

**PLANNING COMMISSION
MINUTES
July 1, 2021 @ 5:30 p.m.**

The Planning Commission held a meeting on Thursday July 1, 2021 at 5:30 p.m. in City Hall Council Chambers.

Commissioners Present

Chairman Wendell Miller
Secretary Justin Cothren
Vice-Chairman Jacimore
Luke Duffield
Cody Black
Larry Smith
Justin Keller

Commissioners Absent

Shirley Hatley
Cheryl Monfee
John Choate

Visitors Present: Mayor Richard Harris, City Attorney Trey Smith, City Planner Sara Jondahl, Planner I Victoria Marchant, Flood Manager Ben Gray, Engineering Tech Armando Diaz, City Engineer Glenn Newman, Jim Lynch of City Corporation, Morgan Barrett of Barrett & Associates, Janet Fryar, Roger Fryar, Chris Abbington, Andy Barrett, Cliff Goodin, Dustin McDaniel, Debbie Williams, Jennifer McGill, Stacey Buckholtz, Casey Castleberry, Terry Green, Jonathan Terrell, Corey Beason, and Heath Moore.

Welcome Visitors

The First Order of Business is a request to review and approve the minutes of the Planning Commission Meeting June 3, 2021.

Commissioner Smith made the motion to approve the minutes as written. The motion was seconded by Commissioner Duffield and passed unanimously.

The Second Order of Business is a Commercial Building Design Waiver located at 5520 N Arkansas. Submitted by Barrett & Associates on behalf of Tobacco Town and Bates Distributing Co. (SPUP-0421-000069)

City Planner Jondahl stated that the applicant's contractor came and met with staff and showed the type of material they would be using. The applicant revised their plans showing how the front office would be in compliance with the Commercial Building Design requirements of Article 3.20 and that this Commercial Building Design Waiver is just for the warehouse portion of the Bates Distribution Center. As originally stated by staff, we would be in agreement with allowing a Commercial Building Design Waiver for the warehouse portion.

Staff recommends approval of this Commercial Building Design Waiver as a result of the findings below:

1. The applicant provided documentation that the front office portion of the building is pressed steel and rock; and
2. The warehouse is located behind the office building and by contrast the office will offset any visual impact from the street of the warehouse; and
3. The Commission has already approved the Special Use Permit allowing operation of this business at this location.

Commissioner Smith asked staff if the elevation photo provided was what the applicant was proposing to construct. City Planner Jondahl confirmed that it was.

Commissioner Black made the motion to approve the item as presented by staff. The motion was seconded by Commissioner Cothren and passed unanimously.

The Third Order of Business is Rezoning a property from CNS to C-2, located at 1605 N Phoenix Avenue. Submitted by Perihelion Solar on behalf of Tim Carr. (ZONE-0621-000094)

City Planner Jondahl stated that this is an update to the Russellville Zone map for a property at 1605 North Phoenix Avenue to C-2 Highway Commercial. She noted it was brought to staff's attention that there was a similar case rezoning an area along Detroit and B Street in the floodway along Prairie Creek for a mobile home; in that instance that application was denied because of the floodway issues along for a creek. When considering zone map adjustment careful consideration needs to be made in regard to the future and current land use of the area, the comprehensive plan recommendations, and that the request is not based exclusively upon a desire to increase the value or income potential of the property. This property is located within the Conservation District. The Conservation District represents the U.S. Corp of Engineers Flowage Easement, the floodway by the FEMA Flood Insurance Rate Map, and other lands deemed compatible with the Conservation District. The current uses of the area within the CNS zone surrounding this property are pasture land and field crops as utilized by Arkansas Tech University. When considering the rezone to C-2 as a future use, regardless of being categorized as such within the future land use map, one needs to take into consideration all the different permitted uses within a C-2 Zone. Permitted uses within the C2 zone include Arcades, Bowling Alleys, Offices medical and/or professional, Dry Cleaners, Book Store, Grocery Store, and Restaurant, among other outright permitted uses, and doesn't take into consideration any uses permitted by special use permit. City Planner Jondahl did note that there was no objection filed by the US Corps of Engineers, they just noted that it's not a question of if this property will flood it is a question of when. ReImagine Russellville 2040 comprehensive plan defines this area as recreational, included as areas intended for recreational purposes. Developments within the recreational or CNS Zone should be thoroughly vetted to ensure that the natural function of land in this area is to be preserved. If this is converted to a C-2 zone those considerations would not be required, however, the US Corps of Engineers will still have extensive specific restrictions that will prohibit updates to the structure. This would include restrictions regarding expansion of the structure. The last item that needs to be considered is the value or income potential. The rezoning request would be spot zoning since the surrounding property is all CNS zoned. The current zoning of the property of a CNS vastly reduces the potential for future businesses within the area that are not recreational or public utility in nature. By granting this rezone the income

potential of the property would increase because of the limitations placed on the CNS Conservation District zone versus a C-2 Highway Commercial Zone.

Staff recommends that the commission forward this application to the City Council with a recommendation of denial to rezone the property from CNS Conservation District Zone to C2 Highway Commercial as a result of the findings below:

1. Is not in line with existing and Future Land Uses within the area; and
2. The proposal does not align with the ReImagine Russellville 2040 Comprehensive Plan;
3. If rezoned would create spot zoning; and
4. There may be an increase of value or income potential of the property since it is existing.

Andrew Barrett, CEO of Perihelion Solar stated they are an employee-owned solar cooperative engineering procurement and construction company. He stated that they have been operating in Russellville for 3 years and do work across the state. Mr. Barrett said his company has been bringing a lot of value to the city and wants to continue doing so. He stated this property is very unique in the fact that it is iconic. Everybody knows this building as the climbing gym. The usefulness of it is no longer there for many different purposes but for Perihelion's use it is ideal. Mr. Barrett said their intention was for a solar array to be constructed on the rooftop in order to power their electric vehicles and to have a training center inside the building. He also stated that the Corps of Engineers had tentatively approved their plans. Mr. Barrett addressed a portion of City Planner Jondahl's staff report that referenced the ReImagine Russellville 2040 Comprehensive Plan. He stated that one of the main components is to bring new businesses in and create new jobs. He stated that this location would also serve as a training center to train their workers that climb on roofs. Mr. Barrett stated this would be a good location for Perihelion because it is adjacent to the Institutional Campus zone on the Future Land Use map. He stated that in the future it is still going to be in character with that property. He stated that the building is already existing and they will not be changing anything on the property. Mr. Barrett addressed another item from City Planner Jondahl stating that there is that flowage easement from the Corps of Engineers which only allows them to use what is currently on the property but does not allow them to construct anything. He stated that it was a great opportunity for Perihelion and felt it was a great opportunity for the City as well.

Chairman Miller asked Mr. Barrett with the property being in a floodplain if that would affect Perihelion's use of the building. Mr Barrett stated that the vehicles will be stored to the side of the building where the chargers will be set up and the inside of the building will be used to store their solar panels which are not environmentally sensitive. He stated that they would store their more sensitive equipment upstairs.

Chris Abbington represents the Carr's (the property owners) and stated that previously the climbing gym had been located at this property. He stated that the previous property owners had invested approximately \$120,000 in this building in 2012/2013. During that time they pulled building permits and a business license through the City. Mr. Abbington stated he thought this was a good opportunity for something to go back in this building and to help grow some jobs. He said he did not want to see the building go to waste.

Commissioner Smith made a motion to send the application to the City Council as recommended.

Commissioner Duffield asked that if Perihelion had another location that they are operating their primary business out of and this location would only be used for storage and warehousing would there be a way to accommodate this use with the primary business being at another location. City Planner Jondahl said the use Perihelion is proposing is the reason that the Corp of Engineers does not have any objection. However, when staff have to consider a rezone, they cannot just look at what the business is proposing today but they must consider what could be located there down the line. Once the zone is changed from CNS to C-2 anything that is outright permitted could come in and apply for a business license and operate at that location. Mr. Duffield said he understood that but he was curious if there was a provision of some sort since the business would not be operated at this location. City Planner Jondahl stated that the C-2 zone is the only zone that he would be able to operate this type of business at this location, and he would still have to go through a Special Use Permit. She stated that unfortunately there is not another option, it is either rezone the property and allow them to go through the Special Use Permit process or deny the request and retain the CNS zoning.

Commissioner Black noted that within the staff report there were notes from City Corporation that pointed out that fire protection may be impacted. City Planner Jondahl stated that the closest fire hydrant and water and sewer is approximately 1400 feet away in a straight line. She stated that she believed the applicant was aware of that. City Planner Jondahl stated that her understanding was that there is a well and septic system on the property. She said that prior to any business going on there they would have to show that the well and septic system are in operation and have the correct approvals as they would have to have a restroom for employees that would be at that location.

Commissioner Jacimore asked how the previous business and the related permits were able to be approved in 2012. City Planner Jondahl stated that to her understanding the climbing gym was considered a recreational facility which can be permitted in the conservation zone.

Commissioner Smith withdrew his motion.

Commissioner Duffield made the motion to forward the application to the City Council with the recommendation of denial. The motion was seconded by Commissioner Smith and passed unanimously.

The Fourth Order of Business is a Large Scale Development located at 4820 E Main Street. Submitted by Robinson Construction on behalf of Tyson Foods. (LSDV-0621-000095)

City Planner Jondahl stated that this application is for a Large Scale Development to allow construction of a new parking lot of approximately 20,000 square feet along Industrial Boulevard. This is the existing Tyson building in the East End Industrial Park. The application must come before the Planning Commission due to the size of the building on the lot.

It is staff's recommendation to approve the Large Scale Development to allow construction of a parking lot for Tyson Foods, Inc as a result of the findings below:

1. The applicant demonstrates compliance with the regulations within Article 2.10 of the Russellville Zoning Code; and
2. The applicant demonstrates compliance with the regulations within section 7 of the Land Subdivision Development Code.

Commissioner Jacimore made the motion to approve the item as presented by staff. The motion was seconded by Commissioner Black and passed unanimously.

The Fifth Order of Business is a Large Scale Development located at 51 Bradley Cove Road. Submitted by Barrett & Associates on behalf of Gulfside Casino Partnership on behalf of Deter Family Rev. Trust, Marion Helton, and Merrick Landholdings, LLC. (LSDV-0621-000096)

City Planner Jondahl stated this application is to request a Large Scale Development approval to allow construction of a new Casino Gaming Facility with Hotel and Casino Annex Structure located on 47.67 acres with primary access being obtained from Bradley Cove Road and secondary access available off Hob Nob Road. The portion of the property zoned C-5 was zoned by Ordinance 2343 establishing the rights granted to jurisdictions by the State of Arkansas to extend zoning to areas located within the Planning Boundary. Properties in the Planning Boundary where zoning has been adopted are subject to both the Russellville Zoning Code and the Land Subdivision and Development Code. The site plan submitted by the applicants outlined how they are in compliance with the checklist for the site plan submittal. The review of the project is subject to all the requirements of the Land Subdivision and Development Code and the Planning Commission has the authority to deny an application in the event the application conflicts with any of the provisions of the Land Subdivision and Development Code. Compliance with the Land Subdivision and Development Code requires adequacy of public facilities and services. The developer outlines the improvements for water, sewer, storm water, and indicates transportation system improvements. In review of the TIS, improvements will be required to be designed and approved by the City and/or ARDOT as needed for improvements at both entrances including off site street improvements for each entrance located at Hob Nob Road and Bradley Cove Road, as well as improvements to maintain a LOS rating of a C or better for both off ramps from I-40 adjoining Highway 331 / Bradley Cove Road. Large Scale Development does require an applicant to propose greenspaces and landscaping. No specific requirements for landscaping are listed within the zoning code, to help offset the large expanse of hard surface being proposed within the parking lot containing over 1500 parking spaces, staff recommends breaking up the vast expanse of pavement by including a landscape island with at least 1 shade tree for every row of parking exceeding 15 spaces side to side. This may cause a reduction in parking spaces, however, as noted in the application "it is highly unlikely that all of the spaces shown will ever be used", as a result staff believes that a reduction of approximately 50 parking spaces would be acceptable and that would still retain more than 1500 parking spaces. Sidewalks per 3.21 are required for new commercial structures. Per the Russellville Trails map there is a 10 foot trail proposed along Hob Nob Road, across I-40 at 331 and along Bradley Cove Road. The trail ends just beyond this property on Bradley Cove Road. The applicant is proposing to build 10 foot trails along the entire frontage of the property meeting the requirements of the Russellville Trails Map and the requirements of Article 3.21. The applicant has also submitted calculations for both the hotel and the gaming area showing that they are providing the over 1,500 parking spaces and are in compliance with the parking regulations. Any new signs will need to meet the provisions of Article V. All signage added on the interstate will direct motorists to exit 84 East Main Street at highway 331 / Bradley Cove Road. If signage directs motorists to exit 83 Weir Road, improvements may be required at the off-ramps at Weir Road in addition to improvements required for the off-ramps at 331 / Bradley Cove Road. The applicant has stated that as soon as possible they plan on annexing the property into the City. The City recommends following the procedures outlined in Arkansas Annotated Code §14-40-609.

It is staff's recommendation to approve the Large Scale Development to allow the construction of the Main Facility and Casino Annex structure with the following conditions:

1. Prior to Building Permit issuance:
 - a. Submit and finalize a petitioner requested annexation; and
 - b. Determine a feasible solution regarding all transportation system impacts identified within the Traffic Impact Study (TIS) and obtain approval for all improvements required by the facility from both the City and ARDOT for those; and
 - c. All public improvements shall be bonded at 150%; and
 - d. Submit revised site plans showing Landscaping with the reduction to parking shown; and
 - e. Obtain an updated license to operate a Casino Annex temporary facility from the Racing Commission and provide the update to the City – OR – Remove the Casino annex building, no revisions will be required to the LSD approval if removed; and
2. Prior to Issuance of a Certificate of Occupancy:
 - a. Submit and finalize a Final Plat application including dedication of ROW; and
 - b. Improvements identified and approved by the City and ARDOT completed; and
 - c. Bond regarding potential improvements at 150% of the cost for improvements identified in the TIS as needing re-evaluated after the Certificate of Occupancy is issued.
3. Within six (6) months of Certificate of Occupancy:
 - a. Submit a new TIS re-evaluating the off-ramps at both Highway 124 / Weir Road and Highway 331 / Bradley Cove Road confirming distribution assumptions within the original TIS.
 - b. If no improvements warranted by new TIS the Bond for potential improvements will be released.
4. Within one (1) year of Certificate of Occupancy:
 - a. Submit construction plans for any intersection improvements identified by the re-evaluation TIS as being warranted for improvements.

As a result of the findings below:

1. The applicant demonstrates compliance with the regulations within Article 2.10 of the Russellville Zoning Code; and
2. The applicant demonstrates compliance with the regulations of the Land Subdivision Development Code.

Mayor Harris stated that this was not a typical Large Scale Development application. He said City Planner Jondahl provided conditions per the rules and regulations for the Planning Commission to consider. He stated that up to this point the City has had little control or say in what has happened in the community in the last two-and-a-half years. Mayor Harris stated that now was not the time to argue political biases or legal issues, now is time to make a decision. He stated the thing that troubled him was a letter he received from the Attorney General two days prior to the Planning Commission meeting. He stated that while there is no legal reason to table the issue, he believes it would be prudent to give the Commission 30 days to take a look at the information provided by the Attorney General's office and see how that information fleshes out prior to making a decision. His recommendation to the Planning Commission was to table the application after hearing discussion from the public and applicant. Mayor Harris stated that he was certainly not trying to sway anyone's decision with pros and cons, he just thought given the

information received from the Racing Commission and the Attorney General's office that the Commission may consider tabling the item for 30 days.

Cliff Goodin stated that this is a very important issue facing the community that will have a major impact from now on, whether that impact is good or bad. He stated he thought the Commission needed to give very serious consideration when they move on the item. Mr. Goodin seconded what Mayor Harris said regarding the letter sent by the Attorney General's office. He said that from that letter it appeared there was an understanding between the various parties involved that no party would move forward until some decisions were made by the Supreme Court. Mr. Goodin said with that information he believes the Planning Commission should table the item until there have been some decisions made.

Dustin McDaniel, counsel for Cherokee Nation Businesses stated that he concurred with Mayor Harris in the proposal. He differed in small part, stating that he does believe there are legal grounds upon which the Planning Commission could act. Mr. McDaniel stated that the meeting was the first he had heard of the proposed conditions. He stated that the conditions sounded reasonable to him barring one, that being the condition which called for a revision of the license that had been granted by the state. Mr. McDaniel said one reason for the Commission to table the matter is the feasibility of those conditions. He stated that when Gulfside submitted their written application they told the state they were going to build a 150-190 million dollar casino, however, when they stood in front of the Racing Commission last summer and made an oral presentation they said it was going to be a 240 million dollar casino. Mr. McDaniel said Gulfside told the Chairman of the Racing Commission that they would not do anything different and if they did that the Commission could take their license away, he stated that was in the transcript. He stated it was only a few months later that Gulf Side came to the Planning Commission with the proposal of the annex building which was a single story windowless building with no hotel on a completely separate 47 acre property that was not licensed. Mr. McDaniel said there are currently five lawsuits pending on Gulfside's eligibility to hold a license at all, and only two days prior to the Planning Commission hearing the Arkansas Supreme Court ordered all parties to respond to an expedited briefing schedule. He said they anticipate being in front of the Arkansas Supreme Court in around September to hear one of the core issues as to whether Gulfside can hold or even apply for a license in Arkansas. Mr. McDaniel said that it is no small thing to suggest that any party would go back to the Racing Commission and modify the license they were originally granted. He stated that that condition would be very difficult to meet. Mr. McDaniel stated he would be happy to answer any questions about the Attorney General's letter or about the status of litigation.

Morgan Barrett of Barrett & Associates stated that the applicant was not before the Planning Commission asking for building permits. He stated that the Large Scale Development is part of the planning process at the very front end. Mr. Barrett stated that within the Large Scale Development process there is a checklist that the applicant has gone through and addressed concerns. He stated that the building permit stage is still down the road and that they would not be coming to ask for a building permit the next day. Mr. Barrett stated that they were there to address the technical requirements not to debate or litigate any of the legal issues. He stated that takes place somewhere else and that is the Racing Commissions purview. Mr. Barrett stated that

this meeting was not court, it was the Planning Commission and it was the technical review of the development.

Casey Castleberry, legal counsel for Gulfside Casino partnership, said there was a lot of discussion about the letter from the Attorney General. Mr. Castleberry read an excerpt from the Attorney General's letter which he believed was the section that had brought all of the attention to the letter. The excerpt stated "While there are no formal court orders expressly prohibiting Gulfside Casino Partnership from beginning construction on the project plans as originally submitted to the Arkansas Racing Commission, this course of action is inconsistent with the parties' stated intention of staying matters in the court system until a final determination on Gulfside's qualification can be made." Mr. Castleberry stated that the excerpt had been referenced in the previous comments made. He pointed out that the sentence begins by saying that there are no formal orders prohibiting Gulfside from going forward with their project. He also noted that where it mentions this being inconsistent with the parties intention of staying the matters in the court system, as Gulfside's counsel who had been a party to all the conversations that led to those stays, he disagreed. Mr. Castleberry said Gulfside never represented that they would preclude themselves from going forward, rather they agreed the lawsuits would not go forward until they have an answer on the first lawsuit that is now before the Supreme Court. He stated that there are five lawsuits total only two of which have been stayed, three of the lawsuits remain live following an order from Judge Timothy Fox in Pulaski County. He also noted with respect to Mr. McDaniel's comment about the feasibility of the condition requiring Gulfside to obtain an updated license to operate a temporary facility or remove the annex facility from the proposal. Mr. Castleberry stated that he believed both of the options were feasible. He stated that the Racing Commission could give Gulfside authority to conduct gaming in a temporary facility or they could remove it from their proposal. Mr. Castleberry referred to an email in which City Planner Jondahl reached out to the Racing Commission to ask them earlier in June regarding the issue of the temporary facility, the Racing Commission responded stating that "Gulfside may build a casino based on the issuance of the license." He stated that from that email the Racing Commission says that Gulfside has the right pursuant to the license that was issued to them to build a casino. The Racing Commission went on to say if Gulfside wants to operate a temporary facility, they would have to get approval from the Racing Commission to do that. He also referenced a letter from Gulfside which confirms that if the Planning Commission chooses to approve the proposal that Gulfside would comply with all of the recommendations that were made by staff in the staff report.

Morgan Barrett of Barrett & Associates said they had submitted a copy of Gulfside's license verifying they are authorized to operate a casino within Pope County. He stated that he thinks anything beyond the technical issues related to the application are issues for the state Racing Commission or legislature. Mr. Barrett said he was there to address the technical aspects of the site as required by the Large Scale Development. He proceeded to go through the 14 item Large Scale Development checklist and how they met each of the criteria. In addition to those required items, Gulfside submitted the renderings of the buildings. Gulfside has stipulated that they will submit an annexation to the City of Russellville for all the property where the casino will be built. They did commission a traffic study which was a lot of the information that City Planner Jondahl went over in her staff report. Mr. Barrett stated that information seems kind of complicated and it is when they start involving the Highway Department and their approach. It is

a multi-step approach, some of the improvements they will want in place and some improvements they do not want in place until a development is built and traffic patterns are established. They want to verify that the traffic counts are there that warrant any improvements. They did a traffic impact study that identified several areas that would need improvements based upon the projected traffic counts once the development is constructed and operating. As mentioned by Mr. Castleberry, a letter was submitted stipulating that Gulfside does concur and have asked to incorporate all of the staff recommendations into their application, which means that it is not a condition, they are asking to make that part of their application and they would complete everything that has been asked. Mr. Barrett stated that staff did a very thorough job, he stated what the Commissioners do not see is all the work that went in behind the scenes prior to the meeting. The traffic study submitted was one of the most detailed that Mr. Barrett had been involved with, in Russellville, and the City Engineer along with the Highway Department went through a thorough review and that is how all of those recommendations came up.

Commissioner Cothren asked what Gulfside planned on doing on Exit 83. Mr. Barrett stated that at Exit 84, right now there is a level of service and a signal is warranted on the eastbound exit ramp. Gulfside has identified that the eastbound and westbound ramp will need some sort of improvements. Typically that would be a traffic signal, however, there is some concern with a traffic signal being installed at the eastbound ramp. Mr. Barrett stated that at Exit 83, the westbound ramp currently--during its peak hours--warrants a signal based on existing conditions, Gulfsides addition of traffic is very minimal at that location. They did provide the traffic study to the highway department and they are aware that it warrants a signal currently. Gulfsides current plan does not include doing any improvements at that location, it is really focused on Exit 84 where they will have an impact but according to their projections and the directional distribution of the traffic they are not really creating any issues at Exit 83.

Corey Beason from the school board of Valley Christian School stated that Valley Christian School purchased land directly across from the proposed Gulfside Casino site in March of 2019. Mr. Beason was curious if Valley Christian School owning that property had any effect on the application. He stated that they were planning on this before the casino was even mentioned and they had purchased the land now. He asked if there was some sort of stipulation stating that you cannot build a casino within so many feet of a private christian school or if anything could possibly be done about that. Chairman Miller stated that he spoke with TJ Curtis about that the afternoon prior to the meeting and asked City Planner Jondahl if she had any comment on this matter. City Planner Jondahl stated that unfortunately she did not know if there are any regulations and she would need to research that.

Commissioner Duffield stated that just to clarify, this application has satisfied all the conditions of the Large Scale Development. City Planner Jondahl confirmed that this application had met all the conditions of the Large Scale Development for planning purposes. The conditions that were placed on the application are to ensure that we get all of the other things prior to building permits, certificate of occupancy, or within six months of certificate of occupancy issuance to make sure that we have all of the other requirements of the Russellville Zoning Code and Ordinances within the City met.

Commissioner Duffield made the motion to approve the item with conditions as presented by staff. The motion was seconded by Commissioner Black and was voted in the affirmative by a vote of four for, and one against.

Due to a procedural error, this item will have to be heard again at the August 2021 Planning Commission meeting.

Meeting adjourned.

Chairman Wendell Miller