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FINAL RECOMMENDATIONS

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City of Kelso
Planning Dept.
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April 12, 1993

To: Kelso City Mayor and City Council Members

From: Chuck Long, Chairman, Kelso Planning Commission *CHL*

Re: Zoning for Sexually Oriented Businesses

The Kelso Planning Commission transmits herewith our final recommendation regarding the site location and proposed new zoning code regulations for sexually oriented businesses within the city of Kelso. As is evidenced through this paper, the commission utilized a very thorough examination of all zones during the site location process in order to find a location which would allow sexually oriented businesses access to the real estate and commercial markets, while at the same time providing the citizens of Kelso with the greatest degree of protection possible from the negative secondary impacts caused by such businesses. The negative secondary impacts are clearly identified in the accompanying materials and were used by the commission during the completion of this task. A list of those materials are attached to this letter as Exhibit "A". The collection of the complete studies, ordinances and articles are submitted as materials used by the planning commission and staff during the deliberations concerning location and site standards.

The planning commission held a formal public hearing on the above subject on Wednesday, April 7, 1993 at 7:30 p.m. in the Cowlitz County Administration Building. Exhibit "B", which is the planning staffs' findings and recommendations, is attached as materials used during the planning commission's public hearing on the proposed location of the Sexually Oriented Business Overlay Zone (SOB) and associated zoning text amendments. Exhibit "C" and "D" are draft ordinances setting forth the detailed zoning regulatory standards and amendments being proposed. During this hearing, the planning commission received testimony regarding the SOB location and other related comments from approximately 21 citizens. Attached as Exhibit "E" is a summary of those comments.

After reviewing all associated documents and conducting a objective analysis as to the proper and most acceptable zone overlay location and text standards and amendments (and hearing citizen comments and concerns regarding the aforementioned location, standards and amendments), the Kelso Planning Commission recommends that the Kelso City Council adopt that portion of the Light Industrial Zone (LI) as depicted on the accompanying zoning map and associated zoning code amendments, which incorporate location standards while ensuring all associated sexually oriented uses can operate within the proposed overlay zone.

BACKGROUND

At a public meeting on October 21, 1992 the Kelso City Council passed Ordinance No. 3199 directing the planning commission to make recommendations for amendments to Title 17, Planning and Zoning, to provide for the most adequate location that would serve to minimize the adverse impacts of nude dancing and other sexually oriented entertainment businesses. During this same meeting the council passed a moratorium prohibiting any adult sexually oriented business from opening or expanding within the City of Kelso for the next 180 calendar days. This was to allow the commission and staff time to conduct the necessary research and prerequisites for zoning code amendments. The moratorium was originally scheduled to end on April 19-20, 1993 unless a time extension was granted by the city council.

ZONE LOCATION ANALYSIS

Under the tutelage of Bill Dana, the planning commission used the Kepner Tregoe Analysis Process, which is well known in industry for making objective decisions. The process began by first establishing a baseline objective, expressed in the form of the following question: "What existing zone or new zone is most suitable to locate nude or topless dancing and other sexually oriented businesses (18 year old patrons and performers allowed)?" The commission listed eleven site objectives that each zone location would have to meet in order to qualify as a "recipient zone". The objectives used are as follows:

1. Ease of police access
2. Zone not too small (compared to other zones)
3. Minimize negative impact on existing businesses
4. Away from schools
5. Away from churches
6. Away from parks and bike paths
7. Available existing utilities
8. Available road access
9. Maintain existing property values
10. Minimize emergency response time
11. Away from residential

Each of the above objectives was then placed in either a "must"-or "want" category. Those placed in the "want" category were assigned a "want value" of 1-10. Any zone that did not meet any one of the "must" objectives was automatically removed from further consideration. For example, "Residential Zones" were removed from further consideration because they could not meet objectives numbers 4, 5, 9, and 11, which were listed as "must objectives".

Of the twelve zones evaluated, the following five zones survived for further evaluation:

1. Light Industrial
2. General Manufacturing
3. Airport Industrial
4. Riverfront Industrial
5. (New Zone) Sexually Oriented Business Overlay Zone

Each of the above five zones were then assigned a score from 1-10 points according to the following question: "How well does the zone meet the WANT?" The "want" categories are:

- Ease of police access
- Minimize negative impacts on existing businesses
- Away from parks and bike paths
- Available existing utilities
- Available road access
- Minimize emergency response time

The "want" value (taken from Page 1) was then multiplied by the "question weight"(Q) (value for each objective) to provide a weight total for each objective and a total weighted score for each zone, as to how that particular zone and objective met the original location question. The higher the total weighted score, the better that zone meets the objectives. The zones and their scores are as follows:

1. Sexually Oriented Business Zone (In the southeastern portion of the GM zone) = 210 points.
2. General Manufacturing (The entire GM zone) = 189 points.
3. Airport Industrial = 167 points.
4. River Front Industrial = 165 points.
5. Light Industrial = 164 points.

The last phase of the Kepner Tregoe Decision Analysis utilizes a "Risk Assessment" of surviving alternatives (zones) by considering threats and vulnerability of selecting a particular zone for location of sexually oriented businesses. Risks identified are:

- Zone too big (citizen risk)
- Zone too small (legally indefensible)

- Negative impact on business
- Access problems
- Police inaccessibility
- Too easy to access residential
- Utilities problems
- Property devaluation
- Increased crime
- Negative impact on minors
- Higher costs to city

The Risk Assessment assigns values of high (H), medium (M), or low (L) for probability and seriousness of that risk to the zone selection. Zones with the most H's represent the zone that potentially has the most risk in selecting that location. This Risk Assessment is then compared to the total weight score to enable the Kelso City Council to make the best pre-legal balanced locational choice.

BEST BALANCED LOCATIONAL CHOICE

Analysis of the five surviving zones against the stated objectives (Page 1) indicates that the "SOB Overlay" zone best satisfied the objectives. The "SOB Overlay" zone, as depicted on the accompanying map, was created and analyzed only after the "GM" zone was shown to present a high risk to valid legal challenge.

When the Risk Assessment (Page 3) was applied, it was determined that "AI" and "LI" zones were the lowest risk to valid legal challenge, however those AI and LI zones did not meet the objectives (Pages 1, 2) as well as the first priority. The Riverfront Industrial (RF-I) zone was considered too high of a risk and also did not satisfactorily meet the objectives.

PROPOSED ZONES LEGAL DEFENSIBILITY REVIEW and FINAL LOCATION DECISION

The Kelso Planning Commission recognizes that it must recommend not only a zone which satisfies the objectives but also meets the test of legal defensibility. It was with this in mind that after the commission concluded the above analysis, all work was then submitted to the city attorney for a "legal defensibility review". An in-depth examination of the five surviving zones was then undertaken by the city attorney's office. The city attorney's office found that Zones 1, 2, and 4 are legally indefensible due to the fact that these locations lack adequate site access, public utilities and access to the market. Zone 3, although legally defensible from the access, public utility and market aspect, was found to be too small and in possible conflict with the Airport Sponsors Assurance provisions between the FAA and the city of Kelso, in that sexually

oriented businesses are not deemed as being compatible with normal airport operations. Thus, only Zone 5, or portions thereof, remain as the final location that is complete with all the required needs of the subject businesses, meets the "original mission statement" and is legally defensible.

ZONING TEXT DEVELOPMENT

The commission then concentrated on examining the existing zoning code and standards, which would be adopted into the city code as additional sections to Chapter 17, and amending subsection 17.44.130 of Section 4 of Ordinance 3189 -- Chapter 17 "Chart A - Uses", Planning and Zoning of the Kelso city code. The purpose of the standards and "Use Chart" amendments are to allow the city control of the various types of secondary blighting effects that commonly result from the operations of sexually oriented businesses. In order to understand what those impacts are, the planning commission examined approximately 15 separate studies gathered from various communities across the country. These studies are attached to this report and recommended for adoption by reference.

The greatest difficulty during the earlier phase of the draft text was not knowing the exact outcome. There were two possible directions that we tried to anticipate during the development of this section. They are:

- a. that applicants for sexually oriented businesses would be allowed to locate within the commercial districts of Kelso; or
- b. that applicants for sexually oriented businesses would be required to locate within an overlay zone.

For example, if a sexually oriented businesses would be allowed to locate within the various commercial districts of Kelso, then there were to be severe "distance regulations" established, and no business would be allowed to locate closer than 1,500 feet of each other or any school, church, boys' or girls' clubs, residential zone or use (including apartments in the downtown area).

Should the use locate within the overlay zone, the distance between each use and surrounding schools, churches, residential zones, etc., is set at no less than ~~600~~ feet. However, the distance between each similar type of business shall be the same as distances set for those uses in the underlying parent zone.

The commission recognizes that the density of development is different between the commercial and industrial zones. The commission also recognizes that locating sexually oriented businesses out of the commercial core and away from residential areas would be in the best interest of the

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city because residential apartment units are allowed as a "mixed-use" concept in the commercial core; whereas, residential apartment units are not allowed in the industrial zones. As the prime objective was to separate sexually oriented businesses from residences, the overlay zone concept (placing these types of activities in the industrial zone) is the only logical step.

After consultation with the legal advisors of both the city and out of state, the planning commission determined that presenting the council with a zoning text, which is not solid as to its expectations, would not be serving the council to the fullness of our responsibilities and would send a message that the commission is not convinced that the "overlay concept" is the best decision to recommend. Therefore, the commission agreed with the city attorney and staff to remove all reference to "commercial" locations, and proposes only one overlay zone location together with the recommended draft text and "existing text" amendments to insure locational and text compatibility.

On behalf of the Kelso Planning Commission, we hope this work meets with the council's expectations and needs. We stand ready to assist during your review and adoption process of this material.

DM:CL:pm

Enclosures

cc: Kelso Planning Commission Members
Concerned Citizen Coalition, Attn: Mary Bardonski
Doug Robinson, Kelso City Manager
Don Mathison, City Planner
Don Harris, Zoning Permit Coordinator

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