

AGENDA

City of University Heights, Iowa
City Council Special Meeting
Monday, February 19, 2018
Community Center - OUP
1302 Melrose Avenue

5:00-6:00 pm.

Meeting called by Mayor Louise From

Time		Topic	Owner
5:00	Call to Order Special Meeting	Roll Call	Louise From
5:05		Public Input	Public Comments
		Discussion of Swisher Tract	Steve Ballard, Josiah Bilskemper & Silvia Quezada
		Zoning Commission Report	Pat Bauer
	Announcement		Anyone
		Proposal to meet in closed session pursuant to Iowa Code Sec. 21.5(1)(j) to discuss the possible purchase of particular real estate where premature disclosure could be reasonably expected to increase the price the City would have to pay for that property.	
		Reconvene to open session.	
6:00	Adjournment		Louise From

Next Regular City Council Meeting is March 6, 2018: Community Center – OUP

SUMMARY OF ZONING COMMISSION REPORT TO CITY COUNCIL

As expressed in the development of the Sensitive Areas Ordinance 212, the Zoning Commission intends to protect environmentally sensitive areas existing in University Heights to prevent environmental degradation and to preserve the natural environment for future generations of residents. To achieve a better understanding of how development of the Swisher property under current city ordinances might impact the environment, City Engineer Josiah Bilskemper, as directed by council, prepared three maps indicating the potential impact on environmentally sensitive areas. In sum those maps clearly indicate that under existing ordinances almost any development of the Swisher Tract would be extremely problematic. The Zoning Commission therefore recommends that:

- Material development of the Swisher property will almost certainly require a level II environmental review, and while such review would authorize possible modifications of certain requirements, any appropriate modifications would be limited to ones that do not diminish or otherwise compromise the environmental protection purposes of the ordinance.
- Following Zoning Commission review of all of the existing ordinances, the Commission concluded that faithful application of all of the provisions of all of our existing ordinances would under almost all foreseeable circumstances be sufficient to properly protect environmentally sensitive areas from future development.
- The Zoning Commission wishes to underscore that its conclusion that existing ordinances not be altered to permit development that is more intensive or more extensive than such ordinances currently may allow.
- As a final matter, the Zoning Commission believes that accuracy and transparency of communications with interested parties could best be assured by requiring that all inquiries to Zoning Commissioners and City Councilors concerning either possible modifications of otherwise applicable requirements currently authorized by existing ordinances or any possible changes of such ordinances be made in writing with any responses being provided in the same manner.

MEMORANDUM

TO: University Heights City Council

DATE: February 18, 2018

FROM: Pat Bauer, University Heights Zoning Commission Chair

RE: Consideration of Need for Changes in Existing Ordinances Regulating Potential Future Development of the Swisher Tract

Introduction

The University Heights Zoning Commission met on February 15, 2018 to consider the need for any changes in existing ordinances regulating potential future development of the Swisher Tract. After reviewing various circumstances described below, the four available commissioners (Bauer, Gahn, Haugen, & Wilson) generally agreed¹ that a need for such changes was not presently apparent. Going forward, the Zoning Commission believes that administration of existing ordinances by the Zoning Commission and/or the University Heights City Council should not entail any authorized modifications, reductions, or eliminations of any presumptively applicable provision of such ordinances absent compelling demonstrations that such permissions are fully consistent with all stated and intended purposes such ordinances were designed to achieve. The Zoning Commission also believes it imperative that the City Council take no action to weaken the existing content of such ordinances in the absence of truly compelling circumstances which the Zoning Commission presently is unable to envision.

Zoning Commission Awareness of Relevant Surrounding Circumstances

At the beginning of a preceding meeting on December 6, 2017 City Attorney Steve Ballard advised the Zoning Commission of circumstances affecting potential sale and development of the Swisher Tract. At the beginning of its February 15, 2018 meeting, the Zoning Commission was similarly advised of material interim developments. The Zoning Commission also reviewed written materials reflecting relevant provisions of the Comprehensive Plan the City Council unanimously adopted in November 2006² and a Resolution to Support Acquisition of Greenspaces the City Council unanimously adopted in January 9, 2018.³

Zoning Commission Consideration of Potential Development Possibly Allowed Under Existing Ordinances

As previously recommended by the Zoning Commission, the City Council directed City Engineer Josiah Bilskemper to determine the nature and extent of Swisher Tract development that might be possible under the currently existing provisions of our sensitive areas, zoning, and ,

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1. Before transmittal to the University Heights City Council, this memorandum was circulated to all commissioners for comments and suggested revisions.
 2. [December 5, 2017 Zoning Commission Meeting Agenda & Attachments](#) at PDF p. 22.
 3. [February 15, 2018 Zoning Commission Meeting Agenda & Attachments](#) at PDF pp.2-4.

subdivision ordinances.⁴ Engineer Bilskemper responded with three maps illustrating the existence and extent of sensitive areas and development possible under existing R1 single-family zoning both absent and with potential subdivision of the existing Swisher Tract.⁵ Pictures being worth at least a thousand words, in sum those maps clearly indicate that under existing ordinances almost any development of the Swisher Tract would be extremely problematic.

As an initial matter, large parts of the Swisher Tract appear to include extensive areas involving at least three types of environmentally sensitive areas protected by our existing sensitive areas ordinance.⁶ Moreover, under such ordinance overlaps between two or more types of sensitive areas often result in enhanced levels of protection beyond those which might apply in circumstances where each type of sensitive area existed in isolation from other types of sensitive areas.

With such sensitive areas protection providing relatively small areas in which development might be permitted, further constraints are imposed by the existing provisions of our zoning⁷ and subdivision⁸ ordinances establishing such additional requirements as permitted uses, minimum lot sizes, required lot setbacks, and necessary easements for streets and utilities. While more exact determinations would necessitate costly on-ground surveys, Engineer Bilskemper's maps note that under existing ordinances almost any potential development would in all likelihood necessitate incursions into protected sensitive areas and/or the reduction or elimination of presumptively required buffer areas.

Placing aside the subsequently considered possibilities of future changes in our sensitive areas, subdivision, or zoning ordinances, any material development of the Swisher Tract almost certainly would require a Level II sensitive areas review by the Zoning Commission. In such review, our sensitive areas ordinance currently authorizes possible modifications of certain requirements⁹ but the circumstances in which such modifications might be appropriate would be limited to ones in which the modification does not diminish or otherwise compromise the environmental protection purposes the ordinance was framed and intended to protect.

Following its review of all of the above considerations, the Zoning Commission ultimately concluded that faithful application of all of the provisions of all of our existing ordinances would under almost all foreseeable circumstances be sufficient to properly protect all appropriate regulatory purposes. While respectful of concerns about the possible adverse consequences of unforeseen circumstances or unfaithful application, the Zoning Commission does not believe that further attempts to circumscribe such possibilities would presently be worthwhile.

The Possibility of Changes in Existing Ordinances

4. Engineer Bilskemper noted that Swisher Tract development also could be affected by the currently existing provisions of [Ordinance No. 191](#) (parkland dedication) and [Ordinance No. 169](#) (post-construction stormwater runoff control) (as amended by [Ordinance No. 213](#)).
5. Maps of [Existing Conditions](#), [Single-Family Home Scenario](#), and [Subdivision Scenario](#).
6. Ordinance No. 212.
7. [Ordinance No. 79](#).
8. [Ordinance No. 210](#).
9. [February 15, 2018 Zoning Commission Meeting Agenda & Attachments](#) at PDF pp. 10-16

The Zoning Commission recognizes that existing ordinances could subsequently be changed to permit either less or more development of the Swisher Tract than those ordinances presently might allow. Because the extent of development possible under existing ordinances seems quite limited, the only possible means of permitting even less development would seem to be some unqualified prohibition of any development whatsoever. Attorney Ballard, however, indicated that pursuing that possibility would present considerable legal risks in addition to the concerns about fairness to present owners involved in “downzonings” where significant uses presently allowed are subsequently completely prohibited.¹⁰

Possible unfairness to neighbors similarly may be presented by “upzonings” where significant uses presently prohibited are subsequently allowed, but on five occasions since its initial adoption in 1982 the University Heights zoning code has been changed in such ways/ On two of those occasions (Birkdale Court¹¹ and the second “horizontal concept” Grandview rezonings¹²), the changes were recommended by the Zoning Commission and then approved by the City Council. In contrast, on the other three occasions (the first “vertical concept” Grandview rezoning¹³ and the One University Place¹⁴ and University Lake Partners¹⁵ rezonings), the changes were not approved by the Zoning Commission but subsequently were approved by the City Council.

The Zoning Commission cannot presently conceive that any upzoning of the Swisher Tract would be appropriate, but prior experience being that its views might not be dispositive, the Zoning Commission wishes to underscore that its conclusion about existing ordinances being sufficient to achieve their purposes rests upon an assumption that those ordinances will not subsequently be altered to permit development that is more intensive or more extensive than such ordinances currently may allow.

The Value of Practices Assuring Accuracy and Transparency of Communications with Interested Parties

As a final matter, the Zoning Commission believes that accuracy and transparency of communications with interested parties could best be assured by requiring that all inquiries to Zoning Commissioners and City Councilors concerning either possible modifications of otherwise applicable requirements currently authorized by existing ordinances or any possible changes of such ordinances be made in writing with any responses being provided in the same manner. If circumstances should arise where in-person meetings between interested persons and individual Zoning Commissioners or City Councilors are deemed appropriate, voice recordings of all such meetings should be made with copies of such recordings available on the same basis as other public records.

10. Both legal risks and fairness concerns may be greatly reduced by prospective imposition of more modest restrictions involving things like paving and parking or appropriate regulations of rental housing.

11. [Ordinance No. 130.](#)

12. [Ordinance No. 146.](#)

13. [Ordinance No. 133.](#)

14. [Ordinance No. 180.](#)

15. [Ordinance No. 208.](#)