation mitigation which were concerns, if you go back and look at the case at the time, of the residents in the area. It was basically the uses, the traffic, and then stormwater. The development agreement, as it's situated right now, references the planned district, so for this request to move forward, we do need to have a revised development agreement. Right now, the -- the applicant and the City are in negotiations to revise that, but until that is done in an acceptable form, we can't take this rezoning to Council. So I just wanted the P & Z to be aware that there could be a delay with this going to Council, but the -- the revisions are to address some of the timing of the issues and also some of the circumstances have changed in that time frame, but, at this point, the City is looking to move ahead with some of those improvements. And if you can see on the screen actually the important parts of that are the new public street extension and cul-de-sac you'll see on the east portion of this site, and then also a potential traffic signal that would be installed at Nifong where that intersects. And so that is looked at as important for the development of this site. So with that being said, happy to answer questions about that, but I just wanted to mention that, as well.

MS. LOE: Questions for staff? Ms. Burns?

MS. BURNS: Yes. What about readvertising this given that the request has changed and the additional information that you're talking about as far as what the responsibility of is staff to come up with the plan as it would be moving forward?

MR. SMITH: So we are not technically required to re-advertise because the request has changed to a less intense district, so we did advertise for an M-C. And since the M-C was what we would consider to be a reduced in intensity, there is no need or no requirement to readvertise for this for this hearing, so we can conduct a public hearing at

this point. What was the second part of that?

MS. BURNS: No. That -- that was my question thinking if there were members from the public here that were thinking, wait a minute, we want to go back and revisit this again, would there be an opportunity, but apparently there doesn't -- there -- it's not required.

MR. SMITH: It's not required to readvertise, but I do see your point that the request has changed at its last moment and may have affected individuals' opportunity to speak with this request in front of them, so I understand that too.

MR. ZENNER: And, Ms. Burns, this item -- public input on this item does not -- is not solely limited to this meeting. City Council does have the ability to hold a public hearing. Any resident of the community that desires to have this item, depending on the outcome of your vote, this could be placed under the old business or, as we have discussed in work session previously of the Commission, the desires for the purposes of ensuring that there is maximum public opportunity to speak on this item, they can direct staff as a part of their motion to have the item placed under old business on the Council's agenda. At that point, placement of a -- of a request under old business automatically sets it for a public hearing course at Council. I would like to also further just make a statement in relationship to what Mr. Smith had provided you as it relates to the development agreement and our ability to move this forward to City Council. Until such time as the development agreement -- a substitute development agreement is presented, that does not impact your ability to vote on this case this evening. If you believe that this request is appropriate from a land-use perspective, please make a motion and vote on it and we will take care of ensuring that the development agreement component which is a negotiated issue at City Council is -- is prepared before it is forwarded to them. With that, if you have any other questions of staff or if there are any other speakers, since we are still in a public hearing mode, we can continue.

MS. LOE: Any other questions for staff? Seeing none, we will go back to public comments. Was there anyone else in the audience that wanted to provide any public comment on this? Seeing -- if you would, you need to come up to the podium, and please give us your name and address for the record.

MR. RAWAT: My name is Gagneesh Rawat. I'm a resident of Bedford Walk neighborhood.

MS. LOE: Can you give us your address, please?

MR. RAWAT: 4501 Revere Court. Yeah. So I have a common-sense question. I was wanting to know, like, you know, when there was this meeting with the Bedford Walk Homeowners Association, and it was an important meeting when you discussed the

homeowners, you know -- so is it -- are there no meeting minutes? Are they not being recorded so that, you know, it becomes like who said, you know, there was no change, and now, you know, Bedford Walk Homeowners Association denies this request or disapproves this request because they said that the desired uses has changed to what was agreed earlier. So I'm trying to figure out, like, you know, whenever you go for any meetings, and if there are anything that are meeting minutes which are disclosed and distributed and both the parties go through it. So in this case, is there just he said, we said, homeowners, you know, meeting? Is it just a verbal word or is it something that was -- something documented from the discussion whenever the meeting took place?

MS. LOE: Okay. There may have been different meetings, and I'm -- I think what was discussed may have been a meeting with the developer. There may have also been a public information meeting that the City held. So Mr. Smith may have some information on that.

MR. RAWAT: Meeting -- I think Mr. --

MS. LOE: You're talking specifically about the meeting of Mr. Farnan?

MR. RAWAT: No. I was talking about basically the association said that it was the usage has changed and, you know, I heard that it was clearly communicated that the previous agreement is no longer valid. It's all -- the usage is going to be under the new zoning. So there seems to be a big gap on what was interpreted by the homeowners association and what was communicated at that meeting. And I was wondering, I mean, was there any minutes or was it just a verbal communication that was never documented or exchanged and what was discussed and decided in that meeting?

MS. LOE: It looks like Mr. Farnan may have a couple comments.

MR. FARNAN: My name is Mark Farnan, 103 East Brandon, Columbia, Missouri. I can address a part of that. The meeting that is referenced in the letter that you have did take place on January the 17th, and it -- I'm going to say eight or nine members of the HOA Board were in attendance of that, as well as a representative of Diversified Management who runs their -- who has the contract to help their homeowners association, and we did it at their -- at the offices of Diversified Management. I do not know if minutes were taken. We did not. We didn't record it and we didn't -- when I say we, me and one of the engineers attended that meeting. We didn't record it and we didn't take any minutes, but I'm not clear as to whether or not specific minutes of that meeting were hosted. There was then another public information meeting that was hosted out here in the lobby that Mr. Smith convened, and one person did show up. She is the daughter of a lady that, Esther, 93 years old, who lives in Gentry Estates, the two PUD structures that exist now, and the only question she had was what will it look like from

her room if this is built, and we did not have a specific answer because we don't know exactly what's going to be built, and there was no complaint about it. And then they must have had yet another meeting because -- that we were not at because it says now they reviewed the City's staff report and they must have met again to decide to not be in favor of this, so there would have been a third meeting that we did not attend and City staff did not attend.

MS. LOE: All right. So --

MR. FARNAN: And so whether or not there are minutes, I don't know.

MS. LOE: Thank you, Mr. Farnan. Mr. MacMann?

MR. MACMANN: I believe I could answer the gentleman's questions. The meeting between the HOA and Mr. Farnan or any owner or developer group, those are private interactions and those, whether there are minutes taken or not, we're not privy to that unless any of the parties present wish to share those with us. So we don't -- just to answer your question specifically, we wouldn't even see those unless one of the parties were to bring that forward or give them to staff before we could see them then.

MS. LOE: Thank you, Mr. MacMann. For the audience, we are still in public comment, so if you have a public comment, please come up to the podium and give us your name and address for the record.

MR. SYKUTA: My name is Mike Sykuta, 4103 Watertown Place, and I'm the author of the letter that you received earlier tonight. We had another HOA issue that we had to deal with earlier this evening that we couldn't reschedule and I came here as quickly as we could afterward. To address my neighbor's questions and perhaps yours, as Mark indicated, we met with him on the 17th of January at his request at -- he asked to meet with the Board -- the representatives of the Board. The Board members met with him, we had conversations about the presented plans. I specifically asked Mark -- cut to the chase -- is there anything in the existing planning restrictions that were negotiated with the Board of Bedford Walk HOA years ago when the plan development was first negotiated, is there anything of that that goes away with this planned zoning change. Mark's response to me was there's nothing that's significantly changes as far as I know. Verbatim, I could be lying to your face, but I don't think that's true, that I don't think there are any major changes. We laughed it off. We said okay, if there are no major changes, there was a motion to approve the plan on behalf of the Board. The Board voted yes, we approved. One of our -- one of our members who was on the Board back when the original plan was developed attended a meeting -- I don't know if it was the public meeting here on the forum, or if she got the agenda for your meeting and read the staff's report. She forwarded it to the members of the Board. The members of the Board read the City

staff report. We had a conversation via e-mail, so those e-mails are documented, but not a formal set of minutes, per se, and the outcomes of those -- the -- we do a lot of our business via e-mail. The members of the Board said, given this new information, we no longer agree with the planned development. This morning I contacted Gordon Craig, our business manager with Diversified, said am I right in understanding that a majority of our Board wants to withdraw our position? If so, I will write a letter to the Commission, so that's what took place earlier today. And I sent it to Mr. Zenner, as well as Mr. Farnan to make sure that they knew that it was coming. So that's kind of how we got to this point.

MS. LOE: Thank you, Mr. --

MR. SYKUTA: So if there are any questions, I would be happy to answer those.

MS. LOE: Yes. Your neighbor's question was, were there any minutes of that meeting?

MR. SYKUTA: For the meeting with Mark, there were no formal minutes taken.

MS. LOE: Mr. Sykuta, can you please speak into the microphone.

MR. SYKUTA: Yes, I'm sorry. Sure. For the minutes of our Board with Mark's group, there were no formal minutes written.

MS. LOE: Thank you. And as Mr. MacMann informed you, that was a private meeting. It's not the -- and it's in a private agreement between the two parties, so the City does not -- is not involved in that. We understand your comments were concerned about the M-N zoning and you did not have concerns about the M-C zoning?

MR. SYKUTA: Our concerns were that there are restrictions written into the current planned development documents. Our -- and we don't know exactly how the M-N versus the M-C changes, what restrictions on what use of the existing PD. We were concerned about is this new zoning going to change the nature of the restrictions that we agreed to back when the original PD was approved. We were told there would be no substantive changes and, therefore, we agreed to the change.

MS. LOE: All right.

MR. SYKUTA: Based on the City staff's analysis, it appears that is not true. And as a result of that, we are not willing to support the change in the zoning, and we would like to see it not approved, at least until some of these other questions are answered about what exactly would change.

MS. LOE: Mr. Stanton?

MR. STANTON: So you do not approve of staff's recommendation for M-N?

MR. SYKUTA: Mr. Smith communicated to me this afternoon that they were recommending a change to M-N for the M-C lots. My response to him was that's probably a good thing from our perspective, but until we know or until we have an

understanding of exactly what would change with respect to the restrictions in the current PD and a change to M-N, even in the corridor section, we don't understand exactly what those zoning changes entail regarding -- relative to the existing PD. If that were explained to us, we could evaluate that and provide some feedback.

MS. LOE: Ms. Rushing?

MS. RUSHING: What current restrictions are you concerned about losing?

MR. SYKUTA: I don't even remember all of the details, and I'm representing interests beyond just myself. The types of businesses that would be allowed to be in the zoned area, adult establishments, gas stations, various types of business formats that the -- the Board a long time ago, well before I was part of it, felt were desirable restrictions. So, again, I don't know the specific details of all of the different restrictions in the current PD. I don't know how those line up with M-C versus M-N. My understanding from Mr. Smith is that the M-N is much more consistent with the existing PD restrictions, but I don't know more consistent is good from our perspective, but we don't know where the inconsistencies are to really have a sound basis for an opinion on the M-N structure because that's new information to us this afternoon and we don't -- we haven't had time to have someone help us understand those differences.

MS. LOE: Mr. Toohey?

MR. TOOHEY: So my question is more for staff. Could we go ahead and just table this agenda item and give them more time to work this out? Is that an option that we have?

MR. SMITH: Yeah. I think that's -- that's always an option with P & Z. I mean, I would also volunteer, there -- there is a list here. If the speaker feels like this would be an appropriate exercise and go through and -- and tell him specifically which uses that were excluded or no longer excluded or that will be conditional so he has a better idea, if he feels that would be helpful, but if it's something that he doesn't feel like would be appropriate at this time, I understand, too.

MR. SYKUTA: It would be helpful. I don't know that it would be inappropriate, but I don't feel comfortable speaking on behalf of our Board and our neighborhood association on the fly.

MS. LOE: Mr. Sykuta, how many people are on your Board?

MR. SYKUTA: We have seven members on our Board.

MR. LOE: Mr. MacMann?

MR. MACMANN: A procedural question, following up on what Mr. Toohey said. Sir, would two weeks or four weeks, say it were to be tabled, be sufficient time for you all to intervene and interact with each other?

MR. SYKUTA: With Mr. Smith's help in outlining what the differences are, I'm sure

that we could get that done in a couple weeks. And one of our members, I know, is leaving the country Monday, but we can --

MR. MACMANN: You would still have a quorum, wouldn't you?

MR. SYKUTA: We would have a quorum, and as long as we don't tie, we'd be fine.

MR. MACMANN: Okay. I'm just hypothetically throwing that out there for procedural information.

MS. LOE: Any further questions for this speaker? Seeing none. Thank you, Mr. Sykuta. Any additional public comments? Seeing none, I'm going to close the public comment period.

PUBLIC HEARING CLOSED

MS. LOE: Commissioner discussion? Mr. MacMann?

MR. MACMANN: Given the fact that staff and Mr. Smith's folks still have to nail down this development agreement, I -- following up on what Mr. Toohey suggested, I don't see a problem delaying two weeks, four weeks for this. We really -- I don't think we're putting the development back. That would give the parties another chance to intervene or interact -- excuse me -- and the specific questions that the Board has for uses could be addressed. I'm of a mind that I -- I kind of -- I don't -- I don't know what -- I can't divine in my head what someone in 2011 thought was inappropriate or appropriate and how that meshes up with what M-N is now. And for us to try to fill that in at this junction might be a bit presumptive.

MS. LOE: Mr. Stanton?

MR. STANTON: This conversation -- this dialogue was going okay until the homeowners association couldn't really tell me what they didn't like, which I felt like you maybe should already have known some of that. I was waiting for you to say I didn't want X, Y, Z, because there is a list of permitted uses under both M-C and M-N, which are available in the Code, I do believe. So the way I'm taking it as we received it is that -- and correct me if I'm wrong. Some of the things that you may fear may be developed would have to be -- would be conditional uses under M-N, which means they would have to come before us again and say I want to put a strip club there, so they would need to come to us and ask us for that. Do you hear what I'm saying, and that would be where your HOA would come in and protest or debate that conditional use. So I'm kind of leery about tabling it because I feel like what you didn't like should already have been established. I guess I understand, you know, there was an old Code and now there's the new Code and there was a PD and now there's, you know, different things, but I feel like that information, even in the old PD, you would already know what you didn't want and what you didn't like. So I'm leaning on going -- going ahead and take a vote on it because

I think that the HO -- the HOA is protected through conditional use triggers that the development would have to -- will have to adhere to. Correct me if I'm wrong, but I think that's --

MS. LOE: Mr. Zenner?

MR. ZENNER: I would just like to point out to the Planning and Zoning Commission, procedurally -- one, procedurally, under your rules, you are entitled to a tabling when new information has been presented. You could consider the new information of a request to eliminate the originally advertised zoning as justification for a tabling to allow for affected parties to be able to be informed of what change has. Secondly, I would like to inform you that any tabling request that you make should not be influenced or make any reference to a development agreement that is yet to be devised. That is not relevant to the case at hand, that is a separate item that will be handled through a different administrative process. So you are within your powers and your rules of procedure to table the project should you desire to do so based on the substantial change that has occurred since it was advertised and the report was prepared. So if you feel comfortable in doing that, or feel comfortable in taking a vote, based upon the fact that the advertised zoning and then the information associated with the ordinance that existed and applied to this property and the ability to compare those ordinance restrictions to what is currently being proposed was available to the public, based upon the notes that we have or the sign-in sheet from the public information meeting we conducted, there was only one other individual present. So I'm not quite sure how, at this point, we've gotten to where we have a Board that's not happy and didn't question anything until this point, given -- reading the staff report, and we haven't had any correspondence up until now to that effect. So to Mr. Stanton's point, that may give you a little bit of pause, as well, but you are, as I want to make clear, in your purview to request the tabling irrespective of what the applicant would like to provide to you. Public hearing is closed. Unless you are going to open the public hearing, there is no further public input being able to be received to provide any clarification to the issues that have been discussed here this evening.

MS. LOE: Ms. Burns, and then Mr. Stanton.

MS. BURNS: I'm inclined to -- to agree with Mr. Toohey about considering a tabling request. I don't think there's any hurry in this. I think we could get more discussion on both sides. I'm looking at the facts of this, what we've seen from the staff report. I wasn't at the meeting. I don't know what was said. That's not our area. There aren't minutes that we were presented with, so if the homeowners associates wants to request that we withdraw our support or deny this request, I understand that. I think the tabling could work in both issues and, as far as the content of the letter, I'm not really taking that into

consideration.

MS. LOE: Mr. Stanton?

MR. STANTON: Staff, from a technical point of view, the way the report is written, it was written for M-C. You do not support an M-C. You gave us an alternative of M-N in lieu of denial of the -- of the report in front of us right now. Correct?

MR. ZENNER: That is correct, and that was based upon our belief and evaluation of the existing conditions and prohibitions within the current PD ordinance being more comparable to those that are associated with the M-N that was requested along the corridor frontage and other revisions and provisions that are now within the UDC that did not exist at the time that the PD was approved.

MR. STANTON: So you're saying M-N is closer to the original PD?

MR. ZENNER: That is correct. And the issues that Mr. Smith pointed out as the additional items that would be added are those that we have identified. Other additions that were previously maybe prohibited uses are now conditional. Conditional uses almost function just like a planned district plan would, they require additional approval and additional conditions could be placed upon them at both the Commission and the Council level.

MR. STANTON: Oh, one more. I'm sorry. I'm just trying to get it clear. So the things that were of issue in the report -- payday loans, those places -- would have to be -- come forward in a conditional use situation?

MR. ZENNER: No, they would not.

MR. STANTON: Okay.

MR. ZENNER: The items that Mr. Smith identified, such as a convenience store, which is not a defined use within the Code. A convenience store is considered retail, payday loan would potentially fall under personal services or retail. We have the gas station, if I recall correctly, that is a conditional use. Drive-throughs, which was something that was of concern, is a conditional use, and then you have packaged liquor sales, if I recall correctly, that is a principal permitted use, as well. Though as pointed out, there are use-specific standards that deal with those items within the UDC, which is partially what the conditions within the PUD were designed to address. As has been said in several other settings, our UDC anticipated or desired to try to avoid the necessity to create planned zoning districts by creating use-specific standards that were tailored to the environment. So if you're adjacent to residential, we may have use-specific requirements that have to be complied with before you can actually go out and build a particular type of use. We have other regulations that are in place as it relates to liquor sale and consumption that apply either within our -- our UDC or may be more applicable

at a state level even that would come to bear on this property. In the uses that are proposed coming out of the planned district, we are -- we are allowing for the opportunity to be able to have greater flexibility, but we also have protections within the Code that basically address many of the concerns that were addressed in 2011. In 2011, I was the staff member that actually was involved in this rezoning request and the existing development agreement and statement of intent. So I -- I am confident that what we have and what Mr. Smith has evaluated is consistent and that the request for M-N is better than the M-C portion definitely, and that it would fit into this particular environment based on our analysis.

MS. LOE: Mr. Zenner, two uses that have been identified were adult stores and gas stations. Would M-N allow either of those?

MR. SMITH: M-N, adult uses are prohibited in M-N, and gas stations are a conditional use in M-N. They fall under the light vehicle service use.

MR. ZENNER: So, similar pattern. Yeah.

MR. SMITH: Real quick, the other conditional uses that are currently prohibited, but will be conditional in the M-N are the -- are the service stations, car washes, bars, and generally anything with a drive-through. Those were prohibited, but would become conditional.

MS. LOE: Thank you. Mr. MacMann?

MR. MACMANN: To follow up on Ms. Burns' statement, I'd like to call this question, and move to table this to date certain 7 March of this year.

MS. LOE: He's calling a motion -- making a motion.

MR. MACMANN: I'm making a motion to table.

MR. ZENNER: You'll need a second.

MS. BURNS: Second.

MS. LOE: Second by Ms. Burns. Any discussion? Seeing none, may we have a roll call, please.

MS. BURNS: Yes.

MS. BURNS: Three to five; the motion does not pass.

MR. ZENNER: Any other motions?

MS. LOE: Motion to approve? Mr. MacMann?

MR. MACMANN: Change directions. Given that motion, I'd like to -- I'd like to move to pass Case 40-2019 --

MS. LOE: Five-one.

MR. MACMANN: Five-one. Thank you. Thank you. I'm going to have to change this language somewhat because of the M-N -- M-C to M-N. Yes? And we're calling that

-- what do we call that, an amendment?

MR. ZENNER: Is it --

MR. SMITH: They amended their application.

MR. ZENNER: The amended -- the amended recommendation.

MR. SMITH: They amended their application and --

MR. MACMANN: Rezoning from PD to M-N reflecting the amended --

MR. SMITH: Application.

MR. MACMANN: -- amended application whereby all the property will be M-N.

MR. STANTON: Second.

MS. LOE: Second by Mr. Stanton.

MR. ZENNER: This is a motion to approve. Yes?

MS. LOE: This is a motion to approve.

MR. STRODTMAN: M-N.

MR. MACMANN: M-N.

MR. ZENNER: Pass equaling approve.

MS. LOE: Discussion on the motion? Seeing none. Ms. Burns, may we have a roll call, please.

MS. BURNS: Yes.

MS. BURNS: Seven to one; motion carries.

MS. RUSHING: Well --

MS. BURNS: Oh, sorry. Ms. Rushing.

MS. RUSHING: Yes.

MS. BURNS: I thought I had counted you in there. Sorry. Still seven to one, motion carries.

MS. LOE: Thank you. Mr. Zenner?

MR. ZENNER: Is it the desire of the Commission to request that staff place this item under old business on the Council agenda? If I could have a motion --

MS. LOE: Do we need a motion for that?

MR. ZENNER: Can I get a motion, please?

MR. MACMANN: I move that this motion be placed on old business on the Council agenda.

MR. STANTON: Second.

MS. LOE: Second by Mr. Stanton. May we have discussion -- no. Just go to roll call. Thumbs up? Roll call. Sorry.

MS. BURNS: Eight to zero; motion carries.

MS. LOE: Thank you.

MR. ZENNER: One final comment that I would like to make so the public understands what has just occurred. Placing an item under the old business section of the Council's agenda means that this item will automatically be placed in a position to which it will have public comment at the Council meeting prior to Council taking a vote at second reading. Therefore, concerns that the homeowners association may have can be expressed. I would strongly recommend that a representative or representatives of the HOA contact Mr. Smith in order to provide maybe a more explicit explanation of the comparison between current and proposed uses in order to allow the homeowners association to craft a response appropriate to the change that has occurred here this evening.

MS. LOE: Thank you, Mr. Zenner. I think that wraps up our public hearing case for the evening.

MR. RAWAT: Time for public comment?

In the matter of case 51-2019, Motion to approve rezoning from PD to M-N whereby all the property will be M-N.

Yes: 8 - Burns, Harder, Loe, Rushing, Russell, Stanton, Strodtman and Toohey

No: 1 - MacMann

VI. PUBLIC COMMENTS

MS. LOE: Yes. Time for public comment. Please give your name and address again for the record.

MR. RAWAT: Gagneesh Rawat, 4501 Revere Court. I think Commissioners had an opportunity where the homeowner association could have felt more comfortable. I think it was a wonderful statement by Commissioner Michael MacMann when he proposed a two-week, four-week, for the homeowners -- homeowners association to meet Mr. Smith and discuss. I think I would have been much more comfortable, that it would have been much more inclusive. You know, voice could have been heard. What I'm hearing is probably it would have been easy to come to an agreement on M-N and PD zoning, but I think the opportunity was missed or denied. I can understand Mr. Stanton's comments that maybe HOA should have been better prepared, but this is a voluntary job. 2011 was a different HOA, and a lot of times on some of these things, we have things can slide back. So there was an opportunity. I personally am hearing one of the first public hearings I think I've heard on the elected City ones, but that was a different one. But I'm here -- I'm here for the first time, and I thought it could have been a win-win if there was another two weeks given and homeowners association I really think would have approved and we all as was -- you know, residents would have felt much more comfortable. I mean, right now, that letter has gone to everyone that HOA does not approve of it, and it

seems like it was, you know, bull-dozed or just fast to it -- while it -- you know, another week or two, we could have made all the parties come on agreement on the same page. It was an easy victory to make everyone agree on the same thing.

MS. LOE: We're -- we're very happy you're engaged now. It takes both sides to -- to have that dialogue, so thank you -- thank you for coming forward. Mr. Stanton?

MR. STANTON: Yes. I also commend your activism. Now, the reason why I supported and did the things we did was basically to give you that voice. You still have a good chance with City Council being more politically swayable and you still have that shot. That's why we made it on old business. We gave that -- give you time to build your case and go before a board that -- to have a good voice.

MR. RAWAT: One thing I was surprised was that the M-C and M-N change happened at the last minute, and part -- part of it could have been because the homeowners association was -- I don't know. When did it happen? It seemed to me that change was requested --

MS. LOE: It happened today --

MR. RAWAT: Yes.

MS. LOE: -- but staff was not recommending approval with the M-C.

MR. STANTON: Yeah.

MS. LOE: So it may not have been approved with M-C.

MR. STANTON: It was -- yeah.

MR. RAWAT: But isn't there a time that when they make a change, it has to go this so that the HOA can again review and again --

MS. LOE: As it -- as it was explained, M-N is a reduction.

MR. RAWAT: Okay.

MS. LOE: So because it was a reduction, it did not trip the time. If it had been more restrictive, then, yes, it would have.

MR. RAWAT: Thank you, Commissioners.

MS. LOE: Any additional comments? Thank you.

VII. STAFF COMMENTS

MS. LOE: Any comments of staff?

MR. ZENNER: We have many.

MS. LOE: Oh. Oh. We've been waiting for these.

MR. ZENNER: I mean -- well, no. We're leaving you in suspense.

MR. CALDERA: Take that back. You're not supposed to give it to them yet. Kind of you blew -- you blew the opportunity.

MR. ZENNER: All right. We've got another meeting coming up on March 7.

And what you have coming around the dais is your work session related topic. It's juicy. It's got --

MR. CALDERA: It's a good one.

MR. ZENNER: It's a -- we're going to have a smoking good time with it, let me tell you.

MR. CALDERA: Oh, yes. There it is. There it is.

MR. ZENNER: So we will get to that in a moment though. I want to talk to you about what we have on your main agenda for the 7th of March. You will have a couple of cases and we have another topic that we are bringing back for a second round of public comment. But on your main agenda for the 7:00 p.m. meeting, we will be talking about a permanent zoning request off of Scott Boulevard South, just to the -- just to the south of the Creek's Edge development. We have a request for permanent zoning of approximately a one-acre tract of land, and then we will have a corresponding final plat associated to that, so those are your public hearings subdivision items. They are related and contingent upon each other. And then we will have a special item. That special item is --

MR. CALDERA: He's really --

MR. ZENNER: Our short-term rental ordinance.

MR. CALDERA: Oh. There's another special item, too.

MR. ZENNER: There's another special item. Well, we've got a special item in work session that we are going to talk about.

MR. MACMANN: We're driving our recorder crazy here.

MR. ZENNER: Yeah, I know. We have a special item, though, and it is our updated version of the short-term rental regulations from December 13th. We are currently in the processes of finishing up revisions to the existing public draft that is out based upon our last work sessions we had, and then the comments that we had received from the public that were in the spreadsheet we shared with you, not at this last work session, but at the one prior. We will have the updated draft available for the public at the same time we produce the agenda. That will be going out to our mailing list that we have assembled for the short-term rental regulation interested parties. We will also be sending that out to our regular P & Z LISTSERV, as well as our other neighborhood associations that we have here within the community that we maintain a database on. So that should be an interesting set of public comments that we will receive on that. We are trying to, as we revise the regulations, come to the middle a little bit between the parties, both ends of the spectrum. We hopefully are very close to having an ordinance that the Commission would be comfortable with holding a public hearing on. Again, this is a public comment

session. It has been readvertised as such, but it is not a meeting at which the Planning Commission is intended or expected to take a final vote. This is only for the purposes of again engaging the public for additional public comment. So we will then come back into work session after that public meeting and talk about any future revisions that we may need to the short-term regulations. Those are the items for your regular 7:00 p.m. meeting on March 7th. However, Mr. Caldera has our wonderful special item for the work session that we will talk about and maybe I'll have, you know, samples available for you just to find out how it will work. But we -- I'm going to let Mr. Caldera talk about more seriously what we actually do have to deal with here coming up in the near future.

MR. CALDERA: Thank you, Mr. Zenner. So as you all saw, I passed around some documentation of what we will be talking about. For the members of the public, we are going to be talking about medical marijuana. So what you have before you are some important dates that we, as a Planning and Zoning Commission, as well as the citizens of the community, need to be aware of. These are states [sic] that the State is obligated to meet under the passage of Amendment 2, commonly referred to as medical marijuana. As part of Amendment 2, local jurisdictions do have some authority on how to regulate the time, space, and manner of medical marijuana facilities. There's specifically four different kinds of facilities that are allowed. I'm not going to go too far into the details because this is going to be an agenda item that we're going to talk about, but these four facilities are things that need to be classified and put into certain zoning districts. And as part of that, we are going to have to make some decisions on ordinance language, specifically where these facilities will go, how far they will be aware from residential -- or, excuse me -- how far they'll be away from daycares, schools, or churches. It's just a variety of things that we'll have to put pen to paper on and in trying -- in our zoning ordinances. Pat and team are currently working on language and, unfortunately, because of the deadlines that are on that piece of paper, the clock is going to move pretty quick for us, as well. All right. The state is going to start issuing licenses probably no later than early 2020, and many of these facilities are already calling us asking what zoning classifications we're going to assign them so that they can start acquiring property. It's my understanding that Columbia is going to get hit pretty hard and we are going to have a lot of facilities here, so we need to get moving. So with that said, I don't know if there's anything else I should have disclosed or --

MR. ZENNER: Not at this point. I mean, we will probably from a more general perspective, get into the greater details associated with the varying facilities where we at this point are contemplating locations that may be appropriate for each of the four facilities, as well as possibly engage in a little bit of just high-level discussion with you

about strategies that we are currently considering. I didn't mean it in that sense, Ms. Loe. However, it will be an enlightening set of meetings that we will be having.

MR. CALDERA: Every meeting I'm in, there's always some weed jokes.

MR. ZENNER: I -- never mind. I'll save some more for our actual work session. But that is where we intend on going. I will tell you, as Mr. Caldera just indicated, that the time frame on this is moving at a pace that I have concern with of the capacity of the Commission, so we will likely also have to discuss potentially alternatives to how we are meeting if necessary and given more specific direction from management that they are wanting to move the process forward at a more rapid pace. Because this is a text code change, it does require to go through a public hearing process. As we have in the past, we've been very methodical about taking text changes through, and this use is one that potentially will generate some significant interest, not unlike our short-term rentals, so we may have to be prepared for a lot of public engagement that we'll get, and in order to be able to accommodate that in the time frames that we need to for the purposes of adopting regulation, we may need to make some changes to how we are handling our regular business. So we will talk more about that at our next work session on the 7th.

MR. CALDERA: Let me add one quick thing. So the whole reason that we wanted to include this in the staff comments on this, because we wanted you all to start kind of thinking of these issues. We are providing a cheat sheet of some general topics dealing with medical marijuana that you guys should just kind of start marinating on, and just I'm trying to avoid any of, like, smoke references or anything like that. So just start thinking about these things. The four facilities that are permissible under Amendment 2 are dispensaries, infused manufacturers, so locations that make edibles, cultivation farms, and testing laboratories. Those are the four types of facilities. So to start kind of rattling your brain on where you would like to see these sort of -- these facilities located. Now staff is going to put forward suggestions and we are actually moving forward with our plan, but obviously we want you all to, you know, contribute, and give us your input, so --

MR. ZENNER: With that, that is all we have to offer. Hopefully, the suspense didn't kill you all, but we are looking forward to engaging in this discussion in order to provide an opportunity to accommodate this newly authorized use within the City's corporate limits, and we will have to thoughtfully and deliberately proceed forward in generating a set of regulations that's appropriate to manage the industry.

MS. LOE: Thank you, Mr. Zenner. You are continuing to bring us interesting cases this year. Mr. MacMann?

MR. MACMANN: Just real quickly. I understand from folks at the State, they haven't made all the decisions necessary yet for us to make the decisions. So -- okay. I just -- I

don't need an answer to that, I'm just letting -- we will be making decisions without the complete information.

MS. LOE: Sounds familiar.

MR. MACMANN: Yes.

MS. LOE: All right. Any additional comments?

VIII. COMMISSION COMMENTS

MS. LOE: Any Commissioner comments? Any motions?

IX. NEXT MEETING DATE - March 7, 2019 @ 7 pm (tentative)

X. ADJOURNMENT

MR. MACMANN: I have a motion.

MS. LOE: Mr. MacMann?

MR. MACMANN: That we go home.

MR. STANTON: Second.

MS. LOE: Second by Mr. Stanton. Unanimous -- thumbs up?

MS. LOE: Yeah. We are adjourned.

(Meeting was adjourned at 8:15 p.m.)

(Off the record.)

Motion to adjourn (thumbs up unanimous approval)