

## MINUTES

The **Rogers Planning Commission** met for a *regular session* in the Council Chambers of the Maurice H. Kolman Building on Tuesday, December 15, 2009 at 4:30 P.M. The meeting was called to order by Chairman Don Spann. Those in attendance were led in the Pledge of Allegiance.

### MEMBERS PRESENT:

Commissioners Chad Campbell, Susan Fennel Mills, Don Spann, David Thrasher, and Jim White were present. Mark Myers, Ron Shelby, and Mike Shupe were absent. James Gosserand arrived at 4:40 p.m.

### OTHER OFFICIALS PRESENT:

City Clerk Peggy David, Deputy City Attorney Jim Clark, Senior Planner Derrel Smith, Water Utilities Engineer Mark Johnson, Director of Planning and Transportation Steve Glass.

### ACTION ON MINUTES:

(December 1, 2009)

**Approved.**

Motion by White, second by Mills to approve the minutes of the meeting of December 1, 2009 as submitted.

Voice vote: Unanimous - Yes. ***Motion carried.***

### REPORTS OF BOARDS AND STANDING COMMITTEES:

None.

### OLD BUSINESS:

(Agenda Item #1)

LSDP, Promenade Point II, south of Walgreens on Promenade Blvd. in the C-2 (Highway Commercial) zoning district

Chad Beardslee, of Crafton, Tull, Sparks and Associates, presented the large scale development plan.

The Large Scale Development Committee reported a review of the plan and recommended approval subject to the 21 standard comments by staff and to approve the waiver to allow less than 2' of freeboard between the hydraulic grade line and the ground as requested.

1. Drainage improvements must be completed and certified by the engineer of record, Crafton, Tull, Sparks, with all ditches and basins solid-sodded, concrete-lined, or underground conduit installed prior to issuance of a Certificate of Occupancy. Erosion control methods must be used during construction.
2. Construction debris must be cleared from all stormwater structures and verified by a site inspection from the planning department prior to issuance of a Certificate of Occupancy.
3. Provide the building official and city planner with compaction tests for all ponds and fill areas.
4. Provide a soils report signed and sealed by a professional engineer with the building permit application.
5. All signs will require separate permits.
6. Any alcohol sales will require a Conditional Use Permit from the Planning Commission.
7. Landscaping must be installed and a three-year guarantee submitted on plant replacement or a letter of credit posted prior to issuance of a Certificate of Occupancy. Minimum size of shrubs is five gallons, for shade trees it is 2 ½" B & B, and for ornamental trees it is 1 ½" B & B.
8. Interior sidewalks are the responsibility of the lot owner and must be installed prior to issuance of a Certificate of Occupancy.
9. Street signs and stop signs must be in place and installed by the developer prior

to issuance of a Certificate of Occupancy. The cost of the sign and the installation will be at the developer's expense.

10. An elevation certificate must be provided to the floodplain administrator and building official prior to issuance of a building permit. A final elevation certificate must be provided prior to issuance of a Certificate of Occupancy.
11. Developer to contact the U.S. Postmaster at 401 No. 8<sup>th</sup> St. to schedule type of mail delivery.
12. The proposed trash dumpster must be screened with a solid-type screening consistent with the architectural style of the building.
13. Engineer to schedule a pre-construction meeting with the Rogers Planning Department prior to issuance of a grading permit. All Phase 1 erosion control must be installed prior to the pre-construction meeting and a reduced set of construction plans (11" x 17") will be required.
14. The person financially responsible for the project must obtain a grading permit including a copy of the NOI, a copy of the Stormwater Pollution Prevention Plan, and a copy of the Grading and Erosion Control Plan.
15. A perimeter buffer strip or acceptable alternative shall be temporarily maintained around the disturbed area. The minimum width for the buffer strip is 25' with a maximum width of 40'.
16. All parking lots and drives must be hard surfaced.

- 17. All mechanical, electrical and air conditioning equipment must be screened from public view.
- 18. The entire facility must comply with the requirements of the Americans with Disabilities Act of 1990.
- 19. All water and sewer plans must be approved by the Rogers Water Utility Department prior to construction. THIS IS A SEPARATE REVIEW PROCESS AND A PRE-CONSTRUCTION MEETING WILL BE REQUIRED.
- 20. The owner/developer will be responsible for any upstream or downstream flooding as a direct result of this development.
- 21. Provide the city planner with a copy of the final site plan and utility plan on compact disk formatted for AutoCAD 2004 prior to issuance of a Certificate of Occupancy.

**Approved.**

Motion by White, second by Campbell to approve the large scale development plan subject to the conditions a listed.

Voice vote: Unanimous. ***Motion carried***

**PUBLIC HEARINGS:**

(Agenda Item #1)

Request by Terry Johnson to rezone 615 W. Chestnut St. from R-DP (Residential Duplex-Patio) to the O (Office) zoning district

Terry Johnson, 5034 N. 2<sup>nd</sup> Street, said the rezoning request is for 615 W. Chestnut, which is the location formerly known as “Our Farm”.

Johnson said he and his wife had purchased and renovated the property about three years ago and has successfully operated it as a group home for autistic or other disabilities primarily because their son was autistic.

Johnson said there are several agencies in Arkansas that manage group homes for people with disabilities. One of the agencies,

BOST, who serves 56 clients and is based out of Fort Smith, has asked if the office areas at 615 W. Chestnut could be used by them.

Johnson said BOST would occupy the offices and the group home most likely would not be used.

There were no comments from anyone in the audience either for or against the rezoning request.

The Public Hearing was declared closed.

Commissioner Mills asked if there was adequate parking available at the location.

Johnson responded “Six to eight spaces are available which would be the normal use and Simmons Bank and Locke Supply have agreed to allow parking on their property if there is an occasion where more people would need to be there.”

Commissioner White asked what the staffing would be at the location.

Johnson responded, “Six full-time people with two receptionists who come and go. There would be those who come in to fill out paperwork.”

Commissioner Thrasher said the Office zone would be appropriate and act as buffer between the residential and commercial zones.

**Approved.**

Motion by White, second by Thrasher to recommend approval to the City Council the rezoning as requested.

Roll call: Unanimous. ***Motion carried.***

(Agenda Item #2)

Request by Lisa Rose for a Conditional Use Permit to operate a commercial wedding venue at 88 Creekwood Hill Road in the R-SF (Residential Single-family) zoning district

Lisa Rose, 88 Creekwood Hill Road, requested the conditional use permit to operate a wedding planning business and provide a site for the weddings at her residence. Rose said she has been in the wedding coordinator business for the last nine years.

Rose said her service is stress-free for the brides in that the site is available by the day and there are no time restraints rather than the rent-by-the-hour venues.

Rose said a foot-bridge would be constructed over the creek would be the access point from Lake Atalanta Road for the whole event and the parking for those attending would be on Chuck Warren's property.

Commissioner White asked how are the items that would be rented, (i.e.: tents, chairs, etc.) how would they be brought in?

Rose said there is an access from Warren's property for the equipment that would be brought in as it was needed.

Rose said that she has created a Vendor Registration form that lists the rules and instructions on accessing the property that she would use.

Commissioner Mills asked Rose if she would be putting up any signage.

Rose responded, "If signage is allowed, then I would like one, but would be fine without one."

Mills said she had small signs already made that would indicate where the event was being held.

Commissioner Spann stated it appears that Mr. Warren has agreed to let you access his property; do you have a formal agreement with him?

Rose responded that nothing has been formally agreed as of yet, but he is in support of this and is here to speak for it.

Mayor Steve Womack spoke in favor of the conditional use permit saying as a neighbor he would support this, but was concerned about noise.

Womack suggested that the hours be limited to daytime hours and no later than 10 p.m.

Charles E. (Chuck) Warren, 1400 Prairie Creek Drive, spoke in favor of Rose's venture saying he supported it.

Warren said a legal easement was created when the neighbor's property was sold and he will allow the access to her property.

Warren said noise from Lake Atalanta is not a problem and he doesn't see that this would be any different.

Missy Elzey, address not given, said she publishes a wedding magazine for the last seven years where Rose advertises. She (Rose) has a very good reputation, is very responsible and wants to get things right. There is definitely a need for this type of venue in Rogers.

Richard Smith, Creekwood Hill, said he is not opposed to having a venue for wedding events. "Our opposition is strictly based on the access. Creekwood Hill Road is a private drive and the expanded use of it for commercial use would be the biggest concern."

Smith distributed a plat showing the private drive, along with a plat of Prairie Creek Village where the access is.

Smith said the three original owners of Creekwood Hills, Richard Smith, Harry Harmon and Tommy Hopper have allowed the owners of the property at 88 Creekwood Hills to use the private drive for their access, but not for commercial use.

Smith provided a copy of an email to Rose showing a proposed agreement dealing with the access but evidently it was not agreed upon by Ms. Rose because he said he did not hear from her.

Commissioner White asked Smith, "You heard my question to Ms. Rose regarding the items that would need to be brought in. If my son was getting married and I was to go to her house regarding the wedding, would you oppose me using your road?"

Smith responded, "Yes. Our concern is access. We do not question that Ms. Rose is trying to get the traffic to use the access from Mr. Warren's property, and not our private drive."

Commissioner Campbell asked Smith, "You said you were not opposed to noise. Aside from the legal access to this property, if she was approved for the conditional use permit, then what hours would you be in favor of?"

Smith responded, "I don't know what the noise would be like. I can imagine a band playing late into the night, but I don't think the noise issue is one that we would be overly concerned with. Our concern is the access and her ability to keep commercial traffic off of it."

Commissioner Spann asked Smith, “Your driveway crosses the creek on a low-water bridge. Have you ever seen the low-water bridge impassable?”

Smith responded, “Yes, the stone wall has been washed away and replaced. I have driven through water on that bridge when I knew better than to do it.”

Spann said, “I see that as a hazard, and it is a concern.”

Commissioner Gosserand said he was in favor of the conditional use with the proposed language in the email but feels that there should be an exception for inclement weather or certain hours of operation to avoid the possibility of anyone ending up in the creek.

Commissioner Thrasher noted that the concern is that the commercial use of the private drive would not occur. I think the requirement that you (Mr. Smith) would be notified seven days before the event would be a private matter between you and Ms. Rose.

Deputy City Attorney Jim Clark confirmed that the seven day notice would be a private matter between the two parties and the city should not be legislating. It is actually a contractual matter.

Chairman Spann noted that Commissioner Gosserand has informed him that he will need to leave in a few minutes, and asked for time for his thoughts.

Commissioner Gosserand agreed with what Thrasher has said. I support Ms. Rose, and would like for the commission to give some consideration to the agreement that Mr. Smith has proposed without the notification process.

Deputy City Attorney Clark announced that if Mr. Gosserand is leaving, that will leave only five commissioners who must all vote in favor of the conditional use permit in order for it to pass.

Commissioner Campbell asked Mr. Smith, "Have you allowed the resident at 88 Creekwood Hill to use your private drive? Has there been a legal document drawn up?"

Smith responded, "Yes, we have allowed the resident to use the private drive. Up until today we have had a verbal agreement. We have a written agreement as of today with the current property owner."

Commissioners discussed whether to table this request since Commissioner Gosserand is leaving, but decided to at least continue with the Public Hearing.

Smith said he had heard that there was a suggestion he and Mr. Taylor would be requesting that the issue be tabled, but we would prefer that the issue to be decided today and put to bed.

Mark Taylor, #3 Creekwood Hill, a resident for six years, expressed concern for the safety of his children that ride their bikes to the creek. We have found people who try to use the private drive to cut wood and poach deer on their property.

Taylor also noted the expense of the maintenance of the bridge and street would be a concern if it is used for commercial.

Taylor said he would not be opposed to temporary signage if the permit is approved.

Taylor said we are in support of the business if the access can be limited to the Warren's property.

Commissioner Mills asked Senior Planner Derrel Smith why there is no street sign at Lake Atalanta Road.

Smith said he suspected vandals might have removed the sign and he would contact the Street Department for a new sign.

Kathryn Sponsellar, owner of rental at 1406 Prairie Creek Drive, said her tenants are always complaining because people use the driveway to turn around.

Sponsellar said she is against this if there are going to be drinking and after dark.

Sponsellar also noted that her neighbor Alma Nichols did not received notification of the public hearing.

Derrel Smith found Ms. Nichols' certified mail undelivered.

There were no other comments from anyone in the audience.

The Public Hearing was declared closed.

Ms. Rose said she had personally contacted all of her neighbors regarding what she was planning to do.

Rose said the reason that she had not signed the agreement was that she received the latest email from Mr. Smith with the additional requirements just before noon on Monday and was advised by Candy in the Planning Office that those requirements could not be added in.

Rose said that traffic along Hwy. 12 would not be greatly increased because of her business. The traffic along Hwy. 12 only increases during the Arts and Crafts Fair at War Eagle.

Rose said the labeling of Lake Atalanta Road will be included in any direction to the event and for parking.

Rose said there is no way to control people from turning around on the private drive and has offered to create a sign to be placed on Creekwood Hill before the bridge directing people to the Creekwood Gardens event.

Commissioner White asked Ms. Rose, "Do you have a problem with Mr. Smith's email?"

Rose responded, "Just some wording issues".

White asked, "Do you have any problem with keeping the access off of the private drive?"

Rose responded, "No, I've already worked that out."

White cautioned Ms. Rose that if this conditional use permit is approved and if there are complaints it will be from the neighbors. "If there are things that happen, whatever it may be and they (neighbors) come back, it puts your business in peril. It appears to me that it's all about keeping that road private for residential use. I don't think that is an unreasonable request since they own it."

Commissioner Thrasher proposed that the conditional use approval be contingent that all commercial traffic will use Lake Atalanta Road.

Rose agreed.

Commissioners discussed the hours of operations until 10:00 p.m.

Rose said regarding the suggested 10:00 p.m. closing, in the summer, most weddings do

not start until 6:30 or 7:00 p.m. because of the heat. People tend to stay up later in the summer. “I would think that because it is a commercial operation, with the conditional use, I’d be given more time to operate than a commercial business.”

Commissioner Campbell asked Deputy City Attorney, “What time does the noise ordinance go into effect?”

Clark responded, “I believe it is 11:00 p.m.”

Rose said most venues will state that you can stay until midnight or 1:00 or 2:00 a.m. but the music has to be shut down by a set time, and I’m fine with doing it that way. Getting everyone off of my property by 11:00 p.m. would be difficult.

White said, “What about the music must stop by a certain time?”

Rose said that most of the people that would use this location cannot afford a band and would probably use a string quartet, jazz band or perhaps a DJ.

Commissioner Thrasher suggested that the conditional use permit be allowed with a strong caution that complaints such as the use of the private road or noise would require that Rose appear back before the Planning Commission.

Rose asked about the use of temporary signs on the private road?

Thrasher said temporary signs are appropriate, would be a good business practice, will help with traffic flow and failure to do that could lead to a complaint.

Chairman Spann read the city’s noise ordinance Sec. 42-33 as follows:

- (1)The maintenance and operation of an outside loudspeaker or public address system transmitting music, advertising or speaking, except upon a permit issued by a person designated to so issue permits by the city council; and notwithstanding the permit, any such loudspeaker or public address system shall not be operated in such a manner or at such volume as to annoy or disturb the quiet, comfort or repose of persons in any office, hospital, dwelling house, hotel, motel or other type of residence or any person in the vicinity. The aforesaid noise, when permitted, shall be restricted to the hours from 8:00 a.m. to:
- a. 8:00 p.m. in residential zones, as delineated in ch. 130.
  - b. 11:00 p.m. on all nights but Saturday and 12:00 p.m. on Saturday nights for commercial zones, as prescribed in ch. 130.

Deputy City Attorney Clark noted that since this is a conditional use permit it doesn't change the zoning so the 8:00 a.m. to 8:00 p.m. would apply for residential zone.

White repeated to Rose that this is a complaint driven system and if a complaint is made, then the Planning Commission has to take action.

Clark advised that if a vote is taken today, all five commissioners have to vote in favor of the conditional use permit or it will fail and the applicant cannot reapply for one year.

Commissioners discussed whether to table this until the January 5, 2010 meeting or whether Rose understands the risks of voting today.

Commissioner Campbell recognized Chuck Warren.

Warren asked, “Is there an advantage to tabling?”

Campbell responded, “It would just be a matter whether she wants to take the risk of how five people would vote today or whether if tabled how four more people would vote.”

Clark advised that the question should be called.

Chairman Spann recommended to Ms. Rose, “After everything that has been said here tonight by all of the parties, I think you have an opportunity to make this thing better if you are willing to invest just a little bit more time and a little bit more effort. The people on Creekwood Hill have offered something that is workable, that this commission would appreciate. I think you’ve got an opportunity that if you don’t take the opportunity I don’t think it will turn out the way you want it to.”

Rose agreed to table the item.

**Tabled**

Motion by White, second by Thrasher to table this item.

Voice vote: Unanimous. ***Motion carried.***

There being no further business, the meeting adjourned at 6:30 P.M.

**ATTEST**

**APPROVED**

\_\_\_\_\_  
Chad Campbell, Secretary

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Don Spann Chairman