

PLANNING COMMISSION
GLADSTONE, MISSOURI

May 20, 2002

Item 1 on the Agenda: Meeting called to order – Roll Call.

Present:	Ms. Alexander	Council & Staff Present:
	Mr. Dillingham	Councilman Shirley Smith
	Mr. Steffens	Councilman Wayne Beer
	Mr. Evans	Scott Wingerson, Assist. City Mgr. for Dev.
	Ms. Lowe	David Ramsay, City Counselor
	Mr. Duncan	
	Mr. Turner	
	Mr. Bone	

Absent: Ms. Wild
Chairman Hill
Ms. Abbott
Mr. Kiser

Item 2 on the Agenda: Pledge of Allegiance.

Vice-Chairman Dillingham led the group in reciting the Pledge of Allegiance.

Item 3 on the Agenda: Approval of May 6, 2002 Minutes.

Mr. Evans stated that he was missing a page of the minutes.

Other Commissioners agreed that they had not received a complete set of minutes either.

Ms. Jarrett stated that she would present everyone with the entire document at the next meeting.

The minutes were approved subject to everyone receiving a completed set of minutes from the May 6, 2002 meeting.

Item 4 on the Agenda: Communications from the Audience.

None.

Item 5 on the Agenda: PUBLIC HEARING on a site plan approval, property legally described as Lot 5, Linden heights, Resurvey of Lot 26, Gladstone, Clay County, MO, generally described as 6902 N. Oak. Applicant/owner: Dominic Cuccia.

Vice-Chairman Dillingham called on Mr. Wingerson for his comments.

Mr. Wingerson reported that the request tonight is for a site plan revision. Many months ago the Commission considered, and the City Council approved, a request from tonight's applicant for the construction and development of property on North Oak for the purpose of a tunnel car wash. One of the points that the Commission talked about, and the Council endorsed to their approval, was a concept of shared access. One of the conditions to approval was that the applicant, Mr. Cuccia, be required to share a driveway with what was then Auto Zone, the property owner directly to the north of the subject property. At the time we believed that was possible. Mr. Cuccia was willing to do that, was willing to negotiate and execute the necessary agreements to allow that to occur. It made a lot of sense for the project, made a lot of sense for North Oak, and Mr. Wingerson said he believed it made a lot of sense for the owners of the Auto Zone property. Mr. Wieland is here tonight representing Mr. Cuccia, and he will explain to the Commission, under the applicant's discussion period, all of the specific efforts that Mr. Cuccia and city staff has undertaken to try and facilitate compliance with that condition.

Mr. Wingerson explained that the conclusion of all of those discussions are that the current owners of what was Auto Zone, now McIntyre Man, are not willing under any reasonable circumstances to share access. That leaves the City with a couple of options. One option is that the City could take a pro-active role and facilitate, through ownership, shared access with the McIntyre Man people. In other words, we can own the access from North Oak on to the McIntyre Man property and provide access back to the McIntyre Man owner as well as the applicant. The City can require that the McIntyre Man owners share the driveway on Mr. Cuccia's property, that's an option too. Again, there would be compensation involved to the owners of the McIntyre Man parcel for affecting their access. The third option is the City could say shared access isn't that big of deal in this particular case and that the McIntyre Man and the applicant can have their own access driveways. Should the Planning Commission recommend to the City Council that Mr. Cuccia be allowed to have a driveway on his property, then there will be a discussion with the City Council about opportunities to move everything back to the west. The City owns seventeen or eighteen acres directly behind this parcel. It is considered developable property, however, the property lends itself possibly to sharing that property to make a better project on North Oak. That will be a discussion that will be taken forth to City Council for consideration. Staff is recommending that the application be approved. By doing that, all of the conditions to the previous approval will remain the same except for the condition that requires that that applicant to share the driveway with McIntyre Man.

From that point, staff is requesting that the Commission consider making a recommendation to the City Council on action. Whether it is to require the McIntyre Man people to share with Mr. Cuccia; whether it's just to leave it alone and pick a different battle to try and talk about. As part of this, staff is really requesting two actions. Number one is to consider favorably the revision Mr. Cuccia has presented. The reason for that is because Mr. Cuccia cannot do his project right now. He cannot build his project with the conditions that the City has applied to it. The second action requested is that the Planning Commission make a recommendation to the City Council on what action to take relative to sharing access. Mr. Wingerson said he would be willing to answer any questions the Commission might have.

Mr. Duncan commented that he thought that sharing access was part of building a development on North Oak. He said that he has a problem understanding why along North Oak we are having such a problem with that. He asked if it was something the City has to change. Mr. Duncan

noted that when Osco went in, which is a prime example...a vehicle can go all the way up from their entrance through the small shopping center. He thought that was one of the conditions that the Commission made Osco do. He wondered where this shared access starts.

Mr. Wingerson said that it can start a lot of different places. Typically, nobody wants to share a driveway. However, the City when requiring that, has been successful in talking to both property owners to work out a reasonably way in which to share the driveway. In concept, it's done all over the country and it's done a lot here in the metropolitan area. In this particular case, the owners of the McIntyre Man property are not willing to share a driveway. It's not project specific, Mr. Wingerson stated in his opinion, it doesn't have anything to do with the application. It has to do with not wanting to share a driveway. The McIntyre Man people did present a way in which they would share a driveway, but that method would, at any time, allow the owners of the McIntyre Man property to prohibit access to the Cuccia parcel, more or less, on a moment's notice. Although that appears to be a good thing, Mr. Cuccia is planning a significant investment and he cannot risk that investment on not being able to have access. If access were approved from the Cuccia parcel, the grading, the plan and the engineering would be significantly different to provide that driveway than it would be to provide the driveway on the McIntyre Man parcel. So, it's not a situation where they can have shared access for a while and then the owners of the adjacent property decide to close that access and then another driveway is put onto Oak. It doesn't work that way. That decision has to be made now because of the topography of the Cuccia property. Mr. Wingerson stated that was just not something that staff anticipated.

Vice-Chairman Dillingham asked if the applicant or his representative would like to address the Commission.

Stuart Wieland, 6000 N. Oak, Gladstone addressed the Commission. Mr. Wieland said that first of all he would like to thank Scott Wingerson and the City of Gladstone for all the help that they have provided to Mr. Cuccia in this process. He said he didn't know how many of the Commissioners remembered him being before them back in August of last year, but Mr. Cuccia has really been relentless on this project through his office. He showed the Commission an exhibit, which was from Mr. Wieland's billing system. The list was highlighted with all the meetings, telephone conferences, discussions with Mr. Wingerson and his office that reflected Mr. Cuccia's efforts in attempt to get some consensus with the adjoining property owner. As Mr. Wingerson indicated, he started out with the Auto Zone, of course, which was in ownership at the time and it became pretty clear to him right off the bat that they had absolutely no interest in even discussing shared access issues with them. He explained that he was referred to a Mr. McClain in their legal department, and essentially the brick wall went up and he did not get anywhere with him. It became pretty clear to him early on that the reason for that was that the property was about to change hands, obviously, they didn't want to muddy the waters with any encumbrance issues as far as this proposed easement goes. So three or four months were lost there in an attempt to get something done with them.

My Wieland went on to say that then he found out who the new owners were for the new property. In fact, Mr. Wieland said he suggested before the property changed hands whether they had as part of their due diligence if they had advised the new owners that he was actively pursuing this and that the City was assisting us. Again, the wall went up. Once the new owners were identified as Gaylord and Sherman Johnson with the McIntyre Man group, they began actively pursuing this issue of the easement. Mr. Cuccia tried to be a good neighbor to the

McIntyre Man group and tried to set up a face-to-face meeting and they did not have any interest in that at all. Mr. Wieland explained that as Mr. Wingerson pointed out, the main reason for that is that they simply don't see any advantage in entering into this type of agreement. Mr. Wieland sent them a proposed easement agreement that would basically make Mr. Cuccia responsible for all maintenance issues, all insurance issues and all construction issues. Basically, putting on his back the lion's share of all of the concerns. Their issue was that if they go to sell this piece of property in five or ten years, they will have to deal with that easement and it will affect the salability of this piece of property. Therefore, they did not see any advantage it in for them. Mr. Wieland added that it is very frustrating for Mr. Cuccia. He has obviously spent a great deal of time and money getting his project to this point and essentially he is not even out of the box because he still can't seem to get any agreement with the adjoining landowner.

Mr. Wieland thanked Mr. Wingerson and his office. He added that Mr. Wingerson's office does a magnificent job here in Gladstone in trying to mediate and work these things out and he did everything that he possibly could. Mr. Wieland closed by saying that he is here tonight for a site plan revision to the original change in the zoning that was accomplished back in August in an attempt to move this project forward. Again, Mr. Cuccia is committed to this area. Mr. Wieland thinks that a lot of his clients would have thrown up their hands months ago and said forget it. That's not Mr. Cuccia. He's persistent and he is going to see this thing through to it's final conclusion. Hopefully that's going to be one that is good for everybody, the City, Mr. Cuccia and McIntyre Man. Obviously, that conclusion and that decision will be reached by this body and the City Council. Mr. Cuccia has brought with him this evening Todd Polk from Phoenix Engineering. He has provided another revised proposal that he can show the Commission.

Mr. Polk revealed the revision to the Commission.

Mr. Wieland explained that the new proposal allows the existing access at 6902 N. Oak to remain open. It is Mr. Cuccia's preference for a number of reasons: both engineering, traffic, ease of use and to try to support the 1993 Comprehensive Plan and the North Oak Corridor Study. The shared use of this access is what Mr. Cuccia would still like to see happen. Obviously he can make it work if the Commission decides that there won't be shared access and both parties can use their own driveways, but his preference clearly at this point is for shared access. Mr. Cuccia just thinks it's better for everybody and the City. Again, Mr. Cuccia is legitimately and definitely concerned what is best for Gladstone as well as what is best for his own business.

Ms. Alexander asked that if Mr. Cuccia has the single drive on his property, where is the back up of cars going to be.

Mr. Wieland said that is an excellent question. That may be a question that Todd can address, but essentially, from how he understands, since he doesn't have the gentleman here from LHE, the person who did the traffic control study, the left turn lane from northbound North Oak is going to be the same and the southbound right turn will be the same. We will have taper it in a little more to get to that access. Clearly, we believe that the shared access as it was originally proposed is best for those kind of issues as well. We do believe it will work this way. The line will still be down the side of the car wash for cars to back up, but the existing grade of the entrance onto the McIntyre Man property seems to be just perfect for what Ms. Alexander is suggesting.

Ms. Alexander asked if we go back to the original way, can the City, with the Planning Commission and City Council approval, encourage McIntyre Man to go with the shared driveway.

Mr. Wingerson answered that from staff's perspective the City has encouraged as much as they can. He said that he meet with Mr. Johnson about four months ago and explained to them the North Oak Corridor Study in detail, the 1993 Comprehensive Plan in detail and exciting concepts for the City's civic area, North Oak and Gladstone Plaza in an effort to try and solicit a community response, rather than a business response. He also explained to Mr. Johnson potential business advantages to sharing a driveway. The Commission heard testimony from the traffic engineer at the last public hearing about the number of vehicles that would pass by the front doors of the carpet store. Mr. Wingerson also shared with him the opportunity for cross-marketing between the car wash and the carpet store as a way to very economically benefit both businesses and potentially other businesses in the corridor. He ended by saying that he thinks the City has done it's encouraging. However, the City can condemn this area for a public purpose and require the shared access.

Ms. Alexander asked if that if the City were to condemn the area, could they set it up so that the access cannot be blocked for the car wash.

Mr. Wingerson answered yes, because the City would own the right-of-way.

Vice-Chairman Dillingham asked if he could see the map where Mr. Wieland was talking about the tapering of the street.

Todd Polk, Phoenix Engineering, PO Box 4015, Blue Springs, Missouri stepped in front of the Commission with full-sized drawings and explained both situations in detail.

Ms. Alexander commented that it was her understanding that the North Oak Corridor idea was not to have all these entrances and exits on Oak and asked if that was true.

Mr. Wingerson answered yes.

Ms. Alexander added that she would think this would be a safety factor.

Vice-Chairman Dillingham asked that if both of these entrances are open, would the shared driveway will remain open or would it be closed.

Mr. Polk answered that the shared driveway would be closed.

Mr. Bone asked if the single entrance would be wider.

Mr. Polk answered yes because the McIntyre property is a little bit wider at their entrance, and it wouldn't be widened, but if he put the entrance in at the Better Wash site and closed off the McIntyre entrance then there would have to be some widening done. At that point, he may be able to do a combination where if the City is going to be taking part in forcing shared access he could maybe center it on the property line. There is several things he could do there to try to

work with the shared access that makes a better project for everybody. If he does that then both entrances are out. If he stages it now with the McIntyre property, with the amount of construction taking place and effecting their property it would be minimized if he uses their entrance.

Mr. Bone asked if the cost would be minimized as well.

Mr. Polk said there would be some cost minimized, but he thinks to try and protect their entrance for as long as possible during construction, they would not be losing the ability to serve their property. If you use their entrance he would have a little better chance of leaving that open. If he puts it at the middle, then both of the existing entrances will have to be taken out in order to do that construction. Then the access to his property will be affected fairly significantly. Temporary access would have to be put in. If he uses the entrance on the Better Wash side, then again, that entrance could be left in place until the other construction is done then it could be taken out. From a construction standpoint, either the north entrance or the south entrance and the middle one, even if it may be a better entrance, may be the one that effects them the worse...temporarily.

Ms. Lowe asked if the only way to have shared access was to condemn part of their property.

Mr. Wingerson answered that there are two options to a shared driveway. One is the City could require the easement from McIntyre Man to allow Mr. Cuccia to share access. The other way is to allow Mr. Cuccia to build his driveway on his property and require that the carpet store owners share the driveway with Mr. Cuccia.

Ms. Lowe asked which option exposes the City to more liability.

Mr. Wingerson said that would be a question for the City Attorney and the City Council. The City Council will be the one to make that decision. Both options come with risks to the City.

Ms. Alexander asked if he was talking about risks in McIntyre Man not agreeing to do it.

Mr. Wingerson said he was speaking more of litigation risks.

Ms. Alexander asked if the City gains anything by having the actual entrance halfway on each property and if there would be any benefit or would it just complicate it.

Mr. Wingerson said it doesn't really complicate it. If the adjacent owners are willing to share access, then necessary ingress/egress easements would still be required to be negotiated by the parties.

Ms. Lowe asked if the only way for the City to obtain ownership of that property is to condemn it.

Mr. Wingerson said that would be the only way unless they willingly sold it to the City. Staff has not asked them that question. However, Mr. Wingerson said his indication would be a willing seller would be unlikely because as Mr. Wieland said, Mr. Cuccia has proposed that all

future maintenance of the easement will be provided by Mr. Cuccia, all insurance related, the construction so that is fairly valuable access for an access easement...and they have refused that.

Mr. Evans asked if the Commission approves the site plan, does the McIntyre Man group understand how this impact them by not having a shared access between. If the Commission decides to approve Mr. Cuccia's single access do they know that they are going to be blocked in? Bearing that in mind, what does the City anticipate litigation coming back at the City as well as Mr. Cuccia for his business impacting them in a negative way?

Mr. Wingerson said that he did not believe there would be any risk of litigation for two separate driveways. The owners of the McIntyre property were advised of the impact, in addition, they were advised of impacts created by the reconfiguring of North Oak. That is still a big part of this request...the dedicated left turn lane into Mr. Cuccia's property. Without that access the McIntyre Man will have a definite impact.

Mr. Evans commented that we can't have their customers hoping the curb to Mr. Cuccia's property. He asked if the McIntyre Man group is essentially all take and not much give?

Mr. Wingerson said that in his discussions there hasn't even been a lot of take...just a no.

Mr. Steffens asked Mr. Wingerson if he could explain the fifty feet back part of the proposal.

Mr. Wingerson answered that the incline of the driveway on the Cuccia property would be in the neighborhood of fifteen or sixteen percent, which is acceptable, but is rather steep from a users perspective. By moving the entire development back in the neighborhood of ten to fifteen feet, we can mitigate the incline of that front driveway. Mr. Cuccia has also requested to have an opportunity to purchase a small portion of the property that the City owns to the back. The City Council hasn't made a recommendation or a decision on that matter so we don't know where that stands. Should the Council approve the sale of some amount of City-owned property for this purpose, then it would be possible to move the development back.

Mr. Steffens asked if that would put more parking on Mr. Cuccia's lot.

Mr. Wingerson said what it would do in addition, to mitigating the grade, would allow that waiting line to get longer.

Mr. Wingerson said he would like to make a couple of suggestions for the Commission to consider. The first one is to table the issue at this level to allow the Council to have the discussion on their preference on dealing with shared access. Also to allow them to have the discussion on real estate. If you were to do that it would automatically be tabled next week at the City Council meeting, then picked up in two weeks at this level. That is the longest time frame relative to Mr. Cuccia's application.

Mr. Wingerson explained that another thing the Commission may consider is to approve the development with the conditions previously listed and subject to City Council resolution of the access issue. That would allow the City Council, if they should so desire, to table the public hearing at their level next week and be able to have the necessary discussion relative to shared access and real estate and come back in two weeks to finally disclose Mr. Cuccia's request one

way or the other. This would be the shortest time frame in process time for the applicant. The second alternative also provides a different level of impact. To table a request specifically for a Council discussion on shared access and real estate sends a very powerful message to McIntyre Man. There may be an opportunity in the intervening two weeks to advise the McIntyre Man people of the Council's general disposition on this matter and be able to advise them on what they can expect should the Council make those decisions. The City may have an opportunity to re-open shared access agreement on a private-to-private matter.

Ms. Alexander asked if there was any advantage to moving the building back, besides the shared access.

Mr. Wingerson said there may be. The motivation at this point is to mitigate the grade to allow Mr. Cuccia to go forward on his project. However, there may be some advantages to moving everything back just a little bit for aesthetic reasons and site plan reasons.

Vice-Chairman Dillingham asked if there was anyone from the audience who would like to speak in favor of the proposal.

Lee Bussinger, 3031 NE 73rd Terrace addressed the Commission. Mr. Bussinger said that some twenty to twenty-five years ago he was on the City Council and was involved when North Oak was widened. He thinks that it's very important that the Commission take a look at how this project will be, he's all for it, but shared access is the only way to go. The City Council wasn't intelligent enough, he guessed, back when he was on the Council, to make it done properly with all the driveways and stuff. The Commission has an opportunity here to help that situation and to help Mr. Cuccia get his car wash, which he thinks would be a good thing, but the Commission has to take the factors involved. What impact is it going to have for each individual to be successful? Mr. Bussinger stated that you don't want him (Mr. Cuccia) to go in there and be tied down to where he can't make it...can't make it right. What benefits is it going to be aesthetically for the City? Mr. Bussinger said he was just a word of caution. Condemnation is not all that bad, but it's time consuming and he hopes the City doesn't have to do that.

Vice-Chairman Dillingham asked if anyone from the audience would like to speak in opposition of the application. Hearing no responses, he closed the public hearing and asked for discussion from the Commission.

Mr. Steffens said that he would like to go with Mr. Wingerson's option number two motion, which would allow the application to be tabled and go and let the City Council discuss the shared access and then come back to the Commission.

Ms. Alexander said she would go along with that because we then have a chance to enforce the North Oak Corridor and if we don't it's going to happen over and over again and we're not going to be any better off than we are now.

Mr. Wingerson said he would like to offer some language. A motion could be to approve the request subject to staff recommended conditions and City Council resolution for the shared access and related real estate issues.

City Counselor Ramsay reminded the Commission that what that motion will do is leave all of the decision to the City Council and the project will, most likely, not come back to the Planning Commission. It will be resolved at the Council level. If the Planning Commission has a burning desire to see this application again, that motion won't do it for them.

MOTION by Mr. Steffens to approve the request subject to staff recommended conditions and City Council resolution for the shared access and related real estate issues, second was made by Ms. Alexander.

ROLL VOTE:

Ms. Alexander	Yes
Mr. Dillingham	Yes
Mr. Steffens	Yes
Mr. Evans	Yes
Mr. Duncan	Yes
Mr. Turner	Yes
Mr. Bone	Yes
Ms. Lowe	Yes

(8 yes, 0 no)

Item 6 on the Agenda: Communications from the City Council and the City Staff.

Councilman Smith welcomed Mr. Turner and Mr. Bone and hoped they would enjoy their time on the Commission. She added that they can see how much the Council depends upon them. She asked "Is this not a great Commission?" The mix and the intelligence and background. She stated that she expects great things out of them. Ms. Smith said she was going to philosophize for a little bit. North Oak didn't get the way it is by a big ogre from outer space landing on it. It was little bits and pieces, little bits and pieces. That's what the City are still fighting...little bits and pieces. In the scheme of things the decision made tonight doesn't seem like all that much, but it would be a step backwards. The City is going to have to stick by their guns and do what know we want as our dream for North Oak.

Councilman Beer also welcomed the new members of the Commission. He thinks that they will find this to be an interesting experience. It will be challenging, but at the same time pleasant as well. Not always pleasant tasks or issues, but overall they will find it to be an enjoyable experience. He added that the Commission had a tough decision to try and make tonight, but assured them that they are not all as difficult as this one was. Some are pretty slam-dunk. He ended by saying that the Commission has studied a difficult situation and that the thinks they made a good decision.

Mr. Wingerson said that on behalf of staff, he would like to welcome Mr. Bone and Mr. Turner to the Commission. He would ask that if they have any questions to please call staff.

He reviewed a follow up memo that outlined some questions from the last meeting. The situation regarding the house with the missing banister is an insurance settlement question and is

being resolved. The property was inspected and is safe. The door to the deck is bolted shut on the inside and only adults can open it.

A courtesy notice was sent to the property owner of the fence on 72nd Street than Ms. Alexander asked about. If it is not resolved, staff will follow it up with a notice and order. The property owner believes that those are building materials, not junk or trash.

Councilman Rudi had asked about a pothole by the A&W restaurant. That information was provided to Public Works and has either been resolved or will be shortly.

Mr. Wingerson thanked Mr. Dillingham for the good job he did at running the meeting tonight. Also, he realizes it was a difficult decision for the entire Commission, especially for the new members, and thanked them for their patience.

Mr. Wingerson also thanked Mr. Cuccia and his team. This has been a really long process and Mr. Cuccia has been more patient and reasonable than about anybody he's ever met under these circumstances.

Finally, he wanted to object to the comment Mr. Bussinger made about the intelligence of the City Council back then. He would refer to that as a unevolved planners. That is probably why things are the way they are now.

Item 7 on the Agenda: Communications from the Planning Commission members.

Mr. Steffens said that at 6101 N. Norton there is no one living there and the grass is getting quite tall. Also at 6003 N. Mersington there seems to be a garage sale everyday. He asked if residents have to come to the City before having a garage sale.

Mr. Wingerson said residents do need to come to the City and get a no-cost garage sale permit. He will look into the situation.

Mr. Duncan welcomed the new members to the Commission.

Ms. Lowe welcomed the new members and commented that it was nice to have someone newer than herself!

Mr. Evans welcomed the new members and also thanked Mr. Cuccia and his team to endeavoring to persevere on this matter. He thanked him for his interest in building in the city limits of Gladstone.

Ms. Alexander said that she drove by the property and she cannot imagine why the McIntyre Man group would not want to get that area improved. She stated that she feels very strongly about either needing to follow the North Oak plan now or forget it. Ms. Alexander said that if the Commission doesn't follow it now they can't stand up for other places.

Vice-Chairman Dillingham welcomed the new members and also thank Mr. Cuccia for his perseverance on the project.

Item 8 on the Agenda: Other Business.

None

Item 9 on the Agenda: Adjournment.

Vice-Chairman Dillingham adjourned the meeting at 8:24 P.M.

Respectfully submitted:

Becky Jarrett, Recording Secretary

Approved as submitted _____

Brian Hill, Chairman

Approved as corrected _____