



## CITY COUNCIL AGENDA ITEM

**TO:** Mayor & City Council

**SUBJECT:** Request to Address Council - Nelson's Fireworks

**MEETING DATE:** 04-23-13

**DEPARTMENT:** Admin/Community Development

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As you are aware, the city has received a request from Nelson's Fireworks for continued operations at their current location on the south 114 service road. The Nelson's seek a long term agreement, or a permanent allowed use for fireworks sales. We understand Mr. Nelson has provided a copy of their proposal to each of you (attached), and they have requested to address the city council Tuesday night. To address questions we have received from council to date, staff offers the following comments regarding their proposal for your consideration:

### **History**

In October of 2008, the property where Nelson's Fireworks is located was included in a larger annexation effort and immediately zoned AG-Agricultural (per the city's annexation procedures). Soon after, the City entered into an agreement with the Nelson's to allow for continued operations through the December 2010 fireworks season. The stated purpose of the agreement was to provide the owner time to recoup investment costs. This agreement was again extended by Council in December 2010 and expired July 4, 2012 with the same stated purpose.

### **Land Use Implications**

*Sale of Fireworks* is not an allowed use in any current zoning classification, and further, is specifically prohibited. A zoning text amendment would be required to allow this on a permanent basis. Procedurally, the Nelsons will need to make application for a zoning ordinance text change and/or added use. Adding this as a use allowed by right, or SUP, would likely subject the city to similar requests. The City cannot arbitrarily adopt zoning regulations for a specific tract that are less restrictive than other tracts in similarly zoned areas, or that are not consistent with the Comprehensive Plan. Owners of the previous stands (that have shut down since the 2008 annexation) have contacted staff in recent weeks regarding the potential for future operations.

The tract to the immediate west of the Nelson's facility is the concrete plant, and to the immediate east is the U-Haul moving and storage operation (all annexed in 2008, and currently zoned AG as well). Of course, all of these tracts (comprising a total of approximately 25 acres) are surrounded by the Fairway Ranch Planned Development. Adjacent uses to the west are planned as Office/Campus and Residential/Private Park to the south and southeast. As the city contemplates the highest and best use for the annexed areas, strong consideration should be given to the compatibility of uses relative to this Planned Development. While the staff has not initiated a formal rezoning effort for the annexed area, nor received a rezoning request, it has

considered some of the logical, future types of uses that would be appropriate for this area. Due to the highway frontage, and proximity to the Fairway Ranch PD residential use, appropriate uses for this area may include those found in the Office (O) or Light Commercial (LC) Zoning Classifications. The existing structures and uses within the annexed portion of land are more compatible with the Light Commercial zoning designation which includes self-storage and wholesale shops that staff believes the Nelson's site could accommodate. The existing concrete plant would then be considered existing non-conforming, unless Council should chose to designate this type of use as permitted within this PD, or simply re-zone the entire portion of land previously annexed as BP-Business Park. Ideally, as new growth and development occurs in the Planned Development of Fairway Ranch, it will become more important that non-conforming uses discontinue as new schools, parks, residential structures including roughly 500 single-family dwellings, are established in the immediate area.

If the City Council chooses not to extend this agreement, and does not have interest in a text amendment that would allow fireworks sales as an allowed or conditional use, staff would recommend zoning classifications and uses that may be more compatible with future land use. The Corporate Campus to the west of this tract was zoned as part of the Fairway Ranch PD in 2012, which includes a base zoning use of LC-Light Commercial with PD standards indicated below:

***Corporate Campus.*** *This tract shall be regulated by uses permissible in the Light Commercial District. However, the following uses shall not be permitted: any outside storage of merchandise or equipment, except that plant and landscape nursery sales with outdoor storage is permissible. Outdoor sales or rentals of vehicles, recreational vehicles, campers and watercraft shall not be permitted. Engine and motor manufacturing shall not be permitted. The side and rear building setback shall be increased from fifteen feet (15') to twenty-five feet (25') and the full twenty-five feet (25') shall be a heavily landscaped buffer to the adjacent residential uses. The Corporate Campus will require six foot (6') masonry screening adjacent to any and all mechanical uses, pad mounted equipment, loading docks, trash receptacles (dumpsters), parking lots, outdoor storage, or like uses as shown on **Exhibit 1**. Said screening shall be constructed during the development of the Corporate Campus and may be constructed immediately adjacent to the improvements requiring screening. The screening and landscape buffer is the responsibility of the Corporate Campus property owner to maintain. In no event shall the screening be closer to the adjacent residential or public parkland than the required twenty-five feet (25') landscape buffer.*

## Exhibit 1

Light Commercial PD

Nelson's Property



### **Sec. 12.430. - General Purpose and Description.**

The LC, Light Commercial, district is intended to provide a location for commercial and service-related establishments, such as wholesale product sales, welding/contractors shops, automotive repair services, upholstery shops, and other similar commercial uses. Uses in this district may utilize open storage areas that are screened from public view (see article VII, division 5 of this chapter). Some light manufacturing may also be allowed, in conformity with certain conditions as required herein. The uses envisioned for the district will typically utilize smaller sites and have operation characteristics which are generally not compatible with residential uses and some nonresidential uses. Convenient access to thoroughfares and collector streets is also a primary consideration.

### **Public Safety**

The Fire Department's position on fireworks sales within city limits remains as conveyed in previous discussions. It is the department's position that fireworks display should be conducted by licensed professional pyrotechnics companies, rather than individuals; and the sale of fireworks to individuals within city limits is contradictory to this position. Chief Duncan has indicated that during the July 4 season, the department routinely responds to 7-8 fires believed to be fireworks related, typically small grass fires. The department does incur added expense

during these times for additional patrol of two fire marshals responding to fireworks complaints. It is the FD's opinion that the retail sale of fireworks is not an appropriate use for Roanoke.

### **Non-Conforming Use**

Staff has received inquiries as to the status of the current use for this structure. Pursuant to existing code, the structure appears to fall into the category of an abandoned, non-conforming use as discussed below:

#### ***Sec. 12.54. - Abandonment of Nonconforming Uses and Structures, and Cessation of Use of Structure or Land.***

*(a)*

*If a nonconforming use or structure is abandoned, any future use of the premises shall be in conformity with the provisions of this chapter and with any other applicable City codes or ordinances that are in effect at the time the use is resumed or the structure is re-occupied.*

*(b)*

*A nonconforming use or structure shall be conclusively deemed "abandoned," irrespective of any intent of the property owner, in the following circumstances:*

- (1) The use ceases to operate for a continuous period of six (6) months;*
- (2) The structure remains vacant for a continuous period of six (6) months; or*
- (3) In the case of a temporary use, the use is moved from the premises for any length of time.*

In addition to the non-conforming status, any repairs or improvements for the structure exceeding 50% of the valuation will require the building to be rebuilt in full compliance of the code. Should the City determine this property has not been maintained to the degree such repairs exceed 50% of the property value, measures may also be taken for the City to remove the structure once declared a public nuisance.

### **Summary**

With the exception of the potential precedent set with owners of other fireworks stands that historically operated in the annexed areas, there is no glaring burden created with the short term continuation of fireworks sales at this location. However, staff is more concerned with the long term issues related to the highest and best use for this property. While the Nelson's proposed upgrade to the metal building would be a welcomed improvement, it is an operation that is open June 24-July 4 and December 20-January 1 of each year; and staff believes there are other uses that will better serve the city in the future. Ultimately, it is in the best interest of the city, and property owner to maintain the property and keep the structure occupied, to prevent the structure from being deemed abandoned.