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Housing project foes get chance to voice objections

Court had directed Shawnee council to hear testimony

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Gene Russell finally got the opportunity to vent his frustrations about a rezoning decision the Shawnee City Council made more than a year ago.

Well, some of his frustrations, anyhow.

Russell addressed the council for more than an hour at its meeting Monday night about why, in his opinion, the 2004 decision to rezone the Kenneth Smith property near his home, was unreasonable.

But later Russell said that his comments — along with similar testimony of four experts in engineering, real estate, land planning and historic preservation, respectively — was just the tip of the iceberg.

"There's so much more," he said.

The presentations were given during a special two-hour public hearing that resulted from an ongoing lawsuit over the rezoning of the Kenneth Smith property in the 13000 block of West 71st Street.

Russell and the other experts tried to convince the council to overturn its 2004 decision. The council voted unanimously, however, to table the matter for further consideration at the Feb. 27 meeting.

Councilman Kevin Tubbesing, who made the motion, asked city staff in the meantime to review the information presented with an "open heart and mind" and address or offer rebuttal to the opinions heard Monday evening.

In November 2004, the council rezoned the property from residential suburban to single-family residential in anticipation of the proposed Fairway Park subdivision. The tract is next to the Fairway Hills subdivision.

In December 2004, Russell and five of his Fairway Hills neighbors filed suit against the city asking that the council's decision to rezone the 60 acres be declared null and void.

A few months ago, Johnson County District Court Judge Thomas Sutherland remanded the issue to the City Council directing that they hear testimony of the plaintiffs' expert witnesses, three of which were paid for their services. City Attorney Marvin Rainey said that the court made it clear the council could take whatever action it deemed appropriate — including taking no action at all.

It's undetermined whether the record of Monday's meeting will be submitted to the court, but Rainey said Sutherland will make the final decision on whether the city was reasonable in its rezoning decision.

Expert testimony

During the public hearing, Russell, who has a master's degree in environmental engineering, presented safety concerns related to flooding that he said arose after safety regulations weren't followed in the planning of the Fairway Hills subdivision, where he lives.

Russell said any development on the neighboring property, which is upstream, will cause more stormwater runoff, and by rezoning the property to allow more impervious area, the council exacerbated that problem.

"If development is going to occur, we need to carefully consider what's going on downstream," Russell said, using Johnson County's Mill Creek Study to show that many property owners downstream from the proposed development already have complained of flooding problems.

"Please carefully consider ... the errors made in the planning of the downstream developments when making your decision," Russell said.

The council also heard from Steve Starrett, a licensed professional engineer. Starrett reviewed the preliminary engineering report, which he said was used in the rezoning decision, and it was his opinion that mistakes and omissions had been made.

"The report is invalid because of the errors and the lack of general details needed for review and because it's not signed by a licensed engineer," Starrett said.

In an interview after the meeting, City Engineer Doug Wesselschmidt said the preliminary engineering study was adequate for its purpose of determining the suitability of a preliminary plat. He said that before construction began on the development, the city would require more detailed studies.

Ralph Oschner, a professional city planner with 45 years of experience, also testified on behalf of the plaintiffs.

Oschner said the current proposal includes 86 lots ranging in size from 10,786 to 23,852 square feet in lot size with an average lot size of 15,388 square feet.

Oschner said while his concern isn't over the plan that's proposed, single family residential zoning leaves residents vulnerable. He said the current zoning allows for a minimum lot size of 9,000 square feet, making it possible for the developer to change plans and make lots smaller than currently proposed.

But by Oschner's calculations, there would be no significant detriment to the developer if the zoning had been left residential suburban, which residents favor because the minimum lot size is 12,000 square feet. Oschner said that based on the current proposal, the developer would only lose five to eight lots if the property went back to a residential suburban zoning status.

Larry Witt, a real estate appraiser who was retained by the plaintiffs, said losing five to eight lots "may not have an economic impact on the development," although he didn't address whether the proposed development would impact nearby property values.

LeeAnn Hays, who represented the Kansas Preservation Alliance, also spoke to the council about the historic significance of the Kenneth Smith property.

Kenneth Smith was a noted maker of custom golf clubs, and according to the Kansas Preservation Alliance, his manufacturing building is the oldest custom-club factory in the nation. He made clubs for Bing Crosby, Bob Hope, Mickey Mantle, and Presidents Dwight Eisenhower and Richard Nixon.

The Kenneth Smith home, manufacturing facility and a nine-hole golf course still exist on the property proposed for development.

Hays said it wouldn't be possible to minimize the impact on the historical significance of the site unless the number of lots was reduced to 54, regardless of the zoning.

When the council next discusses the rezoning decision, it could move to take no action, table the matter again, or initiate an application to rezone the property back to residential suburban.

Rainey said that in a city-initiated zoning application, after the rezoning request went back before the Planning Commission, the property owner would have a chance to protest the application.

If the property owner did protest, approval of the rezoning would require a three-fourths majority vote by the council.

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