

MINUTES OF THE
RAPID CITY PLANNING COMMISSION
November 21, 2019

MEMBERS PRESENT: Erik Braun, Karen Bulman, Racheal Caesar, Eirik Heikes, John Herr, and Vince Vidal. John Roberts, Council Liaison was also present.

MEMBERS ABSENT: Kelly Arguello, Mike Gollhofer, Galen Hoogestraat, Eric Ottenbacher and Mike Quasney

STAFF PRESENT: Vicki Fisher, Fletcher Lacock, John Green, Patsy Horton, Tim Behlings, Todd Peckosh, Ted Johnson, Wade Nyberg and Andrea Wolff.

Braun called the meeting to order at 7:00 a.m.

Braun reviewed the Consent Agenda and asked if any member of the Planning Commission, staff or audience would like any item removed from the Consent Agenda for individual consideration.

Motion by Caesar seconded by Bulman and unanimously carried to recommend approval of the Consent Agenda Items 1 thru 3 in accordance with the staff recommendations. (6 to 0 with Braun, Bulman, Caesar, Heikes, Herr and Vidal voting yes and none voting no)

---CONSENT CALENDAR---

1. Approval of the November 7, 2019 Planning Commission Meeting Minutes.

*2. No. 19PD043 - Buffalo Crossing West

A request by Upper Deck Architecture, Inc for Security First Bank to consider an application for a **Revocation of a Planned Development Designation** for Lot 3 of Buffalo Crossing West located in Section 26, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, more generally described as being located at 1919 Hope Court.

Planning Commission approved the request to revoke the Planned Development Designation on the property.

The Rapid City Planning Commission's action on this item is final unless any party appeals that decision to the Rapid City Council. All appeals must be submitted in writing to the Department of Community Development by close of business on the seventh full calendar day following action by the Planning Commission.

*3. No. 19PD044 - Hamilton Subdivision

A request by Renner Associates, LLC for Paradigm Construction to consider an application for a **Major Amendment to a Planned Development Overlay to allow an apartment building** for Lot CR of Hamilton Subdivision, located in Section 18, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, more generally described as being located at 1330 E. Minnesota Street.

Planning Commission approved the Major Amendment to the Planned Development Overlay to allow an apartment building with the following stipulations:

- 1. The previously granted Exception to allow a maximum height of 38.5 feet in lieu of 35 feet for the 24 unit apartment complex is hereby acknowledged;**
- 2. Prior to submittal of a building permit, a Floodplain Development Permit shall be obtained;**
- 3. Upon submittal of a building permit, construction plans shall show the drainage channel on the eastern portion of the lot being maintained;**
- 4. The Major Amendment to the Planned Development Overlay shall allow for an apartment complex with 32 total units. Any change in use or expansion of use that is permitted in the Office Commercial District shall require review and approval of a Minimal Amendment to the Planned Development Overlay. Any change in use or expansion of use that is a Conditional Use in the Office Commercial District shall require review and approval of a Major Amendment to the Final Planned Development Overlay.**

The Rapid City Planning Commission's action on this item is final unless any party appeals that decision to the Rapid City Council. All appeals must be submitted in writing to the Department of Community Development by close of business on the seventh full calendar day following action by the Planning Commission.

---END OF CONSENT CALENDAR---

---BEGINNING OF REGULAR AGENDA ITEMS---

- *4. No. 19PD042 - Elks Country Estates
A request by Longbranch Civil Engineering, Inc for Lee Jensen to consider an application for a **Major Amendment to a Planned Development Overlay to allow an oversized garage** for Lot 2R of Block 6 and a portion of Block 6 of Elks Country Estates Subdivision, Located in the NW ¼ of the SE ¼ of, Section 16, T1N, R8E, B.H.M., Rapid City, Pennington County, South Dakota, more fully described as follows: commencing at the northwesterly property corner of Lot 1R of Block 6 Elks Country Estates subdivision common with the northeasterly property corner of Lot 2R of Block 6, and adjacent to the Willowbend Road right of way all located in Elks Country Estates Subdivision, and the point of beginning; Thence, S 32°14'29" W, a distance of 113.59 feet to a point on the southwesterly property corner of Lot 1R of Block 6 of Elks Country Estates Subdivision, also common with the southeasterly property corner of Lot 2R of Elks Country Estates Subdivision and common with the boundary of Tract 5R of Elks Country Estates Subdivision; Thence, N 70°33'26" W along the boundary of Tract 5R and Lot 2R of Block 6, a distance of 105.62 feet to an angle point of Tract 5R of Elks Country Estates common with the Southwesterly property corner of Lot 2R of Block 6 of Elks Country Estates Subdivision; Thence, N 81°56'47" W, along the boundary of Tract 5R and the southerly boundary of Block 6 all located in Elks Country Estates a distance of 33.33 feet; Thence, N 32°14'17" E, along a random line a distance of 151.04 feet to a random point located in Block 6 of Elks Country Estates Subdivision; Thence, S

57°43'12" E, a distance of 30.09 feet to the northwesterly corner of Lot 2R of Block 6 of Elks Country Estates Subdivision; Thence, S 57°43'12" E, a distance of 54.91 feet along the northerly boundary of Lot 2R of Block 6 of Elks Country Estates Subdivision to a point common with the Willowbend Road right of way; Thence, S 57°43'12" E, a distance of 34.97 feet along the northerly boundary of Lot 2R of Block 6 of Elks Country Estates Subdivision and the southerly boundary of the Willowbend Road right of way to the point of curvature of a right direction curve of the Willowbend Road Right of way and the northerly boundary of Lot 2R of Block 6 of Elks country Estates Subdivision, with a Radius of 298.93 feet and a Delta Angle of 02°34'33", with a length of 13.44 feet, and a chord bearing of S 56°25'55" E, and a chord distance of 13.44 feet to the northwesterly property corner of Lot 1R of Block 6 Elks Country Estates subdivision common with the northeasterly property corner of Lot 2R of Block 6, and adjacent to the Willowbend Road right of way all located in Elks Country Estates Subdivision, and the point of beginning, more generally described as being located northwest of the intersection of Willowbend Road and Augusta Drive.

Lacock presented the application and reviewed the slides. Lacock noted that the applicant has also submitted a Preliminary Subdivision Plan to plat an additional piece of property to the north to allow room for the construction of the oversized garage. Lacock noted that the applicant will be constructing an additional portion of Willow Bend Road associated with that platting process and as such one of the stipulations is that prior to the issuance of a building permit, a Final Plat be approved. Lacock stated that in addition to the Exception to allow garage area measuring 1,840 square feet in size in lieu of the maximum allowed 1,500 square feet, the applicant is also requesting an Exception to allow an accessory structure with a height of 16.75 feet in lieu of the maximum allowed height of 15 feet. Lacock stated that the applicant is proposing to design the detached garage in similar style and character to the dwelling. Lacock also noted that the placement of the garage should help to minimize the impact. Lacock stated that staff is recommending approval of the Major Amendment to a Planned Development Overlay to allow an oversized garage with the stipulations outlined in the Project Report.

In response to a question from Heikes whether the proposed garage is to allow them to meet their covenants, Lacock said that he believes that is the reason.

Bulman moved, Heikes seconded and the Planning Commission approved the Major Amendment to a Planned Development Overlay to allow an oversized garage with the following stipulations:

- 1. An Exception is hereby granted to allow an accessory structure with a height of 16.75 feet in lieu of the maximum allowed height of 15 feet;**
- 2. An Exception is hereby granted to allow garage area measuring 1,840 square feet in size, in lieu of the maximum allowed 1,500 square feet;**
- 3. All outdoor lighting shall continually be reflected within the property boundaries so as to not shine onto adjoining properties and rights-of-way and to not be a hazard to the passing motorist or constitute a nuisance of any kind;**
- 4. Prior to issuance of a Building Permit, a Final Plat shall be approved;**
- 5. The Major Amendment to a Planned Development Overlay shall allow for an over-sized garage and dwelling for the property. The garages shall not be used for commercial purposes or as a second residence. In**

addition, the garages shall not be used as a rental unit. Any change in use that is a permitted use in the Low Density Residential District – II shall require a Building Permit. Any change in use that is a Conditional Use in the Low Density Residential District – II shall require the review and approval of a Major Amendment to the Final Planned Development Overlay. (6 to 0 with Braun, Bulman, Caesar, Heikes, Herr and Vidal voting yes and none voting no).

The Rapid City Planning Commission's action on this item is final unless any party appeals that decision to the Rapid City Council. All appeals must be submitted in writing to the Department of Community Development by close of business on the seventh full calendar day following action by the Planning Commission.

Items 5 and Item 6 were taken together.

5. No. 19OA002 - Ordinance to Update the Tax Increment Financing District Review Process by Amending Chapter 3.26 of Rapid City Municipal Code
A request by City of Rapid City to consider an application for an **Ordinance to Update the Tax Increment Financing District Review Process by Amending Chapter 3.26 of Rapid City Municipal Code.**
6. Resolution Adopting the Rapid City Tax Increment Financing Policy
A request by City of Rapid City to consider an application for a Resolution Adopting the Rapid City Tax Increment Financing Policy.

Horton noted that this item had been before the Planning Commission and had been continued to allow for suggested revisions to be made and to receive additional input from an Open House that was held November 14, 2019. Horton reviewed the major changes that were made including added language to address potential market volatility; added language to address regional water towers and /or reservoirs other than City owned facilities as current Policy indicates opening it up for other facilities; added language regarding the application requirements in order to be clearer; added language clarifying the City's cost and responsibility for hiring third party review, clarifying that this will be hired and indicating it as an eligible project cost. Horton then ran through the individual changes throughout the ordinance. Horton reviewed an analysis comparison between the current TIF process and the new TIF process that had been presented at the Open House which shows that there are only 4 additional provisions within the new process than are in the current process. Horton stated that staff recommends approval of the Ordinance to Update the Tax Increment Financing District Review Process by Amending Chapter 3.26 of Rapid City Municipal Code and Resolution Adopting the Rapid City Tax Increment Financing Policy.

Heikes made comment on the changes to the definition of blight over the years and how he feels it has been to the better.

In response to Herr's question regarding the makeup of the review team, Horton clarified that the application review will now be done by staff and routed to the applicable divisions as is done with all other development applications. Horton explained this change will remove the requirement for items to receive City Council

approval prior to inclusion in the Project Plan, which was creating the appearance of the items being publicly vetted before the hearing process. Herr stated that he does not like the proposed process.

In response to a question from Bulman, Horton confirmed that the allowable interest changes would still require a plan amendment and would be required to be reviewed and allowable line item changes that would be allowed by plan amendment. Bulman also noted that the participation rate in the definition is shown as 10 percent but in the document is listed as 85 to 90 percent, Horton said she would make sure it was corrected.

Caesar stated that she like the proposed policy change with staff review noting that it still allows the applicant to appeal to the Planning Commission for public process. In response to Caesar's question on the proforma of project costs, Horton reviewed use of prepared spreadsheets that will be adjusted based on financial feasibility analysis. In response to Caesar's question on affordable housing language, Horton reviewed the language stating that the language is targeted at the first home buyer and not the life of the property.

In response to question from Vidal regarding the move away from focusing on the Core community, Horton stated that it was to open up the opportunities. In response to Vidal's question on the 35 percent allowable increase, Horton explained that the language change allows an increase of up to the 35 percent to be made without effecting the base valuation and not lose the increment.

In response to a question from Braun, Horton clarified that the 35 percent is of the project cost.

John Way, Bank West, stating that his bank does many of these loans and has some concerns with the proposed changes. Way thanked staff for their efforts to listen to the concerns and the changes they have worked towards since the recent public meeting. Way spoke to his continued concerns regarding the 10-year repayment period even though it is only used as an encouragement. He worries it will become the standard and believes this language should be removed. Way also spoke to the interest rate and whether it is a set rate or a variable and that this needs to be clarified. Way spoke to the 9 percent statutory rate stating he has never seen one, but believes the option to have it is important. Way also discussed certification stating that he believes there are ways to enhance and speed up the approval and his concerns with the need for more structure to the certification requirements and how these are handled at the bank. He suggests that the City be added to this process and how this could be done.

In response to a question from Braun on the interest a bank is projecting when financing a project, Way stated that this is generally floating as it is looking at the long term since they do not know when the repayment will be.

In response to question from Herr on repayment and interest, Way confirmed that the funding is provided by the bank throughout the project and the interest rate can fluctuate throughout the life of the project. Way agreed that the project is considered done once the certification is done and the delay of certification can be costly.

Horton discussed the interest number and noted that it can be in the Development Agreement.

Kent Hagg, Hagg Development, indicated he has numerous concerns regarding the language used in the Tax Increment Financing Policy and believes that the numerous requirements severely limit the use of this development tool. Hagg discussed his concern for the difficult process of approval and the use of constricting words such as “all” and “must” reading a section on page 1 of the Tax Increment Financing Policy Draft that utilized the word “all” that distresses him. Hagg spoke to his concerns that the plan amendments cause unnecessary delays for developers and that the City is limiting the 35 percent allowable increase to interest only. Hagg stated that he does not believe that his Tax Increment District 70 for Moon Meadows II which he defines as a luxury development would not have been approved under the proposed Tax Increment Financing process which requires 30 percent affordable housing. Hagg asked that the Planning Commission table or continue the item.

Herr stated he thinks there should be more time and effort put into this revision and does not understand why the rush to push it through.

In response to a question from Vidal on how bankers could expedite projects, Way stated he believes that adding the City to the approval process for certification would be a vital step. Horton responded that this is possible, that if the bid process be divided between allowable and non-allowable costs stating that that language can be added to the Tax Increment Financing language and possibly a standard agreement.

Horton spoke to the affordable housing language that is a general part of Tax Increment Financing Policies.

Horton discussed the basic use of Tax Increment Financing indicating that it is imperative for the applicant to have the needed improvements and associated approvals identified, needed studies completed prior to submitting the their application to avoid changes and that if this information is not known then the application is probably premature. Horton said that Tax Increment Financing is like a gap funding to help the developers and pre-preparation is key. Horton also noted that the City Council has the final decision on Tax Incremental Financing applications and are able to make adjustment to projects as they see necessary as long as the Planning Commission has approved the creation of the Tax Increment District.

Discussion followed regarding proposed changes.

Herr requested to hear Kent Hagg’s remaining comments.

Hagg spoke to his concerns to the use of points and that he believes that the proposed Tax Increment Finance Policy is attempting to cover too much. Hagg spoke to development of all strata of housing noting that it creates affordable housing and then did a general overview. Hagg again stated that he would like to see the item tabled.

Caesar spoke to the bid process and the flow of strata development mentioned by Hagg. Caesar also noted the numerous times that this item has been before the Planning Commission acknowledging the effort staff has put into in the years since this revision was initiated and asked for a summary of proposed changes requested today so this could possibly move forward.

Bulman attempted to summarize the revisions that are being requested listing, clarification of Certification language be addressed, removal of the word "all" on the last sentence of the first page where it references the "proposal meets all of the provisions of this policy", clarify language on prime plus one interest rate cap be defined.

Vidal spoke to his support.

Horton stated that changes can be made to the Tax Increment Financing Policy even if it is approve and that just because it is approved it is not set in stone.

Heikes agreed with Horton that this is a living document and he anticipates changes to be needed in the future and that he is ready to move forward.

Herr stated he is not comfortable voting on something he cannot see and would like to continue to 1/9/20.

Herr moved to continue the Ordinance to Update the Tax Increment Financing District Review Process by Amending Chapter 3.26 of Rapid City Municipal Code and Resolution #2019-015 adopting the new Rapid City Tax Increment Financing Policy to the January 9, 2020 Planning Commission meeting Bulman seconded.

Discussion followed.

Vote was 3 to 3 motion failed.

Fisher clarified that if a second motion was made and resulted in a tie vote the item would then be denied and would move forward to City Council with a recommendation for Denial.

Braun asked for a motion.

Heikes moved , Herr seconded to continue the Ordinance to Update the Tax Increment Financing District Review Process by Amending Chapter 3.26 of Rapid City Municipal Code and Resolution #2019-015 adopting the new Rapid City Tax Increment Financing Policy to the January 9, 2020 Planning Commission meeting to allow only the identified revision to be discussed and addressed, Herr seconded.

Discussion followed regarding what was specifically identified as items to be addressed.

Braun noted that it was approaching the 9:00 deadline.

Caesar moved, Bulman seconded to continue the Planning Commission meeting past the 9:00 time period. (6 to 0 with Braun, Bulman, Caesar, Heikes, Herr and Vidal voting yes and none voting no).

Discussion followed regarding the motion and the possibility of issues with it.

Horton suggested that an additional Open House could be held and also requested that all proposed suggestions and revisions be made available to staff in a reasonable time frame to allow review and processing.

Nyberg cautioned the Planning Commission that South Dakota Codified Law requires that public comment be allowed on all hearing items and that time of discussion can be limited but the 1st Amendment prohibits the restriction of limiting subject matter. Nyberg also noted that Planning Commission could curtail debate on the dais, but it would take a 2/3 vote to enact.

Braun offered an amendment to the motion on the floor to read continue the Ordinance to Update the Tax Increment Financing District Review Process by Amending Chapter 3.26 of Rapid City Municipal Code and Resolution #2019-015 adopting the new Rapid City Tax Increment Financing Policy to the January 9, 2020 Planning Commission meeting to focus on the identified revisions as much as possible. Motion maker and seconder accepted the amendment to the motion.

Heikes moved, Herr seconded and the Planning Commission recommended to continue the Ordinance to Update the Tax Increment Financing District Review Process by Amending Chapter 3.26 of Rapid City Municipal Code and Resolution #2019-015 adopting the new Rapid City Tax Increment Financing Policy to the January 9, 2020 Planning Commission meeting to focus on the identified revisions as much as possible. (6 to 0 with Braun, Bulman, Caesar, Heikes, Herr and Vidal voting yes and none voting no).

7. Discussion Items

Fisher reminded the Planning Commission that there is only one meeting left this year and stressed the importance of having quorum for that meeting so that all items can be addressed before the new year.

8. Staff Items

None

9. Planning Commission Items

None

There being no further business, Caesar moved, Bulman seconded and unanimously carried to adjourn the meeting at 9:10 a.m. (6 to 0 with Braun, Bulman, Caesar, Heikes, Herr and Vidal voting yes and none voting no).