



MINUTES
PLANNING COMMISSION
7651 E. Central Park Ave, Bel Aire, KS
July 13, 2023 6:30 PM



I. Call to Order

II. Roll Call

John Charleston, Edgar Salazar, Phillip Jordan, Dee Roths were present. James Schmidt, Heath Travnichek, and Paul Matzek were absent.

Also present were, Secretary and Director of Planning and Community Development, Jay Cook, Code Enforcement Officer, Garrett Wichman, City Engineer, Anne Stephens, City Attorney, Maria Schrock and Attorney, J.T. Klaus.

III. Pledge of Allegiance to the Flag – Chairman Jordan led the Pledge of Allegiance.

IV. Consent Agenda

A. Approval of Minutes from Previous Meeting

Motion: Commissioner Charleston made a motion to approve the minutes of May 11, 2023. Commissioner Roths seconded the motion. Before the vote, Secretary Cook offered a written “proposed corrections to minutes from 5/11 planning commission meeting” from a resident in Heritage Hills Subdivision (attached). Mr. Cook stated that the proposed corrections were reviewed by staff and the original minutes were accurate and complete. The proposed corrections were considered by staff to be immaterial. Planning Commission then considered the corrections as well as staff recommendations and chose to keep the minutes as they were presented. The original motion was voted on and the *Motion carried 4-0*

V. Old Business/New Business

A. ZON-23-01 - Rezoning approximately 64 from AG to M-1 Industrial generally located at the Southeast corner of K-254 and Rock Rd.

Chairman Jordan began the New Business Agenda item V. (A.) which is a public hearing on Case ZON-23-01; an application to rezone property generally located at the SE corner of Highway 254 and Rock Road from Agricultural District (AG) to Planned Unit Development – Industrial District (M-1).

Chairman Jordan opened with ground rules and information regarding the process of hearing a zoning case, the rights of the citizens and applicant/agent to be heard, the fact that the Planning Commission may consider the agenda item in the future as it is a PUD with a required site plan and approval, and the process of being heard during the public hearing.

Chairman Jordan then asked if any of the Planning Commission members intended to disqualify themselves from the hearing due to conflict of interest or a particular bias on the matter. He then declared that legal and proper notification was given in accordance with State Law and the Zoning Regulations adopted by the City of Bel Aire.

Chairman Jordan then asked if any Planning Commission members received any ex parte verbal or written communication and gave the members an opportunity to disclose those conversations. No members mentioned any ex parte communications.

Findings of Fact

Secretary Cook presented a PowerPoint presentation as a visual aid to the staff report that was provided to the Planning Commission (attached). The presentation went through the Findings of Fact (Golden Factors) and discussed each factor individually as to the acceptableness and the reasonableness of the zoning change request. After completing the presentation, Secretary Cook asked for any questions. No questions were asked of staff's representation.

Following staff's report, Chairman Jordan stated that as this is a zoning change, the Planning Commission can only make a recommendation to the City Council and it is the responsibility of the Council to make the final decision.

Chairman Jordan then called upon the applicant or its agent to make their request and give additional response to the Zoning Report. Representing the applicant was Phil Meyer with Baughman Company. Mr. Meyer stated that this is an expansion of the existing zoning changes that go east to Webb Rd. He stated that this is just step one of the process and the PUD process would come after the rezoning, giving another layer of oversight followed by site plan review. He then stood for questions from the Planning Commission members. No questions were asked at that time.

Chairman Jordan opened the public hearing.

Several residents from the Heritage Hills subdivision in Kechi, KS and other residents from the City of Bel Aire wished to speak on this zone change.

Lyle Ackerman, 4920 N Hillcrest, Bel Aire. Mr. Ackerman spoke in favor of this zone change by giving a history of the property based off of his experience with the City. He believed that the location is optimal and the opportunity for retail, commercial, and industrial growth with provide the City the opportunity to grow into a full-service city.

Gary O'Neal, 4967 N Hillcrest, Bel Aire. Mr. O'Neal expressed to the Commissioners that the property was annexed when he was mayor of the City of Bel Aire and that the land was always intended to have commercial and industrial uses along Highway 254.

Ryan Hendricks, 7620 E Oak Tree Ln., Kechi. Mr. Hendricks spoke to concerns with traffic control of Rock Road and its conditions. Mr. Hendricks did mention that he had a tour with Integra that is wanting to become the developer on this land. He stated that he is very pleased with what they have shown him and would be happy to be a neighbor to Integra.

Dean Kuckelman, 7735 Oak Tree Ln., Kechi. Mr. Kuckelman shared his concerns with the findings of fact and golden factors presented by staff. These concerns include the character of the neighborhood, zoning, and use. Mr. Kuckelman stated that regardless of staffs opinion, the

character of the neighborhood is residential and it disfavors approval. He stated that Highway 254 should separate any discussion and that only South of 254 should be considered in the determination. He also stated that the zoning nearby disfavors approval. He spoke to concerns of buffering and not having a lesser dense or intense usage between the existing zoning and the neighborhood West of Rock.

Donnis McPhaul, 7901 Oak Tree Ln., Kechi. Dr. McPhaul shared concerns to the Commission about Rock Rd and its safety. She also discussed the noise of added traffic flow and possible traffic accidents. She also mentioned she had met with Integra and they have alleviated some of her concerns for traffic as they would be entering in off of Webb Rd.

Erik Breckenridge, 7320 E Mill Stream Rd., Kechi. Mr. Breckenridge shared concerns about the character of the neighborhood and traffic flow. He asked for Bel Aire's support in keeping the area as quiet as possible and to ensure the importance of environmental concerns. He also shared concerns about the possibility of a lesser desirable neighbor developing the property.

Suzanne Hawley, 7730 E Mill Stream Rd., Kechi. Ms. Hawley shared her reflecting concerns as the other residents from Heritage Hill. She shared concerns with some of the Golden Factors. Mainly the character of the neighborhood. She stated that Rock Road is mainly residential and Webb Road is mainly commercial. She also disagreed with compliance to the Master Plan stating that the map does not include any industrial zoning and that adjacent land uses be separated by no more than one usage level.

Betty Martine, 5931 Memphis, Bel Aire. Ms. Martine expressed that she believes this change will be a great asset to Bel Aire and Kechi residents.

Chairman Jordan asked if there were any written communications or petitions from the public. Garrett Wichman handed out three written communications to the Planning Commission members from residents in favor of the zone change (attached). Written communication came from Gary Breault, Jeff Englert, as well as Tom and Jeanne Heiman. These written communications were read by Secretary Cook and placed on the record. There was also written communication from Dean Kuckelman titled "alternative proposed findings of fact for 7/13/23 Planning Commission meeting" which will also be put on the record (attached).

Chairman Jordan then allowed the applicant/agent to respond to the public comments. Phil Meyer did have a rebuttal in regard to concerns from the public. A majority of the concerns he had heard were about traffic control and flow. Phil mentioned that Matt Cortez was here to speak as well. Matt Cortez works with Integra as an Architect and has been working with KDOT as well. The concepts of their plan would be an overpass at Rock Rd and 254 Hwy so there is no access to 254 Hwy from Rock Rd. At Webb Rd. there will be a diverted diamond interchange at that intersection.

Chairman Jordan allowed final public comments from the public.

Ryan Hedricks spoke again after hearing from Phil Meyer and Matt Cortez. Ryan's final comments stated that Rock Rd. could remain a two-lane road but it does need a pedestrian egress, or a walking trail.

Dean Kuckelman then spoke on the emails that were received and put into the public record. He stated that he does not know who the authors of the emails were but they do not live across the street. They were speaking as citizens of Bel Aire while the only property owners were from Heritage Hill.

Secretary Cook did mention for the record that a protest petition was received to the city on this zone change at the previous hearing on the rezone (attached).

Chairman Jordan closed the public hearing.

A brief recess was requested and granted.

Following the recess, there was discussion among the Commissioners regarding the findings of fact.

Commissioner Salazar stated that he knows Mr. Kuckelman personally but has not had any communications regarding the case.

Commissioner Roths spoke to the suitability of the subject property considering the history of Bel Aire and purchasing the property with intent to develop into something and a PUD would be the best way to develop.

Commissioner Salazar commented on the different zonings and pointed out the opinions of the property owners is important to consider.

Commissioner Charleston mentioned that he understands the Rock Road dilemma but right now it is the zoning that is in question. He spoke to character of the neighborhood and the vacancy of the property for 20 years and that this land has always been indicated to be used for M-1 Industrial. He commented on the character of the neighborhood stating that Highway 254 would be a good place for an Industrial PUD.

Commissioner Roths spoke to the recommendation of professional staff and she believes that staff is very capable and knowledgeable and trust their opinions and their abilities moving forward.

Chairman Jordan went through the Golden Factors and spoke to his opinion on favoring or disfavoring. Regarding Character of the Neighborhood, Jordan felt like the rezoning marginally favors this factor because it could be argued either way. Suitability of the subject property for uses to which it is restricted is strongly in favor. He stated that his opinion on traffic and other issues can be improved making extent to which removal of the restrictions will detrimentally affect nearby properties is heavily favored. The length of time property has been vacant is strongly in favor of the rezone as the agricultural zoning is a place holder until something is more usable. Relative gain of public health and welfare strongly favors the rezone due to job creation and other advantages. Jordan also believes that the Comprehensive plan favors the zone change even if the map has commercial instead of industrial in the area. He stated that it does bother him that there is a large jump between the zoning of adjacent neighborhoods, but the PUD will solve most of these issues. Property Owners opinions changed to much more positive comments but would still disfavor the zone change. He also stated that the recommendation of staff would strongly favor changing the zoning.

Motion: Chairman Jordan made a motion to recommend to the City Council that Case No. ZON-23-01 be approved rezoning the subject property from Agricultural District (AG) to Planned Unit Development – Industrial District (M-1) Commissioner Dee Roths seconded the motion. *Motion carried 4-0*

B. SD-23-04 Preliminary Plat. Proposed platting of approximately 96 acres within Sunflower Commerce Park 2nd Addition PUD.

Secretary Cook gave a presentation on the application for the Commissioners.

Representing the applicant was Anthony Krejci with SEH, Inc. The applicant is proposing to re-plat within the Sunflower Commerce Park PUD restrictions. Andrew did mention that he had already submitted plans with Anne Stephens our city engineer on a drainage plan for review.

Chairman Jordan opened the public hearing.

There was no one to speak in regard to SD-23-04.

Chairman Jordan closed the public hearing.

The Planning Commission did discuss about the lighting that would be placed on the lots and staff mentioned that would be further reviewed when presented to them.

Motion: Commissioner Dee Roths made a motion to accept the preliminary plat for Sunflower Commerce Park 3rd addition without conditions. John Charleston seconded the motion. *Motion carried 4-0*

C. SD-23-05. Sunflower Commerce Park 3rd Addition Final Plat - Request to plat approximately 96 acres in the Sunflower Commerce Park.

Secretary Cook mentioned that the plat has been reviewed and staff recommends that it be approved. Anne Stephens our city engineer did mention she did not have any concerns at this time.

Motion: Commissioner John Charleston made a motion to recommend to send on to the City Council, Sunflower Commerce Park 3rd Addition as presented. Chairman Jordan seconded the motion. *Motion carried 4-0*

VI. Next Meeting: Thursday, August 10 at 6:30 PM

Motion: Chairman Phillip Jordan made a motion to approve the next meeting date: August 10, 2023 at 6:30 p.m. *Motion carried 4-0*

VIII. ADJOURNMENT

Motion: Commissioner John Charleston made a motion to adjourn. Commissioner Dee Roths seconded the motion. *Motion Carried 4-0*

Proposed Corrections to Minutes From 5/11 Planning Commission Meeting

Attendees at the 5/11 Planning Commission Meeting propose the following corrections, so that the Minutes more accurately reflect what happened at the meeting:

- a. The request from "one resident" wasn't that "Kechi residents in the Heritage Hills [sic] subdivision be treated better than Bel Aire residents." A more accurate statement would be: "One resident requested that everyone who would be impacted by the proposed zoning change and PUD be given more input into the process than just the 'normal' input of being invited to public meetings and having a right to file protest petitions. The rationale for that request was that this is not a "normal" zoning change: The City and State have publicly announced a proposed Integra plant that would involve 2,500 employees and nearly \$2 billion in capital expenses."
- b. It is not accurate to say that "the factors seemed to be divided evenly between recommendation and denial." A more accurate statement would be: "Commissioner Jordan went through each of the Golden Factors, and expressed his opinion that most factors appeared to support recommending denial. At least two of the commissioners said they needed more information to make a decision. One of the commissioners simply said they favored approval because that is what the staff recommended. One of the commissioners said they favored approval because they favored 'progress.' None of the commissioners said that they believed the Golden Factors favored recommending approval, or even that the Golden Factors were divided evenly between recommending approval and recommending denial."

STAFF REPORT

DATE: 06/27/2023

TO: Bel Aire Planning Commission

FROM: Jay Cook

RE: Agenda

STAFF COMMUNICATION

| | |
|------------------|-----------|
| FOR MEETING OF | 7/13/2023 |
| | |
| CITY COUNCIL | |
| INFORMATION ONLY | |

SUMMARY:

ZON-23-01. Proposed re-zoning approximately 63+ acres zoned Agricultural District (AG) to Planned Unit Development - Industrial District (M-1). The current use is farm ground.

General location:

- Southeast corner of Hwy 254 and Rock Rd. (Location Map included)

Applicant/Agent:

- Property Owner: Webb254, LLC, Steve Barrett (Managing Member)
- Agent: Phil Meyer, Baughman Company, PA

History:

- The 63+ acres was annexed into the City of Bel Aire on May 22, 2003, via Ordinance No. 392, and was zoned Agricultural District (AG). In accordance with Bel Aire City Code Chapter 18, Article 7, Section 18.7.0, "the Agricultural District may serve as a 'holding zone' for land where future urban expansion is possible, but not yet appropriate due to the unavailability of urban level facilities and services. Property zoned AG for 'holding zone' purposes may be used for certain commercial and industrial special uses..."

Discussion:

- A zone change has been requested from the Agricultural District (AG) to the Planned Unit Development – Industrial District (M-1)
 - The Planned Unit Development - Industrial District (M-1) is intended to encourage innovation in commercial and industrial development, through designs allowing for a more efficient use of land, incorporation of new technologies in urban land development, and incorporation of a greater variety and flexibility in type, design, and layout of structures.
 - Use Regulations. No building, structure, land or premises shall be used, and no building or structure shall hereafter be erected, constructed, reconstructed, moved or altered except in conformance with those uses provided for below.
 - Permitted uses: The following uses shall be permitted by right in the Planned Unit Development - Industrial District (M-1), subject to all applicable development and performance standards:
 - Commercial office and retail uses pursuant to a Planned Unit Development.
 - Manufacturing and industrial uses pursuant to a Planned Unit Development.

- The City of Bel Aire, Kansas (the “City”) published notice of the public hearing in *The Ark Valley News* on June 22, 2023, and mailed notices to the property owners within the notification area as prescribed by statute and Bel Aire City Code. Because the zoning change impacts property located adjacent to City limits, the notification area was expanded to 1000ft to said properties outside of the Bel Aire City limits.

Legal Considerations:

- Chapter 18, Article 5, Section 18.5.2 of the Bel Aire City Code (relating to Zoning Regulations) provides guidelines for matters which may be considered when approving or disapproving a zone change request. The Planning Commission may find that not all factors will be relevant to this zone change request. Matters that are determined by the Planning Commission to be important will be the basis for the Planning Commission's recommendation. In order to properly make a recommendation to the City Council, the Planning Commission should make specific and substantiated findings supporting its recommendation.

Findings of Fact

The following are the rezoning factors the Planning Commission should consider, a brief explanation of each factor, and staff’s opinion on findings for each factor.

1. **CHARACTER OF THE NEIGHBORHOOD:** *(Factual description of the application area and surrounding property as to land usage, density, intensity, general condition, etc.)*
 - a. The subject property is on the north edge of the current City limits and development area.
 - b. The subject property is the last piece of four lots between Rock and Webb Rd, which other three (3) parcels have already been zoned M-1 for commercial/industrial purposes.
 - c. Currently, the neighborhood is characterized by agricultural, institutional, commercial, industrial, mixed-use, and residential multi-family but is a good prospect for large mixed-use due to its peripheral location in the City limits.
 - d. The subject property is a logical placement for an Industrial PUD due to its proximity to a major highway (Hwy 254) and the arterial Rock Rd.
2. **ZONING AND USES OF PROPERTIES NEARBY:** *(Factual description of surrounding property as to existing zoning and land uses.)*

| Direction/Area | Zoning Classification(s) | Land Use(s) |
|-----------------------|--|---|
| North/Sedgwick County | Agriculture County zoning | Farming/Ranch Use |
| South/Bel Aire | C-1 “Neighborhood commercial, office and retail, R-3 “Single-family residential” R-5 “Garden and patio homes, townhouses and condominiums” | Apartments, office, condos, Northeast Magnet School |
| East/Bel Aire | M-1 “Planned Unit Development – Industrial” | Vacant |
| West Northwest/Kechi | R-1 “Single-family residential”, C-3 “Heavy commercial”, I-1 “Industrial” | Single-family, Northpoint Centre Commercial, KDOT |

3. **SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED:** *(How is the property currently zoned and what uses are allowed on the property? Are there uses suitable given surrounding zoning and site criteria? Are the current allowed uses the only ones that might be appropriate for the property?)*
- a. The property is currently zoned Agricultural District (AG) which is intended to maintain and enhance agricultural operations and preserve agricultural lands utilized for crop production or the raising of livestock.
 - b. The “holding zone” for newly annexed land in the City is Agricultural and this parcel has been given that zoning classification since annexation.
 - c. While the subject property continues to be suitable for AG zoning, the opportunity for development through a PUD or other zoning classification would provide development opportunities and growth opportunities for the city.
 - d. In the Jobs Focus Scenario of Bel Aire growth delineated in the Master Growth Plan adopted by the City, the area between Rock and Webb along Hwy 254 was planned with the potential for large-scale mixed use or commercial.
 - e. The subject property is proximate to existing development, has suitable topography for development, and is located in an area where infrastructure and services are available to be extended to support development.
 - f. The subject property is a logical placement for an Industrial PUD due to its proximity to a major highway (Hwy 254) and the arterial Rock Rd.
4. **EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY:** *[Can the uses allowed in the requested district by good neighbors to existing development? **This is a subjective question.** The focus should be on facts, not fears, and should be based on issues that zoning can address (e.g., allowed uses, minimum lot sizes, height, setbacks, traffic, etc.)*
- a. The proposed planned development is located along the Hwy 254 corridor where such uses are likely and beneficial. Site development standards such as screening and landscaping requirements will mitigate detrimental effects from planned development on nearby residential or other uses, both required or proposed.
 - b. Traffic generation will be likely with the zoning change, but studies and engineering are currently underway along Hwy 254, Rock Rd., and Webb Rd. to mitigate negative impact of added traffic to surrounding developments and to ensure the safest, most effective route to any other development.
 - c. The Planned Unit Development - Industrial District (M-1) requires a screening and buffering plan per the Zoning Regulations that will benefit properties west and south of the subject property. The PUD also gives staff the opportunity to review plats and plans before any building commences to ensure other properties are not negatively affected by the development.
5. **LENGTH OF TIME THE SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED:** *(Factual information, but its importance may be somewhat subjective. A property may be vacant because the current zoning is unsuitable, but there may be other reasons not related to zoning. Some examples might be a glut of available property of the same zoning district, financing problems, land speculation, fragmented ownership, lack of available public services, or other development problems.)*

- a. The property is currently vacant and has been so since annexed in 2003.
- 6. RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY, AND WELFARE BY DESTRUCTION OF VALUE OF THE APPLICANT'S PROPERTY AS COMPARED TO THE HARDSHIP ON OTHER INDIVIDUAL LANDOWNERS:** *(The protection of public health, safety, and welfare is the primary basis for zoning. The relationship between the property owner's right to use and obtain value from their property and the City's responsibility to its citizens should be weighed.)*
- a. The proposed rezoning to a PUD will be developed in accordance with the City's development standards that will mitigate any potential hazards to the public health, safety, and welfare.
- b. If successfully developed into an industrial project, the City will gain a significant number of local, high-paying jobs which will attract additional residents and promote surrounding development of other commercial, retail, and residential development. The result is potentially a material increase in the tax base, city services, and quality of life in the City.
- c. Staff cannot anticipate the effects on property values. If developed, surrounding property values may increase significantly from the economic activity. Decrease of property values for residential property immediately adjacent to an industrial site is also possible.
- d. If the zone change is disapproved, the value of the applicant's property will presumably be diminished because the PUD request will not be allowed.
- 7. CONFORMANCE WITH THE COMPREHENSIVE PLAN:** *(Does the request agree with the adopted plan recommendations? If not, is the plan out-of-date or are there mitigating circumstances which speak to the nonconformity?)*
- a. While the Comprehensive Development plan is somewhat dated (not reflecting surrounding property subsequently zoned M-1 PUD), the vision map adopted by the Governing Body in 2014 nonetheless has the subject property as a potential commercial zone with surrounding mixed use. Increasing the intensity level of the subject property to M-1 PUD would not be unreasonable or create burden for other possible development trends of the City.
- b. The following are aspects of the Comprehensive Development plan that support the zoning change.
- c. Goal 1: Land should be developed within the corporate boundaries which continue the high quality of life for the citizens of Bel Aire and to produce efficient and effective delivery of public services to the growing community.
Objective 1: Encourage congruent land uses that are compatible and developed in a lowest-impact method to adjacent properties.
Recommendation b. Focus higher-impact developments on the peripheral of the city.
- d. Goal 4: The City must support economic development and diversification to ensure a stable and healthy financial growing community supports the development through the subsequent objectives:
Objective 2: Maximize revenue generated from developments which will provide the most return for the investment and land use.

Recommendation b. Ensure location of development is planned in an orderly process (a PUD would ensure this type of development)

Recommendation c. Ensure zoning and building policies reflects progression of development.

Objective 3: Move from sole residential community to a full-service community with diverse city services. The inclusion of possible large-scale development would encourage the development of other services (i.e., desirable businesses to follow).

8. **PROPERTY OWNER OPINIONS:** *The opinions of other property owners may be considered as one element of a decision in regard to the amendment associated with a single property, however, a decision either in support of or against any such rezoning may not be based upon a plebiscite of the neighbors.*

- a. An initial public hearing held prematurely on May 11, 2023 produced some public opinion (mostly residences west of Rock Road) opposed to the rezoning. Cited concerns included traffic, safety, lighting and property values. Subsequently, a protest petition from some property owners was filed on May 24, 2023 which addresses some of the factors differently than staff. The Planning Commission has been provided a copy of this petition.
- b. While residential property owners on the west side of Rock Road have offered opposition, staff believes most concerns can be properly addressed in the Planned Unit Development and Site Plan review.

9. **RECOMMENDATION OF PROFESSIONAL STAFF:** *[Should be based on the evidence presented, the factors, adopted plans and policies, and other technical reports (e.g., Capital Improvement Programs, facility master plans, etc.) which speak to the topic and staff's best professional judgement.]*

- a. Based on the preceding findings, staff recommends approval of the zone change request.

RECOMMENDED MOTION:

- I move to adopt the findings of fact of the staff *[as presented/as amended by this Planning Commission]* and recommend to the City Council approval to change the zoning district classification of the subject property from Agricultural District (AG) to Planned Unit Development - Industrial District (M-1) based on such findings of fact.

Jay Cook

From: Jeff Englert <jenglert@naimartens.com>
Sent: Tuesday, July 11, 2023 11:28 AM
To: Jay Cook; Ty Lasher
Subject: Item V.A on the Planning Commission Agenda for ZON-23-01

Ty/Jay,

I was just made aware of the planning commission agenda item regarding the proposed zoning change this coming Thursday at K-254 and Rock. I would attend the meeting to speak in support of the proposed zoning change from AG to M-1 for this property. However, I am out of town. Therefore, I wanted to email you to communicate my support for this zoning change. Thanks

Jeff Englert
Senior Vice President
NAI Martens
1330 E. Douglas Ave.
Wichita, KS 67214
Cell 316.214.3436

NAI Martens will never request or send wire transfer instructions by email. If you receive a request for this information, please contact the sender at 316-262-0000.

Jay Cook

From: Ty Lasher
Sent: Thursday, July 13, 2023 3:25 PM
To: Jay Cook
Subject: FW: Zoning change at Rock and 254 from Ag to Manufacturing



Ty Lasher
City Manager
7651 E. Central Park Ave.
Bel Aire, KS 67226
P: (316) 744-2451 ext:



From: drgarybro@cox.net <drgarybro@cox.net>
Sent: Thursday, July 13, 2023 3:22 PM
To: Ty Lasher <TLasher@belaireks.gov>
Subject: Zoning change at Rock and 254 from Ag to Manufacturing

Hi Ty,

Hope you're doing well. Jim asked to attend or email you with support for the proposed change needed for the Integra Development project.

I don't think I will be able to make it to the planning commission meeting tonight but he said it would be helpful for me to email you and let you know that I support the zoning change.

This is an incredible opportunity for Bel Aire and the surrounding area including Kechi. Business development in the area is inevitable. We are fortunate to have this type of business interested in relocating here.

I understand the local residential concerns, and these concerns can be addressed in the PUD process.

Gary L Breault
Heartland Animal Hospital
4100 N Woodlawn
Bel Aire, Ks 67220
316-744-2043

Jay Cook

From: Ty Lasher
Sent: Wednesday, July 12, 2023 7:17 AM
To: Jay Cook
Subject: FW: Planning Commission Agenda on July 13,2023



Ty Lasher
City Manager
7651 E. Central Park Ave.
Bel Aire, KS 67226
P: (316) 744-2451 ext:



From: Thomas Heiman <tjheiman@prodigy.net>
Sent: Tuesday, July 11, 2023 9:35 PM
To: Ty Lasher <TLasher@belaireks.gov>
Cc: Jim Benage <JBenage@belaireks.gov>
Subject: Planning Commission Agenda on July 13,2023

Mr. Lasher,

Do to a prior commitment, I can not attend the Planning Commission meeting on July 13, 2023 but as a resident of Bel Aire, I would like to share my feelings on for item V.A on the agenda for Zon-23-01.

As a resident of Bel Aire for 22 years, this note is in support of a zoning change at K-254 and Rock road fro AG to M-1. This change will help the citizens of Bel Aire in multiple ways which makes the change very logical.

Thanks for the opportunity to give input.

Tom and Jeanne Heiman
4953 N. Parkhurst Ct.

Petition Protesting 7/13 Planning Commission Recommendation

As explained below, the decision of the Planning Commission to recommend approval of ZON-23-01 was so wide of the mark that its unreasonableness lies outside the realm of fair debate.

Character of the Neighborhood.

Jay Cook, Director of Planning and Development conceded at the 7/13 hearing that major highways like K254 serve as boundaries for zoning decisions. At the May 11 hearing, Commissioner Jordan specifically and candidly pointed out that the M1 zoning to the east of the property is not “character” because nothing has been built on it yet, and because zoning is specifically considered in factor 2. No commissioners voiced disagreement with this characterization by Commissioner Jordan.

Thus defined, the “character of the neighborhood” is predominantly agricultural and rural residential, with one high school, one medical office, and some multi-family housing thrown in.

Bel Aire Zoning Ordinance 18.7.1 recognizes that Rural Residential Districts are appropriate “where a neighborhood character of single-family dwellings on large lots has been established.” And the AG district “is intended to maintain and enhance agricultural operations and preserve agricultural lands utilized for crop production or the raising of livestock.” Those neighborhood characters are simply not compatible with an M-1 District. In fact, they are at nearly opposite ends of the density spectrum, as Bel Aire has consistently recognized.

Properties to the northwest of the subject property are not part of the Bel Aire Planning Area, as recognized by the 2014 Comprehensive Plan: “The “Bel Aire Planning Area” as delineated for this Plan includes the City and properties to the North and East of the current developed land in the City limits of Bel Aire as illustrated in the “Vision” Future Land Use Map.”

This factor weighs in favor of denying the application for rezoning.

Zoning and Uses of Properties Nearby

The City’s presentation included properties that are north of 254 and west of Rock Road, and thus not “nearby.” Jay Cook, Director of Planning and Development

conceded at the 7/13 hearing that major highways like K254 serve as boundaries for zoning decisions. The presentation also focussed on property that has been “zoned” M-1” but never “used” as M-1.

The M-1 rezoning of the property that is nearby the subject property is entitled to little weight because it is very recent (April of 2022), and the approval of that zoning change was based in part on four factors that do not exist for the current proposed rezoning.

First, as noted in the April 15, 2022 Staff Report, when the Commission applied the Golden Factors it was apparently with the understanding that traffic would come from Webb Road - already a four-lane road, and that “intersection plans [were] in the works with KDOT” for a “a proposed interchange at K-254 and Webb Road.” No similar plans have been identified as “in the works” for an interchange at K-254 and Rock Road. Also, Webb Road is already a four-lane road with shoulders on both sides. Rock is a two-lane road with no shoulders.

Second, the April 15 Staff Report pointed out that “the requested M-1 zoning is about as far away from rural residential as one can get.” That is not the case for the current proposed rezoning, which is “about as close to rural residential as one can get.” The Staff Report did say that “you can’t expect that this area will stay rural forever –especially with it being this close to a City and with the intersection plans in the works with KDOT” - but it was obviously referring to plans for the intersection at 254 and Webb, not the intersection at 254 and Rock.

Third, the approval of the zoning change was apparently based in part on the recommendation in the Staff Report that, through the PUD process, the “Planning Commission will have the opportunity to ensure that a buffer is created between the residential area to the west and the school to the south.” In other words, a property that is “generally located about ¼ mile east of Rock Road” would require a buffer between it and the rural residential district that is east of Rock Road, and the high school that is south of the annexed property. It would be illogical and irrational to suggest a buffer in 2022 between M1 and Rural Residential properties that are separated by a quarter mile, but then use that zoning change the very next year to justify rezoning to M1 the property that is immediately adjacent to the Rural Residential properties.

Lastly, the Staff Report points out that “No interested parties, other than the agent for the applicant showed up to speak either for or against the proposed rezoning.” that is certainly not the case here, where there is significant opposition to the proposed rezoning. ■ April 2022 Minutes.pdf

The proposed zoning change would be contrary to Goal 1, Objective 1 of the 2014 Comprehensive Plan: “Encourage congruent land uses that are compatible and developed in a lowest-impact method to adjacent properties.”

This factor weighs in favor of denying the requested zoning changes - the existing uses favor denial, and the adjacent M1 zoning was approved in 2022 based on the premise that the site would use 254 and Webb for access, and that the property rezoned in 2022 would include a buffer to the Rural Residential property, and that the property that is currently requesting rezoning would also act as a buffer between M1 and Rural Residential.

Suitability of the Subject Property for the Uses to Which it Has Been Restricted

The Staff Report recognizes that the land is zoned as AG, which “is intended to maintain and enhance agricultural operations and preserve agricultural lands utilized for crop production or the raising of livestock.” ((Emphasis added). The Staff Report doesn’t say anything about why the property is no longer “suitable” for that use, and there is no apparent reason why the land is unsuitable for “raising of livestock.” In fact, Mr. Cook conceded at the hearing that the subject property is *suitable* for agricultural use. Mr. Cook argued that AG is not the *most suitable* use for the subject property - but both the Zoning Regulation and the *Golden* case refer to “suitability” - not “most suitable.”

The Staff Report claims that “The holding zone” for newly annexed land in the City is Agricultural.” But Zoning Regulation 18.6.3. says: “All land which is hereafter annexed into the City shall be zoned AG – Agricultural until such classification shall have been changed by an amendment to the zoning regulations as provided by this Code. A written agreement with the landowner prior to such annexation to designate a specific zoning district designation other than AG may be approved as part of the Annexation process.” . The Staff Report does not mention any such written agreement. Also, if newly annexed land starts as AG, the rezoning still must meet all the requirements of the Zoning Regulations. In other words, starting as AG in annexation does not lower the hurdle for changing the zoning classification - contrary to the City’s argument at the hearing.

Also, land that is annexed does not automatically fall into a “holding zone.” Instead, under 18.7.0, “Agricultural District may serve as a “holding zone” for land where future urban expansion is possible, but not yet appropriate due to the unavailability of urban level facilities and services. (Emphasis added). The Staff Report says nothing about the unavailability of urban level facilities and services when Bel Aire annexed and zoned the land in May of 2003. No evidence was presented at the hearing that “urban level facilities and services” were not available when the property was annexed in 2000. In fact, Mr. Cook’s statement at the

hearing that those facilities “may not” have been available in 2000 is a tacit admission that those facilities *may have been* available in 2000.

To summarize, it does not appear that this land really is a “holding zone”, and even if it was that would not help satisfy this “suitability” factor.

The subject property was used by Bel Aire for agricultural purposes from the time Bel Aire bought the land in 2003, until it sold the land in 2023. There was no written agreement with the prior owner to designate the land as anything other than an Agricultural District. The City has never designated the land as a “holding zone” or as temporary commercial or industrial special uses. There was no evidence of unavailability of urban level facilities and services when Bel Aire annexed and zoned the land in May of 2003. There is nothing about the subject property that makes it “unsuitable for the uses to which it has been currently restricted” - i.e. Agricultural.

This factor weighs in favor of denying the application for rezoning.

Extent to Which Removal of the Restrictions Will Detrimentially Affect Nearby Property

Mr. Cook conceded at the hearing that the City does not know whether the zoning changes will increase the value of neighboring properties, or decrease those values. Statements from Dr. Donnis McPhaul quoted from research that suggests that the additional noise and traffic would decrease those values, and the city offered no evidence to rebut that research.

Mr. Cook conceded at the hearing that the zoning change will bring additional traffic, and the applicant asked Matt Cortez to address that concern. Mr. Cortez explained that KDOT is considering eliminating the K254-Rock interchange, but conceded that the timetable for that is uncertain. Nobody from KDOT spoke at the hearing, but a KDOT representative has told neighbors that the K254-Rock flyover will not be completed in time to alleviate traffic that the zoning change will cause. This presentation was a tacit admission by Staff that “we don’t know yet what the traffic impact will be on nearby properties, but we are hoping for something good from some unnamed “studies and engineering.”

If the City Council is placing *any* reliance on this paragraph, it should table the vote on the rezoning until it can review the “studies and engineering” that might mitigate the increased traffic.

The Master Plan states that “higher intensity land uses tend to negatively impact lower intensity uses.” It is undisputed that M1 is a “higher density” than the

current AG land use of the subject property, than the Rural Residential land use that is to the west, than the multi-family housing that is to the south, than the high school that is to the south, and to the agricultural land that is to the southwest. Thus, according to the City's own Master Plan, approving the zoning change will negatively affect nearby properties. There is nothing in the Master Plan that says this negative impact will not happen if there is a PUD.

The 2016 Bel Aire Master Growth Plan requires avoiding this detrimental impact by: "[a]llowing adjacent land uses to be separated by no more than one intensity level." The Plan does not provide an exception to this requirement where there is PUD. The intensity levels between the proposed M-1 district and the adjacent properties in every direction are separated by more than one intensity level.

The first sentence of the "Basic Land Use Concepts" provides:

"Land uses are planned and regulated according to intensity, which describes the level of activity and density of a use, along with the associated impacts. The activities of higher intensity land uses tend to negatively impact lower intensity uses. For example, a manufacturing plant typically has a fairly high level of activity, which may produce noise and traffic that affect nearby homes."

This is exactly the situation created by the proposed zoning change. The proposed change is from agricultural - the lowest density - to industry/manufacturing - second in density only to Utility/Infrastructure. And it is directly adjacent to Rural Residential density and Agricultural density.

A comparison of 18.7.0 (AG) to 18.7.13 (M-1) shows that virtually none of the Permitted Uses or Accessory Uses that rezoning to M-1 would allow are allowed under the AG District. So, virtually all of the AG restrictions would be "removed." 18.1.3 explains that the purpose of the zoning regulations is "To establish a variety of zoning district classifications according to the use of land and buildings with varying intensities of uses and standards whose interrelationships of boundary zones form a compatible pattern of land uses and buffer areas which enhance the value of each zone." If the zoning change were approved, there would be no buffer zone between Rural Residential and the incompatible M-1 uses that are proposed by the requested zoning change. The applicant has presented no facts to show that the proposed zoning change would "enhance the value of each zone" - especially the adjacent Agricultural and Rural Residential zones. Nor has the applicant presented evidence that the proposed rezoning would "enhance the value of" the high school, the apartment complex, the medical office, or the agricultural land on the west side of Rock Road.

It is undisputed that the zoning change, without any mitigation, will increase traffic on Rock Road, and drastically increase the risk of accidents at 254 and Rock Road. The Commission lacks the necessary facts to quantify or even estimate this detrimental effect until it receives results from any studies and engineering that might currently be underway along Hwy 254, Rock Rd., and Webb Rd. to mitigate negative impact of added traffic.

Other potential detrimental effects to nearby properties include: light pollution, environmental pollution, water usage, obtrusive utility lines, encroachment on property by widening Rock Road, noise, and hours of operation. The commission lacks the necessary facts to quantify or even estimate these detrimental effects until it receives results from any studies and engineering that might currently be underway.

This factor weighs in favor of denying the application for rezoning.

Length of Time the Subject Property Has Remained Vacant as Zoned

Mr. Cook's presentation to the Planning Commission treated the subject property as "vacant." But land that is being used for agricultural is not "vacant" - it is agricultural. And "not purchased" does not mean "vacant."

Golden v. City of Overland Park, 224 Kan. 591 (Kan. 1978) created the eponymous Golden Factors, and that case makes it clear that the question for this factor is whether the subject property remained vacant because the applicant for the zoning change "was unable to make any economically feasible use of his property under the existing zoning." *Id.* at 599. In that case, the applicant presented evidence that a glut in the market for office space made it impossible for him to make any economically feasible use of his property under the then-existing zoning that limited the land use to commercial office buildings.

In the current rezoning application, no facts have been presented to show that the current or former land owners have been unable to use the land for "raising livestock" or the other permitted uses under the existing AG zoning. Instead, the subject property has been used for "raising livestock" during the entire time that Bel Aire owned property, and the current owner has presented no evidence to show that they would be unable to make any economically feasible use of the property under the existing Ag zoning. Unlike in *Golden*, there has been no showing that there is a glut on the market for agricultural land. It is not enough for the property owner to show that they could make *more* money if the rezoning is approved.

This factor weighs in favor of denying the application for rezoning.

Relative Gain to the Public Health, Safety, and Welfare By Destruction of Value of the Applicant's Property As Compared to the Hardship on Other Individual Landowners.

This factor focusses on the “gains” achieved by denying the zoning change, compared to the hardship upon the owner that applies for the zoning change. The Staff Report and the City’s presentation to the Planning Commission pulls this factor from 18.5.2.E.10, which is apparently pulled from page 598 of *Golden v. City of Overland Park*, 224 Kan. 591 (Kan. 1978). But both the Staff Report and the presentation incorrectly inserted the word “other” before the words “Individual Landowner.” The Kansas Supreme Court described this factor in *Golden* this way: “the relative gain to the public health, safety, and welfare by the destruction of the value of plaintiff’s property as compared to the hardship imposed upon the individual landowner.”(Emphasis added).

The City’s replacement of “the” with “other” in the Staff Report confuses the meaning of this factor. As written by the Kansas Supreme Court, this factor is intended to compare the gain to public health, safety and welfare that would be achieved by denying the request, with the hardship that denial would impose on the “individual landowner” that requested the zoning change. This is how the Kansas Court of Appeals interpreted this factor at pages 1272 and 1276 of *R.H. Gump Revocable Trust v. City of Wichita*, 131 P.3d 1268 (Kan. Ct. App. 2006).

The “facts” included in the Staff Report do not address either the gain that denial would bring to public health, safety, and welfare, nor the hardship that denial would cause the owner of the subject property.

Denial of the proposed zoning change would benefit the public health, safety, and welfare because it would avoid a drastic increase of traffic through the dangerous intersection of 254 and Rock Road, and would avoid the additional drain on resources and potential environmental hazards that a large industrial site might create - as compared to the current agricultural uses. The ability of a PUD to mitigate these risks is speculation at this point. The landowner has not presented any facts to show that denial of the proposed zoning change would impose any undue hardship on them. It is not enough for the property owner to show that they could make *more* money if the rezoning is approved.

This factor weighs in favor of denying the application for rezoning.

Conformance With the Comprehensive Plan

The Comprehensive Plan does not show the entire subject property as M1. Instead, part of the subject property is shown as commercial.

The Staff Report and the Staff's presentation at the hearing pointed out that the Comprehensive Plan supports maximizing revenue for the City and using the periphery for industrial and commercial, but neither the report or the presentation informed the Commission about parts of the Comprehensive Plan and Master Plan support denial of the proposed zoning change.

18.5.2.E.12 refers to the "master plan" - not the Comprehensive Plan. :

The proposed rezoning does not conform with the adopted or recognized master plan being utilized by the city. Instead, the proposed rezoning violates fundamental protections in the Bel Aire Master Plan - protections that are intended to protect nearby properties from detrimental effects. Specifically, the first sentence of the "Basic Land Use Concepts" provides that: "The activities of higher intensity land uses tend to negatively impact lower intensity uses. For example, a manufacturing plant typically has a fairly high level of activity, which may produce noise and traffic that affect nearby homes." Similarly, the 2016 Bel Aire Master Growth Plan requires "Maximiz[ing] compatibility between land uses to preserve community character" by "[a]llowing adjacent land uses to be separated by no more than one intensity level." The difference in intensity levels between the proposed M-1 rezoning and all of adjacent properties would be greater than one.

Section 18.1.5 provides that "Where any nonconformity with the Comprehensive Plan or other planning policy may be perceived, the provisions of these regulations shall control."

Objective 1 for Goal 1 strives to: "Encourage congruent land uses that are compatible and developed in a lowest-impact method to adjacent properties." The proposed M1 zoning would not be compatible with the adjacent agricultural or rural residential uses.

Objective 2 for Goal 4 includes: "Avoid development that would create a negative impact on the quality of residential life." The proposed zoning change would be counter to this objective.

This factor weighs in favor of denying the application for rezoning.

Property Owner Opinions

The protest petition filed on May 24 includes opinions of other property owners that are opposed to the proposed rezoning. Property owners spoke against rezoning at both the May 11 and July 13 hearings.

Although three Bel Aire residents spoke in favor of the rezoning, they offered no explanation for how the rezoning would impact their properties - only that they favored the rezoning because it would benefit Bel Aire as a whole. Those opinions may help the City with the Golden Factor that addresses public welfare, but they have no bearing on the Golden Factor that addresses property owner opinions, because their statements had no logical connection to their status *as a property owner*. Similarly, the emails that Mr. Cook read to the commission add nothing to this Golden Factor because the authors were not available to answer any questions, and their comments were written from the perspective of a Bel Aire resident, and not a property owner.

Some of these Bel Aire residents stated, without citing any supporting evidence, that Bel Aire's intention since it bought the subject property in 2020 was always to convert it to industrial property. But Rural Residential (including Heritage Hill) and Agricultural uses were here *before* 2020. In other words, "we were here first"! If Bel Aire truly bought the subject property with the intention of converting it to industrial uses, then it shouldn't have bought the property in the first place, and it would have avoided its current predicament: A rezoning that would violate fundamental precepts of zoning and of its own master plans.

This factor weighs in favor of denying the application for rezoning.

Recommendation of Professional Staff

Because the staff recommendation is based on a misinterpretation or misapplication of the Golden Factors and 18.5.2.E, the staff recommendation is entitled to little weight.

Heritage Hills Protest Petition

ZON-23-01

The undersigned residents of Heritage Hills lodge this petition, protesting the decision by the City of Bel Aire Planning Commission to recommend the proposed rezoning from AG ("The current use farm ground") to M-1, on the following grounds:

1. The Official Notice of Zoning Hearing (Notice) may have violated 18.5.2.B.2., of the Bel Aire City Code (the "code") because, according to the Staff Report, the Notice was only sent to "the property owners within the required distance of 200 ft.", even though the Code requires "If a proposed zoning change impacts property which is located adjacent to the city's limits, the area of notification of the action shall be extended to at least 1,000 feet in the unincorporated area."
2. According to the Bel Aire Zoning Application form, "A site plan is required as part of every zoning change application submitted to the City." The form also emphasizes that: "AN INCOMPLETE APPLICATION CANNOT BE ACCEPTED." Bel Aire accepted the site plan, despite the failure of the site plan to meet the following requirements (as explained on the application form):
 - a. An arrow to indicate the north direction
 - b. A scale that is "adequate to portray the project, Lot or structure"
 - c. Dimensions in feet noted for all sides of key features ("lot, buildings, driveway, etc.")
 - d. "Utilities, above and below ground"
 - e. "Drainage patterns"
 - f. "All required zoning setbacks and easements: Using a dashed line, indicate all required zoning setbacks and utility, drainage, or other easements relative to the project, Lot(s) or structure."
 - g. "Indicate surrounding uses and zoning as they apply to the request."
 - h. "Indicate any modifications to the existing structures or features that will result if the zoning change request is approved." Including, buildings, structures, parking areas, vehicular drives, pedestrian walks, location and height of light fixtures, location of trash receptacles and loading areas, landscaped areas.

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| BY City Clerk | DATE 5/24/2023 |

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- i. Instead of providing the “particular reason for reclassification”, the application simply, and perhaps incorrectly states: “For commercial development.”
 - j. It is not clear whether the application bears the signature of all the property owners, or if a written notarized authorization by the owner(s) was provided or required.
3. As set out in the paragraphs above, “procedures in conformity with law were [NOT] employed by Bel Aire.” These procedural nonconformities are a reason to reject the recommendation of the commission, as established in *Golden v. City of Overland Park*, 224 Kan. 591 (Kan. 1978).
4. Turning to the substance of the decision, as directed by *Golden v. City of Overland Park*, 224 Kan. 591, 596 (Kan. 1978), and as explained below, the action of the Bel Aire Planning Commission “was taken without regard to the benefit or harm involved to the community at large including all interested parties and was so wide of the mark its unreasonableness lies outside the realm of fair debate.”
5. (1) The character of the neighborhood. The character of the surrounding neighborhood weighs against approval. Commissioner Jordan specifically and candidly pointed out that the M1 zoning to the east of the property is not “character” because nothing has been built on it yet, and zoning is specifically considered in factor 2. That leaves only the *residential* “character of the surrounding neighborhood.” No commissioners disagreed with this characterization by Commissioner Jordan.
6. (2) the zoning and uses of properties nearby. Zoning of nearby property weighs against approval. Commissioner Jordan tried to piece together from memory the zoning of the neighboring properties, and concluded that roughly 25% was M1, but 75% was residential – along with the Northeast Magnet High School. Commissioner Jordan and at least one other commissioner pointed out that neither the applicant nor the Bel Aire staff provided the information necessary for the commission to understand the zoning of nearby property and properly apply this “Golden Factor.” At least one commissioner pointed out that they are volunteers, and that the paid and permanent and permanent staff of Bel Aire should have provided this critical information. This should minimize the weight (if any) placed on the Golden Factor for the “recommendations of permanent or professional staff.” If the Commission is not provided the information that they need to make a reasoned decision that considers all of the Golden Factors, then the “unreasonableness [of the decision] lies outside the realm of fair debate.” This also means that the Golden Factor “recommendations of permanent or professional staff” should

not carry much, if any, weight. Based on a quick review of the 2016 Zoning map, it appears that none of the ground in the Section that we are concerned about is zoned as M1. Instead, that section is 75% AG, and the other 25% is a split between Residential and Commercial.

7. (3) the suitability of the subject property for the uses to which it has been restricted; Commissioner Jordan noted 254 and “main arterial roads”, but it wasn’t clear if he meant Webb or Rock or both as arterial roads. This distinction between Webb and Rock is significant to the “suitability of property” factor, and entirely ignored by the Commission. Webb is four-lane, has adequate turning lanes, and a wider median at 254 than Rock Road has. This wider median is essential: the 254-Rock interchange has a well-deserved reputation as a fatally dangerous intersection.

Also, Webb Road does not have a high school less than a mile from the property - Rock Road does. USD 259 estimates that 70 buses load and unload every day at Northeast Magnet High School each school day. The Director of Pupil Transportation for USD 259 confirmed that nobody from Bel Aire contacted them about the proposed rezoning - let alone sought their input about the proposed Integra plant.

Similarly, a representative of the K254 Corridor Development Association indicated that the Association was surprised when they were told about Integra building at that intersection, and that the Association won’t have a plan for that intersection until the summer of 2024.

Similarly, residents of Willow Bend are concerned that, if the access to Integra is off of Rock Road, Wichita may be compelled to expand Rock Road from 45th Street south through Willow Bend, ruining the curved sidewalks and tree lines that were part and parcel of the design of Willow Bend. The HOA is concerned about the impact on the picturesque nature of the neighborhood. Willow Bend may well “fight” to move access to Integra eastward to Webb where a housing community does not currently exist.

This failure to even *consider* this distinction between Rock and Webb, and to engage key stakeholders before announcing the Integra plant demonstrates that the “unreasonableness [of the Commission’s decision] lies outside the realm of fair debate.”

8. (4) the extent to which removal of the restrictions will detrimentally affect nearby property; Commissioner Jordan pointed out the commission had no

information on this point, other than the current neighbors expressing their concern that property values would fall. One neighbor commented that “if you think this doesn’t hurt property values, you can buy my house.” The Commission had *no* response to this comment. The chair of the Commission, in an apparent attempt to justify approving the zoning change, mentioned that he casually asked this question of two real estate professionals (apparently outside the context of this specific request to changing zoning) and the responses were along the lines of “I don’t know” and “Meh.” The Chair’s basic point was “we care about people, but this is progress and we can’t stand in the way of progress.” With due respect to the Chair and his good intentions, applying a Golden Factor does *not* mean ignoring the factor if you lack the information necessary to apply the factor! And it does not mean ignoring the Golden Factors simply because they stand in the way of “progress.” If the professional staff failed to provide any evidence of this factor to the Commission, or to explain that the Commission can’t apply a factor if they lack the necessary information, then the Golden Factor “recommendations of permanent or professional staff” should not carry much, if any, weight.

Indeed, the only evidence about the impact on value comes from Bel Aire’s own Master Plan¹, where the first sentence of the “Basic Land Use Concepts” provides:

Land uses are planned and regulated according to intensity, which describes the level of activity and density of a use, along with the associated impacts. The activities of higher intensity land uses tend to negatively impact lower intensity uses. For example, a manufacturing plant typically has a fairly high level of activity, which may produce noise and traffic that affect nearby homes.

This is *exactly* the situation created by the proposed zoning change! The proposed change is from agricultural - the *lowest* density - to industry/manufacturing - second in density only to Utility/Infrastructure. And it is directly adjacent to Residential Urban Density!

Thus, this factor weighs heavily against approval.

¹ This Protest Petition refers to the Master Plan that was retrieved from the Bel Aire website on 5/21. The 5/5/23 Staff Report that recommends approval of the zoning change refers to a “2018 Master growth plan” [sic]. Because the Master Growth Plan on Bel Aire’s website is not dated, it isn’t clear whether the Staff Report is referring to the same Master Growth Plan that Bel Aire has posted on its website. If the Staff Report is referring to a different master growth plan, the Petitioners reserve the right to revise this Petition.

9. (5) the length of time the subject property has remained vacant as zoned

This factor also cuts against approval, because this agricultural land hasn't been "vacant" – it has been used for agriculture. Commissioner Dee Ann Roberts commented on seeing calves born on the properties. This factor weighs toward a zoning change only where the property sat vacant because it was no longer suitable for the existing zoning classification, which isn't the case here. The Notice does not claim that the subject property is or has been vacant. Instead, the Notice explains that: "'The current use farm ground.'" If that description is correct, then this Golden Factor weighs against approval. If that description is incorrect, then the staff failed to perform their duties, and the Golden Factor "recommendations of permanent or professional staff" should not carry much, if any, weight.

10. (6) the relative gain to the public health, safety, and welfare by the destruction of the value of plaintiff's property as compared to the hardship imposed upon the individual landowner. There was no evidence presented by the applicant, nor suggested by the commission that the zoning change would provide any "gain to the health, safety, and welfare." And the Commission frankly confessed that they didn't have a clue about the "destruction of the value of the plaintiff's property." But there *was* evidence of the "hardship imposed upon the individual landowner." This evidence was unrebutted, and included:

- a. Some residents moved to Heritage Hills decades ago to enjoy the lack of traffic, lack of light at night, and lack of sound - all of that is at risk.
- b. Some residents would rather sell their house than live across the street from a property that employs 2,500 people and costs about \$2 billion to build.

11. In addition to not meeting *any* of the *enumerated* Golden Factors, the proposed zoning change does not conform to the City's master zoning plan, for several reasons.

First, the Master Plan explains: "Bel Aire prides itself a city of the future with respect for its past. The title 'Progress with Principles' was conceived to reinforce this motto. It conveys the Plan's intent to guide growth into the future while preserving the fabric of existing neighborhoods and maintaining Bel Aire's unique character." Neither the applicant nor the Commission explained how the proposed zoning change would "preserve the fabric" of Heritage Hills.

Second, the proposed zoning change is inconsistent with the directive to "Adhere to the Preferred Balanced Growth Scenario to ensure land uses are developed in appropriate locations." The proposed zoning change does *not* adhere to the Preferred Balanced Growth Scenario Map because it would place adjacent parcels that are separated by more than one intensity level. The parcel for which the zoning change is sought is Mixed Use/Local Commercial. The Master Plan describes this as: "Low-intensity commercial uses with a local market area such as retail stores, restaurants, offices and personal services (i.e. bank, barber, doctor). Sites may be developed with individual uses or a compatible mix of local commercial uses and housing." That zoning would not be compatible with the directive in the Master Plan to "Allow adjacent land uses to be separated by no more than one intensity level . . . "because Residential Suburban Density is within one intensity level of Mixed Use/Local Commercial. The proposed zoning change would allow adjacent land uses to be separated by a whopping *four intensity levels!* Worse, Heritage Hills is a sort of "Super-Suburban Density" because it is much less dense than Residential Suburban Density. category: "Single-family homes developed at a relatively low density of about 6 units per acre or less, which is typical of suburban residential subdivisions." Instead of 6 units per acre, Heritage Hills is a gob-smacking 1 unit per five acres!

Third, the first point under Implementation Strategies for Future Development sets this requirement: "Maximize compatibility between land uses to preserve community character as development occurs." An industrial facility with 2,500 employees is in no way "compatible" with the existing "Residential Suburban Density."

Fourth, the only location for M-1 on the Preferred Balance Growth Scenario is East of Greenwich, which is about 2.5 miles away from the site of the proposed zoning change! And there are gradual changes in intensity levels, consistent with the Implementation Strategies for Future Development. Similarly, Alternatives 1 and 2 do not place M-1 next to residential, let alone next to Residential Suburban Density.

Fifth, there was no real discussion at the hearing about conformity with the Master Plan. Instead, some of the Commissioners simply stated, without providing any detail or explanation, that the proposed zoning change would conform to the Master Plan.

As explained by the Kansas Supreme Court : “The legislature stressed the making of such plans, and we believe they should not be overlooked when changes in zoning are under consideration.” 224 Kan. at 598.

12. The recommendation of permanent or professional staff does not support the rezoning. In recommending the requested zoning change for approval, the Commission relied heavily on the recommendation of staff, which is not an enumerated Golden Factor, but the Kansas Supreme Court does mention “a consideration of the recommendations of permanent or professional staff.” 224 Kan. at 598. There was no discussion at the hearing about any of the details of the staff recommendation, and a quick look at the May 5 Staff Report suggests why: The “Report” on this proposed zoning change is only six sentences long and does mention *any* of the Golden Factors. Of those six sentences, only these two sentences have any substance: “The 2018 Master growth plan [sic] and the antiquated comprehensive indicates this would be a commercial use district. M-1 is two steps from table 1.2 contained within the 2018 Master Growth Plan; commercial use category and meets the initial requirement. ” But there is no “Table 1.2” in the Master Plan retrieved from the Bel Aire website. Instead, the Master Plan classifies this land as “Mixed Use/Local Commercial, which *Figure 1.2* shows as *four* steps away from Industry/Manufacturing. Perhaps more importantly, the Staff Report does not even mention that the property is adjacent to the Heritage Hills property that fits the *Figure 1.2* definition of Residential Suburban Density - which *Figure 1.2* shows as being *seven* steps away from the proposed M-1 zoning.

Not only does the Staff Report appear to contain significant errors, the Staff Report does not even mention any of the enumerated Golden Factors, much less explain the facts that the Commission should have considered when applying those factors. Thus, the action of the Bel Aire Planning Commission “was taken without regard to the benefit or harm involved to the community at large including all interested parties and was so wide of the mark its unreasonableness lies outside the realm of fair debate.” 224 Kan. at 596.

13. In addition to not meeting *any* of the *enumerated* Golden Factors, the City has violated the Golden Rule: Treat others as you would like to be treated. The city did not engage with any of the residents before agreeing to enormous tax breaks and a huge public release of the “great economic benefits” to Bel Aire and Kansas and beyond. The neighborhood learned about this when they watched the slap-on-the-back videos. When asked by a resident “If you lived here, would you like for this enormous monstrosity to be built across the

street from you”, the Commission made no response at all. When asked if the residents could have input in the PUD, the response from the paid staff was to the effect of: “You will have the same rights as any Bel Aire resident would have, and no more.” The paid staff also claimed that this zoning change was not tied to any specific business, despite a huge public announcement by the state and Bel Aire that Integra would be building a huge site on the property. The paid staff not only left the residents out of the process, they also apparently left Integra out of the rezoning process.

14. In addition to not following the procedural requirements of the BAZO, and violating the Golden Rule, the commission may have violated the rules of procedure at the hearing. Specifically, Commissioner Jordan made a passionate plea for tabling the decision until the commission had more information. Commissioner David Floyd also made a passionate plea for tabling the decision until the commission had more information. He noted that they were all volunteers, and it wasn’t their job to go out and find all the information that they needed to apply the Golden Factors. He also noted that “We are talking about forever here.” Commissioner Floyd was visibly upset and explained that he believed he had to vote yes because a no vote would mean he didn’t support the zoning change, and he just wanted to get more information before voting yes or no. He went so far as to say something like: “I sure wish that the motion had been to table the decision, instead of to make the decision.” No one explained to Commissioner Floyd that he could have made a counter motion, or a cross motion, or abstained from voting. If Commissioner Floyd had abstained from voting, the vote would have been tied at 2 to 2, which, according to 5.13 B: “A tie vote, or the failure to obtain a majority vote of the Planning Commission on any motion, shall be deemed to be a recommendation of disapproval.” If this was a failure of the staff to perform their duties, then the Golden Factor “recommendations of permanent or professional staff” should not carry much, if any, weight.

In conclusion: 1) the recommendation of approval violated Bel Aire’s own rules that apply to applications for zoning changes; 2) did not satisfy *any* of the Golden Factors; 3) violated the procedural rules for voting at commission hearings ; and 4) violated the Golden Rule.

DULY SIGNED AND VERIFIED BY:

- A. Residents who DID receive Notice of the proposed zoning change (one per household):

1. PRINT YOUR ADDRESS HERE: _____

PRINT YOUR NAME HERE: _____

SIGN YOUR NAME HERE: _____

2. PRINT YOUR ADDRESS HERE: 7901 E. OAKTREE LN, Lechi KS

PRINT YOUR NAME HERE: Donnis McPhaul

SIGN YOUR NAME HERE: Donnis McPhaul

3. PRINT YOUR ADDRESS HERE: 7730 E OAKTREE LN, KS

PRINT YOUR NAME HERE: Mel Marshall
MERLIN MARSHALL

SIGN YOUR NAME HERE: DELORE MARSHALL

4. PRINT YOUR ADDRESS HERE: 7625 E Oak Tree Lane

PRINT YOUR NAME HERE: Lois Dunham

SIGN YOUR NAME HERE: Lois Dunham

5. PRINT YOUR ADDRESS HERE: Angela Leiker

PRINT YOUR NAME HERE: 7201 E. Oak Tree Ln

SIGN YOUR NAME HERE: Angela M Leiker

6. PRINT YOUR ADDRESS HERE: 7735 OAK TREE LN

PRINT YOUR NAME HERE: ANNE KUCKEMAN

SIGN YOUR NAME HERE: Anne Kuckelman

7. PRINT YOUR ADDRESS HERE: 7620 E. Oak Tree Ln

PRINT YOUR NAME HERE: Louis R. Hendricks

SIGN YOUR NAME HERE: L. Hendricks

8. PRINT YOUR ADDRESS HERE: _____

PRINT YOUR NAME HERE: _____

SIGN YOUR NAME HERE: _____

B. Residents who DID NOT receive notice from Bel Aire of the proposed zoning change (one per household):

9. PRINT YOUR ADDRESS HERE: 7420 E OAK TREE LN

PRINT YOUR NAME HERE: BRIAN BOEDING

SIGN YOUR NAME HERE: 

10. PRINT YOUR ADDRESS HERE: 7425 Oak Tree Ln

PRINT YOUR NAME HERE: Lisa Brummer

SIGN YOUR NAME HERE: 

11. PRINT YOUR ADDRESS HERE: 7325 E OAK TREE LN

PRINT YOUR NAME HERE: 

SIGN YOUR NAME HERE: Jeff Palmer

12. PRINT YOUR ADDRESS HERE: 7320 OAK TREE LN

PRINT YOUR NAME HERE: DONALD STONEBROOK

SIGN YOUR NAME HERE: Donald Stonebrook

13. PRINT YOUR ADDRESS HERE: 7200 OAK TREE LN

PRINT YOUR NAME HERE: JERRY HAMILTON

SIGN YOUR NAME HERE: 

14. PRINT YOUR ADDRESS HERE: 7201 OAK TREE LN

PRINT YOUR NAME HERE: MARK LEIKER MD

SIGN YOUR NAME HERE: Mark Leiker

15. PRINT YOUR ADDRESS HERE: 7325 E. Oak Tree Ln.

PRINT YOUR NAME HERE: Patty L. Sanders

SIGN YOUR NAME HERE: Patty L. Sanders

16. PRINT YOUR ADDRESS HERE: _____

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17. PRINT YOUR ADDRESS HERE: _____

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18. PRINT YOUR ADDRESS HERE: _____

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19. PRINT YOUR ADDRESS HERE: _____

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20. PRINT YOUR ADDRESS HERE: _____

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21. PRINT YOUR ADDRESS HERE: _____

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22. PRINT YOUR ADDRESS HERE: _____

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| RECEIVED | |
| BY <u>City Clerk</u> | DATE <u>5/24/2023</u> |

SIGN YOUR NAME HERE: _____

23. PRINT YOUR ADDRESS HERE: _____

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24. PRINT YOUR ADDRESS HERE: _____

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SIGN YOUR NAME HERE: _____

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| RECEIVED | |
| BY | DATE |