

**CITY OF RICHARDSON
CITY PLAN COMMISSION MINUTES – FEBRUARY 4, 2014**

The Richardson City Plan Commission met on February 4, 2014, at 7:00 p.m. at City Hall in the Council Chambers, 411 W. Arapaho Road, Richardson, Texas.

MEMBERS PRESENT: Barry Hand, Chairman
Gerald Bright, Vice Chair
Janet DePuy, Commissioner
Marilyn Frederick, Commissioner
Thomas Maxwell, Commissioner
Randy Roland, Commissioner
Bill Ferrell, Alternate
Stephen Springs, Alternate

MEMBERS ABSENT: Eron Linn, Commissioner

CITY STAFF PRESENT: Sam Chavez, Assistant Director – Dev. Svcs – Planning
Israel Roberts, Development Review Manager
Chris Shacklett, Senior Planner
Kathy Welp, Executive Secretary

BRIEFING SESSION

Prior to the start of the regular business meeting, the City Plan Commission met with staff regarding staff reports, agenda items and a work session. No action was taken.

MINUTES

1. Approval of the minutes of the regular business meeting of January 21, 2014.

Commissioner Ferrell pointed out a scrivener error in the motion on page 2 and asked for a correction. Ms. Welp stated the correction had already been made.

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

VARIANCE

- 2. Variance 14-01 Dover Elementary School:** Consider and take necessary action on a request for a variance from Chapter 21 of the Subdivision and Development Code to waive the required screening wall along the southern and western property lines of the school. The property is located at 700 Dover Drive and is zoned R-1500-M Residential. Applicant: Jeff Groth, representing Richardson Independent School District.

Mr. Roberts stated the applicant was requesting a variance from the Subdivision and Development Code to waive the required 6-foot masonry screening wall along the southern and western property lines for the proposed expansion at the existing elementary school. He added the request was based on a concern that the wall would cause a visibility obstruction for an open campus.

Michael Longanecker, Executive Director of Facilities, Richardson Independent School District, 400 S. Greenville, Richardson, Texas, stated the district's main concern was for safety when a visual barrier is erected around the schools dividing them from the adjacent neighborhoods limiting view of the school grounds as well as limiting view of the adjacent homes. He added that the existing 4-foot chain link fence will be replaced with a 6-foot chain link fence.

Chairman Hand said he appreciated the fact that a 6-foot fence would replace the existing fence and asked if the new chain link fence would be the same heavy wire gauge as the existing fence.

Mr. Steve Halsey, Corgan Associates, 401 N. Houston, Dallas, Texas, replied that it will be a standard gauge wire fence that is currently used in all applications. He added that the existing fence was probably built when the school was constructed in the 1950's and is no longer the standard.

Mr. Dave Knepper, 101 Shadywood Lane, Richardson, Texas, stated he was in favor of the chain link fence for safety reasons for both the students and the adjacent homes.

Chairman Hand addressed the applicant stating the Commission wanted to insure a 6-foot fence was constructed and suggested that it be included as part of the motion. He also read into the record the last sentence of a letter from the adjacent homeowners association which stated: *"In light of the aforementioned concerns, the board and residents of Cottonwood Heights Neighborhood Association requests that the City Plan Commission recommend approval of the applicant's request only if it agrees to replace the current chain link fence with a new system."* The letter was signed by Jason Lemons of the Cottonwood Heights Neighborhood Association.

With no other comments or questions, Chairman Hand called for a motion.

Motion: Commissioner Maxwell made a motion to recommend approval of Variance 14-01 with the additional condition of a 6-foot chain link fence on the southern property line in-lieu-of a masonry wall; second by Commissioner Springs. Motion approved 7-0.

PUBLIC HEARING

3. **Zoning File 14-01:** Consider and take necessary action on a request to amend the existing PD Planned Development regulations by adding electronic cigarette establishment as an allowed use on a 5.5-acre lot located at 401 W. President George Bush Highway, south side of President George Bush Turnpike between Custer Parkway and Alma Road.

Mr. Shacklett stated the applicant was requesting an amendment to the existing PD Planned Development to add electronic cigarettes as a permitted use to a multi-tenant retail center. He added that in 2013, a two-part amendment to the Comprehensive Zoning Ordinance (CZO) included: 1) a definition of an electronic cigarette establishment as a business that was dedicated primarily to the sale and/or use of electronic cigarettes; and, 2) required a Special Permit to be obtained within a local retail or commercial district prior to occupancy.

Mr. Shacklett pointed that the since the zoning of the property is a based PD and does not reference a local retail or commercial zoning district, a Special Permit could not be requested, therefore, the applicant was requesting to amend the PD to make it an allowed use.

Mr. Shacklett concluded his presentation with photos of the area and a map showing the nine electronic cigarette retailers in the City at the time of the CZO amendment.

Vice Chair Bright asked if the four areas on the west side of the map were located along Coit Road.

Mr. Shacklett replied one was located west of the QT on Belt Line Road; one at Arapaho and Custer Roads; one at Campbell Road just west of Custer Road; and two in the area of Campbell Road and Highway 75.

Commissioner Roland asked if the amendment to the CZO defined an age limit for purchasing electronic cigarettes.

Mr. Shacklett replied the amendment did not have an age limit but simply defined the land use and the need for a Special Permit.

With no further questions, Chairman Hand opened the public hearing.

Ms. Jamie Richey, 293 Summerset, Bedford, Texas, thanked the Commission and explained that electronic cigarettes were not like tobacco cigarettes because they did not produce second hand smoke or tar, and could contained little or no nicotine. She added that they will not allow anyone under the age of 18 to purchase products in their store and the main ingredients in the electronic cigarettes is vegetable glycerin, food grade flavoring, and nicotine, if preferred.

Commissioner DePuy asked if the business would be strictly retail or would it also be a lounge.

Ms. Richey replied that at the current time, there are no plans for having a lounge and the store would be strictly retail sales.

Chairman Hand asked to confirm the terminology for the product.

Ms. Richey said the industry refers to the product as e-cigs, but they prefer to call it vaping.

Commissioner Maxwell asked if the decision to prohibit sales to customers over the age of 18 was by law or choice.

Ms. Richey replied that it was their personal preference and the only time that would change was if a minor was accompanied by a parent or guardian.

Commissioner DePuy asked if the applicant had any other stores in the metroplex or if they had any prior business experience with retail sales.

Ms. Richey replied the proposed store would be their first and they started their business through online sales.

Commissioner Farrell asked about the cost of electronic cigarettes compared to traditional tobacco cigarettes. He also wanted to know if there were any restrictions on where an electronic cigarette user could smoke their cigarettes.

Ms. Richey stated a pack of regular cigarettes costs approximately \$5 to \$6 and can last between from one-half day to one-day depending on use, whereas, the vapor liquid with nicotine sells for \$10 and lasts approximately one to two weeks. Regarding any restrictions on where electronic cigarettes can be used, Ms. Richey said it was her understanding that public places (hospitals, schools, etc.) have allowed the e-cigs because there is no second hand smoke.

Mr. Chris James, 6221 Aspen Estates, Sachse, Texas, stated he was partners with Ms. Richey, his sister, and said he was a heavy smoker for over 20 years and the use of the electronic cigarettes helped him reduce and eventually stop smoking tobacco cigarettes even when other methods failed.

Mr. James gave a demonstration of the product noting that the fluid travels through the device and comes out as vapor without leaving any harmful second hand smoke or odor behind. He added that an article from a newspaper in Austin, Texas, reinforced the idea of people using electronic cigarettes as a means to quit smoking tobacco cigarettes.

Vice Chair Bright stated Ms. Rickey said there would be no on site vaping, but mention had been made of stools available in the business and wanted to know if that would be for sampling the products.

Mr. James replied there would be a flavor testing area where a customer could sit and test the flavors.

Mr. Richard Jenkins, 531 Bedford Road, Bedford, Texas, stated he had been smoking a pack a day of cigarettes for over 50 years and through the use of electronic cigarettes he had been able to come off tobacco cigarettes. He added that when he first started vaping he started with a liquid with high nicotine content, but now was down to almost the lowest level of nicotine.

Mr. Bob Reid, 2605 Stoneleigh Circle, Richardson, Texas, speaking as owner of the property, said he was in support of the applicant's request for a Special Permit. He added that he felt the business was viable and would fit in well with the mix of other tenants in the center.

Commissioner Frederick asked the occupancy rate for the retail center.

Mr. Reid replied that if the applicant was approved, the center would be 95 percent occupied.

Mr. David Knepper, 101 Shadywood, Richardson, Texas, said he thought the idea of new businesses in the City was appealing, but expressed concern about the applicant's statement of having seating inside the business. He added that if it was retail only where the customers simply tested, purchased and left, he had no problem with it.

Mr. Chris James attempted to relieve concerns by mentioning that some ice cream shops allow individuals to stop and try their product prior to buying and that is what would be available in their establishment.

Commissioner Ferrell asked if the product could be used to help individuals stop smoking, why not sell to someone less than 18 years of age. He also wanted to know if the applicant thought their target market would be the customer trying to quit smoking.

Mr. James said it was their personal preference not to sell to anyone less than 18 years of age, and as far as their target market, it could be both those who wanted to stop smoking and those who were curious and wanted to try smoking without the harmful side effects of tobacco cigarettes.

Vice Chair Bright asked to confirm that the purpose of the seating in the business would be to test the products and then wait for the staff to bring their product to them as opposed to loitering around.

Mr. James replied that assumption was correct; however, he also felt that people staying around inside the business would help to build the clientele and give the staff a chance to educate them on the products offered.

Commissioner DePuy asked what the hours of operation would be for the business.

Mr. James replied they would most likely open in the early morning to catch some of the morning rush hour, but would close between 6:00 and 7:00 p.m.

No other comments in favor or opposed were received and Chairman Hand closed the public hearing.

Commissioner Maxwell asked for clarification from the staff on the electronic cigarette ordinance on whether it differentiated between establishments that sell products versus a lounge.

Mr. Shacklett replied that he ordinance defines it as an establishment that is dedicated primarily to sale and/or on premise use of electronic cigarettes.

Commissioner Roland asked if the original PD would have allowed a cigar shop in the retail center.

Mr. Shacklett replied that a tobacco shop would be allowed in a retail setting. However, with the change to the City's smoking establishment ordinance, no smoking would be allowed at all inside that type of retail center.

Chairman Hand asked if a tobacco shop would also require a Special Permit.

Mr. Shacklett said it would, but wanted to clarify that the request before the Commission was a PD amendment.

Commissioner DePuy stated she did not have anything against electronic cigarettes, but was more concerned with the proliferation of the establishments all over town with no control. She added that based on the ability to review each application on a case-by-case basis, she did not have a problem with the location of the business.

Vice Chair Bright said he supported the request as presented. He added that he agreed with Ms. DePuy that the location was removed from neighborhoods and the request was limited to only one shop on the 5.5 acres of the retail center.

Commissioner Maxwell stated he was in favor of the proposal and asked the staff to add the area to their map of establishments around the City whether it succeeded as a business or not because the use would remain with the PD.

Commissioner Ferrell expressed concerns over the viability of the business because electronic cigarettes were readily available on line and at convenience stores; however, he did not have a problem with the proposed location.

Commissioner Frederick stated that if the request had been for a different location, such as the area around Collins Boulevard and Campbell Road, she might have a different opinion, but she was in favor of the current request.

Chairman Hand said he thought the previously approved process for reviewing the current type of requests was proving to be a very workable mechanism. He also thought that if the proposed business was located closer to a residential neighborhood, he might have a different opinion, but felt the proposed location was an appropriate place for the business.

Motion: Commissioner DePuy moved to recommend approval of Zoning File 14-01 as presented; second by Commissioner Roland. Motion approved 7-0.

ADJOURN

With no further business before the Commission, Chairman Hand adjourned the regular business meeting at 8:03 p.m.

Barry Hand, Chair
City Plan Commission