City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: September 4, 2018

Item: COUNCIL BILL NO. 2018-265
Originating Department: PLANNING & COMMUNITY DEVELOPMENT

Attachments: 1) Copy of Council Bill 2018-265
2) Planning Report
3) Commission Minutes

Planning/Community Development Manager: Troy Bolander
Finance Director: Leslie Haase
City Attorney: Peter C. Edwards
City Manager: Samuel L. Anselm
Board or Commission: Planning and Zoning Commission Date: 08/13/18

Recommended Action: Planning and Zoning Commission recommended to table by a vote of "4 in Favor, 0 Nay, 3 Absent."

SUMMARY/REQUEST:
Case 024-18: Adjacent and South of I-44 at Exit 1 – A request to rezone from Single Family Residential District (R1) to Commercial Planned Overlay District (C3-PD) – Bill Richert.

STAFF SUMMARY:
This property's close proximity to I-44 make it very ideal for commercial use. All property automatically comes into the city as R-1 (Single Family Residential) until a more appropriate zoning classification can be determined. This property was annexed into the city with the understanding that it eventually become commercial property. There is currently commercial property several hundred yards from this property along Outer Road.

On April 9, 2018 Mr. Richert applied to have this property rezoned from R-1 (Single Family Residential) to C-3 (Commercial). This request was approved by the Planning and Zoning Commission unanimously. However, when the case appeared before the City Council there was resistance from adjacent property owners and the Council did not approve the rezoning request.

At this time the property owner is seeking to rezone again, this time to Commercial Planned Overlay District (C3-PD). It is the property owner's hope that having a Planned District designation will mitigate many of the adjacent property owners' concerns. Having a Planned District designation would mean that the site plan for any commercial development must be reviewed and approved by the City Council. This will allow more input during the development process

Staff recommends Case 024-18 be approved.

PLANNING & ZONING COMMISSION TESTIMONY:
Mr. Whitmore stated that due to the controversy of this case he would read off the criteria for making a zoning decision. Zoning decisions should be based on the entire Community, not just the interests of a particular property owner or neighboring property owners. The Planning & Zoning Commission should try to distinguish between facts and opinions at a public hearing. Zoning decisions should include consideration of long range community goals as well as short range needs. The recommendations of the Comprehensive Plan should be the primary source for this information. The Comprehensive Plan should

be reviewed on a regular basis by the Planning & Zoning Commission. It is important to zone base on land use issues not the personal issues affecting the individual applicant. Instead, decisions should be based on whether the land is appropriate for the proposed zoning district.

Finding of Fact Hearing:

Mr. Whitmore stated the six (6) criteria that zoning decisions are made upon.

1. Character of the neighborhood.

This surrounding property is residential, however, further to the east there are existing commercial properties.

2. Zoning and uses of properties nearby.

This is mixed, residential and commercial use.

3. Suitability of the subject property for the uses for which it has been restricted.

With this property being so close to the interstate, restricting this property to residential would not be a suitable use for this property.

4. Extent for which the newer restrictions or change in zoning will detrimentally affect the nearby property.

Removing the restrictions or changing the zoning may somewhat detrimentally affect nearby property. But due to the already high-volume traffic on Outer Road, it does not seem likely to dramatically affect nearby property owners, despite concerns that have been expressed.

5. The findings concerning the extent which the rezoning request meets the intent of the zoning regulation.

The rezoning of this property meets the intent of the Comprehensive Plan and Zoning Regulations.

6. Compliance with the Comprehensive Development Plan -Future Land Use Map.

The Future Land Use Map shows this property as commercial and it was annexed into the City of Joplin with the intent to be commercial property.

<u>PUBLIC COMMENT</u>:

Mr. Richert, 6033 S. Québec Ave., Tulsa OK. He is one of the owners of the property. They are asking the Planning & Zoning Commission for a rezoning for the property at Exit 1 from R-1 to C-3-PD. The understanding is that it will allow commercial uses, but a site plan will need to be brought in for P&Z approval and City Council approval before any development may occur. The zoning at exit interchanges all through Joplin are the same: C-3. They are asking to be able to do a similar type of development to what was on that property before, Nickerson Farms Restaurant. Mr. Richert stated that they are the owners, not the developers. Mr. Cortez wanted to know from Mr. Richert if he was able to tell us what the developer is hoping to do on that property? Mr. Richert stated probably in the same respects as a hotel, restaurant, C-Store. Mr. Ramsour wanted to know from Mr. Bolander how long ago was this piece of property annexed into the City and why was it this particular parcel and not any of the adjacent parcels. Mr. Bolander stated the property owner approached the City about coming into the City. He wanted to receive city services. It was one of the co-founders of Sitton Truck Lines who owned this property. When we annexed the interstate, he requested to be annexed, which occurred in 2008. Mr. Ramsour asked if the property was annexed as a vacant lot. Mr. Bolander stated it did. It was with the understanding from Mr. Sitton that it would be commercial property. Mr. Sitton could have

developed the land any way he chose to if this property wasn't annexed into the city. There are no land use regulations in the county.

Casey Vanstory, 1601 S. Outer Road, Joplin, MO. Things that need to be considered before rezoning the property, characteristics of the neighborhood is one of them. There are a total of eight (8) families that this rezoning will affect. They do not live in the city limits and have concerns for her family. The major concerns are the fabrication of the distance of the utilities. Nickerson Farms was run off a well and a lagoon system. She said there is a natural gas line that runs through the property and prevents any permanent structures being built within 20 feet of this line. Mr. Richert was not made aware of that until the first meeting by someone else. The land itself has a hill and it will cause flooding on all of the properties. She stated that she has failed to receive any notifications and she is adjacent to the property of the rezoning request. She would like to see all notifications. She re-read her letter that she had written at the meeting two months ago. Things that need to be considered before rezoning the property, characteristics of the neighborhood is one of them.

Alan Mauk, 4404 Aadrvark Drive, Joplin, MO. Mr. Mauk stated that at this point in time, you have to consider a developer from Tulsa, who hastily drives by his property and doesn't care if it is full of garbage and trash to make a meeting to change a designation on a property that your own staff has acknowledge there are numerous homes in the area that would be affected by this. The business that was there 40 years ago that was on a well and lagoon would not be accepted today. You have a developer that comes in who does not have a plan or any thought about the process. He has not spoken about any of the utilities, lighting, and upkeep on Outer Road.

Nick and Tamara Breedlove, 1645 Outer Road, Joplin, MO, stated she had nothing else to add, only that she was against the rezoning.

Mr. Ramsour asked Mr. Bolander his opinion on the proper notification of the land owners.

Mr. Bolander stated that we are required to make a good faith effort to notify property owners within 185 feet. There is some debate on whether we need to notify property owners who are not within city limits, but we still do that as our policy. We did check down in Newton County to see why Mrs. Van Story was not receiving a letter. According to Newton County the property is owned by Molandco Incorporated. That may have been a mistake, but she should check with Newton County because that is where we receive our records from.

CB 2018-265

Case 024-18: A tract of land directly south of I-44, adjacent to Exit 1 – A request to rezone from R-1 (Single-Family Residential) to C-3-PD (Commercial Planned Development) for future commercial development – Bill Richert.

Mr. Whitmore stated that due to the controversy of this case he would read off the criteria for making a zoning decision. Zoning decisions should be based on the entire Community, not just the interests of a particular property owner or neighboring property owners. The Planning & Zoning Commission should try to distinguish between facts and opinions at a public hearing. Zoning decisions should include consideration of long range community goals as well as short range needs. The recommendations of the Comprehensive Plan should be the primary source for this information. The Comprehensive Plan should be reviewed on a regular basis by the Planning & Zoning Commission. It is important to zone base on land use issues not the personal issues affecting the individual applicant. Instead, decisions should be based on whether the land is appropriate for the proposed zoning district.

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This surrounding property is residential, however, further to the east there are existing commercial properties.

2. Zoning and uses of properties nearby.

This is mixed, residential and commercial use.

3. Suitability of the subject property for the uses for which it has been restricted.

To restrict this property to residential, being so close to the interstate would not be a suitable use for this property.

4. Extent for which the newer restrictions or change in zoning will detrimentally affect the nearby property.

The extent of removal of the restrictions or change the zoning may detrimentally affect nearby property. But due to the already high-volume traffic on Outer Road, it does not seem likely to dramatically affect nearby property owners.

5. The findings concerning the extent which the rezoning request meets the intent of the zoning regulation.

The rezoning of this property does meet the intent of the Comprehensive Plan and Zoning Regulations.

6. Compliance with the Comprehensive Development Plan -Future Land Use Map.

The Future Land Use Map shows this property as commercial and it was annexed into the City of Joplin with the intent to be commercial property.

Mr. Richert, 6033 S. Québec Ave., Tulsa OK. He is one of the owners of the property. They are asking the Planning & Zoning Commission for a rezoning for the property at Exit 1 from R-1 to C-3-PD. The understanding is that it will allow commercial uses, but a site plan will need to be

brought in for P&Z approval and City Council approval before any development may occur. The zoning at exit interchanges all through Joplin are the same: C-3. They are asking to be able to do a similar type of development to what was on that property before, Nickerson Farms Restaurant. Mr. Richert stated that they are the owners, not the developers.

Mr. Cortez wanted to know from Mr. Richert if he was able to tell us what the developer is hoping to do on that property?

Mr. Richert stated probably in the same respects as a hotel, restaurant, C-Store.

Mr. Ramsour wanted to know from Mr. Bolander how long ago was this piece of property annexed into the City and why was it this particular parcel and not any of the adjacent parcels.

Mr. Bolander stated the property owner approached the City about coming into the City. He wanted to receive city services. It was one of the co-founders of Sitton Truck Lines who owned this property. When we annexed the interstate, he requested to be annexed, which occurred in 2008.

Mr. Ramsour asked if the property was annexed as a vacant lot.

Mr. Bolander stated it did. It was with the understanding from Mr. Sitton that it would be commercial property. Mr. Sitton could have developed the land any way he chose to if this property wasn't annexed into the city. There are no land use regulations in the county.

Mr. Cortez asked if there was anyone else that would like to speak in favor of this case? There were not.

Is there anyone to speak against this rezoning?

Casey Van Story, 1601 S. Outer Road, Joplin, MO. She stated that there are laws that are established by the state on how to do the rezoning. Once again, she came here feeling taken advantage of. She stated she was not given proper notice of this meeting for a third time, but was hand delivered a letter. The sign for the public hearing does not have any dates on it and just has the time. She feels the City is completely against her and is completely attacked by the City. The major concerns are the fabrication of the distance of the utilities. Nickerson Farms was run off a well and a lagoon system. She said there is a natural gas line that runs through the property and prevents any permanent structures being built within 20 feet of this line. Mr. Richert was not made aware of that until the first meeting by someone else. The land itself has a hill and it will cause flooding on all of the properties. She stated that she has failed to receive any notifications and she is adjacent to the property of the rezoning request. She would like to see all notifications. She re-read her letter that she had written at the meeting two months ago. Things that need to be considered before rezoning the property, characteristics of the neighborhood is one of them. She stated that a nearby commercial development would endanger her family.

Mr. Cortez asked if there were any questions for Mrs. Van Story.

Alan Mauk, 4404 Aardvark Drive, Joplin, MO. Mr. Mauk stated that he had the highest regard for Troy and his staff in dealing with them over the years. I have found them very good to work with and certainly above reproach. At this point in time, you have to consider a developer from Tulsa, who hastily drives by his property and doesn't care if it is full of garbage and trash to make a meeting to change a designation on a property that your own staff has acknowledge there are numerous homes in the area that would be affected by this. The business that was there 40 years ago that was on a well and lagoon would not be accepted today. You have a developer that comes in who does not have a plan or any thought about the process. He has not spoken about any of the utilities, lighting, and upkeep on Outer Road. You have an obligation to the City and the families around the community to make sure any decision you make is one that will address the infrastructure of the development and the cost to the City. Has Planning and Zoning seen a plan?

Mr. Bolander stated he has not, but Mr. Richert is requesting a C-3-PD, which means a planned overlay district and the developer will have to come back with a plan. You can't base a rezoning on a specific use or plan. The PD does require him to come back and show this body and City Council a plan before he can proceed with any development.

Mr. Mauk stated that he appreciates Mr. Bolander explanation. So why doesn't the commission wait to see what their plan is first, so you will be able to see the infrastructure needs of the community.

Mr. Cortez asked Commissioners if they had any questions for Mr. Mauk. They did not.

Mr. Ramsour asked Mr. Bolander his opinion on the proper notification of the land owners.

Mr. Bolander stated that we are required to make a good faith effort to notify property owners within 185 feet. There is some debate on whether we need to notify property owners who are not in City limits, but we still do that as our policy. We did check down in Newton County and see why Mrs. Van Story was not receiving a letter. According to Newton County the property is owned by Molandco Incorporated. That may have been a mistake, but she should check with Newton County because that is where we receive our records from.

Mr. Cortez asked if there was anyone else to speak against this case?
Tamara Breedlove, 1645 Outer Road, Joplin, MO. She stated she didn't have anything new to say except that she is against the rezoning.

Mr. Cortez closed the case.

MR. RAMSOUR MOVED, SECONDED BY MRS. BRUECKNER-SEARS THAT CASE 024-18, BE FORWARDED TO THE CITY COUNCIL WITH RECOMMENDATION FOR APPROVAL MOTION CARRIED, WITH MR. CORTEZ, MR. RAMSOUR, MRS. BRUECKNER-SEARS, AND MR. MCCULLOUGH VOTING "AYE". (4 IN FAVOR, 0 NAYS, 3 ABSENT).

Z&P Meeting: August 13, 2018
City Council Meeting: September 4, 2018

STAFF PLANNING REPORT
Rezoning

CASE 024-18 A request to rezone from R-1 (Single Family Residential) to C3-PD (Commercial Planned Overlay District) for future commercial development

LOCATION I-44 at Exit 1, near the Oklahoma state line

APPLICANT Bill Richert

EXISTING CONDITIONS

Zoning	Land Use	Property Size
R-1	Vacant	14 acres

SITE CONTEXT

	North	East	South	West
Existing Zoning	C-3	N/A	N/A	N/A
Land Use	RV Park	Rural Residential	Rural Residential	Agriculture

FUTURE LAND USE

The City of Joplin's Future Land Use Map classifies this lot as Commercial

TRANSPORTATION

Streets with access	Classification	Right-of-way width
Outer Road	Secondary	50'

UTILITIES Utilities need to be extended to the property.

FLOOD PLAIN N/A

STAFF ANALYSIS

CONSISTENT WITH DEVELOPMENT POLICIES OF THE COMPREHENSIVE PLAN?

Yes. The future land use map shows this property as 'Retail Commercial' and is appropriate for commercial use. It would violate the city's comprehensive plan to not rezone this property to commercial.

THE SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED

This property is currently zoned R-1. A zoning change to C-3 is required for commercial development.

THE EXTENT THAT THE ZONING CHANGE WILL DETRIMENTALLY AFFECT NEARBY PROPERTY

The property directly to the East will be impacted by rezoning. That property is rural residential and is not part of the city of Joplin. Adjacent property that is low-density residential may be affected by this change.

DISCUSSION

This property was annexed into the city and was automatically given the zoning of R-1. It was previously used as commercial property known as "Knickerson Farms". This property's close proximity to I-44 make it very ideal for commercial use. All property automatically comes into the city as R-1 (Single Family Residential) until a more appropriate zoning classification can be determined. This property was annexed into the city with the understanding that it eventually become commercial property. There is currently commercial property several hundred yards from this property along Outer Road.

On April 9, 2018 Mr. Richert applied to have this property rezoned from R-1 (Single Family Residential) to C-3 (Commercial). This request was approved by the Planning and Zoning Commission unanimously. However, when the case appeared before the City Council there was resistance from adjacent property owners and the Council did not approve the rezoning request..

At this time the property owner is seeking to rezone again, this time to Commercial Planned Overlay District (C3-PD). It is the property owner's hope that having a Planned District designation will mitigate many of the adjacent property owners' concerns. Having a Planned District designation would mean that the site plan for any commercial development must be reviewed and approved by the City Council. This will allow more input during the development process.

Staff recommends approval of Case 024-18.

ATTACHMENTS

- Application

REZONING APPLICATION FORM

Return Form to:
Planning / Community Development Specialist.
Joplin City Hall
602 South Main Street
Joplin, Missouri 64801
417-624-0820 Ext. 511
FAX 417-625-4738

For Office Use Only
Case No.: 024-18
Filing Fee: $500.00
Date Advertised: 6-24-18
Date Notices Sent: 6-26-18
P&Z Date: 7-9-18
City Council Date: 8-6-18

APPLICANT: BILL RICHERT EXIT-ONE, LLC PHONE: 918 743-6262
ADDRESS: PO BOX 2352, TULSA, OK ZIP: 74101
EMAIL: brichert@sbcglobal.net
OWNER: EXIT-ONE, LLC PHONE:
ADDRESS: PO BOX 2352, TULSA, OK ZIP: 74101
EMAIL: SAME
LOCATION OF PROPERTY: EXIT-ONE OF I-44 (SOUTH SIDE)
LEGAL DESCRIPTION:

Present Zoning: R1 Requested Zoning: C3-PD Acreage: 14 AC
Present Use of Property: VACANT
Proposed Use of Property: COMMERCIAL

SURROUNDING LAND USE AND ZONING:

	Land Use	Zoning
North	CASINO, C-STORE	
South	RURAL	NOT IN CITY LIMIT
East	RURAL RESIDENTIAL	" " " "
West	RURAL	" " " "

CHARACTER OF THE NEIGHBORHOOD: INTERSTATE HIGHWAY INTERCHANGE COMMERCIAL ON NORTH, RURAL ON SOUTH, EAST, WEST

RELATIONSHIP TO EXISTING ZONING PATTERN:

1. Would proposed change create a small, isolated district unrelated to surrounding districts?
   NO
2. Are there substantial reasons why the property cannot be used in accord with existing zoning?
   If yes, explain: THE SITE WAS FORMERLY A RESTAURANT SITE

CONFORMANCE WITH COMPREHENSIVE PLAN:

1. Consistent with Development Policies? YES
2. Consistent with Future Land Use Map? YES

THE FOLLOWING MUST ACCOMPANY YOUR APPLICATION:

1. One copy of a legal description of the property proposed to be rezoned.
2. One copy of a statement describing the reasoning for the rezoning, the impact of the proposed change, including any traffic conditions that may result; any danger from fire hazards; how the proposed change may effect the character of the surrounding properties; and how the proposed change will benefit the City of Joplin.
3. Owner Affidavit, if applicant applying for the rezoning is not the owner of the property be rezoned
4. For Planned Developments the following must be submitted and reviewed before the rezoning can be advertised for public hearing:
   ___ Site Plan ___ Landscape Plan ___ Building Elevations

TRAFFIC CONDITIONS:

1. Street(s) with Access to Property: OUTER ROAD, INTERSTATE 44 INTERCHANGE
2. Classification of Street(s):
   Arterial_____ Collector_____ Local _____ INTERSTATE 44
3. Right-of-Way Width: _____
4. Will turning movements caused by the proposed use create an undue traffic hazard?
   _____

IS PLATTING OR REPLATTING REQUIRED TO PROVIDE FOR:

1. Appropriately Sized Lots?_____
2. Properly Sized Street Right-of-Way?_____
3. Drainage Easements?_____
4. Utility Easements:
   Electricity?_____
   Gas?_____
   Sewers?_____
   Water?_____
5. Additional Comments:_____
   _____
   _____

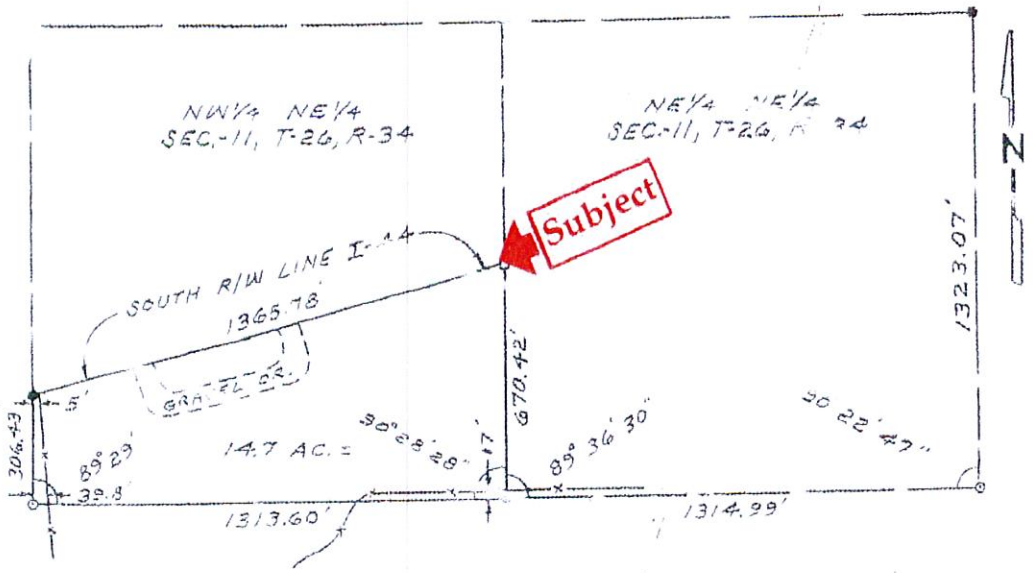
UNIQUE CHARACTERISTIC OF PROPERTY AND ADDITIONAL COMMENT:

PROPERTY WAS FORMERLY A NICKERSON FARMS RESTAURANT AND IS LOCATED ACROSS FROM THE DOWNSTREAM CASINO

SIGNATURE: _____ DATE: 6/8/18

BY: BILL RICHERT

TITLE: PARTNER, OWNER

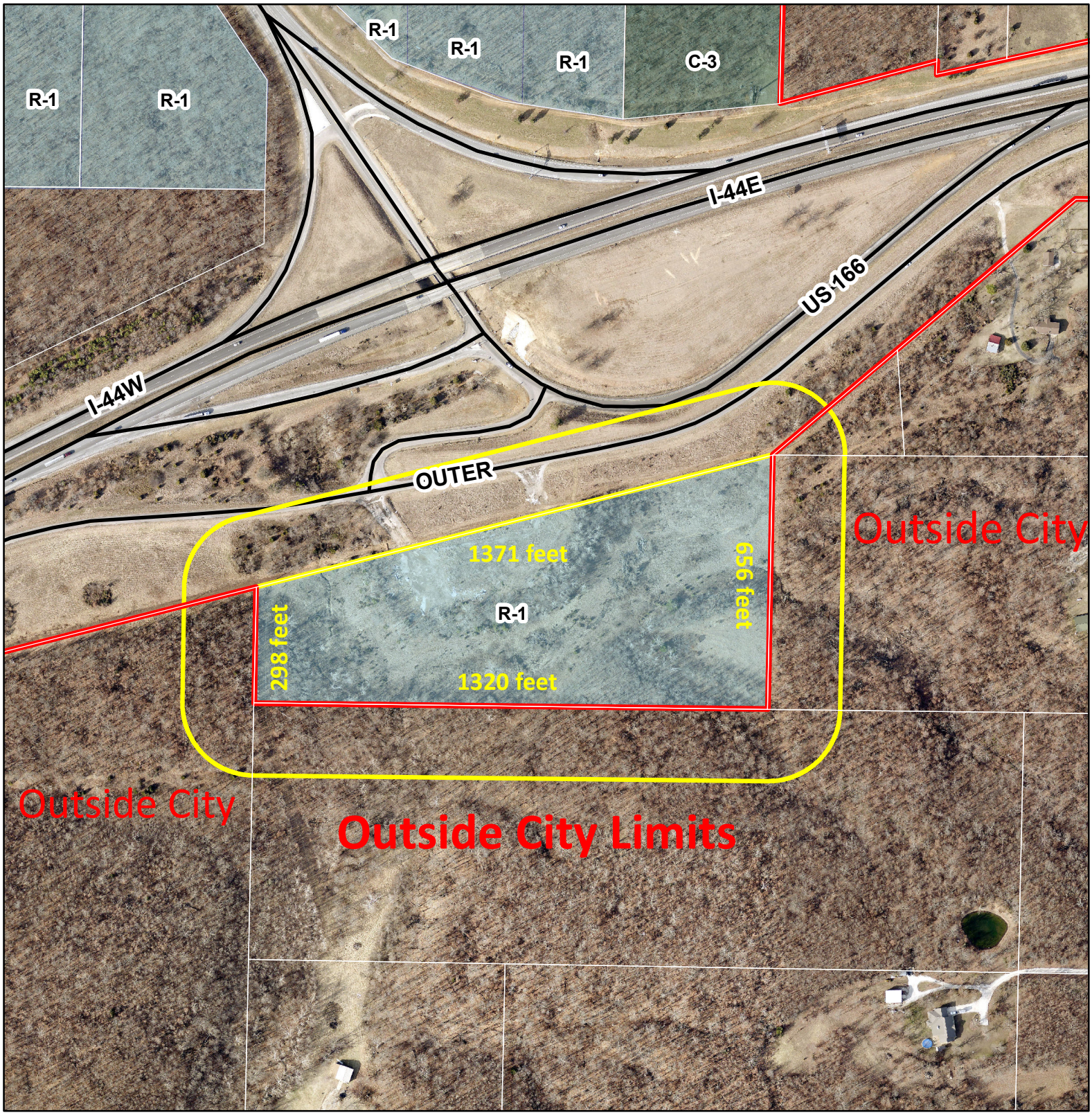


LEGEND:
● = FOUND IRON PIN.
⊙ = FOUND IRON PIPE.
□ = SET IRON PIN & CAP.

DESCRIPTION: (WARRANTY DEED RECORDED IN BK-345, PG-7434)
ALL OF THE NORTHWEST QUARTER (NW¼) OF THE NORTHEAST FRACTIONAL QUARTER (NE FRTL ¼) OF SECTION 11, TOWNSHIP 26, RANGE 34, LYING SOUTH OF INTERSTATE HIGHWAY 44 IN NEWTON COUNTY, MISSOURI, SUBJECT TO ALL EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD, IF ANY.

NOTE:
THE PROPERTY DESCRIBED HEREON FALLS IN ZONE "C" ACCORDING TO FLOOD MAP # 290820 0015 B, NEWTON COUNTY, MISSOURI.

SITE PLAN



0 295 590 1,180 1,770 2,360 Feet

Case 024-18: Adjacent and South of I-44 at Exit 1 -- A request to rezone from Single Family Residential District (R1) to Commercial Overlay District -- Bill Richert

N

P & Z Case 024-18

Bill Richert
(P & Z Recommended Approval)

COUNCIL BILL NO. 2018-265 ORDINANCE NO.

AN ORDINANCE amending Ordinance No. 2004-256, passed by the Council of the City of Joplin, Missouri, November 15, 2004, by removing from District R-1 and including in District C-3-PD property as described below and located adjacent and south of I-44 at Exit 1, City of Joplin, Newton County, Missouri.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. Having referred the subject matter of this ordinance to the City Planning and Zoning Commission and having given at least fifteen days' notice of time and place of hearing on same by publication in the Joplin Globe, Ordinance No. 2004-256 is hereby amended by removing the following described property from District R-1 and including same in District C-3-PD:

ALL OF THE NORTHWEST QUARTER OF THE NORTHEAST FRACTIONAL QUARTER OF SECTION 11, TOWNSHIP 26, RANGE 34 LYING SOUTH OF INTERSTATE HIGHWAY 44 IN NEWTON COUNTY, MISSOURI, SUBJECT TO ALL EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD, LOCATED IN THE CITY OF JOPLIN, NEWTON COUNTY, MISSOURI.

Section 2. That the City Clerk is hereby ordered to file this ordinance with the Zoning District Map maintained in her office and to note the changes herein provided for thereon.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this the _____ day of_____, 2018.

_____
Gary L. Shaw, Mayor

ATTEST:

_____
Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney