

**CITY OF RICHARDSON
CITY PLAN COMMISSION MINUTES – DECEMBER 6, 2011**

The Richardson City Plan Commission met December 6, 2011, at 7:00 p.m. at City Hall in the Council Chambers, 411 W. Arapaho Road, Richardson, Texas.

MEMBERS PRESENT: David Gantt, Chairman
Bill Hammond, Vice Chair
Gerald Bright, Commissioner
Janet DePuy, Commissioner
Marilyn Frederick, Commissioner
Barry Hand, Commissioner
Thomas Maxwell, Commissioner
Eron Linn, Alternate

MEMBER ABSENT: Don Bouvier, Alternate

CITY STAFF PRESENT: Michael Spicer, Director of Dev. Svcs.
Sam Chavez, Asst. Director of Dev. Svcs. – Planning
Susan Smith, Asst. Director of Dev. Svcs. – Dev. & Engr.
Israel Roberts, Development Review Manager
Chris Shacklett, Planner
Kathy Welp, Executive Secretary

BRIEFING SESSION

Prior to the regular business meeting, the City Plan Commission met with staff to receive a briefing on agenda items and staff reports. No action was taken.

MINUTES

1. Approval of the minutes of the regular business meeting of November 15, 2011.

Commissioner Bright asked to remove the word “and” from page 10, paragraph six, line one.

Motion: Commissioner Bright made a motion to approve the minutes as corrected; second by Commissioner DePuy. Motion passed 7-0.

CONSENT AGENDA

All items listed under the Consent Agenda are considered to be routine by the City Plan Commission and will be enacted by one motion in the form listed below. There will be no separate discussion of these items unless desired, in which case any item(s) may be removed from the Consent Agenda for separate consideration.

2. Revised Site and Landscape Plan for ViaWest Data Center (companion to Item 3) : A request for approval of a revised site and landscape plans to reflect a 13,200 square foot

addition to the existing building. The 16.01-acre site is located on the east side of Waterview Parkway, north of Synergy Park Boulevard.

Motion: Commissioner Frederick made a motion to approve the Consent Agenda as presented; second by Vice Chair Hammond. Motion passed 7-0.

PUBLIC HEARINGS

- 3. Replat Lot 2A, Block 2 of Synergy Park Addition (companion to Item 2):** A request for approval of a replat of Lot 2, Block 2 of the Synergy Park Addition to revise easement locations to accommodate a proposed 13,200 square foot building expansion. The 16.01-acre site is located on the east side of Waterview Parkway, north of Synergy Park Boulevard.

Ms. Smith stated the applicant was requesting a replat to accommodate a building expansion of 13,200 square feet, and because of this expansion, the utility easements would need to be relocated and the fire lane easements abandoned.

With no questions for staff, Chairman Gantt opened the public hearing.

Ms. Hillary Von Ashen, representing Kimley-Horn, 12700 Park Central Drive, Dallas, Texas, said she was available for questions.

No questions were asked and no other comments were made in favor or opposed. Chairman Gantt closed the public hearing and called for a motion.

Motion: Commissioner Bright made a motion to approve Item 3 as presented; second by Commissioner DePuy. Motion passed 7-0.

- 4. Replat Lots 1A and 3, Block 2 of the Corporate Square Addition:** A request for approval of a replat of Lot 1, Block 2 of the Corporate Square Addition into two (2) legal lots of record. The 6.78-0acre site is located at the northeast corner of Executive Drive and W. Executive Drive.

Mr. Roberts noted the request for the replat was to divide the property into two (2) legal lots of record and reminded the Commission that this same property had been before them earlier in the year when two variances were requested. He stated those variances had been approved by the City Council in September, and no improvements to the site plan were associated with this replat.

Chairman Gantt asked if there were any questions for staff, and with none, opened the public hearing.

No comments were made in favor or opposed and Chairman Gantt closed the public hearing.

Motion: Vice Chair Hammond made a motion to approve Item 4 as presented; second by Commissioner Hand. Motion passed 7-0.

- 5. Zoning File 11-22:** A request by Richard Ferrara, representing 7-Eleven, for a Special Permit for a motor vehicle service station at the southwest corner of Renner and North Star Roads. The property is currently zoned PD Planned Development for LR-M(2) Local Retail uses.

Mr. Shacklett advised the applicant was requesting to develop a 7-Eleven convenience store with six fuel pumps on the southwest corner of Renner and North Star Roads. The 1.58-acre site is part of a larger 12.8-acre PD Planned Development that currently has a Kids R Kids childcare center, the Evergreen Senior Living facility (Evergreen), and a 4.8-acre undeveloped tract along Renner Road.

Mr. Shacklett reported there will be an outdoor seating area on the north side of the convenience store covered by a trellis, and that the applicant was requesting a variance for reduced internal stacking at the fuel pumps. He added that the site will have two points of entry – one along North Star Road at the existing entry by Evergreen, which is a shared mutual access easement, and a driveway along Renner Road.

Mr. Shacklett pointed out the PD regulations require that the site must be in harmonious design with the other facilities on the site including building materials and color, as well as with the Breckinridge Corners Shopping Center on the northwest corner of Renner and North Star Roads. He added that canopy for the fuel pumps will be made of the same stone and brick as the convenience store and will have the typical orange, green and red stripe corporate logo on an off-white background.

In closing his presentation, Mr. Shacklett noted that five letters had been received in support of the request and one in opposition.

Vice Chair Hammond asked if the roof was made of metal because he did not remember if the other buildings had metal roofs.

Mr. Shacklett replied that the roofs of the building at the Breckinridge Shopping Center were metal, and noted that the required images and design palette were listed on Exhibits H1 and H2.

Commissioner Maxwell asked about the 40-foot wide work easement that appeared to have an encroachment of the mechanical room.

Mr. Shacklett replied that was a temporary work easement for the construction of Evergreen.

Commissioner Bright asked if there would be a concern with people walking in the street or driveway to get to the 7-Eleven, especially the residents from Evergreen.

Mr. Shacklett replied that the Evergreen residents could walk out of their facility to a sidewalk then over to the convenience store.

With no further questions for staff, Chairman Gantt opened the public hearing.

Mr. Richard Ferrara, 405 N. Waterview, Richardson, Texas, addressed the Commission noting that prior to submitting their application, he and his associate met with staff from the City, including the Fire Marshal's office and the Planning Department, to review not only the plans for the 7-Eleven, but also the plans for development of a veterinary clinic on the remaining 4.8-acre tract so they could coordinate fire lanes, fire hydrants, and mutual access easements. He added that the veterinary clinic would not require zoning because of the way the PD was written, but would come before the Commission for site plan and design compatibility approval.

Mr. Ferrara pointed out that the curved lines Mr. Hammond asked about in the briefing session was the area where the fuel delivery trucks would locate and stated that 7-Eleven was very cautious about the movement of the trucks and how they impacted other elements of the site. He added that the delivery truck will be parked at an angle to allow vehicles to pass on either side.

Mr. Ferrara explained the reason for the request for the vehicle stacking variance was due to the fact that the base zoning ordinance requires two waiting stalls beyond the gas pumps, which is not applicable on this site. He added there will be ample space at the pumps with over four car lengths in width, including the two vehicles at the pumps.

Mr. Ferrara indicated that 7-Eleven was very aware of the importance of the intersection to the community and took that into consideration when designing the site with more space, outdoor seating, and increased the landscaping from the City required 7 percent to 37 percent. He added that they would also be using LED exterior lights to eliminate light glare and bleed over into the neighborhood.

In concluding his presentation, Mr. Ferrara reported that he and his associate had taken the time to meet with the local Homeowners Associations (HOAs) and the positive responses received were a result of that effort.

Commissioner Hand asked if there was any possibility that a boutique grocery store could locate on the remaining property along Renner Road, similar to the Aldi grocery store on Belt Line Road across from Richardson Square.

Mr. Ferrara explained that before 7-Eleven became interested in the property, he and his associate had been searching for a viable boutique food store, such as Trader Joe's, but they were too big for the site and not interested in building from the ground up.

Regarding the possibility of Aldi building on the site, Mr. Ferrara reported that Aldi had more of a small warehouse appeal and probably would not be a suitable for the neighborhood, but size wise it could fit on the property.

Commissioner DePuy asked if outside storage would be allowed, and Chairman Gantt mentioned that he had noticed other 7-Eleven locations with outside storage of merchandise.

Mr. Ferrara replied that 7-Eleven would not allow outside storage with the exception of the propane transfer cage, which will be located to the side of the building. He added that 7-Eleven is moving toward eliminating any type of outdoor storage.

Chairman Gantt said the outdoor seating area will be a nice amenity, and it had been mentioned that 7-Eleven will police the area to make sure it maintains its appeal, but he was wondering if in the final design a window could be placed on the side of the building facing the seating to allow employees the opportunity to monitor the area.

Mr. Ferrara replied they had asked that same question to 7-Eleven and there was a possibility of making that change. He also suggested extending the sidewalk near the outdoor seating to the southern property line to accommodate the seniors from Evergreen.

Commissioner Hand asked about the veterinary clinic and if it would come back before the Commission.

Mr. Ferrara replied that the veterinary clinic would come before the Commission for approval of site plan and elevations, but not for approval on zoning or land use.

Chairman Gantt called for any other comments in favor or opposed, and with no other comments the public hearing was closed.

Commissioner Bright asked if the Commission could include a recommendation for a sidewalk between the outdoor seating area and the southern property line.

Mr. Shacklett replied that if a motion to approve was made, and the sidewalk recommendation was part of that motion, the staff could update the plan before it went to City Council.

Chairman Gantt asked if that recommendation was appropriate to add during the zoning process.

Mr. Shacklett replied that it would be appropriate to add that recommendation during the zoning process in addition to any prohibition on outdoor storage.

Chairman Gantt noted that although 7-Eleven reported they were moving away from having outdoor storage, he would like the Commission to consider adding the prohibition and the possibility of a sidewalk to the southern property line to the motion.

Commissioner Bright asked how the motion should be worded – would it be necessary to list items to be excluded.

Mr. Shacklett replied that under the outdoor storage and display section of the City’s zoning regulations there is a section that states “there shall be none except for. . . “ and gives some small dimensions that would still allow a clear walking path; however, the Commission could prohibit any outdoor storage with the exception of the propane transfer cage.

Commissioner Hand remarked that he would like the applicants to continue their dialogue, if possible, to get a grocery retailer on the remaining parcel, and realized that the situation would be market driven, but wanted his comments on the record.

Chairman Gantt agreed that a grocery store would be welcomed in the area, but pointed out that by the time the City changed their alcohol sales ordinance, most of the major grocery chains had moved on to other cities. He added that the proposed design was one of the nicest 7-Elevens he had seen especially with the outdoor seating and small number of fuel pumps.

Commissioner DePuy thought the 7-Eleven was a better choice for the location than a grocery store because of the traffic and congestion that a grocery store would bring.

Commissioner Frederick asked if a limit was put on the outdoor storage would the Commission have to specifically list the dimensions, or would they have to list each allowable item individually.

Mr. Shacklett replied that the Commission should probably limit it to product instead of dimension and should be specific about the items allowed.

Chairman Gantt reminded everyone that propane tanks could not, by law, go inside the store, and if the motion prohibited all outdoor storage that would keep 7-Eleven from doing cylinder exchange at the store.

Commissioner Bright asked if the applicant knew if 7-Eleven was looking at limiting their outdoor storage to firewood and propane exchange.

Mr. Ferrara replied that 7-Eleven wanted to preserve the propane transfer cage and the Red Box DVD kiosk, both of which would be located away from the front of the building.

Mr. Brian Nebel, representing 7-Eleven, 5413 Sonoma Drive, Forth Worth, Texas, said 7-Eleven would be agreeable to limiting outdoor storage to the Red Box and propane transfer cage only.

Mr. Shacklett advised that the Red Box was covered under a separate section of the ordinance for vending machines and was allowed.

Motion: Commissioner Frederick made a motion to recommend approval of Item 5 as presented and limiting outdoor storage to propane tanks; second by Commissioner Maxwell.

Commissioner DePuy asked if the request for a sidewalk to the southern property line needed to be added to the motion.

Mr. Shacklett replied if the Commission wanted to add it as a requirement then it should be part of the motion. No change was made to the motion.

Motion passed 7-0.

- 6. Zoning File 11-23:** A request by Brian Nebel, representing 7-Eleven, for a Special Permit for a motor vehicle service station with modified development standards at 170 E. Spring Valley Road, between Spring Valley Road and Centennial Boulevard, east of the DART Light Rail. The property is currently zoned PD Planned Development.

Mr. Shacklett stated the applicant was requesting a Special Permit for a motor vehicle service station on a 0.96-acre triangle shaped tract located at the juncture of Spring Valley Road and Centennial Boulevard along the southern boundary of the Brick Row development. He added that the 3,016-square foot building would be located in the center of the property with outdoor seating on the north side and a canopy over four fuel pumps on the east side of the property. In addition, there will be two driveways on Spring Valley Road, and one on Centennial Boulevard.

Mr. Shacklett informed the Commission the applicant was requesting three exceptions to the PD Planned Development for the Spring Valley District: 1) yards that include sidewalks; 2) minimum and maximum building build to range; and, 3) minimum building frontage requirement. He explained that the exceptions requested were to increase the maximum yard area from 12 feet to 16 feet; increase the maximum build to line from 18 feet to 22 feet; and, a minimum 14 percent built in the build to range as opposed to the minimum 50 percent listed in the PD, which would allow increased parking and circulation on the site.

Mr. Shacklett stated that the applicant was also requesting two variances: 1) to allow reduced internal stacking; and, 2) to change the screening the rear of the building from a public right-of-way. He pointed out that the rear of the building would face towards Centennial

Boulevard and, as described in the Subdivision Code, the property would need to be screened by a screening wall or wrought iron fence with landscape, but in this case the property had double frontage.

Mr. Shacklett reported that the building elevations would be a combination of brick and stone with EIFS used for architectural details. He noted that the applicant was requesting two exceptions to the PD regulations regarding elevations: 1) to the prohibition of blank facades because the applicant would be providing landscaping along the west and south facades to soften those areas in lieu of building articulations; and 2) to allow non-masonry materials on the ground floor of the building because the structure was only one story tall.

Mr. Shacklett closed his presentation stating that staff had received one email in opposition.

Commissioner DePuy asked where the nearest gas station and/or 7-Eleven were located.

Mr. Shacklett replied that the closest gas station was located at corner of Greenville and Spring Valley Roads, and the closest 7-Eleven was at Plano and Buckingham Roads.

Commissioner Hand asked if there were minimums and maximums for building heights in the PD.

Mr. Shacklett replied that there are no minimums, but in Section 4, Page 20 of the PD it states that "building shall be limited to a maximum height of 100 feet, and may not exceed six stories."

With no further questions for staff, Chairman Gantt opened the public hearing.

Mr. Brian Nebel, representing 7-Eleven, 5413 Sonoma Drive, Fort Worth, Texas, said he was available to answer any questions.

Commissioner DePuy asked if there would be any outdoor storage at this location and would he be willing to entertain the same restrictions as those listed in the prior zoning case.

Mr. Nebel replied that they would be amenable to the same restrictions.

Vice Chair Hammond said he was opposed to the orientation because the main entrance faced the culvert and the two blank facades towards both main thoroughfares. He added that the property was a show piece, an entryway to Brick Row, and an area the City had invested a great deal of time and energy in redeveloping. Mr. Hammond suggested the applicant rethink the orientation and come back at a later date.

Mr. Nebel replied that the orientation had been through approximately ten separate iterations and the main reason for not having the building face the point of the triangle was because of circulation issues.

Vice Chair Hammond said he was aware of the past attempts at changing the orientation, but told the applicant that he was not convinced they had come up with the best option and suggested they continue their work.

Commissioner DePuy asked if there was a possibility of putting an arbor or trellis over the outdoor seating area and, if so, where would it be located.

Mr. Nebel replied that the Brick Row site was smaller than the Renner Road site, but it was not out of the question.

Regarding the location of the outdoor seating, Mr. Shacklett said the design was more linear and located 16 feet from the sidewalk to the building.

Commissioner Frederick said she thought Mr. Hammond had a good point about the blank facades that were facing the major thoroughfares and suggested the applicant could redesign those areas. She also agreed with Ms. DePuy's assessment that the outdoor seating area should have some type of arbor or trellis.

Mr. Nebel replied that they would be willing to work with staff on some type of covering for the outdoor seating area if it did not take away from the landscaping in that area.

Mr. Shacklett corrected his earlier statement regarding the distance from the sidewalk to the building and said it was only 10 feet: a 6-foot amenity zone, a 6-foot sidewalk, and then the building could be 10 feet back of that area.

Commissioner Bright said he supported the application as presented, but understood Mr. Hammond's comments about the blank facades, but was not sure if the building could be oriented in any other direction. He asked the applicant if they had any suggestions.

Mr. Nebel replied that they could work in some architectural details to the west and south sides of the building, but the mechanical enclosure was located on the west side and there was not a lot that could be done with it with the exception of adding landscaping to soften the view. He added no matter what changes were made to the exterior walls, they would have to remain as solid structures because of the interior layout of the building; no windows or other openings would be practical.

No other comments were made in favor and Chairman Gantt called for comments in opposition.

Mr. Andrew Laska, 502 Hyde Park, Richardson, Texas, said he was opposed to the item and felt it was an inappropriate use of the site because an automobile oriented use defeated the

purpose of a Transit Oriented Development (TOD). In addition, he felt another flaw in the design was orienting the property with the gas pumps facing the townhomes across the street.

Mr. Laska suggested other uses for the site including restaurant, retail, and medical offices on a second floor. He also objected to the area east of the site being referred to as a drainage ditch and thought that in the future it could become a water feature.

No further comments were made in opposition and Chairman Gantt closed the public hearing.

Commissioner Hand complimented Mr. Hammond and Ms. Frederick on their comments; however, he felt the real question was not about a trellis or blank walls, but the fact that the Commission had a rare opportunity to ask the applicant to provide a more iconic design that would make a statement at this gateway to the City. He added that he was not opposed to gas stations or convenience store, but was opposed to the design because he felt the architecture would either make or break it as a great retail, residential, or business area.

Mr. Hand concluded his comments by stating that he did not think the proposed design was the best and highest use of the site.

Commissioner Linn said he agreed with Mr. Hand and reminded the Commission that anything built on the site would be visible on all four sides. He added that the item presented the Commission with a unique opportunity and if he was voting on the item he would vote in opposition.

Commissioner Maxwell said he also agreed with Mr. Hand and that the use as a stand alone 7-Eleven was not appropriate, but as part of another development it could be possible. He said he would vote in opposition.

Vice Chair Hammond conceded that although his initial objection to the project was the orientation of the building, he agreed with Mr. Hand's comments and reminded the Commission that the original concept for Brick Row had the site developed as mixed use with office and retail. He acknowledged that the mixed use would probably not happen overnight, but it was the Commission's responsibility to make sure that development of the site was the best and highest use of the land.

Commissioner DePuy said she agreed with Mr. Hand and was surprised the neighborhood had not come forward because they had been very vocal about other aspects of Brick Row. She added that the property would be a difficult piece of land to develop because of the shape, but felt it could be an iconic feature in the area.

Chairman Gantt thanked the staff and 7-Eleven for their hard work on the proposal, but he felt the design was not urban enough in scale. He acknowledged that the property would be

difficult to develop, but felt the plan was not the appropriate use and was not in favor of the proposal.

Motion: Vice Chair Hammond made a motion to recommend denial of Item 6 without prejudice; second by Commissioner Hand. Motion passed 6-1 with Commissioner Bright opposed.

7. **Zoning File 11-26:** A request A request by the City of Richardson to amend the *Code of Ordinances*, Appendix A, Comprehensive Zoning Ordinance, Article I, Section 2, Definitions, adding the definition of smoking establishments and Article XXII-A, Section 2 allowing smoking establishments upon approval of a Special Permit in the LR-M(1) and LR-M(2) Local Retail Districts, and the C-M Commercial District.

Mr. Spicer advised that one of the City Council's near term action items was to evaluate the possibility of creating an ordinance pertaining to the placement of hookah lounges. After researching the Council's request, and consulting with the City's legal counsel, it became evident that specific regulation of the hookah lounges could only be equitably managed within a broader context that included comparable regulation of all businesses that provided for on-premise smoking of tobacco and tobacco like products. Consequently, an amendment to the Comprehensive Zoning Ordinance (CZO) was prepared that would provide a means for the City to exercise greater control over the location of smoking establishments of all types. He added that City Council was generally satisfied with the proposed amendment as presented at the November 21st work session and directed staff to proceed with amending the CZO.

Mr. Spicer pointed out that the City does have regulations in place in Chapter 10, Article 4 of the *Code of Ordinances* to cover smoking, but only to the extent of identifying what businesses are allowed and how the environment is managed in terms of access and ventilation, however; it does not regulate location. He added that the CZO would be the appropriate instrument to regulate land use and currently it is silent regarding smoking establishments including hookah lounges, cigar lounges, and retail tobacco stores.

Mr. Spicer noted that the proposed amendment would define what a smoking establishment is, and then would add the requirement for a Special Permit to Article XXII-A limiting the eligible districts to LR-M(1), LR-M(2), and C-M districts. He read the proposed definition into the record and said the definition would include establishments known as cigar lounges, hookah cafes, tobacco clubs, tobacco bars, retail tobacco stores that allow on-premise smoking and similar establishments.

Regarding the mechanism that would be used to manage the regulations, Mr. Spicer said a Special Permit would allow the City to administer and maintain a level playing field for all retail and commercial zoning districts; give the City Council and City Plan Commission the ability to evaluate each case on its own merit; provide flexibility to determine whether special

conditions might be necessary to insure the use was compatible with the surrounding neighborhood; and any interested party would be afforded the opportunity to express their views during a public hearing.

Mr. Spicer closed his presentation by saying that all existing smoking businesses would become legal nonconforming uses if the amendment was approved and, as such, would be allowed to continue to operate without obtaining a Special Permit. He added that if one of the existing smoking establishments wished to expand, or should a legal nonconforming business cease operation for six consecutive months and then wish to reopen, the need for a Special Permit would be required.

Mr. Spicer stated the amendment would not affect retail tobacco stores that do not allow on-site smoking, and would not affect bars or restaurants with patios where smoking is permitted under Chapter 10, Article 4 as long as they did not sell smoking products or accessories.

Chairman Gantt asked to confirm if the smoking establishments would fall under both the proposed ordinance and the existing ordinance. He also wanted to know if the tobacco business located in the area of the Shire would become legal nonconforming and what type of zoning is currently in place.

Mr. Spicer replied that those businesses would fall under both.

Regarding the business at the Shire, there is a Planned Development (PD) in place that makes reference to local retail zoning districts and the business is allowed, but subject to a Special Permit.

Commissioner Maxwell asked for clarification on the language in Article XXII-A and how it would exclude the allowable use in any other district.

Mr. Spicer replied that the CZO specifically states which districts a permitted use is allowed in and therefore the other districts are excluded. He added that the proposed amendment would be included within the larger context of Article XXII-A, entitled Special Permits, and this article outlines every use that requires a Special Permit.

Vice Chair Hammond asked why smoking was allowed at all in the City.

Mr. Spicer replied that in the past the City went through a process to determine whether to allow smoking and consequently regulations were put in place to prohibit smoking in a large number of businesses, but some very specific circumstances were set aside under which smoking would be permitted.

Vice Chair Hammond asked if there were any cities within the metroplex that banned smoking entirely under any circumstances.

Mr. Spicer replied that in doing research the City of Dallas had banned smoking, but there were existing businesses that were legal nonconforming. Other cities such as Arlington, Fort Worth, Addison, Farmers Branch, Plano, Carrollton, Garland, and McKinney had regulations in place that were generally consistent with the City of Richardson's regulations. In addition, the City of Allen only allows smoking in a smoking establishment and that establishment can only be found within a Planned Development zoning district.

Vice Chair Hammond expressed concern with the wording of the amendment, in particular, the section that read "in whole or in part."

Mr. Spicer replied that section of the amendment was structured to capture retail tobacco stores that allow pre-purchase sampling.

Vice Chair Hammond said he was not pleased with making any type of accommodations for smoking in the City and was opposed to doing anything until the entire subject was revisited.

Chairman Gantt said he saw the amendment as a tool to control the influx of smoking establishments, and if the amendment is not passed, there is nothing to prevent or restrict more establishments from coming into the City. He added the amendment would accomplish, in part, Mr. Hammond's goal of restricting smoking in the City.

Vice Chair Hammond said he did not disagree that it might help accomplish his desired goal, but felt it did not go far enough and felt the subject should be addressed at the very root of the problem.

Commissioner Frederick asked if the existing businesses would be allowed to continue operating without obtaining a Special Permit, and wondered why all tobacco retailers were being "lumped" in with hookah lounges. She expressed concern that other retailers, such as cigar lounges who operated under retail hours as opposed to hookah lounges who operated later into the evening, would be considered under the same regulations.

Mr. Spicer said existing businesses would be able to continue without the Special Permit as long as they were operating in a lawful manner. Also, as long as a tobacco retailer did not allow on-site smoking, they would not be included under the proposed amendment.

Chairman Gantt replied that the amendment states that a business would have to sell tobacco, tobacco products and allow on-site smoking to be covered under the proposed regulations. If someone was only selling tobacco and/or products and not allowing the on-site smoking the amendment would not apply to them.

Commissioner Linn asked what would be the effective date if the amendment was passed by both the Commission and City Council. He also expressed concern that there might be some

establishments that have yet to open who would open their doors in order to pre-empt the ordinance.

Mr. Spicer replied that based on Council direction, if the item was approved by the Commission it would be fast tracked and before the Council on Monday, December 12, 2011, and include the ordinance and would become effective upon publication of the caption as required by state law. In addition, if any smoking establishment had already filed for a building permit or certificate of occupancy it would have a vested right and not be covered under the proposed amendment.

Commissioner DePuy stated she agreed with Ms. Frederick's comment and felt the Commission would not be discussing the item if not for the proliferation of hookah lounges in the City. She also agreed that the amendment should be equitably managed, but felt there was a definite difference between cigar stores that offered samples as opposed to a late night lounge and feared the higher end tobacco shops would pay a price.

Commissioner Hand asked about earlier comments regarding the City of Dallas businesses that are smoking establishments but are still allowed to operate.

Mr. Spicer replied to the best he could determine the regulations for the City of Dallas did prohibit smoking across the board, but there are a number of legal nonconforming establishments in the city.

With no further questions for the staff, Chairman Gantt opened the public hearing and stated that as the applicant, the City would be allowed to make a statement.

Mr. Spicer stated that the item was being presented at the direction of the City Council and was in response to one of their near term action items they wished to accomplish in the next two years.

No further comments were made in favor and Mr. Gantt called for comments in opposition.

Mr. Matthew Bedosky, representing Calypso Products, Inc., 1401 E. Arapaho Road, Richardson, Texas, was opposed to the amendment because it joined his cigar lounge with other establishments that he felt were entirely different. He added that if the amendment passed, it would lock him in to his existing location just at the time they were looking to move and keep his business in the City.

Mr. Bedosky highlighted some of the differences between cigar lounges and hookah lounges including hours of operation, clientele, and noted that although he does allow on-site smoking, his business is more like a retail store whereas hookah lounges are late night operations.

No further comments were made in opposition and Chairman Gantt asked staff if they had any rebuttal comments.

Mr. Spicer stated the amendment was constructed to cover all businesses that permitted on-site smoking and provide for the sale of tobacco and tobacco products. All such businesses were grouped together because they are fundamentally the same. Also, in discussion with legal counsel, the direction was clear that if the City Council wanted to act upon its near term action item they would need to view the businesses in the stated context.

With no further comments in favor or opposed, Chairman Gantt closed the public hearing.

Vice Chair Hammond said he wanted to go on record that he was in favor of limiting the expansion of smoking establishments and understood the Council's goals, but felt the proposed amendment did not go far enough and that was why he would be voting in opposition.

Commissioner Hand said he did not think the Commission needed to debate the public health issues of smoking because it had been covered before, but thought the question of land use was more within their purview. He also felt the Council was not trying to limit retail growth within the City because there are many high-end tobacco retailers who would be welcomed, but pointed out that hookah lounges, which tend to have late night hours of operation, may not be a compatible use in certain areas of the City. Mr. Hand suggested that if a lounge wanted to stay open past 9:00 p.m. they should be subject to a Special Permit.

Chairman Gantt stated he liked the idea of including a time frame that would add a third level to further limit the number of businesses the amendment would affect: selling tobacco, allowing on-site smoking, and open past 9:00 p.m.

Commissioner DePuy said she agreed with Mr. Hand's comments regarding the late night operation of some lounges, and was opposed to the proliferation of the hookah lounges, but was not opposed to higher-end tobacco retailers. She added the increase in the number of lounges degraded the quality of life and appearance of the City and was in favor of limiting their activity without jeopardizing other businesses.

Commissioner Bright thought the idea of a 9:00 time frame was interesting and the amendment could control the problem in an appropriate manner, but felt hookah bars could not be singled out without considering other like establishments. He thought the time frame Mr. Hand mentioned addressed a different issue, but thought the Commission should put the item on hold rather than approve it with the suggested condition until further information from staff and the City Attorney could be obtained. He said he could approve the item in its present form, but was opposed to the 9:00 p.m. element being attached.

Commissioner Frederick said she concurred with Ms. DePuy and thought the Council wanted the Commission to address a certain type of smoking establishment and not include all tobacco retailers in the amendment. She added that she would be in favor of putting the hours of operation limitation in the amendment.

Chairman Gantt asked if staff thought the element of restrictive hours would pass legal review.

Mr. Spicer replied that he could not give legal advice, but stated that if the time restriction was applied universally to all smoking establishments it might work; however, he expressed the desire to further consult with the City's legal counsel.

Mr. Spicer stated that the direction from Council was to focus on location as opposed to operational aspects, which was the reason why the amendment was constructed in its current form. He added a Special Permit would provide a means to control hours of operation, proximity, and allowed the Commission to review multiple aspects of an applicant's request.

Mr. Spicer noted that if the Commission went forward with the amendment as currently being discussed, it would allow the full range of smoking establishments in any district where it was permitted by right without further review and did not address certain unique aspects of different locations such as proximity to schools. The only time a review would be required was if the applicant requested to operate beyond the 9:00 p.m. time frame.

Chairman Gantt asked which zoning districts currently allowed smoking establishments.

Mr. Spicer replied that the CZO was silent to the use all together; however, historically the use has been reviewed as retail and the majority are located in retail areas. Retail uses are allowed in LR-M(1) Local Retail, LR-M(2) Local Retail, C-M Commercial, with limited amount of retail in I-M Industrial, and TO-M Technical Office.

Commissioner Hand said that because of the way the amendment was written, he was trying to strike a balance and did not think there was a perfect solution, but from a retail/commerce perspective, the time frame would be least intrusive on high-end retail. He acknowledged that under his proposal a hookah lounge could operate during lunch, but felt that the compatibility issue was with late night operations.

Chairman Gantt said the Commission was trying to strike a balance and not put an unnecessary burden on high-end retailers to spend money to go through the Special Permit process when the Commission would probably approve it any way. He acknowledged that Council was hoping to fast track the issue and suggested the Commission could either forward it "as is," include the time frame, or delay and let staff go back to legal counsel to see if the time frame accomplishes the Council's goal.

Motion: Commissioner Hand made a motion to recommend approval of Item 7 as presented with the qualification that the Special Permit apply only to establishments intending to be open beyond 9:00 p.m.; second by Commissioner DePuy.

Commissioner Bright said he would oppose the motion because he felt it did not address the location issue.

Chairman Gantt asked for clarification if the time frame aspect of the motion was intended to be added to the definition as read by staff.

Commissioner Hand said he did not think the motion was redefining smoking establishments, but was only asking that a Special Permit be required for smoking establishments wanting to stay open beyond 9:00 p.m.

Chairman Gantt then asked if item 2 in Article XXI-A would say “smoking establishments as a use allowed subject to Special Permit under Article A when open past 9:00 p.m.”

Commissioner Hand replied that it should say “add smoking establishments when intending to stay open beyond 9:00 p.m. as a use allowed subject to approval of a Special Permit.”

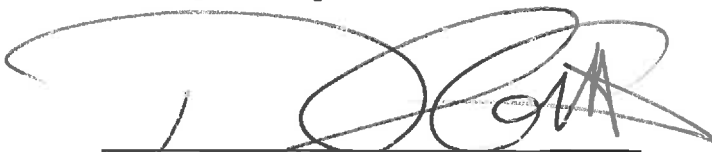
Mr. Spicer suggested the language should be added to Article XXII-A under “Special Permits” where it would not affect the definition. He also wanted to clarify that the motion would limit the opportunities to the three listed zoning districts.

Commissioner Hand said that was his intent and Commissioner DePuy concurred.

Motion passed 5-2 with Vice Chair Hammond and Commissioner Bright opposed.

ADJOURN

With no further business before the Commission, Chairman Gantt adjourned the regular business meeting at 9:37 p.m.



David Gantt, Chairman
City Plan Commission