

## **PLANNING AND ZONING COMMISSION**

**October 8, 2012**

The Planning and Zoning Commission, City of Kearney, Missouri, met in regular session at 6:30 P.M., October 8, 2012 at Kearney City Hall with Kathy Whipple presiding. Members present were Eric Shumate, Kent Porter, Heath Courtney, Darren Hiley, Dan Holt and Kim Murphy. Staff members present were David Pavlich, Chad Coffelt and Shirley Zimmerman.

Kathy Whipple opened the meeting with the Pledge of Allegiance.

### **CONSENT AGENDA**

➤ Minutes of the September 10, 2012 meeting

A motion was made by Kim Murphy and seconded by Heath Courtney to approve the Consent Agenda as presented. The motion carried unanimously.

### **NEW BUSINESS**

**SHOPPES AT KEARNEY – PRELIMINARY PLAT** Staff presented an application from Tim Harris, Star Acquisitions, for a preliminary plat proposing a 37 acre commercial development at the Southeast corner of 92 Highway and Interstate 35. The project would include construction of a 55,000 square foot grocery store, gas station/convenience store, pharmacy, three restaurants, a hotel and three additional retail buildings. The project also includes a new road to provide access, a roundabout and several tracts to be owned and maintained by a Community Improvement District (CID).

Staff presented a summary of the key items on the Staff Report dated October 8, 2012. Staff said no portion of the property is located in the current FEMA flood plain map. However, FEMA is currently going through a map modernization project to update the floodplain map, which is anticipated to be completed within the next year. The drain way through Tract B and a portion of the East-West drainage way that runs through Tract C will be affected. They have received approval from the Corps of Engineers to enclose a portion of the East-West drainage way and a short portion of the North-South drainage that will be located under the road extension.

Staff said a macro stormwater drainage study was submitted with the preliminary plat for review by the City engineer.

Staff said a landscape buffer is required on the East and South property lines that back up to the Shadowbrook subdivision.

Staff said the TIF Redevelopment Agreement identifies a list of priority road improvements to be constructed up front, as part of the project. These include the main access drives through the site, turn lane improvements at the Platte Clay Way intersection

**SHOPPES AT KEARNEY – PRELIMINARY PLAT** and the realignment “T: intersection for Regency Drive. The updated traffic report proposes median improvements on 92 Highway to allow a westbound left turn into the site between the pharmacy and C-store and MoDOT supports the use of medians.

Ron Cowger, AGC Engineers, said this is a very exciting project. He presented a display showing three entrances from 92 Highway. He said the street through the project would eventually extend to 19<sup>th</sup> Street. He said there will be a realignment of Regency Drive.

Mr. Cowger said the grocery store will be the main tenant. He said the time line is critical because the grocery store pad site needs to be ready in early 2013.

Mr. Cowger said there will be a large detention basin on Tract A and substantial detention on Tract C between the Pharmacy and restaurant site. He said they are confident the stormwater will meet the criteria for the stormwater detention. He said they don't want to go to FEMA because the current FEMA map doesn't show this in the floodplain. He said they are okay working it out with the City but don't want to go to Washington because it would take four to six months to get clearance.

Mr. Cowger said they are concerned about Item 6 in Staff recommendations. He said they want to do proof of purchase of stream mitigation credits prior to final acceptance of improvements rather than prior to any grading/construction.

Mr. Cowger said they just worked out the agreement with MoDOT on Friday. He said they signed off on the access points to 92 Highway. He said they don't have a letter yet or modeling changes submitted yet.

Mr. Cowger said they would prefer to build a berm rather than have a wall or fence to buffer the existing residents. He said they would do an earth berm with landscaping. He said the buildings would be seven to nine feet below the top of the berm.

Mr. Cowger said on the South line it would be about two feet tall on back yards and seven to nine feet on the shops side due to building being lower than the lots. He said a six foot berm would be on the East side property line. He showed a photo of the Price Chopper in Kansas City North where a berm was used to buffer from residential.

Heath Courtney asked them to describe the proposed modifications along 92 Highway. Dustin Elliott, Transystems, said they did a traffic study of the area. The improvements would include: Two driveways on 92 Highway at the C Store. One would allow left in and left out and the other would be right in/right out. There would be improvements to Regency Drive. MoDOT wanted a barrier the entire way from I-35 to Platte Clay Way but agreed to less restrictive movement with a raised median. There would be some openings for left turns or a u turn. The median will affect property owners on the North side of 92 Highway. This will make the East driveway of Shell and the driveway to ReMax be right in/right out only entrances. Interstate Auto and McDonalds will still have full entrances.

**SHOPPES AT KEARNEY – PRELIMINARY PLAT-CONT** Heath Courtney asked how the traffic study relates to stacking in the turn lanes. Mr. Elliott said the PM peak is the highest at 150 left turns, so 150 feet of storage is needed and they are providing 200 feet.

Eric Shumate asked how the left turn from McDonalds will affect the left turn in to the shopping center or people making a u turn. Mr. Elliott said the model says it can handle this.

Kent Porter asked for drawings of how the median will look. Mr. Elliott said this is just a rough sketch because it was just worked out last Friday.

Heath Courtney asked how the left turn out of McDonalds gets out at peak times. Mr. Elliott said they can pull out into the center lane and then get back into the East bound lanes of traffic.

Heath Courtney asked about sidewalks along 92 Highway. Ron Cowger said MoDOT is planning to do sidewalks along the South side to Platte Clay Way and then on the North side to 33 Highway. Staff said the project will build sidewalks in front of the site on 92 Highway.

Kim Murphy said MVOB requirements in 405.705 say you can't put an access drive onto a major arterial if access is available through the shopping center or access drive. He said he is also concerned about the short distance to the pharmacy entrance from 92 Highway. He said maybe it should line up with the entrance to the C Store.

Mr. Elliott said they were done this way to allow traffic to flow thru the C Store better. Mr. Cowger said it could be only a right in to the pharmacy.

Eric Shumate said the traffic study was dated July 2012. He said it would be more accurate to do that during school because the AM peaks will be different. Mr. Elliott said the PM peaks are more critical period because there won't be retail traffic of the morning.

Eric Shumate asked if the trip generation is figured from the South also. Mr. Elliott said it is and they used projected traffic to 2030 from MoDOT on the 19<sup>th</sup> Street project.

Heath Courtney said along Regency Drive on the East side there are two businesses. He asked how people will be able to make a left turn into their business if the Northbound traffic has two turn lanes and a thru lane. He said that could back up traffic onto 92 Highway. Mr. Elliott said there would be room at the South end of the turn lanes for traffic to turn left into the South entrance to those businesses.

Kent Porter asked if there would be a realignment of the intersection light at 92 Highway. He was told no. He asked when the road would get extended to 19<sup>th</sup> Street. Dan Holt said it was the City's idea to go to 19<sup>th</sup> Street. He said that would be paid with CID

**SHOPPES AT KEARNEY – PRELIMINARY PLAT** money or something like that. Mr. Cowger said Star Development doesn't own the land all the way to 19<sup>th</sup> Street.

Darren Hiley said a flyover or interchange at the 19<sup>th</sup> Street would spur more development in this area.

Dan Holt said we are just looking at that at this time and hopefully something will be submitted by May or June.

Darren Hiley said he is very uncomfortable with answers for what traffic flow will be like on 92 Highway. He said there is a lack of definition for what that is going to be. He asked if the businesses on the North side of 92 Highway are aware of this plan. Mr. Elliott said MoDOT has reviewed the traffic models of the study and the City Engineers and MoDOT have agreed this will help improve efficiency and safety. He said it is too late to change plans once they start grading.

Kim Murphy asked if there is a break in median for someone leaving the C Store and going back to the Interstate. Mr. Elliott said they will have to go right and use the turn around.

Eric Shumate said the PM peak with the development shows a vehicle turning left on Regency Drive every 10 to 15 seconds. He asked how people get out of their driveways on Regency Drive. Mr. Elliott said it is a level of service of a C which is within the acceptable standards for gaps.

Heath Courtney said there are people that may very well go the back way through Regency Drive instead of 33 Highway to 92 Highway. He asked if it is designed for that level of traffic. He said there would be a future additional back door after the frontage road to 19<sup>th</sup> Street is built. Mr. Elliott said they have looked at all different directions for flow of traffic.

Dan Holt said when this was first brought to the City Tract C and a spot behind Lot 3 were to have detention. He asked why they aren't on this plan. He said the 2009 plan showed one by the building. Ron Cowger said it probably was not done to scale.

Dan Holt asked how the water gets from the South end to the North end. Ron Cowger said the vast majority drains to the North. Tract C will have an in-channel detention outside the normal high water mark.

Eric Shumate said the Tract C detention report says the four foot by four foot box under the ramp and the pipe from the intersection will go into the six foot by six foot box culvert. Ron Cowger said there will be a throttling junction box at the entrance to the culvert.

**SHOPPES AT KEARNEY – PRELIMINARY PLAT** Bill Cunningham, Larkin Associates, said in regard to FEMA, the City paid a lot of money for floodplain work and should use that work to determine detention areas. He said developers should use that modeling.

Kim Murphy said he likes the idea of sidewalks from the pool to the store. He said that cuts down on cars.

Kent Porter asked who would maintain the berms if they are used for buffer. John Davis, Star Acquisitions, said they would be maintained by the property owners. He said the CID will own and maintain the storm water detention.

Kent Porter said he didn't see the aquatic center anywhere on the plans. Dan Holt said it won't be here. It will probably be on school property South of the football field but the funding would come from the TIF.

Heath Courtney asked what the site lighting would be like. Ron Cowger said there will be street lights on the streets. The lighting on the buildings will meet the City codes and not shine onto the residential residences.

Darren Hiley said he is concerned about how the berm height is determined. He said it should be six foot high on the residential side and not the commercial side.

Eric Shumate said he is concerned about the stormwater study. He said when you compare the flow at Regency Drive it doesn't match. He said the 100 year flood plain says in Tract A it will back out onto the street at 820.8 elevation. Ron Cowger said there is rework to be done on the project. He said they compare 1814 cf at Regency drive versus 1080 four hundred feet downstream of there on the FEMA information.

Kathy Whipple said she is concerned about the owners maintaining the berm landscaping if it is another dry year. She said lots of trees have died in the community this year and what has to happen to enforce replacement of them. She said if the berm is shorter than six foot than you don't have a six foot berm any longer.

Kim Murphy asked what does "final acceptance" of the project mean as it relates to their request for future payment of stream mitigation credits. Ron Cowger said construction of infrastructure would be final acceptance.

Kathy Whipple said she was going to open the floor to anyone wishing to speak to the Commission.

Chuck Davis, Kearney Kwik Lube, said if there is only one lane Southbound and three lanes Northbound how is a car going to turn left into his business without a turn lane. Mr. Elliott said there will only be a back up during peak times.

**SHOPPES AT KEARNEY – PRELIMINARY PLAT** Mr. Davis said with two hundred foot stack ups it will shut down his business. He said he thinks he should get a left turn lane.

Heath Courtney said as an idea his lot is paved all the way from 92 Highway down to past the vacuums. He said why couldn't he be allowed an entrance to him only at the south end of the business. Mr. Davis said why couldn't he have a left turn lane at the South End where Regency Drive begins.

Mr. Davis said they also have a lot that is undeveloped to the South end of the property. He asked if he will be allowed access to that property.

Mr. Davis said they talked about u turns on 92 Highway and he said he doesn't believe that will happen.

Joel Elmore, 807 Regency Drive, introduced a letter into the record regarding stormwater issues into Shadowbrook Subdivision. He said he would prefer fence over a berm. He said a berm won't catch trash and their yards will be full of trash all the time.

Mr. Elmore said he is concerned about detention because he has water up to his fence now. He said please figure out the stormwater detention because he is concerned about paying flood insurance.

Text of the Letter from Joel Elmore dated October 8, 2012:

Re: Shoppes at Kearney  
Scheduled meeting at City Hall October 8, 2012

My name is Joel Elmore, my wife Shirley and I live at 807 Regency Dr. here in Kearney. We own two lots (43 & 42) on the South side of tributary 16 on the same side as the car wash, both lots border tributary 16.

We purchased the Kearney property in October of 2008. We moved here for several reasons, one of which was the privacy of our backyard and that the house is centrally located, it's within walking distance of many stores. The Shoppes at Kearney is a furtherance of that convenience, however, living in so close a proximity to the planned development site Shirley and I have concerns involving Water, Traffic and Buffering.

**Water**

We are finishing up on a bank restoration project that started approximately a year ago. I would like to thank the city for their outstanding cooperation in allowing us to undertake this task. I would also like to thank Jeff Couchman who is not only our alderman but our HOA president.

The bank restoration project involves approximately 240' of the over 300' combined lineal footage of Lots 43 & 42 bordering tributary 16. The project has been considerable in both time and money. We undertook this project due to the amount of erosion that was taking place along the bank. Example: We could stand beside our 4' high fence and literally look straight down approximately 19 feet to the bottom of the Creek. (Note: I have witnessed multiple times were tributary 16 has risen up to and passed within 1 foot of this fence that I just described. This has occurred during very heavy rain storms approximately 4" rain fall

over a course of two hours. Our backyard, as well as, our neighbor's yards throughout the Shadowbrook subdivision also serves as a detention basin.)

Concerns:

Referencing: Shoppes Prelim Plan 09-07-12; It would appear a lot of the area that was being used for water detention will be filled in, it doesn't look like the new areas of detention make up for the areas that have been lost due to development. If the total area of detention on the TIF site is made to be less than they are now, would this promote an increase in flooding potential downstream from the site?

I would assume that the release of water will be more gradual and that the water will be running for a longer period of time in the Creek. Will longer duration runoff increase bank erosion downstream of the site?

**Traffic:**

In creating an additional lane of traffic exiting from the Shoppes at Kearney on to Regency and compounding that traffic with the traffic making a left on to Regency it would seem that the interval of traffic will increase. It is already a busy street.

Due to our garage configuration, I am required to back up to park in the garage; this requires a three point turn. Most of the time, due to oncoming traffic, I pull over to the curb in front of my driveway. I wait for the traffic to pass and look about 400 feet in front of me to see if any more oncoming traffic is approaching. I then look in my rearview mirror approximately 250 feet to see if anybody's approaching from behind. Inevitably there is either oncoming traffic or back traffic approaching. This goes on for some time before I can back into the driveway.

I think that it is imperative that should the project be approved that Street "A" should be extended to W. 19th St. in order to relieve some of the new traffic congestion.

**Buffering:**

If the berm and fence were in place sooner than later it might help cut down on the amount of fallout and noise from the construction site.

Tim Brannlund, 800 Regency Drive, said after they removed the pond in 2009 it has wiped out the side of his house. He said he has sinkholes in his yard. He said they need to repair the creek. He said he has lost up to six foot of his yard because the pond kept the water in place before it was removed. He said he thought they were going to build a big box culvert to control the water. He said he has lost his property and no one wants to fix it.

Mr. Brannlund said he is concerned that the berm along the East side of the shopping center will cause the run off to go through his yard.

Mr. Brannlund said he is concerned how long the widening will be for Regency Drive. He said if it is 110 feet from the North side of the bridge, eight cars waiting to turn left will block his driveway. He said he knows you can't widen the bridge to help traffic.

He said he is concerned about traffic coming through the development as a cut through rather than use the light at Platte Clay Way. He presented pictures showing the damage to his property since the pond was removed.

Ron Cowger said he would attempt to answer the concerns. He said in regard to Mr. Davis they could leave access at the South end open. He said Regency Drive is

**SHOPPES AT KEARNEY – PRELIMINARY PLAT** unchanged at Lot 5 belonging to the Davis's . He said they can look and see about a turn lane at the South end. Mr. Davis said he didn't want his access reduced.

Mr. Elliott said the additional Northbound left turn lane will help stacking on Regency Drive.

Mr. Cowger said in regard to Mr. Elmore's concern about berm versus fence. He said they chose a berm because it will stay looking nice where a fence will deteriorate with time. He said they will make sure the drainage is done correctly.

Mr. Cowger said he doesn't know about the bank eroding away on Mr. Brannlund's property. He said the berm and curb gutters will capture all the water from the development before it gets to Mr. Brannlund's property. He said the storm outlet will be turned slightly to direct the flow away from his property.

Kathy Whipple said it appears there are three issues of concern at this time. They are traffic, detention and berm vs. fence. She said the left turn westbound movement is a new item on the study.

Heath Courtney said part of our analysis is to make sure the traffic works. He said this is a hand written drawing of the median. He said we need more clarity on 92 Highway before voting on this.

Mr. Elliott said the median design has not gone through yet. This could change prior to engineering.

Sabin Yanz, Cook, Strobel and Flatt engineers, said they did a study of this same area for the City. He said there are more tools and models that can be brought before the Commission to better understand the process. He said their study is pretty much the same as Transystems. He said creating the T at Regency Drive and Platte Clay Way entrance to the Shopping Center will help.

Kathy Whipple said it is important how they address the Southbound traffic into the car wash driveway.

Darren Hiley asked if the entrances into Fuel Espresso and Kwik Lube would remain as they are now. Mr. Elliott said they would.

A motion was made by Heath Courtney and seconded by Darren Hiley to table the application from Tim Harris, Star Acquisitions, for a preliminary plat proposing a 37 acre commercial development at the Southeast corner of 92 Highway and Interstate 35 until they have a better design of traffic and detention issues are addressed.

Ron Cowger asked if there could be a short recess so he could have a discussion with his client.

**SHOPPES AT KEARNEY – PRELIMINARY PLAT** The Commission recessed for a short time. The Commission re-convened.

Ron Cowger said his client would like for the Commission to take a vote tonight on the application.

Heath Courtney withdrew his motion to table the project.

A motion was made by Darren Hiley and seconded by Heath Courtney to deny the application from Tim Harris, Star Acquisitions, for a preliminary plat proposing a 37 acre commercial development at the Southeast corner of 92 Highway and Interstate 35.

Dan Holt asked if they can approve the project to start and table the MoDOT issues.

Heath Courtney said he is concerned about the inconsistencies in the storm water report and the incompleteness of the median information on the plan. He said I believe we have ninety percent of the information we need but we need the other ten percent.

Kathy Whipple said we can't control MoDOT on 92 Highway but she is concerned about Regency Drive and Platte Clay Way. She said we must respect the businesses and residents that are already there. She said we must also be sure the stormwater detention is done correctly.

A vote was taken on the motion to deny and it carried by a vote of five to two with Dan Holt and Kim Murphy voting nay.

**ADJOURNMENT** There being no further business on the agenda, a motion was made by Kim Murphy and seconded by Eric Shumate to adjourn. The motion carried unanimously.

**APPROVED:** \_\_\_\_\_ **ATTEST:** \_\_\_\_\_  
**Kathy Whipple, Chairperson** **Darren Hiley, Secretary**