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**City of Smithville, Missouri  
Planning Commission - Regular Session Agenda  
May 5, 2020**

**7:00 pm – City Hall Council Chambers \*\*Via Videoconference\*\***

**NOTICE:** \*Due to the Governor’s Emergency Declaration and the Health Officer’s orders for safety, public meetings and public comment during public meetings will require modification. The City of Smithville is committed to transparent public meetings and will continue this commitment during the COVID-19 crisis. Anyone who wishes to view the meeting may do so in real time as it will be streamed live on the city’s FaceBook page through FaceBook Live.

For Public Hearing Comments you will need to email your request to the City Clerk at [ldrummond@smithvillemo.org](mailto:ldrummond@smithvillemo.org) prior to the meeting to be invited via Zoom.

If you do not have access to the internet you may give your Public Comment in person at the Senior Center – Only one person will be permitted at a time. You will enter in the east door and exit out the west door.

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1. Call to Order
  2. Approve the March 10, 2020 Planning Commission Minutes
  3. Staff Report
  4. Rezoning a portion (8 acres) of 18601 N. 169 Hwy from R-1B and B-3 to B-2  
Public Hearing  
Findings of Fact and Recommendation
  5. Single Phase Subdivision – Herzog Foundation  
Public Hearing  
Commission Recommendation
  6. Adjourn



## SMITHVILLE PLANNING COMMISSION

### REGULAR SESSION

March 10, 2020

7:00 P.M.

Council Chambers

A regular session of the Smithville Planning Commission was held on March 10, 2020 at 7:00 p.m. at Smithville City Hall in the Council Chambers.

Those attending the meeting: Deb Dotson, Carmen Xavier (arrived at 7:04 pm), Vice Chairman Connor Samenus, Alderman Steve Sarver, Dennis Kathcart, Mayor Damien Boley and Development Director Jack Hendrix. Chairman Rand Smith was absent.

#### **1. CALL TO ORDER**

Vice Chairman Connor Samenus called the meeting to order at 7:04 p.m.

#### **2. MINUTES**

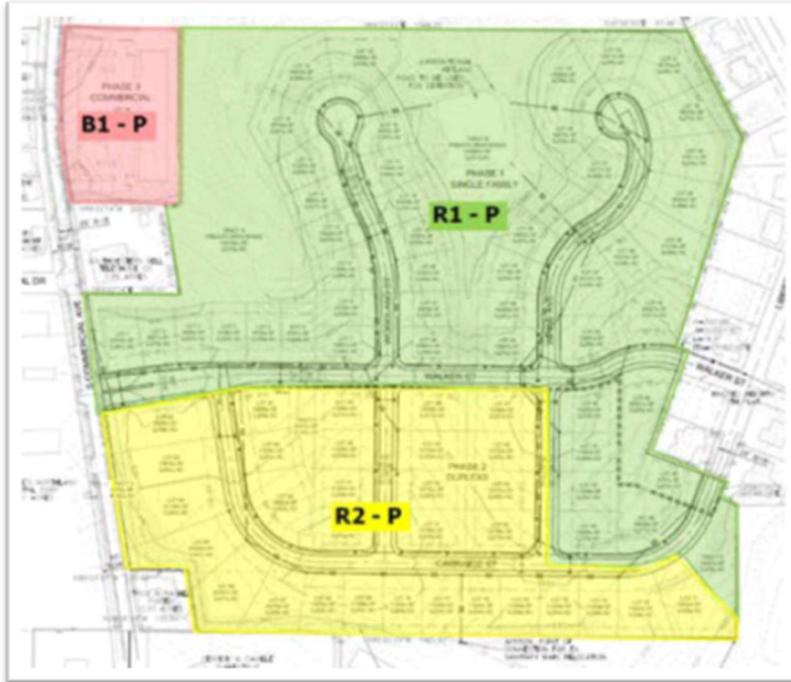
The February 11, 2020 Meeting Minutes were moved for approval by ALDERMAN SARVER, Seconded by KATHCART.

Ayes 4, Noes 0, MAYOR BOLEY abstained. XAVIER was not present at the time of the vote. Motion carried.

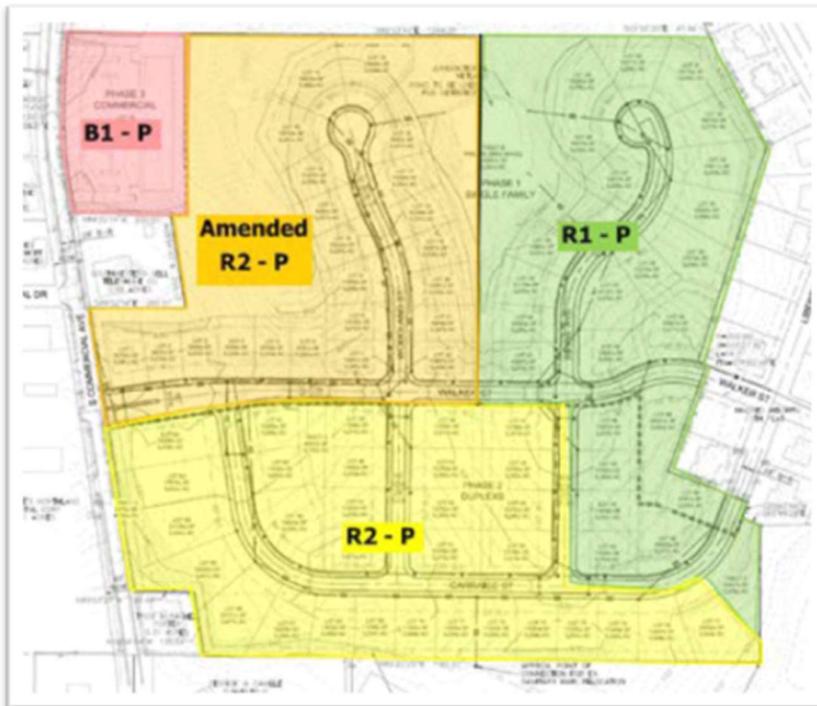
#### **3. AMENDING THE OVERLAY DISTRICT CONCEPTUAL PLAN FOR EAGLE RIDGE. PUBLIC HEARING---SAME AS REZONING**

**Eric Craig---Applicant---1220 Bainbridge Rd Smithville MO---** Stated that he is one of the partners on this development. He has been a real estate agent here in Smithville for 19 years. One thing that is of concern to him in Smithville is affordable housing. In his opinion once construction is completed in the Lake Meadows subdivision you will no longer see new construction single family homes for sale for under \$250,000. That is a pretty expensive home. Mr. Craig explained the proposed amendment to the commission and also showed the attached visuals. The area involved is shown below as amended R-2P with the original submission on the top:

Existing



Proposed



The two-family villas are proposed for 53 lots instead of 31 lots. The single family lots would be reduced from 46 lots to 24 lots and will maintain the buffer from the single-family lots to the east. The proposed density would change from 108 units to 130 units. The entire development is going to be maintenance provided which will include lawn care & snow removal. The expected fee for this maintenance provided neighborhood would range between \$100 to 125 per month. There will be restrictions and will be similar to what is in Ashmont. The restrictions will be enforced. Mr. Craig explained that the project ran into substantial cost overruns that would nearly double the lot costs which is the reason for requesting this amendment.

XAVIER stated that she is happy there will be another development like Ashmont in Smithville and supports it 100%. However, the monthly maintenance fee of \$115 that they pay in Ashmont is not enough to cover everything, for example painting, roofs and driveways. She asked that he make absolutely sure that the range of \$100 to \$125 is more than adequate and take into account for inflation. She also said he will need to be very clear with potential buyers what maintenance will be and will not be provided. Many people who live in Ashmont are retired so an increase of even \$5 a month is a big deal when you are living on a fixed income.

Mr. Craig stated that the HOA is not going to provide maintenance on the exterior of the units or the roofs. They will only provide lawn and snow removal.

### **PUBLIC HEARING:**

**Glen Owen---532 S Commercial Ave---**Stated that his biggest concern with this rezoning is the traffic on Commercial Ave. It's already difficult for some residents to get out of their driveways without this added to it.

**Linda Corten---628 Liberty Rd---**Asked how long will it be before phase 2 is finished? Why have the excavators not been working? She also asked why a pipe was put into the pond to let the water out?

Mr. Craig stated that if sales go as good as they think they will it will be started as soon as they get done with phase 1. They are currently working with the engineers about going ahead and putting in the infrastructure for phase 2. That excavator is doing a big project off of Indiana Ave and 152 Hwy. He pulled off this job to get that one completed before the end of their

contract. Right now the plan is to have homes start going in there by June 15<sup>th</sup>. Their engineers worked with the city's engineers and the pipe was put into the pond where the spillway will be installed. The pond will fill up once the spillway is done. This will all be done by end of June.

**Natalie Bankus---616 Liberty Rd---**She has only lived here for about a year and was not living here when this was originally approved. Stated that with the number of townhomes proposed she is concerned about what this will do to the class sizes for the schools. Her child attends Horizon Elementary and the class sizes are already large. She hopes that this will be taken into consideration. She stated she was told that there would be a greenspace between her house and the new single-family homes proposed for this subdivision. Is there any truth to that? She also asked if any of these new townhomes and villas would be rentals? She stated that she heard that the amendment being presented tonight is what was originally plan that was presented and then got vetoed. She asked why is it all of a sudden alright to revisit this idea because you are 44% over budget which is no one's fault here in this room?

Mr. Craig stated no, there is not going to be a greenspace between her lot and the new lots but there are utility easements. He stated that the lot sizes are actually bigger than the lots sizes on Liberty Rd. He stated that they are not looking to have package deals for investors. In 2008 when the market collapsed there were HOA's that had restrictions that said they could not rent their homes out. That got contested at state level and his opinion is that people just simply left their houses and let them get foreclosed on. He stated that he will not have stipulations that state they cannot be rented for that reason. He informed her that what she had been told about this amendment being the plan originally submitted was not true.

**Fred Barber---625 Liberty Rd---**Stated that he came to the initial planning meeting. His concern is density and with the children that walk to school. He is glad that there is a tract of land being given to the school so they children can still walk there. He stated that a 44% overture is a gross miscalculation. Is there any penalty against this contractor to relieve the absolute necessity for a higher density?

Mr. Craig stated that they did have a traffic study and did reach out to the engineer that conducted it. The City was provided an email from the engineer stating it's able to withhold the additional traffic. We are in the middle of negotiating with the excavator so we can get this project finished.

**Dale Best---639 S Commercial Ave---** Stated that other than receiving the notice to come here today he hasn't been contacted by anyone. A 44% overrun in the first stage is extremely high and we are not even in the home building stage yet. He stated he is holding off on putting more money into his property if there is a probability that it won't be there in 2 years.

Public hearing closed.

ALDERMAN SARVER made a motion to amend the Overlay District Conceptual Plan for Eagle Ridge. DOTSON seconded the motion.

### **DISCUSSION:**

Xavier stated that the last two speakers really struck a chord with her. She asked Mr. Hendrix to help her understand at what point a contractor's obligation to build what they present. I am thinking this is a reflection of what we can and cannot do in terms of approving additional or overlays to compensate for that kind of thing.

HENDRIX stated from the Planning and Zoning and even the Board of Alderman perspective, the City has no hand in those contracts. It's all private until they are done with the all the construction and all the infrastructure has been approved and inspected by the City's staff. Once everything is done according to the approved plan then the City gets involved because they have to give all of that to the City for maintenance in the future. That's how this subdivision process works. So, what the cost is and if it goes up or down, we don't really have a say in it.

XAVIER stated that increases or decreases in density does have an effect on traffic flow which is a very real thing and has been brought up tonight.

HENDRIX stated he doesn't disagree and will say this about Mr. Owen's concerns about traffic, when or if the development further east of this develops they will have to do a traffic study like this development did and they will then have to provide improvements based upon their impact. It will be based on the traffic at that time versus a speculation of what it will be like in 10 years.

KATHCART asked Mr. Craig if he will be selling the duplexes before the single-family homes? If so, will you be concerned about the sale of the single-family homes after building so many duplexes?

MR. CRAIG stated that the first phase is the duplexes and those will be sold first. Phase 2 will be the single-family homes. No concern on the sale of the single-family homes.

HENDRIX stated that Harborview is a good example. They have a mixture of duplexes and single-family homes. The duplexes are next to the busy street.

MAYOR BOLEY stated that he has listened to everyone's comments on this but has also spent a lot of time with the community. Our teachers, fire fighters and police officers can't afford to live here. We are losing our teacher of the year and our associate employee of the year this year because they cannot afford to buy a house here. If our schools start to decline our property values are going to decline way more than having this subdivision close to your house. These are the type of people who cannot afford to live in Greyhawke.

DOTSON stated that the people looking to buy the Ashmont style of homes are the grandparents who want to be near their children who are buying single-family homes so they can help take care of the grandkids in the afternoon after school so the parents don't have to worry about it. This type of development is also a win/win for retirees. They are also moving out of Smithville because they can no longer afford to live here. She believes this is a good thing.

**THE VOTE:** DOTSON-AYE, MAYOR BOLEY-AYE, KATHCART-AYE, ALDERMAN SARVER-AYE, XAVIER-AYE, SAMENUS-AYE.

**AYES-6, NOES-0. MOTION PASSED**

**4. AMENDING THE PRELIMINARY PLAT OF EAGLE RIDGE. ADJUSTING LOT LINES ON LOTS 16 AND 17 OF EAGLE RIDGE PRELIMINARY PLAT**

**Eric Craig---Applicant---1220 Bainbridge Rd Smithville MO---** Stated that one of the lots needs to be wider so we can build a ranch-style home on it. As it is right now it's too small.

HENDRIX stated that this could have been taken care of through a lot line adjustment and would have been approved by himself, but since they were coming in for the rezoning item he decided to handle it this way.

**PUBLIC HEARING:** None

Public hearing closed.

MAYOR BOLEY made a motion to amend the Preliminary Plat of Eagle Ridge. DOTSON seconded the motion.

**DISCUSSION:**

DOTSON stated that because of the density and the fact that there is so little greenspace there could that be an area there for a pocket park? Just a place for people to gather and talk with some nice landscaping?

MR. CRAIG stated that the topography there is very steep and so that would not be an ideal spot. We had to bring in quite a bit of fill dirt from the marketplace because it was so steep.

**THE VOTE:** ALDERMAN SARVER-AYE, XAVIER-AYE, DOTSON-AYE, MAYOR BOLEY-AYE, KATHCART-AYE.

**AYES-5, NOES-0. SAMENUS WAS NOT CALLED TO VOTE. MOTION PASSED**

**5. STAFF REPORT**

HENDRIX provided the Commission with several documents as they relate to the Comprehensive Plan update process. He asked that the Commission read through this information and email him with any comments they may have. He will pass the information he receives along to the consultants.

MAYOR BOLEY stated that we need bold new ideas and challenged the Commission to think outside of the box.

We had 332 residents completed and submitted the 2030 Comprehensive Plan Community survey so far. There have been 54 people who signed up for the 4 taskforce meetings. The City would like to have more people sign

up so we are asking that the Commission speak with anyone they know about this and ask that they get involved by signing up on a taskforce.

White Iron Ridge event center has started installing the steel frame for the building.

Price Chopper has 85% of their foundation poured. About 65% of the deadmen (extra temporary pieces of foundation to support the walls when they go up) in the foundation are being poured now. The current plan is for the walls to start arriving on March 16<sup>th</sup> and then they will start setting them.

Porter's Ace hardware has their foundation in. They will pour the floor portion of the foundation as soon as the rain stops. They still have some plumbing to do before they can pour the foundation.

KCI RV Storage is still moving forward.

The second phase of the First Park industrial park has reevaluated some aspects of their infrastructure and are preparing plans for that. We have made communication with the medical marijuana manufacturing facility that will be going in there. They are preparing their final plans for site plan review.

A license was issued by the state for a medical marijuana dispensary on the south end of town where Full Features is. Mr. Mitchell will be coming forward with a site plan review for that and also moving forward with their storage facility in a site plan as well.

MAYOR BOLEY stated that the Council Chambers at City Hall will also be under construction soon to fix the sound issues. The layout of the room will change slightly as well. We will also be getting new technology for this room with this renovation.

## **6. PUBLIC COMMENT**

NONE

## **7. ADJOURN**

MAYOR BOLEY made a motion to adjourn. DOTSON seconded the motion.

VOICE VOTE: UNANIMOUS

Samenus declared the session adjourned at 8:33 p.m.



STAFF REPORT  
May 5, 2020  
Rezoning of Parcel Id # 05-301-00-01-005.00

Application for Rezoning District Classification Amendment

Code Sections:

400.560.C Zoning District Classification Amendments

Property Information:

Address: SE corner 169 Hwy and 188<sup>th</sup> St.  
Owner: Diocese of Kansas City-St. Joseph  
Current Zoning: R-1B and B-3  
Proposed Zoning: Part of R1B and all of B-3 to B-2

Public Notice Dates:

1<sup>st</sup> Publication in Newspaper: April 16, 2020  
Letters to Property Owners w/in 185': April 20, 2020

GENERAL DESCRIPTION:

The applicant has a contract to purchase the north 8 acres of the current Catholic Church site for the purpose of constructing a roughly 8,000 ft<sup>2</sup> office building to house the Stanley M. Herzog Charitable Foundation offices. Currently, the extreme northwest corner of the parcel has a 2.25 acres area that is zoned B-3. The applicant seeks to adjust that zoning down to B-2, but expand the area to a total of 8 acres.

EXISTING ZONING:

The existing zoning is R-1B and B-3.

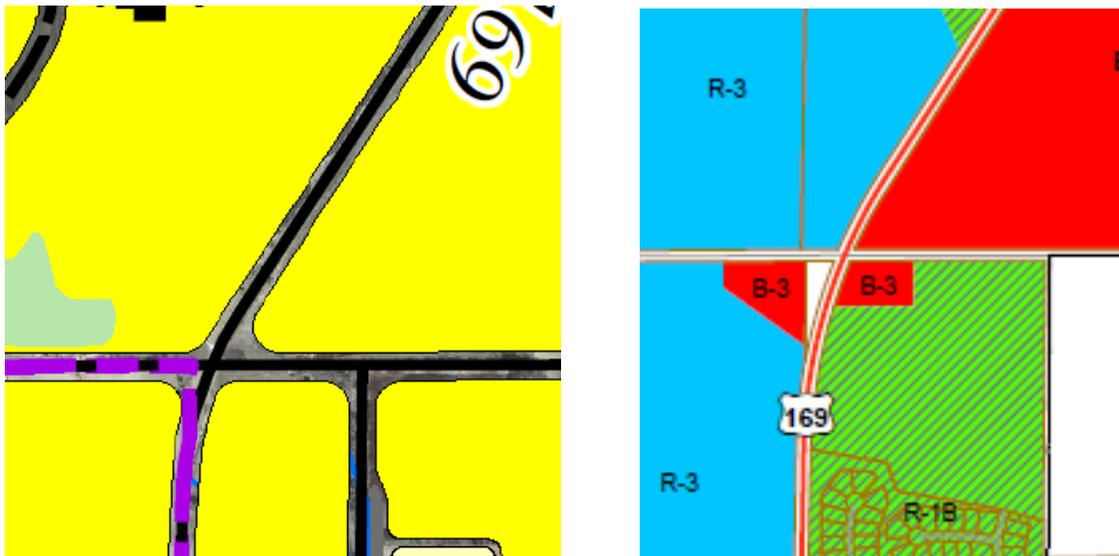
CHARACTER OF THE NEIGHBORHOOD *400.560.C.1*

The surrounding area is a mix of R-1 single family housing to the south of the Catholic Church, as well as many acres of undeveloped land with R-3 Multi-family and B-3 General Business districts.

#### CONSISTENCY WITH COMPREHENSIVE PLAN AND ORDINANCES 400.560.C.2

The existing Comprehensive Plan was approved on October 6, 2005 and calls for this area to be a low density residential in nature. Low density residential is defined as 3 dwelling units per gross acre of land. The Comprehensive Plan's Future Land Use Maps were approved after the current zoning was approved. It is important to note that "[w]hen an owner requests a rezoning, the Recommended Land Use Plan is one of the primary bases for the staff's recommendation and the Planning and Zoning Commission's and Board of Aldermen's decisions, along with other recommendations, principles and guidelines in the Comprehensive Plan." (Comp Plan pg. 14).

The 2005 Comprehensive Plan map shows the property in yellow (low density residential) at all four corners of the 169/188<sup>th</sup> St. intersection. The current zoning map shows R-1B in green, B-3 in red and R-3 in blue at the intersection.



The applicant proposes down-zoning the 2.25 acres of B-3 to B-2 but increasing the size from 2.25 acres to 8. While the Comprehensive Plan calls for the area to be low density residential, the intent of the B-2 district is "to accommodate a demonstrated need for development of office and other non-retail space adjacent to residential uses and which may be inappropriate for other commercial uses." The Comprehensive Plan calls for low density residential, but the current zoning has high density residential and B-3, so a reduction in the B-3 to B-2 is closer to the Comprehensive Plan intent, but it doesn't meet that plan to be low density residential.

The strict adherence to the Comp Plan requirements or variances that meet the overall intent of those requirements is a decision that the Planning Commission and, ultimately, the Board of Aldermen must evaluate and decide.

#### ADEQUACY OF PUBLIC UTILITIES OR OTHER PUBLIC SERVICES *400.560.C.3*

##### Streets and Sidewalks:

Adjacent streets are open ditch, paved and chip seal streets with no sidewalks. If approved, the subdivision process and the site plan review process should be used for determining any upgrades to those streets and sidewalks. 188<sup>th</sup> St. is a primary Collector street providing access to 169 Hwy, and Main St. is a local street.

##### Water, Sewer and Storm water

The city has adequate water supply on the north and east of the parcel and sewer bisects the property already. A storm study will be required as a part of the site plan process prior to any construction.

##### All other utilities

Future Development will be conditioned upon installation of all other needed utilities at the cost of the development.

#### SUITABILITY OF THE USES TO WHICH THE PROPERTY HAS BEEN RESTRICTED UNDER ITS EXISTING ZONING *400.560.C.4*

The current use is as a church facility, and therefore not subject to zoning district restrictions. The north 8 acres is both low density residential and B-3, but undeveloped.

#### TIME THE PROPERTY HAS REMAINED VACANT AS ZONED *400.560.C.5*

The property was zoned to the existing district classification in 2004. In 2009, after no development, the land was acquired by the Catholic Church and the church was constructed.

#### COMPATIBILITY OF PROPOSED DISTRICT WITH NEARBY LAND *400.560.C.6*

To the extent all the adjacent land (except the church) is vacant, undeveloped land of higher density, the proposed use is compatible with the adjacent land, but not the Comprehensive Plan.

EXTENT WHICH THE AMENDMENT MAY DETRIMENTALLY AFFECT NEARBY  
PROPERTY *400.560C.7*

No detrimental effects are known as the adjacent land is all undeveloped. To the extent it does not comply with the Comprehensive plan is a separate evaluation by the Commission and the Board

WHETHER THE PROPOSAL HAS A DISPROPORTIONATE GREAT LOSS TO  
ADJOINING PROPERTY OWNERS RELATIVE TO THE PUBLIC GAIN *400.560.C.8*

With no detrimental effects known, no great loss is expected.

STAFF RECOMMENDATION:

Staff recommends that the Commission and Board evaluate the 2005 Comprehensive Plan recommendations on density in light of the 2019 Strategic Plan and determine if the intent of the Comprehensive Plan could be met by this proposal to reduce the intensity of certain B-3 land but increase the area of the B-2 from that shown on the Future Land Use Map. Staff's findings and recommendations are also based upon the execution of a development agreement that identifies street improvements and storm water protections be constructed during lot development following Site Plan Review approval.

Respectfully Submitted,

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Zoning Administrator

## FINDING OF FACTS AND CONCLUSIONS OF LAW

Applicant: Dirk Talley, Agent for Diocese of KC-St. Joseph/ Herzog Foundation

Land Use Proposed: B-2

Zoning: R-1B and B-3

Property Location: 18601 N. 169 Hwy

Pursuant to the provisions of Section 400.560(C) of the Smithville Code, the Planning Commission does hereby make the following findings of fact based upon the testimony and evidence presented in a public hearing of the Planning and Zoning Commission of the City of Smithville, held on May 5, 2020, and presents these findings to the Board of Aldermen, with its' recommendations on the application.

### Finding of Facts

1. *Character of the neighborhood.*  
The surrounding area is a mix of R-1 single family housing to the south of the Catholic Church, as well as many acres of undeveloped land with R-3 Multi-family and B-3 General Business districts.
  
2. *Consistency with the City's Comprehensive Plan and ordinances.*
  - A. The existing Comprehensive Plan was approved on October 6, 2005 and calls for low density housing. The proposed district of B-2 does not comply with the Comprehensive Plan.
  
  - or
  
  - B. The existing Comprehensive Plan was approved on October 6, 2005 and calls for low density housing. This plan was adopted after the property was rezoned to its' current zoning of B-3 and R-1B. The current B-3 district area does not comply with the Comprehensive Plan recommendations but is fully developable as B-3. The proposed B-2 district, while larger in area than the current B-3, substantially reduces the available uses from that B-3 district and brings the area closer to compliance with the Comprehensive Plan.
  
3. *Adequacy of public utilities and other needed public services.*  
The application is to allow an 8-acre portion of the land to be used for constructing an office building. All utilities and services are available currently.

4. *Suitability of the uses to which the property has been restricted under its existing zoning.*  
The current use is as a church facility, and therefore not subject to zoning district restrictions. The north 8 acres is both low density residential and B-3, but undeveloped.
5. *Length of time the property has remained vacant as zoned.*  
The property was zoned to the existing district classification in 2004. In 2009, after no development, the land was acquired by the Catholic Church and the church was constructed.
6. *Compatibility of the proposed district classification with nearby properties.*  
To the extent all the adjacent land (except the church) is vacant undeveloped land of higher density, the proposed use is not incompatible with the adjacent land.
7. *The extent to which the zoning amendment may detrimentally affect nearby property.*  
No detriment is anticipated to the adjacent nearby undeveloped land.
8. *Whether the proposed amendment provides a disproportionately great loss to the individual landowners nearby relative to the public gain.*  
No loss to landowners is expected.
9. That in rendering this Finding of Fact, testimony at the public hearing on May 5, 2020, has been taken into consideration as well as the documents provided.

#### Recommendation of the Planning Commission

Based on the foregoing findings of fact, we conclude that:

- A. This application and the Rezoning of this property from R-1B and B-3 to B-2 is governed by Section 400.620 of the zoning ordinance of Smithville, Missouri.
- B. The proposed zoning is (not) compatible with the factors set out in Section 400.560(C) of the zoning ordinance.
- C. The Planning and Zoning Commission of the City of Smithville, Missouri recommends (dis)approval of rezoning the property to B-2 subject to execution of the attached Development Agreement.

**BILL NO. 2858-20**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF SMITHVILLE, MISSOURI AND ENTERING INTO A DEVELOPMENT AGREEMENT.**

**WHEREAS**, The City of Smithville received an application for rezoning a portion of 18601 169 Hwy on March 6, 2020; and

**WHEREAS**, the public was notified by publishing in the CT paper on April 16, 23 and 30, 2020 and notices were mailed to adjoining property owners on April 20, 2020.

**WHEREAS**, a Public Hearing was conducted before the Planning Commission on May 5, 2020; and

**WHEREAS**, the rezoning is to create a single commercial lot for development and a Development Agreement is included to ensure public infrastructure improvements and their timing is declared; and

**WHEREAS**, the Planning Commission presented its' findings to the Board of Aldermen and recommended approval of the rezoning request; and,

**NOW THEREFORE BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI, THAT:**

Section 1. Having received a recommendation from the Planning Commission, and proper notice having been given and public hearing held as provided by law, and under the authority of and subject to the provisions of the zoning ordinances of the City of Smithville, Missouri, by a majority council vote, the zoning classification(s) or district(s) of the lands legally described hereby are changed as follows:

The property legally described as:

All That Part Of The West Half Of The Southwest Quarter Of Section 2, Township 53 North, Range 33 West Of The Fifth Principal Meridan, Located In The City Of Smithville, Clay County, Missouri, Being More Particularly Described As Follows: Commencing At The West Quarter Corner Of Said Section 2; Thence North 89°42'11" East Along The North Line Of The Southwest Quarter Of Said Section 2, A Distance Of 247.61 Feet To The Point Of Beginning Of The Tract Of Land Herein To Be Described, Said Point Also Being On The Easterly Right-Of-Way Line Of Missouri State Highway Route Number 169; Thence Continuing Along The North Line Of The Southwest Quarter Of Said Section 2, North 89°42'11" East, A Distance Of 1049.38 Feet To The Northeast Corner Of The Northwest Quarter Of The Southwest Quarter; Thence South 00°17'35" West Along The

East Line Of Said Northwest Quarter, A Distance Of 314.27 Feet; Thence Departing From Said Line South 89°42'11" West 1160.24 Feet To A Point On The Easterly Right-Of-Way Line Of Missouri State Highway Route Number 169; Thence 334.52 Feet By Arc Distance Along A Curve To The Right Having A Radius Of 2824.79 Feet And Chord Bearing And Distance Of North 19°39'30" East, 334.32 Feet To The Point Of Beginning. Said Tract Of Land Contains 8.00 Acres More Or Less And Is Subject To Restrictions, Reservations, Easements And Right-Of-Ways Not Found In Public Records, If Any.

is hereby changed from B-3 and R-1B to B-2.

Section 2. Upon the taking effect of this ordinance, the above zoning changes shall be entered and shown upon the "Official Zoning Map" previously adopted and said Official Zoning Map is hereby reincorporated as a part of the zoning ordinance as amended.

Section 3. That the Mayor is authorized and directed to execute the attached Development Agreement with the applicant.

Section 4. This ordinance shall take effect and be in full force from and after the approval.

PASSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Damien Boley, Mayor

ATTEST:

\_\_\_\_\_  
Linda Drummond, City Clerk

First Reading:                    /       /

Second Reading                /       /

## **DEVELOPMENT AGREEMENT**

This development agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the Stanley M. Herzog Charitable Foundation (Developer) and **THE CITY OF SMITHVILLE, MISSOURI**, a Missouri Corporation (City) as follows:

**WHEREAS**, Developer plans on developing an office building and future related facilities on the north eight (8) acres of land previously identified as the Good Shepherd Catholic Church 18601 N. US 169 Hwy, Smithville, Missouri; and

**WHEREAS**, the Developer desires to plat land for an office building with other accessory uses and rezone this property by amending the previously approved zoning plan of R-1B and B-3P to B-2; and

**WHEREAS**, the City will make certain requirements for improvements if said land is developed with any structure, including an office building and related facilities; and

**WHEREAS**, it is in the best interest of both parties to enter into an agreement as to what improvements will be required of Developer; and

**WHEREAS**, this agreement is necessary to provide for the safety, health and general welfare of the public and provides for the orderly development of City.

**NOW, THEREFORE**, in consideration of the foregoing recitals and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The terms of this agreement apply to the following property and all portions thereof to be platted as HERZOG FOUNDATION, a single lot subdivision, the

legal description of which is set forth on Exhibit A attached hereto and which is or will be solely owned by Developer.

2. This is the entire agreement concerning Street and Storm water infrastructure regarding this development as it is currently conceptually proposed. It is generally agreed that Developer shall provide a Traffic Impact and Analysis Report and a Stormwater Analysis Report prior to the construction of any building on the subdivision property to be reviewed and approved by the City's Public Works Department and Engineers as a condition of approval of any site plan review.

3. Regarding 188<sup>th</sup> St., the developer agrees to improve 188<sup>th</sup> St. with a 4" asphalt overlay from 169 Highway to the East side of N. Main St., approximately 1,100 ft in length, as well as curbs, gutters and any storm water inlets necessary and in accordance with the Stormwater analysis report. The curbs and gutters shall extend to the west side of the N. Main St. right of way, including any radius onto N. Main St. In addition to the above, the right of way shall also be improved with a 5' wide sidewalk from the 169 right of way thru the curb radius on N. Main St. No other improvements on N. Main St. are required unless the development includes an access drive from the site to N. Main St.

4. That the developer will submit design plans for all such right of way work that coordinates with the grades, width and other improvements of the 169 and 188<sup>th</sup> St. intersection proposed by MODOT and to be constructed in 2021.

5. The Developer agrees and understands that any future development of the site, are subject to separate review by the City and any engineering evaluations required by the additional development of the site are the sole responsibility of the Developer.

6. The parties agree that execution of this Agreement in no way constitutes a waiver of any requirements of applicable City Ordinances with which Developer must comply and does not in any way constitute prior approval of any future proposal for development.

7. Developer agrees to record this Agreement with the Recorder of Deeds for Clay County, Missouri, and to pay the cost for said recording and provide a copy of the recorded Agreement to the City. These covenants shall run with the land described in Paragraph 1 of this Agreement and shall be binding and inure to the benefit of the parties hereto and their successors and assigns and on any future and subsequent purchasers.

8. All work agreed to be performed by Developer in this Agreement shall be done only after receiving written notice from City to proceed.

9. In the event of default in this Agreement by either party, it is agreed that either party shall be entitled to equitable relief to require performance by the other party as well as for any damages incurred by the breach, including reasonable attorney fees.

10. This Agreement shall constitute the complete agreement between the parties and any modification hereof shall be in writing subject to the approval of both parties.

11. Any provision of this Agreement which is not enforceable according to law will be severed "here from" and the remaining provisions shall be enforced to the fullest extent permitted by law.

12. The undersigned represent that they each have the authority and capacity from the respective parties to execute this agreement.

13. This agreement shall not be effective until approved by an ordinance duly enacted by the Board of Aldermen of Smithville, Missouri.

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement on the date first above written.

**THE CITY OF SMITHVILLE, MISSOURI**

By \_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
**CITY CLERK**

**STANLEY M. HERZOG  
CHARITABLE FOUNDATION**

By \_\_\_\_\_  
Member

STATE OF MISSOURI     )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, to me known, and who, being by me duly sworn, did say that he/she is the \_\_\_\_\_ of the Stanley M. Herzog Charitable Foundation, and said instrument was signed and sealed on behalf of said Stanley M. Herzog Charitable Foundation by authority of its Board and he/she acknowledges said instrument to be the free act and deed of said Stanley M. Herzog Charitable Foundation.

Stanley M. Herzog Charitable Foundation

\_\_\_\_\_  
Member

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office in \_\_\_\_\_ County, Missouri, on the day and year last written above.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_





STAFF REPORT  
May 5, 2020  
Platting of Parcel Id # 05-301-00-01-005.00

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Application for a Plat Approval – Herzog Foundation 1 lot

Code Sections:

425.285.A.4                      Single Phase Final Plat Approval

Property Information:

Address:                      SE corner 169 Hwy and 188th St.  
Owner:                        Diocese of Kansas City-St. Joseph  
Current Zoning:              R-1B and B-3  
Proposed Zoning:            Part of R1B and all of B-3 to B-2

Public Notice Dates:

1st Publication in Newspaper:              April 16, 2020  
Letters to Property Owners w/in 185':      April 20, 2020

GENERAL DESCRIPTION:

The property is currently a 34.42-acre parcel owned by the Diocese of Kansas City-St. Joseph and is the location of the Good Shepherd Catholic Church. The application is to divide the north 8 acres from the 34.42-acre tract and create a subdivision of 1 lot, to be titled the Herzog Foundation subdivision. The subdivision will be for a new lot to be zoned B-2 in order to construct a large office building to house the foundation offices.

**GUIDELINES FOR REVIEW – SINGLE PHASE SUBDIVISION FINAL PLATS** *See 425.285.A.4*

The Planning Commission shall consider the following criteria in making a recommendation on the plat:

- a. The plat conforms to these regulations and the applicable provisions of the Zoning Ordinance and other land use regulations. ***Yes, the layout complies with zoning and subdivision requirements.***
- b. The plat represents an overall development pattern that is consistent with the goals and policies of the Comprehensive Plan. ***The Development pattern is similar to the existing zoning on the property, however the Comprehensive Plan pattern is for single family.***
- c. The development shall be laid out in such a way as to result in:
- (1) Good natural surface drainage to a storm sewer or a natural watercourse. ***The property is bisected by a natural drainage area. To the extent that the proposed subdivision is for a single, commercial lot, the storm drainage is subject to a storm study and protective measures in accordance with and during the Site Plan Review process.***
  - (2) A minimum amount of grading on both cut or fill and preservation of good trees and other desirable natural growth. ***Again, a single commercial lot is subject to the Site Plan Review process which contains the same protections as this subdivision provision, so the ultimate design must meet this standard.***
  - (3) A good grade relationship with the abutting streets, preferably somewhat above the street. ***In most of the lot, the grade meets this standard. The exception is the natural drainage course across the property.***
  - (4) Adequate lot width for the type or size of dwellings contemplated, including adequate side yards for light, air, access and privacy. ***Yes.***
  - (5) Adequate lot depth for outdoor living space. ***Yes.***
  - (6) Generally regular lot shapes, avoiding acute angles. ***Yes.***
  - (7) Adequate building lots that avoid excessive grading, footings or foundation walls. ***Yes.***
- d. The plat contains lot and land subdivision layout that is consistent with good land planning and site engineering design principles. ***Yes.***
- e. The location, spacing and design of proposed streets, curb cuts and intersections are consistent with good traffic engineering design principles. ***There are no new roadways, but the Site Plan Review process will require a traffic study concerning access, and there are street improvements included in this staff report assumptions.***
- f. The plat is served or will be served at the time of development with all necessary public utilities and facilities, including, but not limited to, water, sewer, gas, electric and telephone service, schools, parks, recreation and open space and libraries. ***Yes, the development lot includes gravity sewers already in place, and water, power and all other utilities are on the existing parcel.***

g. The plat shall comply with the stormwater regulations of the City and all applicable storm drainage and floodplain regulations to ensure the public health and safety of future residents of the subdivision and upstream and downstream properties and residents. The Commission shall expressly find that the amount of off-site stormwater runoff after development will be no greater than the amount of off-site stormwater runoff before development. ***The proposed development will meet this standard at the time of Site Plan Review, and the minimum standards of this provision are met during that process.***

h. Each lot in the plat of a residential development has adequate and safe access to/from a local street. ***N/A.***

i. The plat is located in an area of the City that is appropriate for current development activity; it will not contribute to sprawl nor to the need for inefficient extensions and expansions of public facilities, utilities and services. ***Yes.***

j. If located in an area proposed for annexation to the City, the area has been annexed prior to, or will be annexed simultaneously with plat approval. ***n/a***

k. The applicant agrees to dedicate land, right-of-way and easements, as may be determined to be needed, to effectuate the purposes of these regulations and the standards and requirements incorporated herein. ***Yes, the plat includes the required dedications.***

l. All applicable submission requirements have been satisfied in a timely manner. ***Yes.***

m. The applicant agrees to provide additional improvements, which may include any necessary upgrades to adjacent or nearby existing roads and other facilities to current standards and shall include dedication of adequate rights-of-way to meet the needs of the City's transportation plans. ***Staff's recommendation is based upon the developer's agreement to the development agreement included with the rezoning request.***

STAFF RECOMMENDATION:

Staff recommends APPROVAL of the proposed Final Plat based upon adherence to the conditions contained in the May 1, 2020 letter to the developer, including the terms of the development agreement included with the rezoning request.

Respectfully Submitted,

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Director of Development



April 30, 2020

Dirk Talley  
Agent for the Diocese of Kansas City-St. Joseph and  
Stanley M. Herzog Charitable Foundation  
Via E-mail

Re: Herzog Foundation Final Plat

Dirk:

Our surveyors have reviewed the Final Plat and provided their recommendations for the plat approval. In addition, the Public Works Department has reviewed the infrastructure surrounding the proposed plat and has identified certain improvements that will be required. The following are the staff comments for the recommendation of approval of the Final Plat:

1. Add State Plan coordinates to major corners of the plat.
2. Add statement dedicating all easements, streets, alleys and all other public areas not previously dedicated.
3. Change the Notary Certification to match Section 425.285.A.3.m.(4) located here:  
<https://ecode360.com/28676212>
4. Please amend the signature block to include the current owner of the land as a/the signatory under the Dedication block.

In addition to these surveyors' comments, the following public infrastructure items are required to be executed in the attached Development Agreement.

- A. Sanitary Sewers are adequate and bisect the site and no improvements are necessary.
- B. Water lines are accessible directly to the site on the West, East, and North and no additional improvements are necessary.
- C. Storm Water Analysis must be performed that addresses not only the proposed building(s) and parking areas, but the existing drainage basins that enter the site. Based upon the proposed construction of buildings, this study must occur during the Site Plan Review process and meet the subdivision and site plan requirements. All such improvements will be constructed following Site Plan Review approval.
- D. Street access points will be subject to a traffic impact analysis to be performed as a part of the Site Plan Review Process also. In addition, the 188<sup>th</sup> St. right of way must be improved to include curbs, gutters, storm boxes and 5' sidewalks the entire length of the south side of 188<sup>th</sup> St. from 169 Hwy to the WEST side of N. Main St. and a 4" asphalt overlay from 169 to the EAST side of N. Main St on both the east and west lanes of traffic. All street access and improvements shall match the grade and width of the proposed improvements to the 169 and



188<sup>th</sup> St. intersection under design by the Missouri Department of Transportation for construction in 2021.

The attached Development Agreement includes the above infrastructure requirements, triggering events and conditions to meet the subdivision requirements of the City of Smithville, and are the basis of the Staff Report to the Planning Commission.

/s/



**Jack Hendrix** • Director of Development  
City of Smithville, MO

107 W Main Street • Smithville, MO 64089

Phone: (816) 532-3897

[www.smithvillemo.org](http://www.smithvillemo.org)