

EXCERPTS
PLANNING AND ZONING COMMISSION MEETING
COLUMBIA CITY HALL COUNCIL CHAMBER
701 EAST BROADWAY, COLUMBIA, MO
DECEMBER 6, 2018

**MS. LOE: Our next and last case is,
Case 18—182**

A request by Luebbert Engineering on behalf of the D&D investments of Columbia, LLC for approval of a major amendment to the University Chrysler PD plan. The original development plan for this site was approved in 1972 and revised in 1975/76 and in 1983. The purpose of the PD Plan amendment is to revise the buffer screening detail on the southern property boundary. The 4.63-acre site is zoned PD and is addressed 1200 I-70 Drive Southwest. This item was tabled at the October 4th, 2018 Planning and Zoning Commission meeting. May we have a staff report, please?

MS. BACON: Yes. This case was originally covered at the October 4th Planning Commission meeting. There was a public hearing. After about two hours of testimony the applicant and adjacent neighbors agreed, I think pretty jointly, to request a table of the meeting or table the case to tonight as a meeting date certain. I don't have any new information to provide to you this evening. I have a very brief staff report for the public and anybody watching of course. This location is 1200 I-70 Drive SW. It's the current location of the University Subaru. It has been University Chrysler in recent past. It's 4.63 acres. Tonight you are reviewing a PD or plan development plan amendment, specifically to the screening detail on the southern property line that was provided in the original 1972 Husk Subdivision and PD plan. We sent public -- or we have a public information meeting on 09/11. We had a very robust participation from the public. The Highland Park Neighborhood Association came out in full and had many questions regarding the process for the public hearing process at the Planning and Zoning Commission. There were also questions regarding the technical components of PD plans and what constitutes a minor amendment versus a major amendment and the process to amend thereof. The applicant in -- and the property owner was also there. We also sent postcards advertising that public information meeting and sent to the same 26 adjacent property owners, property owner notification letters, as well as placed an advertisement in the newspaper. I will note because the case was tabled to a date certain, this evening, no additional public follow-up was required by the code. However, we did follow up with the neighborhood association just letting them know it would be scheduled as was

agreed upon at the previous October 4th meeting. And we have received a request, which we provided to you for Mr. Zenner on Monday December 3rd from Jade Govero, who is a member of the Highland Park Neighborhood Association requesting to table the case further just noting that there is a legal dispute and that a court date of December 13th has been set. The UDC does allow for the public to make a request to be tabled. It's not something we see very often. Typically, it would be the applicant who would request a tabling, but that process as well as provided per the agenda by Mr. Zenner, is available as well. In terms of the PD plan itself as I mentioned, I haven't heard anything other than the tabling request at the October 4th meeting. I also have not heard anything new from the applicant. I don't have anything new to present. As I mentioned this is a request amend a 1972 proposed Huff Subdivision detailed landscaping, so it would replace in essence a previously existing fence that was not included in original 1972 plan, but has shown up as existing on plan amendments from 1983 and on. It has become a de facto part of the plan. Earlier this year the existing fence was removed and so the proposed replacement of that fence would move the fence ten feet to the south, which would be on the property line of the Subaru dealership. Our current UDC code requirements do specify that is the ideal location for screening fences. In addition to having a fence which does meet our code, it's eight feet tall, the code does require a ten-foot landscape buffer. And so this would replace where that fence was removed. It would be Lot 1 and then the western 97 feet of lot to that Huff Subdivision. The screening detail in terms of the landscaping type do meet the four categories as required by our code, is provided here on the screen. It's about 197 feet or so across that Lot 1 and Lot 2. And so this plan would only affect this part of the PD plan. So the requesting applicant is not to amend the larger PD plan for this site, but just the specific landscape detail here. You can see on the aerial where the existing -- the formally existing fence was located. And prior plan amendments when the shop addition was put in, you could see the additional fencing was put in here to the east. As so as proposed this plan amendment to put this fence and this fence on landscape buffer would then match up generally with this other existing fence. The landscape buffer we'll note will be on the applicant's side of the property. This is pavement right here, so previously the parking lot pavement directly met the fence. In recent years there was some folks that called it a retaining wall, but really it was more just landscape blocks to help shore up the fence. I've been told by different people different variations of the condition of the fence before it was taken down. I cannot attest to that because I did not personally inspect it. Generally there was a fence here and then it has been removed. There's now some temporary fencing. To my knowledge, the applicant

would like to then put in a new fence and new landscaping. Overall, the fence will restore security and privacy to the adjacent properties as well as the Subaru dealership. We have heard from both sides of the nonexistent fence now, that folks traversing to and from is not ideal in this situation. The proposed plan amendment is consistent with what we require in the UC now in terms of the landscape buffer. It will be 10 feet. And then that 8-foot wood fence screening by itself, so it meets the code. The landscape -- the landscaping if approved will require an inspection and our code does allow to take into account weather in terms of planning season. So that inspection would not include -- not happen until spring at the very earliest. This evening we are recommending approval of the PD plan amendment to the Huff Subdivision landscape detail screening as provided. I as well as the applicant, I'm sure, are available to answer any questions.

MS. LOE: Thank you, Ms. Bacon. Before we go on to commissioner questions, I would like to ask any commissioner who has had any ex parte prior to the meeting related to Case 18-182 to please disclose that now, so all commissioners have the same information to consider. I see none. Any questions for staff? Mr. MacMann?

MR. MACMANN: Before go much further on this one, after a couple hours of rather contentious discussion, we agreed to table this case pending a legal hearing, which -- and I don't know this for sure, but it doesn't appear to have happened yet. It was supposed to happen I believe on 20 November. Now, it's supposed to happen on 13 December. Our original intent therefore does not seem to have been met. I'm going to go with the neighborhood's request that they -- table it again. I think it will be wise. I don't know what anyone else's tensions are, the applicant or the neighborhood homeowners, but I do know Ms. Govero is involved and I believe she's president of that neighborhood association. Before we go on I just want to -- I don't think we have met our original criteria. I just wanted to say that.

MS. LOE: Any discussion of Mr. MacMann's comments? Ms. Rushing?

MS. RUSHING: I join with Mr. MacMann. I think we made it clear that the intent was to postpone our consideration of this request until after the Court had made a determination as to ownership of the property and that has not occurred. And it -- according to the request both parties agreed to a court continuance and so I don't see any reason why we **shouldn't** continue this case until December the **20th**, which should take us beyond the December 13th court date.

MR. MACMANN: I would only add that having been in court for a variety of issues, 13 December may be a fluid date and so 20 December on our part may be a fluid date also. I'm just -- you know, we may be -- we very well could be tabling and

tabling until then. I just want to bring that up because different people have different schedules.

MS. LOE: Any additional comments on the table? Ms. Burns?

MS. BURNS: I would like to hear from the members of the public who are to speak about this. I think we owe that and then we can decide whether or not we're going to continue.

MS. RUSHING: I concur. Because there may be extenuating circumstances that we're not aware of.

MS. LOE: Additional comments? Seeing none, I'm going to open it up to public comment.

Public Hearing Opened

MS. LOE: If anyone would like to make a comment, please come forward and state your name and address for the record.

MR. HOLLIS: Good evening. My name is Robert Hollis. I am an attorney at the Van Matre Law Firm. Our office is at 1103 E. Broadway here on behalf of the applicant. And I appreciate the point made by Mr. MacMann as well as Ms. Rushing. The point being that this was tabled based on litigation which is a discussion in itself whether or not that is beyond proper preview. But I would say, yes, there is a date for one of the lawsuits but there is -- there **was** a date for that lawsuit before. It's been moved. Probably moved again. You know how litigation works. It often drags on and on and on. To move it to the **20th** to get past a potential hearing date of the **13th**, let's say that worked. You still have the O'Neill litigation. That's another property owner where there is litigation that is pending. We sued the O'Neills. The O'Neills had already sued us. The lawsuits went past each other. Once -- I think everyone has finally been served. There's been a motion which I believe is a joint motion to consolidate the cases. I don't know if there's been a hearing on that yet or not. Long story short, this could be a very long story. It's not be finished by the **20th** that is for sure. If you're considering both cases, which I assume you are. Now, to that issue as Mr. MacMann said properly and accurately you can be tabling and tabling and tabling. And that makes the point, which I believe is completely valid that you should not be considering litigation. This board in my humble opinion and I respectfully suggest that you consider the land-use issues that are here in front of you regardless of ownership. Is it a proper land-use decision? Is it in accordance with the ordinances? Not whether or not a land dispute lawsuit may be finished by the date certain. It makes it impossible for you to do your job, to attempt to monitor outside litigation and try to make decisions around when that may or may not reach a resolution. Now, if you're concerned about whether or not your decision has any

bearing on a lawsuit or a court, there's none. It is not part of what a court is to consider. Not at all. If the court considered your comments or a decision made by you, you could have made an improper decision. They could do it. A court could do that, but it would be absolutely improper. Appealable, I'm sure. So that should not -- also should not be part of what you're considering. One thing that I don't think that we mentioned last time -- I don't think -- my client is perfectly willing to build the fence to the extent that the fence is permitted to be built such that -- in other words, where a court has not said you **can't** build a fence, we'll build a fence. Of course it is up to the City Council after you make your recommendations. City Council could make a policy decision and say we're not going to consider cases like this if there's pending litigation. That could happen. That would be a policy decision which again I think is not your responsibility, but that's just my opinion. As far as consenting to tabling, I think what I said last time was okay, that doesn't help the neighbors. It doesn't hurt us. It doesn't hurt my client, but it certainly doesn't help the neighbors, the rest of the neighbors that is. The only reason I'm even discussing this -- the only reason I'm putting this information forward is because my client wants what's best for the rest of the neighbors. If the fence is not there it's not hurting us. It's not hurting Subaru in any way, shape, or form, but it is hurting the neighbors. I will leave you with that and I would be happy to answer any questions.

MS. LOE: Any questions for Mr. Hollis's? Ms. Rushing?

MS. RUSHING: Well, it was my understanding from the testimony at our last meeting where we considered this, that the fence was removed without any communication with the neighbors. Are you saying that is not correct?

MR. HOLLIS: That's not accurate. There were discussions. There were discussions that happened in the fall of the previous year, I think. Discussions about that the fence would be removed. It was dilapidated and falling down. Repairing it was becoming futile. Where the mistake was made -- not a legal mistake, but where the mistake was made and my client admits its mistake is they should have made contact with the neighbors a week prior to tearing the fence down. They should done that, just out of common courtesy. They **didn't**. That was a failure.

MS. RUSHING: And is time of the essence to your client in this?

MR. HOLLIS: With respect to their concern for the other neighbors, yes.

MS. RUSHING: But **wouldn't** that mean the -- I mean, if it is the neighbors you are concerned about and the neighbors are the ones who want the continuance --

MR. HOLLIS: It's only two neighbors that want a continuance. There are two neighbors that are involved in litigation. It's my understanding the rest of the

neighbors would like to see the fence in place as soon as possible.

MS. LOE: Mr. MacMann?

MR. MACMANN: Thank you. Just for clarity sake, Mr. Hollis I have been on different sides of the same court a couple of times and we can both speak to the case that these things do gone a very, very long time or they **can**. I would take issue Mr. Hollis's interpretation of the neighbors' intentions. And while I agree with him that it would be improper for a judge to make -- let the existence or nonexistence of the fence or anything like that influence over what the city -- influence their behavior, we all know they are human beings and we all know they are influenced by this. This would clearly send a message to the City. Mr. Hollis is shaking his head. I appreciate that. Judges are human beings, **too**. I'm still going to be where I'm going to be.

MS. LOE: Any additional questions? Mr. Hollis, has the Court said the fence cannot be built in any areas?

MR. HOLLIS: There is a temporary injunction in place with respect to the Govero's property. It doesn't say that a fence can't constructed. I believe it says that no vegetation can be removed. It probably also is written broadly enough that a fence wouldn't be constructed or couldn't be constructed, but it's not with respect to a fence. To my knowledge there is no injunction or restraining order with regard to the other lawsuit, the O'Neills.

MS. LOE: So one property.

MR. HOLLIS: One property.

MS. LOE: Would not have a fence?

MR. HOLLIS: **Right**. The rest of them would have a fence. Again, keep in mind it is just a recommendation with regard to applicable ordinances from you. Obviously, the City Council decision, if they chose to consider outside external matters of policy then they could do so.

MS. LOE: Were there discussions about the dilapidated condition of the fence held with each and every property owner?

MR. HOLLIS: Each and every?

MS. LOE: Yes. You said there were discussions. We were talking about the property owners being informed. You said yes, they were. I am just trying to clarify was each and every property owner informed.

MR. HOLLIS: Each and every adjacent property owner. I was not there. It's my understanding that that happened. At a bare minimum --

MS. LOE: Each and every --

MR. HOLLIS: -- they were all given notice, but each and every I **can't**

say that with a 100 percent certainty. I'm sorry.

MS. LOE: So not each and every?

MR. HOLLIS: I am not saying not. I am absolutely not saying not. It's my understanding that it was with the majority -- and there might have been more than one meeting. I haven't heard anyone say they weren't invited to the meetings or anyone complain that they **didn't** know about the fence back in the fall. What I have heard, the complaint -- this has been consistent and admitted by my client as a mistake, in this spring when it was removed there was no notice at that point in time. I think everyone would say they did not receive notice, as well as my client. Back in the fall I don't think anyone was complaining about that.

MS. LOE: So there were meetings in addition to discussions or the discussions were at the meetings?

MR. HOLLIS: Such as phone calls possibly? Is that what you're asking? I don't know.

MS. LOE: I don't know you. Are the one representing what communication happened. I'm just trying to understand.

MR. HOLLIS: I can't say. I don't know.

MS. LOE: Thank you. Any additional questions for Mr. Hollis? None. Thank you, Mr. Hollis.

MR. HOLLIS: Thank you.

MS. GOVERO: I am Jeremy Govero. I live at 1119 London Drive. I believe I spoke with you all last time around. I am pulling up my notes. I apologize. I **didn't** know I was going to have to take notes, but here we are again. Yes. Several things that I believe Mr. Hollis -- apologize if I say your name wrong -- several things he said that unfortunately were not consistent with what is going on so far. Yes, we do have a restraining order that they cannot step foot on our property including obviously vegetation, building a fence or anything. The judge has agreed to two hearings in front of them stating they cannot step up our property. That's where it is at right now as far as moving the fence or anything. That is stating where it's current -- or used to be until it was removed. Once again it comes again to the dilapidation of the fence and then the idea that no one was notified. The only reason we found out about was someone heard through the fence. One of my neighbors had a conversation through with fence with someone and say, you know, the guy on the other side of the fence, you know they're going to be tearing down that fence. They said no. Through that, we reached out. We had a meeting with the Subaru dealership, the owners there at the property. There were three neighbors involved with that out of the six that this involves. The other three were never notified. That

was almost a full year before randomly one day they cut down the fence with chainsaws because was not in any kind of way falling down. Like I said, because they required chainsaws to remove the fence from where it was at. The idea that there was not contention from the neighbors is just simply not true. As the commissioner mentioned there was a lot of contention here inside of this very building with over 20 people here very upset about the -- the way this took place without any kind of notification given on -- the other thing is the idea that this gentleman, again Mr. Hollis, the only damage being done is to the neighbors. I just want you to understand that they are the ones that knocked down -- cut down the fence. The idea that the only damaged being done are the neighbors, the only damage being done is by them, not by us. We didn't decide -- we didn't want to come in front of you all. We didn't want to get involved with court process. We all work and this is taking up an insane amount of time for everyone involved and it's very fortunate that we are still here and have to waste your time. So I do appreciate that and the one final piece during this discussion last time when we got to the point talking about tabling the issue, it was actually Mr. Hollis himself who said they have no issue at all in moving forward and waiting until the legality and for the courts to get done, which we all agreed with. It's always a great idea to let the courts make a decision before we move on, which I again agree with today. I ask you all to please continue tabling the issue in moving forward and let the courts take care of the issue. For verification, Jade is my wife and she is not here today. She had our daughter. Was very pregnant last time we were here and we have our daughter now, so that's why she is not what this. But thank you all very much.

MS. LOE: Congratulations.

MR. GOVERO: Thank you.

MS. LOE: Any questions for this speaker? I see none.

MR. GOVERO: Thank you.

MS. LOE: Thank you. Any additional speakers?

MR. O'NEILL: James O'Neill, 1211 London Drive. Thank you for the opportunity to be here again tonight. I would just like to say that Jeremy Govero laid out as clear as could be and I have nothing else to add to that other than I would appreciate the opportunity for you guys to table this until these other lawsuits are settled. And that's all I have.

MS. LOE: Thank you, sir. Any questions for this speaker? I see none at this time. Thank you.

MR. O'NEILL: Thank you.

MS. LOE: Any additional speakers?

MS. O'NEILL: Kelly O'Neill 1211 London. I'd like to start off by saying that I don't feel that Mr. Hollis has any business saying our feelings in regards to this. I can't. They are the ones who tore down the fence. I'm perfectly fine waiting if it takes two years because what's done is done and it's open and we can call police if people come in there. My concern is they want to rush in and do this before the court date. There are very established trees behind my and once they're gone, they're gone. So the consideration in tabling this -- I don't know. We haven't received a court date yet. I don't know that we're going to get one by the 20th of December to be honest with you. So I'm looking forward to Jeremy and Jade's -- anyway. Thank you.

MS. LOE: Thank you. Are there any questions for this speaker? Mr. MacMann? We do have a question.

MR. MACMANN: Ms. O'Neill, just real quickly, is the circuit court here? Is that where you guys filed the case?

MS. O'NEILL: Uh-huh.

MR. MACMANN: Okay. Everyone is in the same house then? All right.

MS. O'NEILL: Also too, for the record, I was never notified. I was never invited to a meeting. All the stuff that he said in regards to all of the six neighbors -- when I found out about it is when I came over. I got a phone call from my husband that they took the fence down. I never knew anything. He can't even answer these questions, so he probably knows too. Anyway, thank you.

MR. LOE: Thank you. Any additional speakers on this? Seeing none, I'm going to close the public hearing.

Public Hearing Closed

MS. LOE: Commission discussion?

MS. RUSHING: I have a question for Staff. If we have to table to a date certain how do we handle this situation?

MR. ZENNER: My recommendation would be that you do not table to a date certain.

MS. RUSHING: I understand that is staff's recommendation.

MR. ZENNER: That's given based on the fact Ms. Rushing that there is no definitive deadline at this point. We will be continuing to prolong and prolong it. As we get further and further away from the originally advertised deadline or the advertised public hearing for this, it does create an impact as it relates to public notification and the process that we follow for notifying residents and having provided adequate public notice. There are options that exist other than tabling it.

MS. RUSHING: So we might be better off just denying the application and they could come back after the litigation is --

MR. ZENNER: Provided counsel, a denial of this body would go to planning -- or go to City Council and provided it is denied by City Council, they are not able to come back with substantially the same application for 12 months, which means the litigation would be completed in a short period of time and because they were denied they would not be able to come back to modify the plan. Now, that's depending on the outcome of the litigation. They may not need to be coming back with a plan because if -- depending on the outcome of the litigation, the area and the buffer required is not going to be **their** property anymore possibly. So it becomes the property then maybe of the adjacent property owners who would be potentially obligated to comply with the current CP plan screening requirements. The other is you could request the applicant withdraw the application at this point and resubmit when the court proceedings had been completed, at which point there will be a resolution and we will either get an application back or we wouldn't get one back and we would resolve the issue of continuing to push this issue further and further away from its original advertised public hearing, therefore, diluting its obvious understanding within the neighbors. I doubt that that will go away, but again, it becomes more of a tracking issue for Staff. So that would be why I would suggest not tabling it to a date certain. You have two options: You could ask the applicant to withdraw; if you choose not to, you have an opportunity to vote up or vote down.

MS. BACON: Mr. Zenner, just a point of fact. If the applicant withdraws they can come back any time, not the 12 months. Correct?

MR. ZENNER: That is correct. Withdrawing at a Planning Commission level withdrawing an application prior to the action of the Planning Commission and the prohibition on resubmission is withdrawing an application that has been denied by the Planning and Zoning Commission cannot come back for 12 months. If Planning and Zoning Commission approve this action and then it was denied by Council, the inability for to be able to come back -- or withdrawals it -- I apologize. It's been denied by Council, the 12-month restriction does apply. But if approved by this body and withdrawn prior to getting to City Council, they could bring it back the following month. But that's not where I believe this might be headed. That's what I offer for your suggests. If you want to table to a date certain, given where we are heading at this point the year, I would suggest that it is probably not appropriate to bring it back until sometime late January or early of February 2019.

MS. LOE: Discussion? Mr. MacMann?

MR. MACMANN: Although I disagree with Mr. Hollis, I like Robert. I would like this -- I think this moment might call for an Anthony Stanton outreach. Are you with me on this Commissioner Stanton?

MR. STANTON: On tabling?

MR. MACMANN: Well, I would say -- say my interpretations are incorrect, that's fine they can be incorrect. If we vote this down you and your clients essentially face a 12-month prohibition. If you all withdrew it, you could bring it back shortly. Right? Resubmit?

MR. ZENNER: That would be correct.

MR. MACMANN: A couple of months? Three months to go back in the cycle again?

MS. RUSHING: It would depend on the litigation schedule and I don't know that any --

MR. MACMANN: Well, we'd still not be tied directly to the litigation.

MS. RUSHING: Well, but I would have the same concerns with regard to granting them the ability to do something I'm not sure they have the right to do.

MR. MACMANN: I am with you there. I am.

MS. RUSHING: So if we would like to see that issue settled either by the court or by agreement between the parties, then you know I would want to either see them withdraw their application and bring it back when the legal issues are resolved or we can vote it down.

MS. LOE: Mr. Strodtman?

MR. STRODTMAN: I'll make a note that I was not here at the last minute. I was out of town, so I apologize for not being here on the previous one. It seems like there was a lot of discussion on this. So that's my first statement. So going in with that said, I'm struggling with my role as a Planning and Zoning commissioner. If I approve this PD Plan amendment, which basically is installing a fence with the proper buffering, I don't see where my role -- I don't know in my six years of being on this commission that I've ever had to worry about a legal interpretation of something that is maybe outside of my wheelhouse, if that makes sense. So I'm probably missing some information on what was discussed at the last meeting that maybe is the piece I'm missing. But to me the fence and the buffering is within our -- my wheelhouse of Planning and Zoning, but who owns that land and any trees and exactly where that fence falls, we never really get into on other cases. And maybe it's always never been challenged that there was a legal dispute as to who owned that actual property. I don't see that that falls into my responsibility, if that makes sense.

MS. LOE: I think I made the same statement at the last meeting, Mr. Strodtman, that to me it's clear-cut what we are evaluating and what we are opining on. But based on the discussion at the last meeting I could also understand how our decision could influence or be construed to include some interpretation of

who might own that land. I have to admit this go around I am very uncomfortable approving a plan that shows a fence going across a property that has a current injunction in process. That fence currently can't be built. To me it throws a little bit more into the gray area.

MR. STRODTMAN: Mr. Zenner, maybe even José, help me with this. I mean, is that the Planning and Zoning Commission's responsibility is to clarify who owns something? I mean, wouldn't the assumption be that if they build it and it's not theirs, there's consequences? I mean, that's not my job.

MR. CALDERA: So whatever action you all take tonight, let's say you were to approve. It doesn't matter. That does not get around the injunction actions on Mr. Hollis's client. To over simplify this Mr. Strodtman, your point is correct which is you all are dealing with this specific issue and are not making a determination about the underlying legal rights. Now, Mr. MacMann's concern and Ms. Rushing's concern is that this might have some kind of persuasive effect on a court. I'm not go to speak to that because that is up to the judge. What I will tell you is that you do have the authority to proceed with a vote on this; up, down, table, whatever you want to do. It will not have -- I do not believe it has any legal determination on the underlying ownership. Okay.

MS. LOE: Mr. Stanton?

MR. STANTON: I'm in the same boat as my colleague. I was also gone during the same meeting. I understand we missed a humdinger. I agree with my colleague on one hand but also I don't want to influence the decision of the court either. I feel like a win-win for you would be to step back and let the chips fall. That's just me. Even though I know that this is -- seems to be a clean-cut action as far as our role, but it seems like some people are just too happy to see this get voted real quick. And when I see speed, I did to want to see why that is.

MS. LOE: Ms. Rushing?

MS. RUSHING: I still fail to see why time is of the essence here. I don't think that our decision would affect the court and that's not why I hesitate to say yeah, go ahead and build that fence. I'm looking at what was done and the statement that if we approve this, they're going to go out as soon as they can and put that fence up when they could easily, as far as I can tell, wait until the issue with regard to ownership is resolved. I just -- they're -- they are asking me to say yes, go build a fence on property that I know the ownership is in dispute. I'm not going to make a decision as to who owns that property. I don't know who owns that property. Not knowing who owns that property, how can I say you can build a fence on it.

MS. LOE: Ms. Burns?

MS. BURNS: I'm also -- I don't see the rush in this. I think I would like to do this right and not look back and think we have some unintended consequences. I also to Mr. Strodman's point, we receive information and we have papers and reports from Staff and indications but we also public hearings. People's opinions matter. It is important that we listen to people who are involved and affected by these cases and that weighs with me. I think about what I hear in these comment sessions and that helps me form my opinions and the way I vote.

MS. LOE: Mr. MacMann?

MR. MACMANN: To simplify -- to speak to some of our folks who were not here -- maybe you did read all of the details in the minutes. Some of the property owners are very concerned about established vegetation, serious trees on there. And some of you mentioned you cut my tree down, yeah you could pay me for it later if it's found to be another person's tree. The tree is gone. This is not a simple case. It's not straightforward. There is no rush to it. I don't want to make a wrong decision one way or another.

MS. LOE: So is there some agreement among the Commission about an option other than a motion? Do we need to make a motion if we want to ask them to withdraw?

MR. ZENNER: Withdraw of the case is the applicant's choice.

MR. CALDERA: In order to ask that question you would have to open the public hearing and ask it of Mr. Hollis.

MS. LOE: I guess I'm asking the Commission if we want to go there.

MR. MACMANN: Before -- it's only fair to Mr. Hollis and his clients that we ask them rather than assuming what their course of action may be.

MR. CALDERA: And just to be clear, once we open the public hearing Mr. Hollis will have an opportunity to speak, but so will anybody else that would like to respond.

MS. LOE: I understand. Are we ready for opening it back up? Okay. We're going to open back up the public hearing.

Public Hearing Reopened

MS. LOE: Would anyone like to come forward? Please state your name and address for the record.

MR. HOLLIS: Robert Hollis, 1103 East Broadway for the applicant with the Van Matre Law Firm. I came up here to answer any questions.

MS. LOE: I think we have a question of, of the options available to us it seems like if the applicant withdrew that may provide you with the most opportunities moving forward. Therefore, we would like to pursue that first.

MR. HOLLIS: I will try to make a short response. I think it would set a horrible precedent to consent to withdraw, withdraw or even a tabling based on information that just has no bearing on the decision. To the extent that a tree would be cut down, that is potentially the court. With that said, my client would not agree to withdrawing or frankly tabling it again. The rush, again, is to protect the additional neighbors, the neighbors where we have put temporary fences up for now because that's just based on their request. And again -- I haven't asked my client this but I think if you did choose to table it we would rather you vote no. Just vote no. But if you did chose to table it for some -- if we went to February -- we don't even have the parties straight in the O'Neill case. We're not even close. We'd just be back here again. So if you did choose to do that, my recommendation -- I don't know if my client would do this -- my recommendation would be to request that the city manager place this on the Council's agenda, which can happen.

MS. LOE: I believe the alternative is denial. If you choose not to withdrawal, we are going to deny.

MR. HOLLIS: Excellent. Thank you.

MS. LOE: Thank you. Any additional public comment?

MR. O'NEILL: James O'Neill, 1211 London Drive. For the gentlemen that missed the last meeting part of this also involved not just some trees, but the area in question has been taken care of by the homeowners in that area for well, probably in the area of 20 years. The various different residents have landscaped that area to their liking. Some may have a natural growth type of thing. Some of them might have bamboo. In our case we have landscape timbers and mulch all the way to where the fence was. In our area, the fence wasn't in any type of dilapidated state at all except at the very bottom where the University Chrysler had done some graveling behind the blocks and cross to the bottom of the fence. So I am with whatever your decision is. I think there is an opportunity by not withdrawing because it seems like at that point reapply the very next day whereas if you deny it then they're kind of out of luck until a year from now. All I can say is I wanted to fill some of you fellas in on what some of the issue was. From that, thank you for the opportunity to speak again.

MS. LOE: Thank you. Any questions for this speaker? I see none. Thank you. All right.

MR. GOVERO: Jeremy Govero, I live at 1119. I want to clarify one more time Mr. Hollis saying there were six neighbors that were affected by this fence line. One is Lloyd, he lives next to me. I talked to him on the phone before I came and a close friend past away and was not able to be here. Once again the idea that this is somehow only affecting two neighbors, that we're the only ones that care is absolutely

ludicrous. Anyone who was here for the last meeting knows that is absolutely not true in any way. We had over 20 people here before, all very unhappy with this and the way it's been taken care of. It is affecting a lot of people. Everyone is not okay. The reason they put in a temporary fence is to stop people from walking through, which should have been done as soon as you decided to take down the fence. Nonetheless I appreciate all of your time. I wanted to make that clarification. Once again, this is not okay with four of the six neighbors in any way whatsoever just because they are not here to. They were all here last time. That was the discussion that was had.

MS. LOE: Thank you. Any questions? I see none. Thank you.

MR. GOVERO: Thank you so much.

MS. LOE: Mr. Stanton?

MR. STANTON: Is it proper for me to ask Mr. Hollis to come up to the podium?

MS. LOE: Mr. Hollis could you come back up? I think we --

MR. STANTON: We didn't close the public hearing. Right?

MS. LOE: We have not.

MR. STANTON: I'm looking for a win-win, you know that.

MR. HOLLIS: Yes, sir.

MR. STANTON: Okay. So in my mind I'm thinking you're not willing to withdraw because you haven't talked to your client, you don't feel like making that decision or you are just saying that is not an option, if I give you a chance to figure it out with your client?

MR. HOLLIS: Correct. That's not an option.

MR. STANTON: Okay. Thank you.

MS. LOE: Any additional comments? Seeing none, we're going to close the public hearing.

Public Hearing Closed

MS. LOE: I guess a technical question is a denial -- are we making a motion and then voting on it or are we doing something else?

MR. ZENNER: It would be a motion. I think the way we've -- we would like to do this is, this is a motion in the affirmative, everybody then votes no, which would serve as a denial.

MS. LOE: Thank you.

MR. ZENNER: So long as everybody's clear on that. Don't vote the opposite way.

MS. LOE: Mr. MacMann?

MR. MACMANN: I would be willing to make that motion. I just want to make sure all commissioners, particularly the two gentlemen who were not here the last time

had the opportunity to ask any more questions or --

MS. LOE: We'll have discussion on the motion.

MR. MACMANN: With that in mind, my friends, in the matter of the University Chrysler PD Plan in Case No. 18-182 I move for approval.

MR. STANTON: I second.

MS. LOE: Second by Mr. Stanton. We've a motion on the floor. Any discussion on that motion? Mr. MacMann?

MR. MACMANN: Just to be clear and to follow up on the attorneys and our city planners advice, I will be voting no. Just to be clear.

MS. LOE: Thank you. Any additional comments?

MR. STRODTMAN: My only comment would be I just want for future -- I think we are in some ways in my opinion crossing a line that is not our responsibility. I think it is the City and the courts' responsibility to determine ownership and not ours. We are granting a fence and landscaping. We are not granting ownership. That is outside of my responsibility and so I will be voting yes.

MS. LOE: Any additional comments? Mr. Stanton?

MR. STANTON: Like a counter-argument to my colleague's statement. Though I agree with him, I feel like we're doing the same thing by setting a precedent by not allowing -- there's something in here that's not right. I feel like what is time? It seems like all parties are not willing to deal with that time, so we're faced with the decision we are at. I don't want to make a precedent in the other direction either. I plan to vote no.

MS. LOE: Additional comments? I'd like to say that I concur with Ms. Rushing's statement that we are being asked to make a decision on land that is in dispute and I do feel uncomfortable with that. If this was not in dispute, I do agree that it would be a clear decision. Any additional comments? Seeing none, Ms. Burns may we have a roll call, please?

MS. BURNS: Mr. Harder?

MR. HARDER: No.

MS. BURNS: Mr. MacMann?

MR. MACMANN: No.

MS. BURNS: Mr. Stanton?

MR. STANTON: No.

MS. BURNS: Mr. Strodtman?

MR. STRODTMAN: Yes, ma'am.

MS. BURNS: Ms. Rushing?

MS. RUSHING: No.

MS. BURNS: My vote is no. Ms. Loe?

MS. LOE: No.

MS. BURNS: Six to one, the motion is denied.

MS. LOE: That concludes our public hearing portion of the evening. And our cases for the evening.