

PC Minutes 5/23/18

ITEM NO. 7 TEXT AMENDMENT TO LAND DEVELOPMENT CODE; CONDITIONAL ZONING (SLD)

TA-18-00154: Consider a Text Amendment to the City of Lawrence Land Development Code, Article 13 to review and potentially remove conditional zoning. *Initiated by City Commission on 4/17/18.*

STAFF PRESENTATION

Commissioner Sands said he had ex parte with Mr. Hugh Carter and his concerns about removing conditional zoning as a tool from the planning toolbox.

Ms. Sandra Day presented the item.

PUBLIC COMMENT

Mr. Hugh Carter, Chamber of Commerce, said he was part owner of property on Research Park Drive that was being rezoned to allow climate controlled storage. He felt the ability to condition was an important tool. He said conditional zoning was used for the good of the neighborhood and helped to alleviate fears. He stated the community was growing and infill was a way to control sprawl and to condition out offensive uses.

COMMISSION DISCUSSION

Commissioner Sands asked staff for a summary of City Commission concerns.

Mr. McCullough said a particular rezoning came up on Research Park Drive striking a number of uses in the IL zoning district to match the IBP zoning district. He said conditional zoning was identified as an alternative to the text amendment process. He stated it was beneficial for a number of reasons. He said it may be something staff does not support putting into a new district just to support one property because it would affect all zoning city wide. He said the Research Park Drive applicants were willing to strike all other uses because they had a specific use in mind. He said City Commission had discussions that if mini-warehouses were allowed in the area then why weren't they looking at incorporating it into the IBP district. He said City Commission initiated a text amendment to consider adding mini-warehouses in the IBP district. He said staff was working on language to distinguish between climate controlled and traditional mini-warehouses. He said the City Commission discussion was not a fully informed discussion because there were some terms thrown out like contract zoning and spot zoning. He said the current City Commission had only seen a few conditional zoning items and were not used to the way it had been used in the past and did not have the benefit of the staff research being presented in the staff report. He said City Commission rezoned that particular property to IL with conditions. He said the direction from City Commission was to go through the amendment process and if mini-warehouse ends up going into the IBP district the direction was to go back to the one property on Research Park Drive and initiate a rezoning back to the IBP district. He said that was the solution to cure what City Commission believed was a process issue. He said some projects may not have been moved forward if not for conditional zoning.

Commissioner Struckhoff said the use of conditional zoning was his least favorite way to get the best outcome of both encouraging development, satisfying the applicant with a reasonable project, and still protecting the interest and needs of the neighborhood. He said conditional

zoning was one of the most important tools in the PC toolbox. He appreciated the ability to provide a solution to allow a development and a good use to proceed while still maintaining control and protections that the conditions provide. He agreed with staff about not removing the use of conditional zoning.

Commissioner Culver asked what other tools could be used to allow unique situations to work if conditional zoning was removed.

Ms. Day said it would mean more text amendments to add more uses to districts, as well as more planned developments. She said it would be more process heavy to do the same project. She stated it would probably end up diluting districts or creating many more districts, such as CN4 and IL4. She said prior to the new Land Development Code being adopted staff went through the old code trying to collapse down those many districts that had grown because of that exact issue of creating a new district for a single project or use.

Mr. McCullough said there would be less distinction between districts as uses were added from one district to the next.

Commissioner Willey said she liked conditional zoning because it allowed for creativity in solving problems. She said infill was difficult and conditional zoning allowed for some control to alleviate fears in neighborhoods. She said she would hate to see the conditional zoning tool go away. She said she understood why the Research Park project got flagged by City Commission as being a little bizarre because all other uses were removed. She said that specific project could have been solved with a text amendment but some past projects where conditional zoning was used could not have been solved with a text amendment. She said Planning Commission would end up having to say no to projects they like because they cannot give reassurance to the neighborhood about fears. She stated she supported the staff recommendation of keeping conditional zoning.

Commissioner Sands said if conditional zoning was removed it would broaden and restrict other tools.

Mr. McCullough said there were implications to the zoning code in terms of when they were looking at uses and striking uses. He said the analysis of a text amendment that would affect the entire city was different than the analysis done on a specific property.

Commissioner Sands supported the staff recommendation of keeping conditional zoning.

Commissioner Carpenter said the discussion of "either-or" did not address the issue. He said initially the League of Women Voters opposed conditional zoning. He felt it was essentially planning a la carte by choosing what they do and don't want in a zone. He felt there should be predictability for property owners who live around infill development. He said they were forcing rezonings to comply with area plans. He said all conditional zonings were not the same and it was a mischaracterization to say he was against all conditional zoning. He said the ones that bothered him were the ones where the density was increased and uses were stricken from it. He said he was not completely opposed to conditional zoning but felt a better system was needed to define what it was and what the process was and when it would apply. He said the new Comprehensive Plan was forcing more infill so they would see a need for more flexibility.

He felt there was middle ground for choosing which types of uses were good and bad and how to address the issue. He wondered why there were 35 conditional zonings since the new Development Code was adopted in 2006 and what was missing from the Development Code that didn't take these issues into account. He wondered if they could add something to the Development Code that could take these issues into account. He felt conditional zoning had the potential to be legally challenged. He felt they could do this in a more structured and predictable fashion to address the issue.

Commissioner Sands asked Commissioner Carpenter if the proposed text amendment language met his intent.

Commissioner Carpenter said no and neither did the current language.

Commissioner Willey said City Commission probably wanted Planning Commission to have this discussion. She said what she was hearing from Planning Commission was that they did not want to remove the conditional zoning tool completely but it may need a great deal more time and attention. In the meantime, City Commission should expect that Planning Commission would forward those to them.

Commissioner Culver said something he found helpful during his years on Planning Commission was to learn some of the processes and procedures the applicant goes through that Planning Commission does not see. He felt it would be helpful to educate decision makers on the process and procedures the applicant goes through in regard to what type of tool could be used for different scenarios.

Mr. McCullough said staff employs the right tool in the right condition. He said the thing that was hard to predict was what the harm might be to the neighborhood from project to project. He said there is a high hurdle to change the zoning of a property once conditional zoning was established. He stated it would be difficult to come up with code language that was predictable enough to hit every possible future scenario. He said there would be some impacts to developments deemed as good. He said even a Planned Development Overlay was not the most flexible tool to use.

Commissioner Carpenter felt this would be a long-term discussion that should go hand in hand with the Comprehensive Plan.

Mr. McCullough said staff struggles with what problem this initiative is trying to solve. He said he would not know what to do with the Code until he received clarity on what problem is trying to be solved. He said the City's position is that conditional zoning is a legal tool.

Commissioner Struckhoff asked Planning Commission if for now it made sense to return the text amendment to City Commission without changes.

Commissioner Sands said yes. He felt the text amendment should be forwarded to City Commission with a recommendation to retain existing language with no changes. He struggled with sending nothing back to City Commission.

Commissioner Willey said Planning Commission looked at the text amendment and had a full-bodied discussion. She said the changed language did not solve the problem so it was entirely appropriate to send the text amendment back to City Commission with no changes but with the understanding that more discussions were needed in the future.

Mr. Randy Larkin said Planning Commission could send the text amendment back to City Commission with no changes. He said if City Commission did not agree with that opinion they would direct staff to prepare something specific which would be brought back to Planning Commission.

Commissioner Struckhoff said regarding Mr. McCullough's comment about 'what problem were they trying to solve' he requested that the 35 properties with conditional zoning be examined. He wondered if there had been complaints or problems with any of them.

Commissioner Carpenter said there were 10 conditional zonings in 2013.

Mr. McCullough said he did not know of any complaints.

ACTION TAKEN

Motioned by Commissioner Willey, seconded by Commissioner Culver, to forward the proposed amendment, TA-18-00154, amending Article 13 of the Lawrence Land Development Code to the City Commission with a recommendation to retain the existing language with no changes.

Motion carried 8-1, with Commissioner Carpenter voting against the motion.
Commissioners Butler, Culver, Paden, Sands, Sinclair, Struckhoff, Weaver, and Willey voted in favor of the motion.