

MINUTES OF THE REGULAR PLANNING COMMISSION MEETING

**PLANNING COMMISSION/
BOARD OF ZONING APPEALS**

June 17, 2008

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

Commissioners Absent: Gage, L. Smith

Others Present: Justin Givens, Amy Barenklau, Brian McCauley, Megan McFarland, and others

Item 1: Consider minutes from the May 20, 2008 meeting

Chair Cowman called the meeting to order with the first order of business the consideration of the minutes from the May 20, 2008 meeting.

Commissioners Cowman and McLean made a motion to approve the minutes as submitted. All Commissioners voted in favor.

Item 2: Sign Deviation – Consider an application from Sonic for a new LED display sign.

Planner Givens stated the applicants were in attendance then presented the staff brief. The owners of Sonic at 610 North Silver have requested a new LED sign for their business. Nationwide, Sonic has been installing LED signs that are either animated or static with changing images.

Analysis:

Section 07.104 Signs Prohibited D. – states that, “Any illuminated sign on which the artificial light is not constant in intensity and color at all times. For the purpose of this Article, any revolving, rotating, moving, animated, signs with moving lights or signs, which create the illusion of movement, shall be considered as a flashing sign. A sign which displays the current time and/or temperature by use of intermittent lighting shall not be deemed a flashing sign if the lighting changes are limited to text indicating time, temperature or other public messages. Such sign shall not in any case exceed 32 square feet in area.”

It is staff’s determination that even as changing static pictures this type of sign would fall in this category of sign. Sonic has asked that the Planning Commission consider a sign deviation for this type of LED sign.

The LDO states that the Planning Commission shall consider the following criteria in acting upon a request for deviation:

Purpose And Intent Of Code: Is granting of the deviation in compliance with the general purpose and intent of the City's signage regulations?

- A. **Impacts On Adjacent Properties:** Will granting of the deviation adversely affect neighboring property owners or residents? Is the image presented by the sign or attention-attracting device consistent or compatible with that in the area as a whole?
- B. **Safety:** Will granting of the deviation adversely affect safety? For free-standing signs, a safe sight-distance setback is required, and the sign location must not encroach upon potential future right-of-way needs. The use of signs or attention-attracting devices should not significantly distract traffic on adjacent streets.
- C. **Visual Clutter:** Will granting of the proposed deviation significantly clutter the visual landscape of the area? The proposed deviation, in addition to all existing or potential future signs on nearby tracts, should be reviewed for their impact on cluttering the visual landscape. Reductions in the total number of signs or their size may be needed, or setbacks increased, to compensate for other signs and attention-attracting devices in the area.
- D. **Site Constraints:** In some situations, topography, landscaping, existing buildings or unusual building design may substantially block visibility of the applicant's existing or proposed signs from multiple directions. While visibility of a sign or attention-attracting device is not to be guaranteed from all directions, deviations may be appropriate to provide reasonable visibility of a business's main sign.
- E. **Lighting:** Sign or attention-attracting device lighting should not disturb residents of nearby residential land uses or adversely affect traffic on adjacent streets.
- F. **Promotion Of High Quality - Unique Design:** The proposed sign(s) should be of high quality and must be compatible and integrate aesthetically with daytime/nighttime color, lighting and signs of the development and adjacent buildings. Facade signs may include unique copy design including painting of walls or integration into canopies/awnings, shapes, materials, lighting and other design features compatible with the architecture of the development of surrounding area. Attention-attracting devices should be of a unique, high quality design, which accentuates the architecture of the building(s) served, versus functioning solely to draw attention to it.

Deanna Bustamonte of Optec Displays, a California based company that installs and operates the signs for Sonic, nationwide, provided staff with information about the sign setup. Optec Displays remotely operates the sign from California via the internet and local franchises have limited control over the message or images. Ms. Bustamonte stated that the signs displays could be set to whatever level the Planning Commission would see fit if the sign deviation were to be approved. The sign can function in a fully animated mode or can be static with hold times ranging from 5 to 30 seconds or more. Additionally, the brightness of the display can be manipulated to minimize the impact of light on surrounding areas. Also, most signs are only operational during the operating hours of each store. When Sonic closes, the sign can be shut down, once again minimizing the impact on surrounding areas.

Issue:

Does the Planning Commission wish to approve the sign deviation in one of two forms, static changing or fully animated?

As indicated by the summary sheet, the City of Paola would not be the first municipality that has had to deal with this issue. Although Paola is ahead of the curve, we have in place a sign ordinance that prohibits this type of display but when written LED signs were not specifically mentioned. Additionally, we have in place a sign deviation process that some of the cities have adopted to address these issues. We also have in place lighting requirements that help to minimize the affect of signs on neighboring properties.

Actions:

Approve / Not approve the Sign Deviation
Table the matter for further study

Recommendation:

If the Planning Commission chooses to approve the sign deviation staff would suggest that the following conditions be placed on the sign:

1. That static changing images be allowed but not fully animated. Since this location is close to a high traffic area, the fully animated display may be to distracting for drivers.
2. Operational Hours – the sign shall only be operational during normal business hours
3. Display Brightness – the sign shall conform to illumination standards that limit spillover to 0.5 foot-candles on the north and south property lines.
4. If changing images are allowed that those images are held for a minimum of 25 seconds. A 25-second hold should limit that number of changes to help minimize any potential driver distraction at the Baptiste and Silver stop light.
5. That the City shall have the right to require modifications in hold times and brightness at any time if deemed necessary.
6. Any additional conditions that the Planning Commission sees fit.

Commissioner Cowman inquired if the proposed sign would replace the existing marquee area on the sign at their location. The applicant indicated that it would replace the existing area on the current sign.

Commissioner Cowman inquired if the total square footage would then exceed the allowed signage in TA zoning. Planner Givens indicated that it would and it was determined that the deviation needed to include additional square footage for the proposed sign.

Commissioners King and Bonner questioned if the proximity of the sign to the existing stop lights would create any additional distractions for drivers. Commissioner King said he felt if the sign was static, it might not be that much of a distraction.

Planner Givens stated that staff has worked with Gerry Bieker, Public Works Director, on timing of the sign changes and they feel it would be a minimal impact to drivers. Givens stated that the proposed sign is controlled by computer and that a company in California controls the sign. He stated staff will work with Sonic owners and the sign company to adjust the sign as needed.

Commissioner King inquired about existing LED signs on Baptiste Drive near the intersection with Hedge Lane. Planner Givens and Commissioner Cowman stated that Teambank's sign was existing at the time these regulations were adopted. Givens stated that the other sign probably pushes the limits, but that it does display time and temperature.

Commissioner Bonner inquired as to how this proposed sign compares to the sign that the Commission previously approved for the Paola Assembly of God. Commissioner Cowman indicated that the previous deviation was for wording only, no pictures.

Commissioners Cowman stated he did not have a problem with the sign, but animation with the hill, Cactus Jack's entrance, Sonic's drives and lights were a concern; but he did not feel the static sign with a 25 second hold would be a big distraction.

Commissioner McLean stated he saw a similar sign at the Sonic in Pittsburg, Kansas over the weekend and did not feel it was distracting.

Commissioners Cowman and Bonner made a motion to approve the sign deviation for the LED sign and size with the conditions listed. All Commissioners voted in favor.

Item 3: Re-Zoning Application – Consider an application from Gerald Barenklau at 24870 West 327th Street for re-zoning 29 acres from Business Park to Suburban – remanded from City Council.

Planner Givens presented the staff brief. At the May 20, 2008 meeting, the Paola Planning Commission did hold a public hearing and consider an application for a re-zoning request from Gerald Barenklau. During the public hearing, brief consideration was given to a designation of Thoroughfare Access instead of Suburban. After discussing the issue with staff, the Planning Commission did approve the request unanimously.

At their May 27, 2008 meeting, the Paola City Council did consider the recommendation from the Planning Commission and after discussion felt that further study should be considered on the matter. The City Council was not against the re-zoning in its entirety but directed staff to present information to the Planning Commission to consider the re-zoning request with Thoroughfare Access standards as opposed to the Suburban district standards as requested by the applicant.

Analysis:

At present there is slightly less than 500 acres zoned Business Park from the northwest corner of 327th and Hospital and going west and north to Reno Road on the West and North to Wea Creek.

Staff has provided two charts of Suburban/Thoroughfare Access/Business Park uses and lot minimums to compare and contrast the districts.

The Business Park district is defined as follows:

- A. This district permits office, manufacturing, industrial, warehousing, and uses that support them. These areas are located primarily at US 169 interchanges, at K-68, and the current industrial park. The land use restrictions ensure the land best suited for this use is available.

- B. Moderate to high intensities are permitted to achieve maximum land utilization. This development pattern provides a Thoroughfare Access character. The area is intended to attract business and industry. The designated areas are intended to be regional employment centers for the City and Miami County. The area's development (as seen from US 169 or other main roads) provides a high quality business park character. The interior land, screened from US 169 or other main roads, may develop at higher intensities with less landscaped area. Such practices will maximize land use. Exterior storage is limited to interior sites and must be screened.

Currently there are three other areas that are zoned Business Park. The land south of K-68 and around the US-169 interchange has been designated BP. The Paola Industrial Park, which the city provides free land for developing business has been, designated Business Park. Also, land east of US-169 and Baptiste as well as that land around 311th and Hedge Lane is included in the Business Park zoning.

Staff feels that these lands are much more suitable to Business Park Zoning and have a higher potential to develop as such with the possibility of adjacent lands being re-zoned in the future to accommodate higher intensity uses.

The key limitation in this area is that it is primarily agriculture land and the desire of several of the landowners is to build homes, which are not allowed in the Business Park District.

The original recommendation for the area was to be re-classified as Suburban. Suburban is classified by the LDO as:

- A. This district permits a wide range of residential uses. This district includes most of the newly developing areas designated Suburban in the Comprehensive Plan.

- B. This district permits low density development and a full range of residential uses in a manner consistent with providing a high quality SUBURBAN character. Significant areas of open space and/or landscaping shall be provided to maintain the balance between green space and buildings that characterize SUBURBAN character.

- C. This district is not intended to be used for fully developed areas -- those areas are zoned Neighborhood Conservation (NC) or in some instances Suburban, Moderate Density (S-2). The S-1 District would be used to infill tracts containing at least three (3) acres or where Paola seeks to redevelop the area to SUBURBAN character.

The two main considerations in considering the Suburban district were the adjacent area to the west that is currently zoned Suburban and the rural nature of the area. The Suburban zoning would allow for some growth in the area but not as intense as other residential or commercial zones.

It was recommend by the City Council that the re-zoning request be considered under Thoroughfare Access zoning standards. The Thoroughfare Access district is defined as:

- A. **This district provides for high quality, moderate density development with a full range of residential and nonresidential uses.**
- B. The design requirements provide a Thoroughfare Access character while encouraging pedestrian and automobile access.
- C. This district's intensity accommodates most community commercial and business activities. These nonresidential uses shall be limited to parcels having access to arterial or collector streets. Interior areas are intended to be residential.
- D. This district is not intended to promote strip development along all arterials and collectors. In newly developing areas, the minimum parcel depth along an arterial or collector shall be six hundred (600) feet. The minimum area shall be twenty (20) acres. In the older built-up areas where there is in-fill development, this zoning shall not displace residential uses in areas where at least one block of residential exists. New zoning shall have depths and areas equal to or greater than similar uses for four hundred (400) feet on either side. This district shall be used in areas designated Thoroughfare Access in the Comprehensive Plan. Access standards and site plan review shall be used to ensure that adequate access and visibility are retained on regionally important land near interchanges to prevent premature development from foreclosing future development options.

The Thoroughfare Access zoning classification would allow homes to be built as well as preserving land for future commercial ventures. The intensity of those uses are the significant difference in the Thoroughfare district. If the intent is to preserve land for future commercial uses then the TA zoning should be considered.

The most significant differences in the two commercial districts would be how many uses are allowed. In many cases, allowed or limited review uses in the BP district would require conditional use permits in a TA zone. Heavier uses especially Heavy Industry and Utilities would not be allowed uses in a TA zone as opposed to allowed uses in the Business Park.

Issue:

Does the Planning Commission wish to recommend the approval of the re-zoning request:

1. To be re-zoned to Suburban
2. To be re-zoned to Thoroughfare Access

Does the Planning Commission wish to recommend the approval of re-zoning multiple properties:

1. To be re-zoned to Suburban
2. To be re-zoned to Thoroughfare Access

Actions:

Approve / Not Approve a recommendation to the Paola City Council for the re-zoning
Table the matter for further information

Commissioner Cowman did not feel that Thoroughfare Access zoning would be appropriate if just the one property was re-zoned. Commissioner Wrischnik stated he felt that Suburban zoning makes more sense and fits with the existing character of the land. Planner Givens stated that Suburban zoning maintains the character and that in certain areas it makes more sense than in others; he felt that the Council did not want to shut off or limit land uses in the area to commercial use.

Commissioner Wrischnik stated that from his interpretation, a farmstead would not be allowed in Thoroughfare Access zoning and by rezoning as TA, would defeat the purpose the applicant had for applying for the rezoning. Commissioner Cowman stated that if the property was re-zoned, any existing uses would be grandfathered. Planner Givens reiterated that only a change in use, not change in owners, would trigger the TA zoning enforcement.

Amy Barenklau, speaking on behalf of Gerald Barenklau, stated that the definition of change in use states that if a use is discontinued for six months, then it ceases. She stated that as part of a farming operation, where cattle and horses are kept, there may be times when there are no livestock on this piece of property, potentially for a period of six months. Her concern would be that if the change of use was enforced, then it would affect Gerald's ability to use the land as he intended.

Commissioner Cowman stated he felt that the type of activities associated with farming would not be enforced as change of use.

Commissioner Cowman stated he felt they should consider rezoning all of the Business Park property in this area. He indicated that if one property owner was requesting rezoning, there is a potential for others to request, there is a potential for spot zoning and it makes more sense for all property to be zoned similarly in this area. He stated that the Council was right that TA zoning is more flexible in terms of land usage, but that it does raise an issue in that the character of the land today could be an issue in TA zoning.

Planner Givens reminded the Commissioners of the other Business Park zoning districts and those were more desirable and would develop long before these parcels would be considered for business park type uses. He stated that he could not foresee, in the immediate future, any use other than residential. Givens stated that the sewer proximity at this location is a plus for future development.

Commissioner Cowman verified that Miami County would have the final approval on any rezoning in this area. He stated the hard part of rezoning is that any action affects the long term use of the land, not just what is happening at this moment.

Commissioner Cowman made a motion to rezone the entire area along 327th Street from Reno Road to Hedge Lane and North to the northern edge of the BP zoning district, as Thoroughfare Access.

Commissioner Cowman then withdrew his motion.

Commissioner Cowman stated he did not like the idea of spot zoning.

Planner Givens informed the Commissioners that if they were going to consider rezoning the entire area as TA zoning, it would require a public hearing.

Commissioners Bonner and King made comments in favor of tabling the rezoning request for 24870 West 327th Street, and to address rezoning all parcels in the area at one time. Commissioners Wrischnik and McLean agreed that it would be best to do all of the area in question at one time.

Commissioner Cowman agreed and stated that TA zoning gives all land owners the most options for their land. He continued that there are three other BP zoning districts that make more sense.

Planner Givens told the Commissioners that if they are considering a zoning map amendment, the city would initiate the process.

Commissioners Bonner and Cowman made a motion to table the rezoning request for 24870 West 327th Street until after the public hearing. All Commissioners voted in favor.

Item 4: Items from Staff

Planner Givens updated the Commissioners on a potential new mattress business that is going to be located in the former Rent-A-Center building on Baptiste Drive. He indicated that the mobile sign business in the trailer will be relocating.

Givens indicated that staff will be working in conjunction with Miami County on some zoning violations south of town.

Item 6: Items from Commissioners

There were no items from Commissioners at this time.

Item 7: Adjournment

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