

**MINUTES**  
**CITY OF ST. CHARLES, IL**  
**PLANNING AND DEVELOPMENT COMMITTEE**  
**MONDAY, MARCH 9, 2020 7:00 P.M.**

**Members Present:** Stellato, Silkaitis, Payleitner, Lemke, Turner, Bancroft, Vitek, Pietryla, Bessner, Lewis

**Members Absent:** None

**Others Present:** Mark Koenen; City Administrator, Rita Tungare; Director of Community & Economic Development, Russell Colby; Assistant Director of Community & Economic Development, Ellen Johnson; City Planner, Rachel Hitzemann; City Planner, Monica Hawk; Development Engineer, Ciara Miller; Econ. Dev. Planner, Bob Vann; Building & Code Enforcement Manager

**1. CALL TO ORDER**

The meeting was convened by Chair Payleitner at 7:00 P.M.

**2. ROLL CALLED**

Roll was called:

Present: Stellato, Silkaitis, Payleitner, Lemke, Turner, Bancroft, Vitek, Pietryla, Bessner, Lewis

Absent: None

**3. OMNIBUS VOTE**

\*4a. Recommendation to approve a Minor Change to PUD for Meijer Outlot Building B (Wahlburger's signs).

\*4b. Recommendation to approve a Final Plat of Subdivision for St. Charles Public Library District and a Plat of Vacation of Walnut Ave. and S 6<sup>th</sup> Ave. – St. Charles Public Library PUD.

**Aldr. Bessner made a motion to approve omnibus items \*4a and \*4b on the Agenda. Seconded by Aldr. Lewis. Approved unanimously by voice vote. Motion carried 9-0.**

**4. COMMUNITY & ECONOMIC DEVELOPMENT**

- c. Plan Commission recommendation to approve a General Amendment to Title 17 of the St. Charles Municipal Code (Zoning Ordinance) to add Recreational Cannabis Dispensing Organization as a Special Use in the M-2 District.

Adam Rak – WBK Engineering-116 W. Main St. – said they found the Plan Commission's Findings of Fact adequately represent their findings and align with their position.

Anthony Marsico – Zen Leaf, 3714 Illinois Ave. – said they received a positive recommendation from the Plan Commission. The biggest concern has been with the Fowler School of Dance and Zen Leaf co-locating in a complex with them. He said the two parties have reached an agreement which will force one of them to relocate in a timely fashion to avoid concerns of them operating near each other. He noted they explored a number of different options to operate within the facility, but were not able to

find a solution that would work at that location. They also made significant efforts to the other neighbors and the St. Charles Commons Association. He noted they offered a number of different concessions which include covering the liability insurance, providing additional security for the premises, providing a direct line to their security officers for unit owners, further limiting their hours of operation, traffic control during opening weeks and peak times, and increased lighting on east side of building. He said they can positively impact the community of St. Charles. They projected approximately \$1 million in annual tax dollars paid to the city. This would give the City the opportunity to make improvements as they see fit. It can also fill the hole in the budget from the loss of Pheasant Run. If Zen Leaf were granted the special use, they would be creating 15-20 new good paying jobs.

Chair Payleitner clarified the vote tonight is whether or not the city is ready to change the 4 month old ordinance.

Aldr. Stellato stated the process has taken awhile to digest and commended Mr. Marsico for reaching out and working with their neighbors.

Aldr. Turner expressed concern about changing the ordinance at this point. He said once it's done, all ordinances are open to amendment. The ordinance is then a non-entity. He said he is not ready to vote for this change and he will not weaken this ordinance by any means because it then becomes a free-for-all. It will become invalid because of the amendments.

Mr. Marsico said cannabis dispensaries currently exist in one zoning district so when they talk about compatibility of use, the use is virtually identical. He understands there is a potential for increased traffic which has previously been addressed. He does not view it as weakening the ordinance, but rather including a zoning district where the use already exists.

Aldr. Turner said the ordinance is very generous when it comes to zoning.

Aldr. Bessner expressed interest in hearing more about the mutual understanding between both parties and the 4-5 year timeframe for one of them to relocate. Mr. Marsico said one of them will relocate from St. Charles Commons in a timely fashion, not 4-5 years.

Kathleen Chavez - attorney for Beth and Bob Fowler, 2350 Persimmon Dr. – said the paramount concern is the two businesses could not co-exist for any long-term period of time and both have different reasons for being locked-in to their current location. They came up with an agreement that would be beneficial to both parties right away. Zen Leaf agreed to a number of the dance studio's non-negotiable items. They have 6 month ticklers put in place that correspond to pending legislation in Illinois to determine if they are permitted to relocate, then Zen Leaf would like to relocate to a location better suited to their business model. If not, Zen Leaf has guaranteed the dance studio will be relocated and they will provide financial assistance to do that since Ms. Fowler would not be able to do that on her own. She continued to give further information on the agreement. Ms. Chavez said they are very pleased with the outcome and hopes this can move forward. Even if Zen Leaf relocates, the dance studio is not opposed to this change occurring.

Aldr. Turner said that until the State determines what they are going to do, the ordinance should stay as written. Ms. Chavez sees no conflict between the proposed changes to the statute because in

Springfield they are broadening or giving a very general additional grant authority. Cities are being given more flexibility in where they locate.

Aldr. Vitek thanked both businesses for the effort they put into this. Aldr. Bessner asked if everyone was happy. Ms. Chavez said Ms. Fowler is and she would like to add her unit's endorsement for the change in the ordinance.

Aldr. Turner said they have to think long term. It is only 4 months old. They should wait at least a year before they even think about amending the ordinance. It's a really controversial item and the public will say they came up with a really strict ordinance and then changed it at the first opportunity. He felt it would make the ordinance looser and the public would lose trust in them.

Ms. Chavez felt citizens should embrace having the flexibility to change something in the community if it isn't working. She said they view this change as embracing something that needs to happen, some flexibility that needs to take place, that wasn't anticipated. Things need to be tweaked along the way.

Aldr. Lewis asked for clarification on the 6 month ticklers. Ms. Chavez said it's a relocation determination date. In the hopes that the bill passes, then Zen Leaf will be relocating. If it is not voted on by May 31<sup>st</sup>, or if it fails, Ms. Fowler will be moved as quickly as she can find alternative space. The next trigger date is December 31<sup>st</sup> to correspond with the State's next action date.

Bill Bochte – attorney for St. Charles Commons Association – said there are 7-8 other units in the association who invested hard earned dollars before Zen Leaf bought a unit. Zen Leaf agreed to be subject to a certain set of condo rules and regulations. One of those rules states no part of the property shall be used for other than warehouse, industrial, commercial, office and related common purposes in accordance with all applicable zoning regulations. He said Zen Leaf wants to use it for other than one of those purposes. He continued to say that no unit owner shall permit anything to be done or kept in his unit, or in common elements, which will result in a cancellation of insurance, or which will be in violation of any law or ordinance.

Mr. Bochte referred to a memorandum from Ms. Chavez which indicates that there is no ambiguity under federal law - marijuana is still a scheduled one drug. He said U.S. law says it is a felony under the Controlled Substances Act of 1970 to import, manufacture, cultivate, sell, distribute, store, transport, or possess cannabis. Federal law is not pre-empted by any law of the State of Illinois. Therefore, Zen Leaf is not permitted to conduct illegal acts in that particular unit and they are doing it. Mr. Bochte also shared information from an insurance agent that states their insurance rates are going to increase due to Zen Leaf's business.

He said this is also having an effect on property values. He read an e-mail from a buyer of another unit who has put his purchase on hold because of the uncertainty with Zen Leaf. It may affect the suitability of the buyer's intended use of the property.

Mr. Bochte said the agreement between Zen Leaf and their neighbors gives Zen Leaf the right to stay in the premises through December 31, 2022. For three years, the children who go to that dance school will be affected by whatever goes on in that association.

He stated the request for a general and a special use amendment should be denied. We are diluting zoning that we already have. Zen Leaf has the ability to do exactly what they want to do and preserve

their secondary location, but they just need to wait until May 31<sup>st</sup>. He suggested waiting until then. The public does not benefit from this other than the tax money that may be collected by the City.

Aldr. Stellato said if they vote tonight, the vote could go either way. He said they have another choice to wait and see what the state legislature does on May 31<sup>st</sup>. He pointed out that special use once meant special reason. There's a reason to take a vote.

Aldr. Bancroft stated the private agreement between the different parties has nothing to do with the Committee/City. Mr. Bochte disagreed.

Aldr. Lewis felt they should wait even longer and suggested the fall. Aldr. Bessner said they don't know what's going to happen in May and they may have to go through this all again then. He preferred to vote now.

Chair Payleitner asked how many neighbors are in agreement. Mr. Marsico said they have agreements with 3 units. He said they are operating their business as it is today. It's a commercial use, which is allowed, so no zoning violations exist.

Aldr. Lewis said the state says they can move their medical license. She asked what the possibility would be for Zen Leaf to move elsewhere within the M2 district and not go within the BC-BR district. Mr. Marsico said there is zero chance of that happening, unless his ideal location existed. Aldr. Lewis said there are some things in the zoning that need to be looked at and she felt they should not spot change it.

Aldr. Bancroft asked if they received a positive result tonight, how long would it take for them put the items in their agreements in place to open the recreational dispensary. Mr. Marsico felt it wouldn't take that long, but the state's restrictions, which include background checks for new-hires, would take more time. In the current location, he said it would take about 1-3 months. If they had to move, it would take 9-12 months. He felt if they wait to vote until June, it would push everything back possibly another 18 months.

Ms. Chavez noted there is an inconsistency between federal and state law. She said it is state legal in Illinois.

**Aldr. Lemke made a motion to continue the discussion for items 4c & 4d at the June Planning & Development Committee meeting. No second. Motion died for lack of second.**

**Aldr. Vitek made a motion for Plan Commission recommendation to approve a General Amendment to Title 17 of the St. Charles Municipal code (Zoning Ordinance) to add Recreational Cannabis Dispensing Organizations as a Special Use in the M-2 District. Seconded by Aldr. Bessner.**

**Roll was called:**

**Ayes: Stellato, Bancroft, Vitek, Bessner**

**Absent:**

**Recused:**

**Nays: Silkaitis, Lemke, Turner, Pietryla, Lewis**

**Motion Failed 4-5**

- d. Plan Commission recommendation to approve a Special Use for a Recreational Cannabis Dispensing Organization for Zen Leaf St. Charles, 3714 Illinois Ave.

**Aldr. Bancroft made a motion for Plan Commission recommendation to approve a Special Use for a Recreational Cannabis Dispensing Organization for Zen Leaf St. Charles, 3714 Illinois Ave. Seconded by Aldr. Vitek.**

**Roll was called:**

**Ayes: Stellato, Bancroft, Vitek, Bessner**

**Absent:**

**Recused:**

**Nays: Silkaitis, Lemke, Turner, Pietryla, Lewis**

**Motion Failed 4-5**

- e. Plan Commission recommendation to approve a PUD Preliminary Plan for First Street Building 7B.

Mr. Colby presented the Executive Summary posted in the meeting packet.

Aldr. Silkaitis asked if the Plan Commission recommended brick on the building or if they just said they would like it. Mr. Colby said it was a comment that was made. A number of suggestions were offered, but none were included as conditions of the recommendation.

Aldr. Lewis asked if the stone goes all the way around the building. Bob Rasmussen, the developer, said it is actually black and gray brick and it does go around the entire building. Aldr. Lewis asked what they put on the glass so that you don't see the cars. Mr. Rasmussen said it is spandrel glass and just looks black.

**Aldr. Stellato made a motion to approve a PUD Preliminary Plan for First Street Building 7B. Seconded by Aldr. Turner.**

**Roll was called:**

**Ayes: Stellato, Silkaitis, Turner, Bancroft, Vitek, Pietryla, Bessner, Lewis**

**Absent:**

**Recused:**

**Nays: Lemke**

**Motion passed 8-1**

- f. Recommendation to approve Redevelopment Agreement with R&B Development, LLC, regarding First Street Building 7B.

Mr. Colby stated a draft has been prepared with terms similar to what is in place for Building 8. The only addition would be the reimbursement from the City for the streetscape. The developer is reviewing the draft and it will be finalized with exhibits when it is presented to the City Council.

**Aldr. Stellato made a motion to approve Redevelopment Agreement with R&B Development, LLC, regarding First Street Building 7B pending finalization of the draft review. Seconded by Aldr. Turner.**

**Roll was called:**

**Ayes:** Stellato, Silkaitis, Turner, Bancroft, Vitek, Pietryla, Bessner, Lewis

**Absent:**

**Recused:**

**Nays:** Lemke

**Motion passed** 8-1

- g. Plan Commission recommendation to approve a PUD Preliminary Plan for Advanced Care Medical, Pine Ridge Park PUD.

Ms. Johnson presented the Executive Summary posted in the meeting packet.

**Aldr. Turner made a motion to approve a PUD Preliminary Plan for Advance Care Medical, Pine Ridge Park PUD. Seconded by Aldr. Stellato. Approved unanimously by voice vote. Motion Carried.**

- h. Recommendation to approve amendments to the Commercial Corridor and Downtown Business Economic Incentive Program.

Ms. Miller presented the Executive Summary posted in the meeting packet.

Aldr. Lewis asked if a property owner would be eligible to apply for both programs if they made changes to allow for internal and external improvements. Ms. Miller said they would add an eligible item under this program to allow façade improvements so they could apply for the maximum award of \$25,000. They would be able to use one application to apply for both inside and outside improvements.

Aldr. Bessner ask if there was a way to differentiate structural addition funding from façade improvement funding so that the funding doesn't all go towards structural improvements. Ms. Miller said the grants are administered on a first come, first served basis. They currently have \$50,000 budgeted. If someone receives the maximum amount, the City would be able to do two grants in one fiscal year. She said there is currently nothing written into the guidelines that say only one could go towards a façade improvement or vice versa. If the Committee had an interest in doing that they could update the guidelines. Aldr. Bessner felt it would prevent everyone from taking advantage of the program in a structural way. Ms. Tungare noted structural improvements were really the premise of the original program.

Chair Payleitner said they need to be careful that grants are not being given just for paint jobs.

**Aldr. Pietryla made a motion to approve amendments to the Commercial Corridor and Downtown Business Economic Incentive Program. Seconded by Aldr. Bessner. Approved unanimously by voice vote. Motion Carried.**

**5. ADDITIONAL BUSINESS - None**

**6. EXECUTIVE SESSION - None**

**7. ADDITIONAL ITEMS FROM MAYOR, COUNCIL, STAFF OR CITIZENS-None.**

8. **ADJOURNMENT - Aldr. Bancroft made a motion to adjourn at 8:45pm. Seconded by Aldr. Pietryla. Approved unanimously by voice vote. Motion Carried.**