



# MEMORANDUM

(Corrected 2-21-2008 page 5)

TO: Michael G. Herring, City Administrator

FROM: Mike Geisel, Director of Planning & Public Works

SUBJECT: Planning & Public Works Committee Meeting Summary  
**February 7, 2008**

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A meeting of the Planning and Public Works Committee of the Chesterfield City Council was held on Thursday, February 7, 2008 in Conference Room 101.

In attendance were: **Chair Connie Fults** (Ward IV); **Councilmember Jane Durrell** (Ward I); **Councilmember Bruce Geiger** (Ward II); and **Councilmember Dan Hurt** (Ward III).

Also in attendance were Councilmember Mike Casey (Ward III); Maurice L. Hirsch, Jr., Planning Commission Chair; Mike Herring, City Administrator; Mike Geisel, Director of Planning & Public Works; Brian McGownd, Director of Public Works/City Engineer; Annissa McCaskill-Clay, Assistant Director of Planning; and Mary Ann Madden, Planning Assistant.

Chair Fults called the meeting to order at 5:30 p.m.

## I. APPROVAL OF MEETING SUMMARY

### A. Approval of the January 24, 2008 Committee Meeting Summary

**Councilmember Durrell made a motion to approve the Meeting Summary of January 24, 2008.** The motion was seconded by Councilmember Geiger and **passed by a voice vote of 4 to 0.**

## II. OLD BUSINESS - None

### III. NEW BUSINESS

- A. **P.Z. 48-2007 Clocktower Plaza:** A request for amendment to City of Chesterfield Ordinance 2247 for the addition of the following use:

~~Recreational facilities, indoor and illuminated outdoor facilities, including swimming pools, golf practices driving ranges, tennis courts, and gymnasiums, and indoor theaters, including drive-in theaters.~~

Said request also includes establishment of hours of operation from 5:00 a.m. until 9:30 p.m. for said use. (17T240243)

#### **Staff Report**

Ms. Annissa McCaskill-Clay, Assistant Director of Planning, stated that the request is for the addition of use **(r) Recreational facilities, indoor facilities and gymnasiums;** and for a variance to the operating hours for use **“r” to be limited to 5:00 a.m. until 9:30 p.m.** The current operating hours for restaurants and retail sales are from 7:00 a.m. to 9:30 p.m. seven days/week.

The Planning Commission placed an additional limitation on the site in that **use “r” shall be limited to a maximum of 18% of the development and shall be located exclusively within 180 feet of the northern property line.**

The subject development is located at the intersection of Edison and Chesterfield Commons East.

Councilmember Hurt asked why such an early opening time is being requested. Ms. McCaskill-Clay replied that it is intended that a fitness center would be located in the facility, which specializes in one-on-one physical training and fitness consultation. It is felt that the 5:00 a.m. opening time would allow clients to use the facility prior to going to work. Councilmember Hurt stated that he would not want any outdoor activity allowed as early as 5:00 a.m. – such as trash collection and deliveries.

Planning Chair Hirsch pointed out that the other fitness centers along Edison open at 5:00 a.m. Chair Fults noted that these fitness centers are about two miles west of the subject site, which puts them further away from the residential areas.

#### **Planning Commission Report**

Planning Chair Hirsch stated that the Planning Commission reviewed the petition very closely and concern was expressed about the requested hours.

The Commission added the language about limiting the percentage of space, along with the facility's location, to insure that a fitness center would not dominate the building and that it would be located as far away from the residents as possible.

At Planning Commission, a motion was made to approve, which would have included only the 18% limitation and would have included hours from 5:00 a.m. to 9:30 p.m. This motion was amended to allow operating hours from 7:00 a.m. to 9:30 p.m. for the recreational use – said amendment failed by a vote of 3 to 4, with Commissioner Broemmer being absent from the meeting. Commissioners voting for the 7:00 a.m. opening time were Banks, Geckeler, and Perantoni.

A second amendment was then proposed regarding the location of the fitness center (*"shall be located exclusively within 180 feet of the northern property line"*), which passed by a vote of 7 to 0.

The main motion to approve, as amended, passed by a vote of 5 to 2, with Commissioners Banks and Geckeler voting against it because of the 5:00 a.m. opening time.

## **DISCUSSION**

### **Hours of Operation**

Chair Fults stated she has no problem with the proposed use or an opening time of 7:00 a.m.

She noted, however, that before the project was ever built, she and past-Councilmember Mary Brown met with Dr. Schifano and advised him that because of the Clocktower's location near residential, the hours would be more restrictive than The Commons or Commons East. Chair Fults felt the restrictive hours was the only reason the residents did not oppose the development and she did not think the residents would accept the earlier opening time.

Chair Fults also expressed concern that allowing an earlier opening time would set a precedent for Chesterfield Commons and Commons East. She added that she gets complaints on an ongoing basis about deliveries being made in The Commons before 7:00 a.m.

Chair Fults questioned whether THF had to turn away tenants who wanted earlier hours in Chesterfield Commons and Commons East.

**Councilmember Geiger made a motion to forward P.Z. 48-2007 Clocktower Plaza to City Council with a recommendation to approve.** The motion was seconded by Councilmember Hurt.

**Councilmember Hurt then made a motion to amend the motion by amending Section I.A.2. of the Attachment A as follows: (amendments shown in green)**

- b. Hours of operation for restaurants, ~~and~~ retail sales, **and recreational uses** shall be limited to as follows:

7:00 a.m. to 9:30 p.m. seven days/week.

- ~~c. The hours of operation for use "r" shall be limited to 5:00 a.m. until 9:30 p.m.~~

The motion was seconded by Councilmember Geiger.

Ms. Hannelore Bugby, representing the Clocktower Plaza, stated they are aware of the operating hours. She noted, however, that the physical fitness center is a business that would generate very little noise. It is intended that there would be only six instructors and six clients at any one time. There would be no deliveries to the fitness center. The contract with the proposed tenant is contingent upon having operating hours beginning at 5:00 a.m.

Ms. Bugby stated that they are trying to get a clientele in the Clocktower that is somewhat different than the boutique-type tenant. She asked that the Committee consider their request for a 5:00 a.m. opening time taking into consideration that there would be little noise. She expressed concern that this information was not relayed to the residents.

Chair Fults stated that she had received calls from the residents about the development and has met with their representatives. They are very concerned that the Petitioner has already asked for an exception to the operating hours and that it would set a precedent for the rest of the area. Ms. Bugby did not think this would be the case as the fitness center will not generate any increased traffic or noise while other uses may.

Councilmember Durrell stated that it would have been helpful to have seen a map of The Commons along Edison Road showing hours of operation. It was noted that The Commons and Commons East all have the same operating hours of 7:00 a.m. to 9:30 p.m.

Chair Hirsch pointed out that the hours for the Tech Park have a limitation on when doors can be opened (7:00 a.m.), but there is no limitation on hours of operation. Ms. McCaskill-Clay added that the Tech Park's Ordinance states that between 7:00 p.m. and 7:00 a.m., ingress and egress must be closed - but the hours of operation begin at 5:00 a.m. for Chesterfield Valley Athletic Center.

Councilmember Geiger stated that the hours of operation for The Commons was a big issue and involved a lot of discussion. He stated that he is opposed to the requested 5:00 a.m. opening time for the requested use.

Before a vote is taken, Ms. Bugby requested a meeting with the residents to explain the Petitioner's position. She stated that they have been a part of the community for a long time through Petropolis. They feel they have been good neighbors and have contributed to the community. It is important to them to retain a good relationship with the neighboring residents. She did not feel that allowing a 5:00 a.m. opening time would set a precedent for retail to open at an earlier time.

Councilmember Durrell felt there is a difference between a fitness center of six trainers and six clients, and Wal-Mart's. She felt there could be a distinction made if Wal-Mart asked for an earlier opening time.

Chair Fults questioned whether it would be fair to give one tenant an earlier opening time when THF may have had to turn tenants away because they could not accommodate an earlier time.

Ms. Bugby asked that the vote be tabled until after she has had a chance to meet with the residents.

It was noted that if this went forward to Council, the petition would only have its first reading on February 20<sup>th</sup>. The second reading would not take place until March 3<sup>rd</sup>, which would give plenty of time for a meeting with the residents without holding it at the Committee level.

Councilmember Casey questioned whether there could be a compromise of a 6:00 a.m. opening time. Chair Fults stated that the residents' primary concern is that of setting a precedent.

After further discussion, it was agreed that Chair Fults would set up a meeting between the residents and the Petitioner. If the neighbors agree to a 5:00 a.m. opening time, Chair Fults stated she would ~~make the motion at City Hall to allow the requested operating hours~~ **bring the matter up to Council.**

Councilmember Geiger felt that if the hours are changed, it will set a precedent for the rest of The Commons and Commons East area. He stated that he is opposed to changing the hours for The Commons and Commons East from the current 7:00 a.m. time. Even if the residents are agreeable to the 5:00 a.m. starting time for the fitness center, he will oppose it for that reason.

**The vote on the motion to amend the operating time from 5:00 a.m. to 9:30 p.m. to 7:00 a.m. to 9:30 p.m. passed by a voice vote of 4 to 0.**

The vote to forward P.Z. 48-2007 Clocktower Plaza, as amended, to City Council with a recommendation to approve passed by a voice vote of 4 to 0.

Councilmember Durrell stated she would be willing to change her vote at Council if the residents are agreeable to a 5:00 a.m. opening time.

**Note: One bill, as recommended by the Planning Commission, will be needed for the February 20, 2008 City Council Meeting.  
See Bill #**

**[Please see the attached report prepared by Mike Geisel, Director of Planning & Public Works, for additional information on P.Z. 48-2007 Clocktower Plaza.]**

**B. P.Z. 49-2007 Chesterfield Blue Valley, LLC:** A request for consolidation of two "PC" Planned Commercial Districts located on the north side of Olive Street Road, west of its intersection with Chesterfield Airport Road. Total area proposed to be consolidated: 130.9 acres. (17W540078, 16W230053 part of, 17W520025, 17W530123, 16W210022 part of, 16W210033 part of, 16W230042 part of)

### **Staff Report**

Ms. Annissa McCaskill-Clay, Assistant Director of Planning, stated the Committee had approved P.Z. 41-2007, which is Blue Valley, LLC. In 2006, zoning was approved for Blue Valley (Agricola Associates).

The subject petition is a request to consolidate the two developments under one governing ordinance. At the Committee meeting where P.Z. 41-2007 was presented, a scale model was displayed showing the Petitioner's vision for the area.

The Planning Commission's recommended changes to the Attachment A are included in the Draft Attachment A. After reviewing the ordinance that was passed for P.Z. 41-2007, Staff prepared a revised Draft Attachment A to make the language consistent with the ordinance for P.Z. 41-2007. Copies of the new Draft Attachment were distributed to the Committee members.

Mr. Mike Geisel, Director of Planning & Public Works, stated after that the meeting packet for tonight's meeting was posted, City Council amended the ordinance at its last meeting. Staff did not have these amendments in time for the meeting packets, but are now included in the new Draft.

### **Planning Commission Report**

Planning Chair Hirsch stated that the Planning Commission passed the subject petition, as amended, by a vote of 7 to 0.

Noting the Commission's earlier vote on Blue Valley, Chair Fults asked if there were any misgivings on the subject petition. Planning Chair Hirsch replied that there were no misgivings. He noted that the Petitioner gave a similar presentation as to the one given to the Planning & Public Works Committee. This presentation, along with the scale model, addressed the Commission's previous concerns.

**Councilmember Geiger made a motion to forward P.Z. 49-2007 Chesterfield Blue Valley, LLC, with the revised Attachment A, to City Council with a recommendation to approve. The motion was seconded by Councilmember Durrell and **passed by a voice vote of 4 to 0.****

**Note: One bill, as recommended by the Planning Commission, will be needed for the February 20, 2008 City Council Meeting.  
See Bill #**

**[Please see the attached report prepared by Mike Geisel, Director of Planning & Public Works, for additional information on P.Z. 49-2007 Chesterfield Blue Valley, LLC.]**

- C. Chesterfield Valley Wetland Permit - Modification:** A request to engage Midwest Testing to submit a modification to the existing Valley wide permit as required by the US Army Corp of Engineers.

### **Staff Report**

Mr. Brian McGownd, Director of Public Works/City Engineer, stated that in 1997 the Corp of Engineers issued a permit to the City to excavate and fill existing wetlands within Chesterfield Valley – basically everything north of Chesterfield Airport Road and east of Long Road. This permit was a five-year permit, which expired in 2002. At that time, the permit was extended because the wetland areas that were previously identified in the original permit had not been impacted. The extended permit expired December 31, 2007.

Because it has been ten years since the original permit was issued, the Corps has required that the City modify the existing permit by re-evaluating the remaining non-impacted wetlands from the original permit, as well as conduct a cursory review of the permit area to identify any previously unidentified jurisdictional wetland areas.

In order to perform the necessary work to submit the permit modification to the Corps, technical assistance will be required. Staff recommends the firm of Midwest Testing for these professional services, which will be funded from TIF proceeds. Midwest Testing has worked closely with Colonel Lee McKinney and the Corp of Engineers in the past on various projects.

Mr. Mike Geisel then explained that the City was issued a permit that took the jurisdictional tag off of the 78 acres of wetlands, which were identified in the Valley. As a replacement, the City created 130-plus acres of wetlands in two separate locations. The City now needs to submit a permit modification to avoid having regulatory jurisdiction on those wetlands that have not yet been impacted. Without the permit modification, the City's ability to complete the storm drainage improvements for the Valley could be impeded.

## **DISCUSSION**

### **Bids**

It was noted that this work does not go out to bid because it is a professional service. Councilmember Hurt expressed concern about the project not going out to bid and offered the name of another firm that the City may want to consider for the work.

Mr. Geisel stated the City's purchasing policy, along with State law, prohibits professional services from being bidded out. The City must solicit proposals for professional services. The State law now requires that the City use qualification based selection procedures, which prevents the City from seeking price proposals.

### **Wetlands**

For background purposes, Mr. Geisel explained that during his term, the first President Bush made a declaration prohibiting any net loss of wetlands from that point forward. Prior to the flood, the Corp of Engineers halted all development in Chesterfield Valley. The Corps stated that there would be no more Valley development unless there was an area-wide permit issued, which identified the individual and cumulative impacts on the wetlands. The City endeavored to identify and inventory all of the wetlands in the Valley. The Airport identified the wetlands on its property, and the City identified 78 acres of wetlands in the Valley. The City negotiated with the Corps to develop a wetlands mitigation bank.

Developers are now required to reimburse the City at a rate of \$25,000 per mitigated acre, which reimburses the City and the Levee District for their costs in establishing the wetlands.

**Councilmember Durrell made a motion to forward to City Council a recommendation of approval to engage the firm of Midwest Testing for professional services related to preparing a permit modification to the**

existing Chesterfield Valley Wetland permit, on an hourly cost basis, in an amount not to exceed \$19,000 to be funded from TIF proceeds. The motion was seconded by Councilmember Geiger and **passed** by a voice vote of 4 to 0.

**[Please see the attached report prepared by Brian McGownd, Director of Public Works/City Engineer, for additional information on Chesterfield Valley Wetland Permit - Modification.]**

- D. **Grading Ordinance Amendment – Natural Watercourse Protection**: An Ordinance amending Ordinances 1973, 1998, and 2231 as embodied in Chapter 12, Grading, Erosion and Sediment Control, of the City Code by adding requirements relative to natural watercourse protection.

### **Staff Report**

Mr. Brian McGownd, Director of Public Works/City Engineer, stated that as a result of the Phase II requirements of the Federal Water Pollution Control Act, the City previously adopted the St. Louis County Phase II Storm Water Management Plan and joined with the Metropolitan St. Louis Sewer District, St. Louis County, and other area municipalities as a co-permittee in submitting a joint permit application to the Missouri Department of Natural Resources.

The last item on the five-year permit is to address natural watercourse protection. This would prohibit the disturbance of any land within 25-50 feet of a stream bank. The easiest way for the City to accomplish this would be to amend the City's Grading Ordinance by adding a new section relative to "Natural Watercourse Protection". The proposed section prohibits clearing, grading, excavation, construction, or disturbance of any kind within 50 feet of the top of bank of Bonhomme Creek, Caulks Creek, or Creve Coeur Creek; and prohibits disturbance within 25 feet of the top of bank of any other smaller stream that runs through the City.

## **DISCUSSION**

### **Logan's Creek**

Councilmember Hurt asked if this would pertain to Logan's Creek along Baxter Road. Mr. McGownd replied that it would if it shows up on the U.S.G.S. map. He noted, however that there are exceptions that would be allowed – such as buffers, roads, bridges, and utilities.

**Councilmember Durrell made a motion to approve the amendment to Chapter 12, Grading, Erosion and Sediment Control, of the City Code regarding Natural Watercourse Protection and to forward the recommendation to City Council for approval. The motion was seconded by Chair Fults and **passed** by a voice vote of 4 to 0.**

**Note: One bill, as recommended by the Planning Commission, will be needed for the February 20, 2008 City Council Meeting.  
See Bill #**

**[Please see the attached report prepared by Brian McGownd, Director of Public Works/City Engineer, for additional information on Grading Ordinance Amendment – Natural Watercourse Protection.]**

#### **IV. MISCELLANEOUS**

##### **A. Standards for Hours of Operation**

Chair Fults stated that the City of Chesterfield has never approved 24 hours of operation. Anything that has a 24-hour operation of business had been approved through the County.

She noted that hours of operation are never clearly noted in the Attachment A. She suggested that the City establish a standard for normal hours of business for office, retail and restaurant uses. If the standard is not met, it would then be called out as an issue.

Mr. Geisel noted that without a standard establishing hours of operation, it is very difficult to enforce. He agreed that having a standard would be helpful in guiding Staff on knowing what the Council desires.

Councilmember Durrell suggested that a map of the City be prepared showing the hours of operation for each business.

Councilmember Hurt suggested that the Staff establish a standard that includes the most restrictive hours now being used. He felt the hours should relate to “PC” or “PI” Districts vs. specific uses.

Instead of establishing a standard, Mr. Geisel suggested having the hours of operation noted in the Staff Report and included in the Attachment A. He thought the Staff Report could also include the hours of operation of businesses adjacent to the subject petition.

After considerable discussion, **Councilmember Durrell** made a motion directing Staff to address the issue of “hours of operation” for all rezoning petitions, which would include calling out the operating hours of surrounding properties. The motion was seconded by Chair Fults and **passed** by a voice vote of 4 to 0.

## **V. ADJOURNMENT**

The meeting adjourned at 6:55 p.m.