

Columbia City Council Pre-Council Minutes

Monday, May 19, 2014 6:00 p.m.
City Hall – Conference Room 1A/1B
701 East Broadway

Council members present: Mayor McDavid, Ginny Chadwick, Mike Trapp, Ian Thomas, Laura Nauser and Barbara Hoppe

Absent: Karl Skala

Mayor McDavid called the meeting to order at 6:00 p.m.

City Manager Mike Matthes explained that there is a growing interest in development rules and so the session tonight will include an overview from Dan Simon who is very knowledgeable and qualified to provide this information.

Development Overview – Dan Simon:

Dan Simon started by explaining that while he has been called upon to represent developers, he does not have the intention to represent any group here tonight. He is simply presenting unbiased information on Land Use Laws and is not advocating on behalf of developers. He commented that court cases are timely and costly and the City Council should have adequate knowledge about what the rights are for all parties, so that fewer people are forced into courts to protect their rights. He provided a binder handout (the information in the binder is the same as the information included on the online agenda for this meeting) for each person's future reference.

He overviewed each of the sections in the binder which include: Hierarchy of Land Use Laws, a complete treatment of Missouri Land Use Laws and of the Missouri laws related to special tax districts, discussions of cases and authorities (and arguments previously presented) as to the authority of a city council to decline to approve a final planned unit development or development plan which conforms with an approved preliminary plan and/or a subdivision plat which conforms with the requirements of the underlying zoning and subdivision regulations. Also included in the binder is a memorandum discussing the ability of a court to compel issuance of a building permit as a ministerial process, a general discussion of law on non-conforming uses, further discussions on judicial actions challenging refusal by a city council to rezone property and a legal memorandum on the issue of legality of issues requiring exactions.

Mr. Simon noted in the Hierarchy of Land Use Laws portion, that a land use plan sometimes does not define what land can and cannot be used for, and it is the zoning laws that define the uses. He noted that zoning is a legislative function. Courts are reluctant to interfere with an exercise by a legislative body and its

functions. He referenced Section 3 in the binder relating to cases and noted that a property owner must show that current zoning is unreasonable. The court has to find on all evidence and determine that the issue is not fairly debatable. If it is debatable, the property owner loses. He provided some examples of cases related to zoning. He noted that when considering changes to zoning ordinances, you may hear statements that you'll get sued for taking property rights; those are likely unfounded statements and he feels that the constitutional law is balanced. When you change the zoning of a property and they already make use of the property and then they change that use; it then becomes a non-conforming use. They have the right to make use of that property.

Council person Hoppe noted that we have lots of nonconforming uses in the City and she asked if Mr. Simon was implying that those people cannot get insurance. Mr. Simon replied that some of them cannot get insurance or likely have difficulty getting it. If you have a large non-conforming use, it's nearly impossible. Mr. Simon continued and noted that exactions refer to requirements for dedications, rights of way, contributions to building infrastructure, etc. He provided some examples of exactions and explained the rights of the developers in these situations.

Ms. Hoppe thanked Mr. Simon for putting this information together, and felt that the information would be helpful to have on hand in the future. She asked staff, to please include anything they felt was missing from the binder that they think would be helpful. Council person Thomas added that this was helpful information for him as well and he feels that this should become an annual session so that new council members have the benefit of this information. He asked hypothetically, when a final plat can be denied without legal jeopardy. Mr. Simon replied, hypothetically, if you have a final plat before you and the staff report says it conforms with all requirements and staff recommends approval, Council would be on thin ice if they don't approve it.

The information presented by Dan Simon can be viewed at the following links:

Land Use Part I:

<https://www.gocolumbiamo.com/CMS/bcmanager/downloadfile.php?id=13722>

Land Use Part II:

<https://www.gocolumbiamo.com/CMS/bcmanager/downloadfile.php?id=13723>

Land Use Part III:

<https://www.gocolumbiamo.com/CMS/bcmanager/downloadfile.php?id=13724>

Future of Fiber Optics Report - Tad Johnsen and Mike Brooks:

Economic Development Director, Mike Brooks, stated that this is an outcome that started years ago. A Request for Proposals (RFP) was issued by the City, and Magellan Advisors was the firm selected to evaluate our broadband capacity in the community. After much research, John Honker, President of Magellan, is

here to present their findings and recommendations. Mr. Honker introduced some of the key staff that assisted on this project and provided an overview of items he would cover in his presentation.

Mr. Honker explained that Next-Generation Broadband has no bandwidth limitations, is dedicated versus shared, has higher reliability, easy upgrades, and a platform with long term growth. He noted that traditional services have maximum speeds ranging from 1.5 Mbps up to 150 Mbps compared to fiber optic which is 1 Gbps and greater. Many small and medium sized businesses are looking for that kind of speed, but it's either not available or is unaffordable. Mr. Honker explained that this would be important to Columbia because it helps drive economic development by allowing for new business start-up, technology transfers from the University of Missouri and lowers the cost of doing business here. This also impacts areas of healthcare, education, utility innovation, equity across the community, and resident quality of life. He noted some of Columbia's broadband issues and provided statistics from a survey conducted in which 72% of Columbia business respondents have had major internet problems relating to speed and reliability. 87% of Columbia business respondents said their current internet service is insufficient in areas of speed and reliability. 43% have not upgraded because the cost is too high; 32% have not upgraded because there is no upgraded service available. Mr. Honker provided some economic development statistics related to Columbia and stated that the small businesses here could run much more effectively and efficiently if their internet operated faster and would also be a great incentive to draw future businesses to Columbia.

Mr. Honker reviewed the issues to include unaffordable broadband for businesses, opportunity based expansion only, little distribution fiber, providers don't compete on price, and there is a lack of widespread affordable fiber. He then overviewed an approach to resolve these issues which would be to create a Water and Light community broadband network, to use an open-access business model, Water and Light would provide only the connection, not services, leases would provide connections to service providers, connect customers starting with businesses, expand anchor services, expand to residential and implement a broadband-friendly public policy. Council person Hoppe asked if the lease would be for the cost to reimburse the city for their expense. Mr. Honker replied yes, and added that the costs and terms can be set.

He reviewed the projected results being a new source of local fiber; facilitate more competition, lower costs for businesses, new economic development potential, more revenue stream for Water and Light, more municipal value to citizens, more collaborative opportunities, and it protects Columbia's future. Mr. Honker showed a diagram of Columbia's Broadband today and then reviewed some potential next steps. Water and Light would need to develop a

business plan that includes the benefits, strategy, and a financial, funding, implementation plan. Council would need to take a new stance on public policy and make changes to the land development code to make it friendlier when it comes to joint trenching agreements and include a “dig once” policy. Mayor McDavid noted that they were out of time, but that he intends to ask staff to proceed with this.

The Broadband Planning Study Executive Summary can be viewed here:

<https://www.gocolumbiamo.com/CMS/bcmanager/downloadfile.php?id=13718>

The presentation from Magellan Advisors can be viewed at the following link:

<https://www.gocolumbiamo.com/CMS/bcmanager/downloadfile.php?id=13813>

The image of the Fiber Network Isometric can be viewed at the following link:

<https://www.gocolumbiamo.com/CMS/bcmanager/downloadfile.php?id=13814>

Other Topics Council Wishes to Discuss:

None.

There being no further discussion, the meeting adjourned at approximately 6:57 PM.