

**EXCERPTS**  
**PLANNING AND ZONING COMMISSION MEETING**  
**COLUMBIA CITY HALL COUNCIL CHAMBER**  
**701 EAST BROADWAY, COLUMBIA, MO**  
**November 4, 2021**

**Case Number 318-2021**

**A request by McClure Engineering Company (agent), on behalf of Marshall and Sylvia Murray (owners), for approval of a two-lot final minor plat of an existing 4.9-acre parcel and another 0.5-acre parcel, to be known as Hardy Plat 1, with an associated design adjustment to Section 29-5.1(d) to waive sidewalk construction along the property's South Highway KK frontage. The subject site is located on the north side of South Highway KK, approximately 3,200 feet west of Scott Boulevard, and includes the address 5971 South Highway KK.**

MS. LOE: May we have a staff report, please.

Staff report was given by Mr. Clint Smith of the Planning and Development Department. Staff recommends:

- Denial of the requested design adjustment to waive the sidewalk requirement. Alternatively, a fee in-lieu could be recommended instead.
- Approval of the final plat of Hardy Plat 1.

MS. LOE: Thank you, Planner Smith. Before we move on to questions for staff, I would like to ask any Commissioner who has had any ex parte related to this case to please share that with the Commission now so the Commission has the benefit of all the information on the case in front of us. Seeing none. Are there any questions for staff? Commissioner MacMann?

MR. MACMANN: Thank you, Madam Chair. Planner Smith, what's the linear foot on the roadway -- footage? What, 300 feet-ish?

MR. SMITH: I think we calculated 260. That was something we were going to confer with the applicant to come with a final number on the distance. That way, we can calculate accurately the cost, but it was roughly going to be an \$18,000 fee in lieu.

MR. HALL: Yeah. \$18,000. Between \$18,000 and -- (inaudible).

MR. SMITH: About \$18,000, yeah.

MR. MACMANN: And could you please return to the photographs that you personally took that show the gray -- there we go. And the right-of-way surrender is three feet; is that correct?

MR. SMITH: Correct.

MR. MACMANN: Okay. Which isn't going to make anything else.

MR. SMITH: It would be approximately 33 feet from the centerline of the road there.

MR. MACMANN: Centerline. Can you tell us, and if you don't know, maybe I can ask Mitch sometime. But what's CATSO's take on this road in the future?

MR. SMITH: Other than it's a major collector, no specific take. We didn't -- we didn't present it to them for their input or recommendation on it.

MR. MACMANN: They don't have -- it's still -- its status hasn't changed, if I can recall. It's been a while since I dug deeply into that, but --

MR. SMITH: Not recently.

MR. MACMANN: Okay. Those are things I wanted to know. Thank you, Planner Smith.

MS. LOE: Any additional questions for staff? Commissioner Carroll?

MS. CARROLL: This is looking really familiar to me. Is this the same replat that we saw back in April of last year?

MR. ZENNER: I believe that is correct, and it was withdrawn.

MS. CARROLL: Okay. Did that have the same design adjustment request with it?

MR. ZENNER: If it had moved forward, I imagine it would have.

MS. CARROLL: That covers my questions for now.

MS. LOE: Commissioner Placier?

MS. PLACIER: Just out of curiosity, do you know when this strangely shaped area was annexed?

MR. SMITH: Not off the top of my head, but I could find that probably here in short order.

MS. PLACIER: Okay.

MR. SMITH: It was -- it was -- I want to say it was annexed, roughly, around the same time as Thornbrook, so it was about 2000, maybe 1998. I would have to look at the exact date, though. I can get that.

MS. PLACIER: But at the time, the decision was that it would not include that central county. That is kind of the issue, and I guess we can't do anything about that.

MR. SMITH: Oh, the center piece?

MS. PLACIER: Yeah.

MR. SMITH: I don't know necessarily the history there. I do know the owner of the piece in the middle is the same owner as the one that surrounds it, and I do have it here that the piece in question was annexed in 2001.

MS. PLACIER: Thank you.

MS. LOE: Commissioner Geuea Jones?

MS. GEUEA JONES: Given the stream buffer and the ravine running through this property, in your opinion, is it buildable as an R-1 lot?

MR. SMITH: I think there's -- there is potential there, but it would be challenging. I think just accessing the portion of Lot 1 that is buildable would be difficult. I think the gentleman who owns it would probably need to restructure it so that there's better access to both of those. From my conversations with

the applicant, and this isn't necessarily something they're held to, but that's not really the long-term for the piece. But, yeah, there's challenge there, but the majority of the site is in the stream buffer, so there would be difficulties there in finding a spot where you can construct, but it's probably feasible. They do -- they do a lot of things that I don't think are possible sometimes, so --

MS. GEUEA JONES: Fair enough. Thank you.

MS. LOE: Commissioner Rushing?

MS. RUSHING: So I'm not sure I'm understanding the purpose of this request. Do you --

MR. SMITH: Well, beyond the -- the desire to create a subdivision with plats that are legal lots, there's nothing specific that they're required to tell us. The objective typically with that is for the sale of the property. You are not legally able to sell property within the City after it's been annexed unless it is properly subdivided.

MS. RUSHING: Okay.

MR. SMITH: And developed. You can't build on something unless it's considered a legal lot, and some R-1 lots do have exceptions where you don't have to actually subdivide it, but generally with this one, since it is kind of a remnant --

MS. RUSHING: That is helpful. Thank you.

MS. LOE: Planner Smith, the sidewalk on the westernmost Thornbrook lot that didn't get built, was that -- is that not shown on their master plan? I mean --

MR. SMITH: I did look at the preliminary and the final plat for that. Did not find any information about sidewalks being waived. Aside from that, I did not dig into that any deeper. It probably would be something at the building permit stage and level, so -- but there was nothing formal that I could find that -- that waived the requirement. So unfortunately it may have been something that was missed. I can't confirm that. There may be a reason, but I didn't investigate it beyond looking at the final plat to see if there had been a waiver.

MS. LOE: So it is -- how difficult would it be to complete that section?

MR. SMITH: From a financing standpoint, there would need to be money allocated to that, and if there is money allocated here, that potentially could be done. From the standpoint of physically building it, it would need to, I think, come within some sort of project that Public Works would -- would want to put forward and, you know, that's potentially could be done, but it would probably -- it's unlikely that they would do it on a lot-by-lot basis, you know. It's probably something they would look at it as a longer project all the way down KK perhaps, so -- but, right now, I have no indication that that's in the works or anything. But having the money in the fee in lieu --

MS. LOE: Right.

MR. SMITH: -- allows it to be used if that does come along within the next period.

MS. LOE: We -- we own the right-of-way or -- okay. Commissioner Carroll?

MS. CARROLL: This might be a better question for the applicant, but I might ask you both. So fee in lieu is \$69 per linear foot, based on 260-foot frontage, I'm getting about \$17,000.

MR. SMITH: It may be 280 feet. I forget the exact number on the frontage. It's on the plat, so I'll double check.

MS. CARROLL: Okay. So based on your staff report, the owner estimated cost was about \$24,000. That difference in cost, is that because of the grade, or is there something else?

MR. SMITH: No. So their estimate would -- would -- was likely their actual cost to them to build it. So the fee in lieu is a very specific formula.

MS. CARROLL: Right. Right. Right. I'm trying to account for what the difference between the fee and the actual cost is.

MR. SMITH: Well, the fee, again, is -- is an average of the City projects. So they might take in the different --

MS. CARROLL: Right. So this would likely cost more because of the grade?

MR. SMITH: Probably.

MS. CARROLL: Okay.

MR. SMITH: And if the City actually has to come out and build it, it is likely that it could cost more than that \$69, but that is what the policy as set forth that we would charge them.

MS. CARROLL: Yeah.

MS. LOE: Commissioner MacMann?

MR. MACMANN: Just a point of order to address Commissioner Carroll's question. I would actually address this question with City Legal. Eighty-five would be a much more realistic number. When I lived on Hubbell, the sidewalks cost about \$125 a linear foot without this much -- this is topographically challenging. Up -- up the hill, you can cut. Downhill, you're going to have to change the grade, change the flow, and then build. I appreciate the difficulties. It may be well over \$150 in certain places. I think \$69 is too low, but I have yet to win that battle with City Legal. They use this average over time.

MS. LOE: Any additional questions for staff? Seeing none. We will open up the floor to public comment.

#### **PUBLIC HEARING OPENED**

MS. LOE: If you have any public comment, please give your name and address for the record.

MR. HALL: Michael Hall with McClure Engineering, 1901 Pennsylvania Avenue here in Columbia. Would you mind taking to the parcel viewer view. I want to kind of reference a few points on that. No, the one that actually shows the -- the lot lines. You had one prior to it. Yes. That's close enough for my -- for -- this is a little bit older of an aerial view, just to give a little bit of point of reference for all the Commissioners. When we're talking about additional developable area and potential for extension of sidewalks, I would like to point out a few things. Immediately on the western property line, there's an existing small structure, and all the houses are on the -- are outside of City limits. There's an existing small structure right immediately there on the west property line. As you continue around the corner, there is some new homes that have recently been constructed, large-lot homes that have been built immediately adjacent to that. And you'll see a -- a -- the horizontal line along there where there's a

little bit of a tree cut after you come around the curve, that's kind of where the -- the -- that developable area stops, and there have been two homes built there within the last -- I think they were building in the last two years. And again, you also have an existing rural subdivision on the south side of the road that is existing, as well as the -- there's a large home that was originally built by Mr. Tompkins along the inside corner there. So with all due respect, I do feel like the extension of a sidewalk is highly -- of all the areas in town in the City of Columbia, I think that the probability is highly small. The other thing I would like to point out when it comes to the sidewalks and all of the discussion, this is not a City street. This is a state highway. This is Highway KK. Although it's a supplemental, very, very low priority road, unless the City would like to take over more roads and get it from MoDOT, I would highly venture that unless there was a development that would cause the road to be improved, it's not going to get improved anytime soon. Just -- and, again, you can take that as opinion, but I would like for it to be considered as a professional opinion. As far as the sidewalks and the \$69 per foot, and the fee in lieu, that percentage is still extremely high considering what's being, you know, could be proposed. These are not going to have homes built on either one of these lots. You know, the potential is for a small outbuilding at some point to be put on the lot to the west and, you know, you're talking about a -- maybe a \$40,000 structure, and we're talking about another \$20,000 just in sidewalk fee in lieu alone. So -- and I would also agree with Mr. MacMann when he was referencing sidewalk costs, this particular lot is way, way more complicated than just building a sidewalk. You're talking not just grade changes, but you're talking storm structures, because there's the -- the outfall of the main discharge from the lake at Thornbrook runs through this area and is part of this plat action, and it goes under the road right there. One other point of reference, this is really a plat that's going to benefit the City in multiple ways. It's cleaning up a very nasty remnant partial that was never really done the way it should have done in the first place. And in one other significant piece is the fact that the City of Columbia has a lift station sitting there with no easement for the electric that goes to it right now, and this rectifies that. So this -- there is an easement that's being provided with this plat action to get the electric -- there's overhead electric lines that come from Route KK back to the City lift station. Clint, you may be able to go back to -- so if you see in there, and I don't see -- I don't think we shot the actual pump station itself, but there's all kinds of sewers and so forth, the gravity sewers that come in and then a forced main that leaves -- yes. That -- thank you. That's a good way to represent it. And the existing road there is an access road back to the easement -- back to the lift station that comes off of Route KK. There is no easement there, so, basically, there is a -- there's easement for the sewers, there's easement for lift station structure itself, but not for the -- not for the overhead power lines. They are not on easement, or at least partially not on easement, and this rectifies and closes that error, I guess is the best way to put it.

MS. LOE: Thank you, Mr. Hall. Are you willing to take any questions?

MR. HALL: Absolutely. I'd be more than happy to take any questions from anybody.

MS. LOE: Are there any questions? Commissioner Geuea Jones?

MS. GEUEA JONES: Did I understand correctly that the single-family home in the cutout portion

is the same owner?

MR. HALL: Yes. That's -- Mr. Murray owns that.

MS. GEUEA JONES: Okay. You mentioned cleaning up an oddly shaped and weird parcel, and I agree. I think one of these lots is essentially unusable.

MR. HALL: Right.

MS. GEUEA JONES: Why are we not also talking about annexing and combining all three?

MR. HALL: Mr. Murray does not want his house to be annexed into the City of Columbia.

MS. GEUEA JONES: But he wants to annex his other properties into the City?

MR. HALL: They're already inside the City?

MS. GEUEA JONES: Or they're already in the City?

MR. HALL: Yes, that is accurate.

MS. GEUEA JONES: He wants to combine them to make them saleable?

MR. HALL: That is accurate. Or at least have the option to do so.

MS. GEUEA JONES: And do you -- do you agree with Planner Smith's and my personal assessment that Lot 1, as described, would probably not be usable for a structure other than an outbuilding that would be --

MR. HALL: That is accurate, yes.

MS. GEUEA JONES: All right. Thank you.

MR. HALL: Absolutely. Any other questions? I think, as far as some more information on the sidewalk addition, there is another individual that will speak, but I would be happy to answer any other questions you guys may have.

MS. LOE: Any additional questions for this speaker? Commissioner Burns?

MS. BURNS: Yeah. Fee in lieu was mentioned.

MR. HALL: Yes.

MS. BURNS: So what are your thoughts on that option?

MR. HALL: Yeah. Under -- the option to fee in lieu, the applicant does not feel like it's appropriate because of the -- again, we're looking at the potential for a -- maybe a \$40,000 upper end outbuilding to be constructed. That's another 50 percent add-on for a sidewalk for a fee in lieu. And I just don't see the sidewalk network ever being done in -- well, in my lifetime because of what I -- and that's kind of a preference -- that's why I kind of led in with some of the other development that's occurred, because in order for the sidewalk to be contiguous and to continue along, there would have to be that one small house that's on a very small lot that's landlocked to be redeveloped. The other homes that were just constructed, large-lot, on a -- you know, over an acre in size in the county, something would have to be changed with that, as well. And you would have to be looking at a large capital improvement by, most likely, MoDOT, maybe the City of Columbia, within an area where there is just not a whole lot of traffic demand, even though the classification is accurate, and I do not dispute the fact that this is the classification, that is 100 percent accurate.

MS. BURNS: Just to follow up. You indicated that there were, as we continue down KK and turn the corner, there had been a development recently.

MR. HALL: In the county. There's been a couple of homes --

MS. BURNS: In the county. Okay. So --

MR. HALL: Yeah. It's all in the county. Again, the western line there that you see is the city limit line; okay? I actually live in Steeplechase, which is where you see the excavation and the dirt, and so I'm personally very familiar with this area. And so there is -- like I said, there's a couple of homes that -- this was -- that have been recently constructed back there.

MS. BURNS: I guess my thought is if there is construction that's occurring and might occur in the future, connectivity could be important as far as a sidewalk network.

MR. HALL: But they're already done, and they were done outside the county, and they were done on large lots, so you are -- your question has validity. I don't dispute that. But it's not going to happen because it's already done, I guess is my point.

MS. BURNS: Thank you.

MR. HALL: Uh-huh.

MS. LOE: Commissioner MacMann?

MR. MACMANN: While we're on this point, and I'm -- I am definitely -- I'm in construction. I'm sympathetic to your situation. I also -- I'm just a little tired of waiving sidewalks. I would remind the Commission, and this is a point of order. I'm not necessarily asking you a question -- is that Scott used to be a state road, and it had almost every characteristic that we're describing here. And we waited and we waited. We got the road, and we developed it and we built the sidewalks. Unbuildable property, as Mr. Smith has brought out, some of you are familiar with Chapel Hill. As you drive down Chapel Hill, when you get towards the bottom near Twin Lakes, maybe a little past there, there's now a senior facility there. They had to cut that out of there with dynamite because it was an unbuildable lot, and now it's a buildable lot. I would disagree with your assessment about in our lifetimes. Money talks a lot. This is a very valuable piece of property were it to be buildable, and I just -- I'll save the rest of my comment towards the end when we get to some discussions, because I wanted to give my fellow Commissioners -- I just wanted to bring that up while we're on this particular plat.

MS. LOE: Additional questions for this speaker?

MS. CARROLL: I have a follow-up question for staff. So now that this satellite image has been up for a while, I'm -- I'm looking at the area directly across from Villa Wood Court. Is that a sidewalk right there? I didn't see it when I drove because it's screened by some trees. Is that a private sidewalk or a City sidewalk?

MR. SMITH: No. And excuse me for not pointing it out and a little more in detail. There is sidewalk along the north side of Route KK.

MS. CARROLL: Yes. That's a City sidewalk.

MR. SMITH: It is a City sidewalk. It was built with the Thornbrook Subdivision.

MS. CARROLL: I couldn't see it when I drove it at all.

MR. SMITH: There is a one-lot gap, though, between where it terminates and where this property is. So -- and this is a little dated. If I used the City aerial, it would probably show a little more of the sidewalk built out, but, in general, that's the location, and that is a public sidewalk, yes.

MS. CARROLL: Thanks.

MS. LOE: Any additional questions for this speaker? Thank you.

MR. HALL: Thank you very much. I appreciate your time and your questions.

MS. LOE: Any additional speakers?

MR. COLBERT: Thank you. Madam Chair, members of the Commission, Caleb Colbert, attorney at 827 East Broadway. And I'm actually here tonight on behalf of the proposed buyer of Lot 2 out of the subdivision, so I can fill in a little bit of the background of the context on what we're proposing here. Ultimately, my client is proposing to buy Lot 2, and locate an outbuilding in the northwest corner of Lot 2. As mentioned -- as Mike mentioned -- as Mr. Smith mentioned, and I know it's been discussed, that we submitted a land analysis map as part of this application. Lot 1 has steep slopes located, you know, over a large portion of that lot. Lot 2 has a stream buffer that does eat up a large chunk of that. In addition, as to the question of what can we build on this lot, there is, as we discussed, a City -- a City sewer lift station located right in the middle of what is proposed to be Lot 2. So we can't build a subdivision over City sewer infrastructure. So this is never going to be built out as any kind of subdivision. And as noted in the staff report, we can't have driveway access directly onto to KK. Single family residential driveway access is definitely limited. So, actually, I'm going to jump in and hand out an exhibit, if you don't mind. Again, the context on this request is my client proposes to build an outbuilding. That outbuilding, he does believe, will be in the ballpark of \$40,000 cost to construct. I'll wait for those to get distributed. Thank you. So when my client contacted me about this question of, you know, are sidewalks required, the first thing I did was I went to the UDC in Section 29-5.1, which deals with sidewalks. And I agree with the City staff that the fact that KK is a collector is the trigger for a sidewalk requirement. But if you look at the language that I have highlighted and underlined in Subsection 2, there is an exception for construction of an accessory structure, and that is exactly what my client proposes to build on Lot 2. So at least as to Lot 2, we believe the sidewalk requirement doesn't even apply, so we would respectfully ask the Commission, you know, to take that into account, because we're not proposing new single-family residential construction. This is the first step in what will be ultimately the construction of an accessory building to his lot, which is located in Thornbrook. My client owns property that is directly adjacent to this lot. But if -- if you disagree with our interpretation of the Code, we still think that it would be appropriate to waive the requirement to build sidewalks and the requirement to provide a fee in lieu, and ultimately that does come down to the cost. As noted, we expect sidewalk construction to cost somewhere around the ballpark of \$24,000, the fee in lieu to be in the ballpark of \$18,000. We respectfully think that that is disproportionate to what we propose to build on the site, again, a \$40,000 structure. If you look at the policy resolution that is part of the packet for tonight, Section 1 says, "The City Council shall review each request for a



sidewalk variance along an unimproved street in the context that there must be 'a reasonable relationship between the proposed activity of a landowner and the requirement that the landowner construct a sidewalk.'" So I would ask the Commission what is that relationship here? We can't build a driveway that connects to KK. We're proposing to build a shed that -- or an outbuilding that is tied to a lot in Thornbrook. So respectfully, we don't believe that there is any relationship between what we're proposing and the requirement to build sidewalks. And when you take the cost into account, again, it's a \$40,000 structure. It seems disproportionate to trigger an obligation to pay nearly \$20,000. And whether it is a fee in lieu or the cost of construction, either way, my client is ultimately having to write a check for that, so in our mind, a fee in lieu is not really an appropriate alternative to actually building the sidewalks. Either way, it costs our client more than what it is worth at the end of the day. But with that, I would be happy to answer any questions. Mr. MacMann? Oh, sorry. Sorry. I'm here too often.

MR. MACMANN: Mr. Colbert has executed a coup. I do have questions. Madam Chair, may I proceed?

MS. LOE: Please.

MR. MACMANN: Mr. Colbert, I'm going to rake you over the coals, and then I'm going to give you another way out.

MR. COLBERT: Sure.

MR. MACMANN: All right. When Thornbrook was originally platted, the undeveloped lots were \$75,000-ish a piece. This is 4.9 acres. What do you think it's worth?

MR. COLBERT: I don't have any idea. But you also have to take into account that there is a stream buffer.

MR. MACMANN: I appreciate that.

MR. COLBERT: And there is a sewer lift station that it -- it basically eats up three-fourths of Lot 2. So what is it worth to you to own real estate that you can't use?

MR. MACMANN: I've often wondered that, but yet you and I see that every day, and we actually spent two hours discussing that very thing. There was a mention earlier by the gentleman behind you that the City needs an easement --

MR. COLBERT: That's correct.

MR. MACMANN: -- to access their property. Can you tell me what discussions have gone on in regard to that easement? Has there been any progress? What's the status? Do they have --

MR. COLBERT: I think the easement is dedicated on the plat; correct?

MR. HALL: Yes.

MR. COLBERT: Right. So the discussion essentially was from City staff that in order to move this plat --

MR. MACMANN: Does your client feel that the surrendering of that easement would over any sidewalk?

MR. COLBERT: Absolutely. I mean, I think, ultimately, if we're conveying an easement to the

City, there is some value there.

MR. MACMANN: Well, everyone would convey it, though, you know, in this situation. Okay. We're going to have some talking to do, all of us, together.

MR. COLBERT: Okay.

MR. MACMANN: That's all the questions I have at this time, Madam Chair.

MS. LOE: Thank you, Commissioner MacMann. Any additional questions for this speaker? Commissioner Geuea Jones?

MS. GEUEA JONES: So there's a difference between a building permit and a permanent waiver on a plat. You are asking for a permanent waiver on a plat. The exception you pointed out is on a building permit. So, in fact, this requirement would not necessarily be triggered if you applied for a building permit for an accessory building, so you're not going to have to write a check immediately upon purchase and approval. You'll have to write a check if you apply for a building permit.

MR. COLBERT: Is that City staff's interpretation, that if we apply for a building permit for an accessory structure, we will not be required to build sidewalks?

MR. SMITH: No. Because there's actually -- our interpretation is there's actually two separate requirements going on here, and we didn't dive into those specifics, but one is the requirement to build it on a collector with the exception that accessory structures won't, but the other requirement which trumps everything is that when you plat, you build sidewalks.

MS. GEUEA JONES: You plat, build the sidewalks.

MR. SMITH: Right. That's the requirement.

MS. GEUEA JONES: But, again, this exception that you're pointing out has nothing to do with the plat, which is the request that's before us, so it's a bit disingenuous to bring this to us and say we're requiring you to do something you're not required to do when this is not the request that you're talking about, because this would be -- do you see what I'm saying? This is about when you get your building permit, you're waived for an accessory building. You're asking for a permanent waiver on a permanent plat that would apply to everything forever and beyond.

MR. COLBERT: And again, from our view, Section 29-5.1 applies both at the platting and the building permit process, and I don't necessarily agree that if you grant this now, it is a permanent waiver -- well, I guess I take that back. It would be a permanent waiver, but we would be comfortable with including this language on the plat, I believe.

MS. GEUEA JONES: This -- I am just pointing out to you that you gave this to use and told us that our staff was wrong in their interpretation, when, in fact, the exception you're pointing out is about building permits, not platting actions.

MR. COLBERT: And I certainly appreciate that feedback.

MS. GEUEA JONES: Thank you.

MS. LOE: Commissioner Rushing?

MS. RUSHING: I just wanted -- out of curiosity. I'm assuming that your client's property is the

property to the west?

MR. COLBERT: To the northwest.

MS. RUSHING: Northwest. Oh, that one? The smaller property?

MR. ZENNER: The larger part -- the larger parcel, if I'm not incorrect -- Mr. Colbert, correct me if I'm wrong -- is the Orscheln Tract?

MR. COLBERT: That's correct.

MR. ZENNER: That's their Orscheln -- the Orscheln Estate.

MR. MACMANN: Thank you, Mr. Zenner.

MS. LOE: Any additional questions, Ms. Rushing? Commissioner Burns?

MS. BURNS: Thank you. Not that we're there yet, but does your client have a preference if they would have to build the sidewalk or pay the fee in lieu?

MR. COLBERT: Well, I think the preference would be the fee in lieu, but ultimately, again, the fee in --

MS. BURNS: This -- as we have our discussion.

MR. COLBERT: Sure.

MS. BURNS: Thank you.

MS. LOE: Mr. -- Mr. Zenner?

MR. ZENNER: I just have one question, and it may be germane to the Commission, but I think it's as germane to us as staff because the process moving forward here may get even more complicated. If I understand what Mr. Colbert has indicated is his client, who the plat is named after, is in that northwest corner, the small lot. They are wanting to purchase Lot Number 2 -- or, yes, Lot Number 2, so they can build an accessory structure on the lot. An accessory structure cannot be built without a principal structure being on the property, and a building permit cannot be built without having a legal lot or a building permit cannot be issued without a legal lot, which goes to Ms. Geuea's point that you have two different issues here. You've got to create a legal lot, which is what's triggering the necessity for a sidewalk on a collector, and then, if you get your legal lot created and you build an accessory structure, possibly you don't have a sidewalk because of the other provision. So my question to Mr. Colbert, to the Commission, is how do you intend on handling the transfer of Lot 2 to the Hardy tract? Are you going to attempt to do that through subdivision action, or are you going to attempt to build an accessory structure over a property line?

MR. COLBERT: The intention would be to come back with another plat that combines those lots.

MR. ZENNER: Which, if the Commission should desire to waive the sidewalk on the smaller lot or not even include that as a condition at this point, meaning that the sidewalk would be required to be built on Lot 1, you will get an opportunity to be able to require the sidewalk on Lot 2 when it comes back to be combined with the property off of the Thornbrook access road.

MR. SMITH: That's presuming that it wouldn't classify as being processed as an admin plat.

MR. ZENNER: It won't.

MS. LOE: Commissioner MacMann?

MR. MACMANN: This may also be a question for Ms. Thompson, and this will probably be a question for Mr. Colbert or whoever is standing in his stead at the time. I can see us hearing the argument, well, you didn't require one in the first place, not that Mr. Colbert would ever make that argument the second time around, and we don't think we should do it now. I have another question for someone on staff, and I don't know if you guys remember or not. We talked about the differentiation about when the check is cut, so to speak. Do we actually know when the check is cut, because we've had several in my five years here or whatever, we've had several times where someone was -- said, hey, you're going to have to write us check. Do we know when that actually happens?

MR. SMITH: I would expect before Council would execute the plat and set it for recording. So that needs to be done, basically, at the time that Council approves it. No later than --

MS. THOMPSON: And I was going to state, the resolution, the policy resolution actually speaks to when those payments have to be made.

MR. MACMANN: Okay. I just wondered, because Council usually says when they say yes, I just don't know when the check makes the transfer -- like, when the building permit is issued, or, you know, what that's --

MS. THOMPSON: When it's approved with the final plat, it has to be made prior to issuance of the first building permit.

MR. MACMANN: Okay. All right. Now we know more. Thank you very much.

MS. LOE: Any additional questions? Commissioner Stanton?

MR. STANTON: Just a point of clarification. So, Mr. Zenner, are you essentially saying that, basically, they're going to create an ADU in a big, long backyard? Is that basically their intent?

MR. ZENNER: Well, I think as Mr. Colbert pointed out, it's a storage building, an accessory structure, not necessarily a dwelling unit, to our knowledge. But, yes, that would be what would be on Lot 2. What this aerial does not show, since it is dated, there is a very large pool sitting in the southwest corner or southeast corner on Mr. Hardy's lot at this point, to which the storage building most likely is probably associated with for pool paraphernalia and any other things that he can't fit in his garage. Mr. Smith pointed out that if it processed as an administrative plat, the issue of the sidewalk, if not resolved with the initial platting of this property to create a legal lot for purposes of transfer and combination, it would be processed administratively. It does not require -- administrative plats do not require Council action, so that does further put the importance of the sidewalk either being a fee in lieu of or being required to be built at this time with this platting action as it's presented this evening most likely because the requirements for an admin plat would be a combination of two or more lots or the exclusion would be for it to not be able to be qualifying as an admin plat is two or more lots with more than 120 feet on a single frontage. And this -- the parcel in question for the Hardy plat that's in Thornbrook right now is likely not 120 feet, and the frontage along KK is likely not, either. So it would qualify. It's not greater than two lots, and that would be the concern that Mr. Smith was pointing out. So I just want to make clear that

there may be no additional review. And even if there was a final plat to be reviewed, your approval of this plat this evening, regardless of how you choose to do it, creates a legal lot. The lot that's in Thornbrook is a legal lot, and under the replatting provisions of the UDC, you do not see replats that are of legal subdivisions. You only see replats that were not previously presented to the Planning Commission. And in this particular instance, this would fulfill the latter. Both of them would have been shown in plats presented to the Commission. So it goes directly to City Council at that point.

MS. LOE: Additional questions? I see none. Thank you, Mr. Colbert.

MR. COLBERT: All right. Thank you.

MS. LOE: If there aren't any additional public comments, we'll close public comments.

**PUBLIC HEARING CLOSED.**

MS. LOE: Commission comments? Commissioner MacMann?

MR. MACMANN: My thinking, off the top of my head, is what I would like to do is to make a motion to approve the final plat, deny the -- deny the design adjustment, and ask for the fee in lieu of. I realize that it won't be seen again. That's one reason I want to do that. Number two, our clients have the ability and the wherewithal to get another bite at the apple with Council, and I think that may be the best way forward. And it is my hope that our Councilpersons read these minutes and watch this video. I just -- I just tell you guys where I'm at on this.

MS. LOE: Commissioner Geuea Jones?

MS. GEUEA JONES: I don't like any of this. I think this is a way of creating what is essentially a landlocked R-1 lot that could be buildable with a home in the -- what is that -- northeast corner, Lot 1, as opposed to Lot 2, which is the lot they're actually trying to sell where they have a buyer and a use and everything, but there's no -- with that little piece of county land and an owner who does not want to be in the city limits, but wants to sell the rest of his property in a way that makes it less than usable, I am very concerned that we are setting ourselves up for seeing this property back here over and over and over again as people need various and sundry adjustments because we've created a lot with serious challenges. Yeah, but even -- like, the -- the way you would have to get to there, you've either got a driveway in a stream buffer, or you've got a very narrow driveway, and either way, they're both on KK, which you can't do. So, I mean, you're -- you're creating -- we are creating a situation where whoever wants to have Lot 1 and use it is going to have serious design challenges because of how we're approving this plat. And I -- I personally -- I mean, I -- I'm very aware that I'm probably in the minority opinion on this, but I don't think that's good public policy to set up a piece of property in such a way that someone who wants to use it for building a home, whatever, is walking into it with challenges we created. If they're challenges that exist because of topographics and whatever, fine, but if we created it by creating a plat that's got weird access issues, I don't feel comfortable okaying that. And talk me down, but that -- that's where my head is at now, and I certainly am not comfortable with continuing to waive sidewalks just because they're not likely to be heavily used today. That's where I'm at.

MS. LOE: So I'm -- I've brought forth cases to different planning and zoning councils that were

puzzle pieces based on family and co-owner situations which the surveyor said you could never sell these properties, and the intent was not to sell, the intent was very personal. And I -- I'm not sure how we would have proceeded should the Planning and Zoning Commission not have approved our proposal. We are not creating the layout, the applicant has created the layout. They are simply asking us for approval, and if it meets the technical requirements, based on my personal experience with needing to deal with land issues, I will approve it because I know they're bringing it -- they have derived it based on their needs. However, I agree with you that because they've created a parcel that may or may not allow or make the best use for the requirement for sidewalks, that's -- that's another issue, and I'm not going to waive the sidewalk issue in an area that I believe will need sidewalks within not many years, so they -- they can lay out the land as they desire, but I still see sidewalks as being a necessity. Additional comments? Commissioner Burns?

MS. BURNS: I agree with Commissioner Loe and Commissioner MacMann as far as that we need -- we have a request before us, we have a report before us. We're talking about a design adjustment, and I think that's what we should focus on, and I agree that we shouldn't -- we should deny the design adjustment and either go with the fee in lieu or the sidewalks and cross the other bridges as they come before us.

MS. LOE: Commissioner Carroll?

MS. CARROLL: I agree with what's been stated by the majority of the Commissioners I've heard from tonight. I'm also not inclined to waive the sidewalks. Also, given that it's unlikely that Route KK is going to be expanded in the near future, improved in the near future, it's unlikely that the sidewalk would need to be torn up or moved in the near future, I am inclined to require the sidewalk as opposed to a fee in lieu. The connectivity is significant. There are other sidewalks nearby, and the cost for fee in lieu doesn't cover the actual cost for the sidewalks that the City would have to build if it chooses to, which may be down the road quite a bit.

MS. LOE: Commissioner Stanton?

MR. STANTON: I have a question for staff. If I -- do I have to deny the adjustment if I want the fee in lieu?

MR. SMITH: Good question. I was going to come back around to that, and my recommendation doesn't get into what your recommendation should probably be worded as, but anything that waives the sidewalk actual construction is a design adjustment. So what they're asking for is a -- is just a straight design adjustment. My recommendation is design adjustment, so they don't have to build it, but with a fee in lieu. Right? So those are -- that's the different there. So there could be three recommendations, and one is just approval of the plat and a denial of the design adjustment, which would be then to construct it. Right? So if you don't want the sidewalk built, then the design adjustment needs to be part of the -- of the motion. If you want the fee in lieu, you need to add that, too.

MR. STANTON: Well, then --

MS. THOMPSON: And if I just jump in to --

MR. STANTON: To a denial? That's what I'm trying to get.

MS. THOMPSON: If you wanted -- if you want to do the fee in lieu, my recommendation would be to grant the design adjustment from having to install the sidewalk, so you would grant the design adjustment with the condition that they pay the fee in lieu.

MR. STANTON: So they don't have to build it, but they've got to pay for it.

MR. MACMANN: No. That's -- that's cleaner. That's much cleaner.

MR. ZENNER: You have to take action on the design adjustment to either approve, approve with fee in lieu or deny, because we have a separate report that's being processed for the design adjustment, which is what that aspect of it deals with, and you have the final plat. So as I think Ms. Thompson has recommended, the cleanest adjust -- the cleanest way to deal with the adjustment, based on the discussion we have heard, is to recommend approval of the design adjustment with payment of a fee in lieu.

MS. THOMPSON: Well, I would say with approval of the design adjustment with the condition that they pay a fee in lieu of constructing the sidewalk pursuant to policy resolution 48-06A.

MR. ZENNER: I couldn't have said it better myself.

MS. LOE: Mr. Stanton?

MR. STANTON: That's what I wanted to say right there. As counsel has suggested, so --

MS. LOE: Are you making a motion?

MR. STANTON: Yes. That motion right there.

MS. LOE: We're making a motion. All right. Mr. Stanton has -- just to reclarify -- has moved to --

MR. STANTON: As it relates to Case --

MS. LOE: -- approve. Okay. Let's back up.

MR. STANTON: As it relates to Case 318-2021, I move to approve the design adjustment --

MS. LOE: With the condition --

MR. STANTON: -- with the condition of a fee in lieu for future construction of that sidewalk.

MS. LOE: Per PR 48-06A.

MR. STANTON: Yeah.

MR. MACMANN: Second.

MS. LOE: Seconded by Commissioner MacMann. We have a motion on the floor. Any discussion on that motion? Commissioner Geuea Jones?

MS. GEUEA JONES: I am curious -- I am curious to know if -- if we vote this down, so if I, like Commissioner Carroll, which I do -- I would rather see the sidewalk built, and we vote no on this, then the follow-up motion will be to just deny the adjustment? So there -- this isn't our only option. We vote on this one, depending on how this vote turns out, we may or may not vote on the straight denial? I just wanted to clarify that because I don't know where everyone is.

MR. ZENNER: That's correct.

MS. LOE: No. Good discussion. I -- I'm going to support this because it -- it appears there are

other pieces of the sidewalk that need to be done, and I think it's a more constructive path forward for getting the whole project done. Mr. MacMann?

MR. MACMANN: Two things. Even though this property might not have any immediate value to anyone off of KK, it certainly already has value to people to the northwest and potentially to the east. Also, while I do agree with Ms. Geuea Jones' point, and this goes to maybe a follow-up motion, which we may or may not get to, and Ms. Carroll's point that the \$69 a linear foot would be insufficient, it was -- it would be my supposition that sidewalks would come to this area once the road was improved, and that road approval would take up a lot of the engineering beforehand, and \$69 would be closer to it. Thank you.

MS. LOE: Additional comments? Commissioner Stanton?

MR. STANTON: I think this is a win-win, and it cover as much of what we all want as possible. We've got money on the table. It's benefitting the client and still got money for a sidewalk. Mr. MacMann is right. The engineering for the road and stuff is -- will be baked in. I think that would be a good price after they do all that. And if they build it now, I don't think it's going to be maintained by the time -- by the time they get to doing the road, that sidewalk is going to be screwed up anyway.

MS. LOE: Additional comments? Commissioner Carroll?

MS. CARROLL: As I understand it, there's no plans to improve the road in the near future. I don't know. I've required sidewalks in similar requests, and I'd prefer to be consistent.

MS. LOE: Any additional comments? If not -- oh. Commissioner Placier?

MS. PLACIER: Well, I mean, it's a pretty obvious thing that there would not be any sidewalk in front of that center lot because it's in the county. And so we have no power -- so there will be two sections of stranded sidewalk, and at this point in time, it doesn't seem to make sense to me.

MS. CARROLL: I think you're right.

MS. LOE: Final comments? Ms. Carroll, may we have roll call, please.

MS. CARROLL: Yes. Yes.

**Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Ms. Loe, Mr. Stanton, Ms. Burns, Ms. Rushing, Mr. MacMann, Ms. Placier. Voting No: Ms. Geuea Jones, Ms. Kimbell, Ms. Carroll. Motion carries 6-3.**

MS. CARROLL: We have six votes to approve, and three to deny. The motion carries.

MS. LOE: Okay. And we need a second motion on this case. Commissioner MacMann?

MR. MACMANN: In the matter of Case 318-2021, Hardy Plat Number 1, approval of the final minor plat, I move to approve.

MR. STANTON: Second.

MS. LOE: Seconded by Commissioner Stanton. We have a motion on the floor. Any discussion on this motion? Seeing none. May we have roll call, please, Ms. Carroll.

**Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Ms. Loe, Ms. Burns, Mr. Stanton, Ms. Rushing, Mr. MacMann, Ms. Placier, Ms. Carroll. Voting No: Ms. Geuea Jones,**



**Ms. Kimbell. Motion carries 7-2.**

MS. CARROLL: We have seven votes to approve, and two to deny. The motion carries.

MS. LOE: Recommendation for approval on both motions will be forwarded to City Council.

MR. ZENNER: And just for a point of order, due to the fact that the first motion on the design adjustment was not approved by 75 percent of the seated Commission, it is under old business, which means both items will appear under old business, so they are joined together even though they'll be in two separate reports.

MS. LOE: That concludes our hearings for the evening. Thank you.