

ITEM NO. 3 IG TO IL; 5.09 ACRES; 2200 EAST HILLS DR (SMS)

Z-13-00191: Consider a request to rezone approximately 5.09 acres from IG (General Industrial) District to IL (Limited Industrial) District, located at 2200 East Hills Drive. Submitted by GHB Investors, property owner of record.

STAFF PRESENTATION

Ms. Sheila Stogsdill presented the item.

APPLICANT PRESENTATION

Mr. Steve Glass said IL was a very broad category of zoning that allowed a lot of uses and some were not appropriate for this piece of property which was why he submitted a list of uses that should be deleted. He said he had no problem with the 50,000 square foot limit and was fine with the proposed restrictions. He said he did not see a full service grocery store being located at the site but wanted to make sure it would not prevent a quick shop type facility. He said he was not sure what all retail sales general consisted of. He said he had some concern about the fast order food. He did not have concern about eliminating a self-standing McDonalds or Burger King, for example, but wanted to be able to have a multi-tenant building with a Subway, for example, that might have a pick-up window. He asked that they not exclude that type of use.

Commissioner Liese asked if Mr. Glass saw a distinction between a drive-thru and pick-up window.

Mr. Glass said he was concerned about the phrase "Fast Order Food, Drive-In." He said if they considered Subway a fast order food then he did not want that type of use excluded if located in a multi-tenant type building.

Commissioner Liese said he was not sure there was a way to define that.

Mr. McCullough said the Code does not distinguish them. He said fast order food typically had a pick-up window with drive-thru. He said it could be attached to a larger complex or standalone. He said the only distinction he could give were examples such as Little Caesars or Papa Murphy's where people call ahead and pick it up at a window. He said it may not be a Code distinction but may need to be crafted somehow with conditional zoning.

PUBLIC HEARING

No public comment.

COMMISSION DISCUSSION

Mr. McCullough said food and beverage was typically a grocery store. He said gas and fuel sales incorporated the convenience store use so the IL District would permit the use of gas and fuel which could include a convenience store. He said striking food and beverage would exclude larger grocery stores not the smaller convenience stores.

Commissioner Jossierand asked if access to the property would be off of East Hills Drive.

Ms. Stogsdill said yes, it was already platted that way.

Commissioner Rasmussen inquired about the 50,000 square foot limit. He said last month they recommended changing that requirement and the need to do a retail market study. He inquired about the inconsistency.

Mr. McCullough said it was due to the timing of when this application came in. He said the ordinance for the text amendment would be approved on second reading by City Commission tomorrow. He said this condition was generally to resolve the Code conflict regarding what the Code required when the application was

submitted. He said Planning Commission may still want to keep the requirement in terms of what they were trying to do with the property. He said staff did not believe it should become a larger commercial node.

Commissioner Rasmussen inquired about the recommendation to exclude fast order food drive-in. He asked about the differentiation between that and a quick shop. He wondered how they could say a quick shop could be there but not a Sonic.

Mr. McCullough said the exercise staff did was evaluating if they were attempting to maintain an industrial parcel with a few commercial services for the park or were they attempting to open it up to highway traffic.

Commissioner Rasmussen said he did not see a big difference between fast food, drive-thru, and quick shop.

Mr. McCullough said there may not be a big difference. He said staff felt like the convenience store and gas aspect would serve the patrons of the park. He said a fast food restaurant would also do that but that fast food restaurants tends to pull more traffic off the highway, in staffs opinion. He said if they felt strongly that it should serve both the park and highway they should loosen up the uses.

Commissioner Liese said he was concerned that the more they limit this the more the business would have to rely on the local business. He said he would support opening it up for the maximum use.

Mr. McCullough said gas and fuel sales were already permitted in IG today so it would be maintained in IL. He said the fast food drive-in would be a new use in IL.

Commissioner Josserand said he would support staff's recommendation and said the report did a good job of drawing the line. He felt development on this lot should serve the uses of the business park and Farmland more than attracting people off the highway.

Commissioner Rasmussen asked about access to the Farmland property.

Mr. McCullough said there would be.

Ms. Stogsdill said the City was currently constructing the east/west street that goes through Farmland connecting to the west to the north/south entrance to Farmland, which was the intersection of O'Connell where there was a new traffic signal. She showed the area on the overhead.

Commissioner Liese said a business at that site may need as much support as possible to stay open and he did not know if they could count on Farmland and East Hills Business Park to keep them alive and well. He wondered if it would create the potential for more failure so he did not want to risk doing something for two areas not completely developed yet.

Mr. McCullough said IL was still an Industrial District so it was meant to have the opportunity to develop with less intense industrial uses. He said staff wanted the site to be successful as well. He said there were many categories of use and with the right mix of use could be successful.

Commissioner Liese said he would vote in favor of the rezoning. He said he would also support less conditions if Commissioner Rasmussen felt strongly about that.

Commissioner Britton said he was inclined to support the comments made by Commissioner Liese but that he was hesitant because KDOT had not been involved yet and the implications on traffic were not known. He said if they were going to allow a gas station or a gas station with a Wendy's or Subway, that it would be hard to draw a line after that and say no to a standalone McDonalds, Dollar General, or full grocery store. He wondered what the process would be to involve KDOT in the process.

Mr. McCullough said staff could meet with KDOT and throw out a worst case scenario. He said KDOT would say yes but with improvements. He said a traffic study would advise on what improvements would be needed to the highway to accommodate the new traffic.

Commissioner Britton asked if that was something that could be addressed with a specific proposal.

Mr. McCullough said yes.

Commissioner Britton said he shared the concern about bringing traffic in and off the highway at that intersection but that it was difficult to address that issue at the zoning stage. He said he some faith any traffic issues would be addressed with the proposal. He said he was inclined to support broad uses to allow the property to have all kinds of safely moving traffic in and out.

Commissioner Denney agreed with Commissioner Britton. He asked if the intersection currently had no traffic control other than a stop sign and if there were no plans for anything other than stop sign.

Ms. Stogsdill said that was correct.

Commissioner Culver supported the limitation of 50,000 square feet on commercial so it would not become another commercial node. He felt it could support and compliment other uses in Farmland and the East Hills area. He said he was also concerned about the traffic but that a traffic study created during the site planning stage could address that. He said he could support a motion that would be in alignment with staff's recommendation. He liked the idea of a multi-tenant use building for fast food instead of a standalone building.

Commissioner Liese said the Subway in the gas station on N. 3rd Street had a drive-thru and speaker box.

Mr. McCullough said the Code did not distinguish between multi-tenant and standalone. He encouraged them to think about the use itself and its impact to pull off traffic from the highway.

Commissioner Rasmussen said he did not see the difference between fast food and gas station. He said the vehicular traffic going in and out of a gas station would be more than a fast food place that might be busy at just lunch and dinner. He said the Quik Trip at 23rd and Haskell was busy at all hours of the day. He did not feel there was justification to exclude fast food drive-thru but allow a gas station at that site.

Mr. McCullough said a gas station was permitted currently. He said staff did not want to create a cluster of uses that would exacerbate the potential traffic issue. He said a gas station with a fast food restaurant could create more traffic pulled off the highway.

Commissioner Rasmussen said there were other uses that would be permitted uses that staff recommended not allowing as a permitted use and the applicant agreed with that.

Ms. Stogsdill said the only use staff suggested striking, in addition to the applicant's suggestions, was the drive-thru. She said all the other struck uses were part of the applicant's original proposal.

Commissioner Rasmussen wondered why gas and fuel sales was not struck.

Ms. Stogsdill said it was currently allowed today. She said staff only looked at the additional uses that the IL District provided in terms of expanding the realm of uses.

Commissioner Rasmussen said this was an opportunity for staff to make recommendations. He said he had a hard time justifying only recommending fast food drive-in to be excluded and not a gas station. He said a gas station could have as big of impact, or more, as a drive-thru fast food.

Ms. Stogsdill said the other component were the gateway arguments. She said part of the consideration was having a standalone fast food restaurant at the entrance to the East Hills Business Park, Farmland Business Park, and Lawrence.

Commissioner Liese said they were working on assumptions that they did not have hard data for. He said they were not addressing that the applicant himself was asking for a certain kind of fast food restaurant be allowed.

Mr. McCullough said the definition of drive-in includes pick up windows.

Commissioner Liese asked Mr. Glass if he could live without a pick up window.

Mr. Glass said he would prefer to have the option of pick up window since he did not know which business would occupy the space.

Commissioner Rasmussen asked if the definition included places like Applebee's where they bring food out to your car.

Mr. McCullough said no. He said that was drive-up not drive-thru and that staff did not interpret it that way. He said Applebee's was a Quality Restaurant which was defined differently in the Code.

ACTION TAKEN

Motioned by Commissioner Josserand to approve the request to rezone approximately 5.09 acres, from IG (General Industrial) to IL (Limited Industrial), based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval subject to the following conditions:

1. The development shall be limited to no more than 50,000 sq. ft. of commercial (retail) development.
2. The permitted uses of the subject property are restricted to those listed in the staff report (deleted uses highlighted in yellow identified by applicant & highlighted in teal suggested by staff).

The motion died for lack of second motion.

Motioned by Commissioner Liese, seconded by Commissioner Britton, to approve rezoning approximately 5.09 acres, from IG (General Industrial) to IL (Limited Industrial), based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval subject to the following conditions:

1. The development shall be limited to no more than 50,000 sq. ft. of commercial (retail) development.
2. The permitted uses of the subject property are restricted to those listed in the staff report (deleted uses highlighted in yellow identified by applicant) [Fast Order Food Drive-In, Food & Beverage and Retail Sales, General will be permitted uses]

Commissioner Britton said it was a good end result. He expressed concern about distinguishing fast food drive-in and gas sales. He felt staff did the right thing in providing different options and identifying things Planning Commission should talk about regarding the rezoning.

Commissioner Josserand asked if the motion would allow the entire category of fast order food drive-in as a use.

Commissioner Liese said yes.

Commissioner Josserand said he would vote against the motion. He said staff did a good job in trying to increase the flexible uses for the property but he was concerned about commercial sprawl. He felt the best use of the property was to serve the population of the area as opposed to creating traffic problems.

Commissioner Denney said anything that helped develop the area was good and felt they should not limit it. He stated whatever business goes there will probably trigger a traffic impact study which would address changes that need to be made to make it safe. He said he would vote in favor of the motion.

Commissioner Liese said he appreciated the options provided by staff.

Commissioner Culver asked if the motion included the uses food, beverage, and retail sales.

Mr. McCullough said yes.

Commissioner Rasmussen said Planning Commission had given City Commission a lot of discussion to think about.

Motion carried 5-1, with Commissioner Josserand voting in opposition.