



LEE'S SUMMIT MISSOURI

May 17, 2024

Lester Massood

Via Email: Summitbigman@yahoo.com

Re: **Take 5 Oil Change Public Hearing (PL2022357)**

Mr. Massood,

My name is Aimee Nassif, I am the Deputy Director of Development Services and work with Dan Fernandez who has been in communication with you regarding Take 5 Oil Change application and public hearing process. I understand that you spoke at the City Council meeting on May 14 and had several questions and continued concerns with the City's public notification process. Thank you for sharing those with us. I have put together a timeline for you along with the City's Unified Development Ordinance (UDO) and State Statute requirements to assist in answering your questions.

Rezoning cases such as the one pertaining to Take 5 Oil Change must adhere to requirements of Missouri State Statute pertaining to public hearings and public notice. Chapter 89 of the Missouri Statutes requires that only one public hearing be held and that notice in the newspaper be provided 15 days in advance of the hearing. There is no additional notification required by State law. We go above the State's requirements and hold two separate public hearings; each public hearing is advertised in the newspaper.

In addition, the City exceeds State Statute requirements by also requiring that a sign be posted on the site and notices are mailed to all property owners (not occupants or residents) of property within 300 ft of the subject property of the public hearing before the Planning Commission. In addition, while the UDO requires a radius of 300 ft, we extend this in practice to 330 ft to ensure all applicable parcels are captured. These mailed notices are also an extra step we do which is not required by State Statute.

While I understand you believe notices should be sent to all property owners along with residents and occupants within the area; I hope this clarifies the City's ordinance requirement. Residents around a parcel that is proposed for rezoning who do not own property are provided notice by the newspaper notification and sign posted on the property. These methods both provide the same information as provided for in the mailed certified letters.

When the original continuance was requested by the applicant it was to “a date uncertain.” While our public hearing obligations per State Statute have been met with the public hearing that was held in October; we do require that when there is a continuance to a date uncertain that new public notice be provided prior to the date on which the matter will be heard. The UDO does not require this to occur within 15 days, however that is our practice for mailings and advertising. **(UDO Art 2, Div. II, Sec 2.190)**. These notices were mailed to property owners on April 19, the site was posted again, and newspaper advertising occurred April 20 for the May 7 public hearing.

We appreciate you reaching out to us on approximately April 29 and sharing your updated mailing address with us. As you know, our address lists are derived from Jackson County, and County records had not been updated with the new address update that you provided to them. Because of this, we contacted the applicant and rescheduled their 2nd public hearing for May 21 so that mailed notices could all be sent out to property owners again and to the updated address you provided.

The project manager Dan Fernandez also contacted you both by phone and email and advised you of the new public hearing date, that new notices would be mailed, and provided you with information on how to make comments and participate in the public hearing process at the Council meeting. It is also important to share that the City’s UDO also states that “Failure to receive mailed notice shall not invalidate any action taken on the application”. **(UDO Art. 2, Div. II, Sec 2.170)**. While it would have been legally appropriate to proceed with the May 7 public hearing date, we did continue the case to address your concerns and provide you with additional time before the hearing.

I understand that you have advised us that you did not receive a mailed notice of the 2nd public hearing to your updated address despite, the receipt that we received from the US Post Office for this mailing to you. We did look into this matter and found through the tracking number that, according to the USPS, delivery was attempted and a notice left on your door at 217 NE Independence on May 7. Tracking records also indicate that this mailing was signed for and picked up on May 14. I have attached a copy of the tracking records and certified mail receipts for you.

In this instance, this project has met and exceeded all State requirements and meets all City ordinance requirements for public notice and will therefore be proceeding to the 2nd public hearing as scheduled on May 21. In addition, the purpose of mailing notices is to ensure a property owner is made aware of the date of a public hearing. In this instance, you were made aware of, and have actual knowledge of, the public hearing date from your discussions with us on May 2 and the letter that was picked up at the US Post Office. While you picked it up on May 14, it was attempted on May 3 and there is no requirement of 15 days advance notice for continuances.

With all of this information provided to you in various methods and various dates of the 2nd public hearing date; your due process rights have not been harmed and you will be allowed to participate in the public hearing on May 21. If you like, you may also request a continuance the night of the hearing to have additional time to prepare and provide testimony on the application. The Council has the right to grant or deny your request for a continuance, but you can certainly make that ask.

I also wanted to take a moment to explain why City Councilmembers do not speak with interested parties in advance of a public hearing for a rezoning application. The purpose of the public hearing is to provide a forum in which all information on a pending zoning application is made on the record with all Councilmembers present. This way, all information shared is provided to everyone so that no single Councilperson has information that others do not have. It is necessary to ensure that the information and facts provided on an application are available to everyone at the same time so the public hearing process provides the necessary means to have everything on the record and discussions occur in public and Councilmembers have the ability not only to hear the same information but to engage in the same discussion. In addition, this allows the property owner of the property that is part of the application to also participate, hear the discussion, and be available to answer questions as well.

Your email you provided on May 16 in which you express concern with the address 1 Armour Blvd KC, MO 64111 was also shared with me. That is an address that was identified as the property owner's address when we ran the mailing list for this application for Summit East Plaza Association/Don Hutchison. I do not know why it was sent twice with two separate tracking numbers, however one of those numbers does show that the letter was delivered on May 4 at 9:53 am. I have attached a copy of that tracking sheet for you also.

To your question regarding the October 5, 2023 Affidavit of Notice we received, this was the method previously used to confirm public mailings were sent to property owners. Certified mailing was not previously required by the City, however in November 2023 we performed a series of code updates and one item that we updated was to start requiring mailings be sent as certified mail. This was an area we identified should be updated to ensure property owners are aware of public hearing matters and are receiving proper notice. This now allows us to have improved tracking and records to confirm notices are sent properly and have a record in case property owner information changes or there are any concerns that arise that we can then investigate and act on as necessary. This UDO update took effect on November 14, 2023.

I understand this may not be the answers you were hoping for, but I do hope that this provides clarity for you. I apologize for the lengthy letter, however I wanted to provide with you as much detail as possible. Again, you are welcome to submit written comments regarding this application that will be made part of the record, and you can also attend the public hearing on May 21 and speak before the Council.

While the Planning Commission has already conducted the first public hearing, they provide a recommendation to the City Council, not a final decision. The second public hearing on May 21 will provide you with the same opportunity to speak and provide comment before any final decision is made. In addition, both the applicant and staff will be making a presentation as well just as what occurred at the Planning Commission.

Sincerely,

A handwritten signature in cursive script that reads "Aimee Nassif".

Aimee E. Nassif AICP
Deputy Director of Development Services

Cc: Mark Dunning, MPA City Manager
Ryan A Elam, P.E., Assistant City Manager
Brian Head, City Attorney
David Bushek, Chief Counsel of Econ. Dev. & Planning
Joshua Johnson, AICP, Director of Development Services



LEE'S SUMMIT MISSOURI

From: Aimee Nassif, Deputy Director of Development
Date: May 17, 2024
Subject: Take 5 Oil Change Public Notice Timeline

Date Action Taken	Description (State Statute only requires 1 public hearing and only advertising in newspaper)	UDO Notice Requirements
10/06/23 – 10/08/23	Advertised 10/7/23. Site posted 10/06/23. Notices mailed 10/5/23 (*certification was not required in the code at this time).	Advertise – 10/11/23 Posting – 10/11/23 Mailings – 10/11/23
10/26/23	Public hearing at Planning Commission held	
11/04/23	Advertised 11/04/23. Site posted 10/06/23. Notices mailed 10/5/23 (*certification was not required in the code at this time).	Advertise – 11/04/23 Council date sent with original postings and mailings 10/5/23 & 10/6/23
11/20/23 – 11/21/23	Original 2 nd public hearing date at City Council set for 11/21 however applicant contacts staff for a continuance to a date uncertain.	
04/03/24	Applicant requested 2 nd public hearing be scheduled for May 7.	
04/17/24 – 04/20/24	Advertised on 4/20. Site was posted on 4/17. USPS certified mail receipt dated 4/19.	State Statute – no requirements. UDO – post, advertise, and mail as applicable. No 15-day requirement.
4/29/24 – 4/30/24	Mr. Massood advised us of his new address at 217 NE Independence which did not originally appear on Jackson County records at original public hearing mailings.	
05/01/24	Review of Jackson County records confirmed new address and delay occurred between when Mr. Massood requested address update and Jackson County records were updated.	
05/02/24	Due to addressing information concern, the public hearing was rescheduled to May 21 to provide for new notifications to be sent. Advised Mr. Massood by phone and email of the new public hearing date.	
05/03/24	USPS certified mail receipt dated 5/3/24.	
5/07/24	Council continued application to a date certain of May 21. UDO does not require re-advertisement. Per USPS tracking records, delivery was attempted and notice left on door of address at 217 NE Independence Ave.	Re-publication not required.
5/14/24	Per USPS tracking records, mail was picked up for 217 NE Independence Ave.	