

EXCERPTS

PLANNING AND ZONING COMMISSION MEETING

DECEMBER 8, 2016

Case # 16-204

A request by Highland Properties Company (owner) for a major amendment to The Highlands - Phase 8 Final PUD Plan, including proposed variances from subdivision standards requiring sidewalk installation and limiting cul-de-sac length (Sections 25-48.1(a) and 25-47(a), respectively). The 5.3-acre subject site is located at the terminus of Stonehaven Road, approximately one quarter mile southwest of the intersection of Forum Boulevard and Old Plank Road. (This item was tabled at the November 10, 2016 meeting)

MR. STRODTMAN: May we have a staff report, please.

Staff report by Mr. Steve MacIntyre of the Planning and Development Department. Staff recommends denial of the requested major amendment to The Highlands - Phase 8 Final PUD Plan, including denial of the associated request for variance from the terminal street length maximum (Section 25-47(a)) and denial of the requested variance from Section 25-48.1(a) to allow no sidewalks to be constructed along Stonehaven Road and Old Plank Road rights-of-way adjacent to the subject property. Should the Commission choose to recommend approval of the requested major PUD plan amendment, staff would support a variance from the requirement to construct sidewalk along the cul-de-sac bulb on Stonehaven Road. If the Commission supports the variance from sidewalk construction along the site's Old Plank Road frontage, staff recommends that the following conditions apply:

1. The property owner shall pay the City \$20.00 per lineal foot of frontage on Old Plank Road for future construction of a 5-foot wide sidewalk along Old Plank Road prior to final plat approval.
2. The proposed emergency vehicle access shall be maintained by the Homeowners' Association to standards which allow the access to be used by emergency vehicles.
3. The proposed emergency vehicle access easement shall include provisions to accommodate public bicycle and pedestrian access.

MR. STRODTMAN: Thank you, Mr. MacIntyre. Commissioners, questions? Ms. Rushing?

MS. RUSHING: We -- you talk in your recommendation like it is kind of an either-or, but we could deny one or both of the variances and still approve the application. Correct? So we have three separate items that we are looking at?

MR. MACINTYRE: That is correct. You could recommend, independently of course, if -- if you choose to approve or deny the variance from the -- it depends on how you phrase your request -- or your recommendation rather. Some of these elements, the variance would not necessarily --

MS. RUSHING: But we could vote on the sidewalk variance and approve or deny it?

MR. MACINTYRE: Yes.

MS. RUSHING: And the vote on the extension, approve or deny it? And then regardless of what happened on those two votes, we could still approve the PUD?

MR. MACINTYRE: That is correct.

MR. STRODTMAN: Mr. Harder?

MR. HARDER: I have a question. I know that the length of a cul-de-sac, there is a limit. I mean, this street is like 30 years old. I mean, what triggers to say, okay, it can't be a cul-de-sac anymore because it has been a cul-de-sac for 30 years.

MR. MACINTYRE: Well, that gets to the initial intent of this street, which was to connect it. And that's how it was initially platted and always has been shown. It's hard to give up the opportunity that exists and, frankly, has simply not been fulfilled by -- by the original developer or the owner. When that right-of-way has been dedicated, it's there, it just needs to be -- the obligations need to be followed through on to make it happen.

MR. STRODTMAN: Ms. Loe?

MS. LOE: Mr. MacIntyre, just to follow up on Ms. Rushing's question, does -- it appears to me that the major amendment to the PUD plan includes eliminating a connection. So can we approve that and vote separately on whether or not we approve the -- I mean, by approving or denying that, aren't we approving or denying the extension?

MR. MACINTYRE: Right. The sidewalks could be considered separate. The extension, I would say the reduced width street and the cul-de-sac all kind of go together naturally. So I'd rather wait and see how you would like to frame it, but I think that there are natural -- you know, certainly you could support the PUD plan without the sidewalks, but not necessarily without the cul-de-sac bulb, for example.

MS. LOE: Thank you. I just wanted to clarify.

MR. STRODTMAN: Any additional questions for staff, Commissioners? If not, I will open this up to our public hearing.

PUBLIC HEARING OPENED

MR. STRODTMAN: And if you would like to come forward and give us your name and address, and we would welcome that.

MR. HOLLIS: Good evening. Robert Hollis with the VanMatre Law Firm, 1103 East Broadway. May I approach and pass these out? Thank you. Well, not that you are unaware, but City staff's work on this has just been excellent, as usual. And this is not a simple topic on this very small development, but it has taken a lot of their time and effort and we certainly appreciate that. So I said Jamie Jeffries is here; he is not. I was wrong. Sorry. You know where the site is. That is your first slide. We're here because of a plan virtually identical to this was approved in 2009, and it just expired. There was no development. There wasn't interest in the lots as far as buyers, so there was no need to move forward. That is not the case anymore. There are ready and willing buyers, and so that's why we are here. The issues addressed in 2009, I'm happy to go over all -- any and all of them with you, but I'd like to skip through them as quickly as possible, unless you have questions. It's cul-de-sac street length, connectivity, safety

concerns, sidewalks. I'll -- I've got a bunch of slides on these and we can -- I'll never get through it in my time that is allotted, but please come back and ask questions if you have some. The cul-de-sac street length, it's called an emergency access, but the emergency department, which is the fire department doesn't require it. So now we are talking about connectivity. And when you are talking about connectivity, I think the evidence weighs heavily in favor of there not being a connection now based on what has changed since 1987 when the plan was originally approved. There is also something that I hadn't pointed out before in this, the agreement with the City, which I have a copy of and you're -- happy to give you a copy of it if you want it, is the cul-de-sac length was to be waived, and that was, again, a late-80s agreement. And there is a quote there for you. Also, the neighborhood support -- is in support of opposition of there being a full-blown connection to Old Plank. So as far as the purpose of the 750-foot limitation -- so that's -- you're not supposed to have a street that is longer than 750 feet. Well, why? Because you're going to have too many lots that you can't get to with emergency services. On a 750-foot street, you could have 26 lots. There are 22 on this. Yes, the street is much longer than 750 feet, but has long been developed, and there are 22 lots, and that is all there will ever be. From a practical standpoint, it is -- it is flat topography, so I provided this topographical map. The pavement is in fact 32-foot wide. It is on a 50-foot right-of-way, and there are 50 feet on either side of that of setback. So getting through -- and I've included a few pictures on the slide that shows views on Stonehaven, a few pictures that show that it is hard to imagine circumstances where emergency vehicles could not get through. To me, it mattered -- why in the world was this -- the decision in the first place? Why was Stonehaven shown as a through street? And it is because Highland Ridge was not owned at the time, so there was no way to plan for the connection, which is Glasgow, at that point in time. Also at that point in time, the Forum connection, which now exists, it wasn't even on the CIP for the next 20 years. And so it was -- it made sense at that point in time for this connection -- Stonehaven to be a connection from Old Plank to the north. Subsequently, it doesn't. Also, there are many, many other points of connectivity for The Highlands, and if you compare that to other developments, it is often triple as many. Another thing to keep in mind about an access point, if it would exist from Stonehaven to Old Plank is it would be dangerous. And it would also create cut-through traffic. Dangerous because that's a picture from standing at the point where the access point would be and how far you can see. It is only 220 feet. Not very far. Also, there is no doubt that that would create cut-through traffic. People would go left on Stonehaven attempting to go north when all they need to do is go a little bit farther and go north on Forum, which is a street that is built for those purposes. If you've been on Stonehaven, you would know, it is not a street, it is not a neighborhood, it's not a development that is meant for cut-through traffic. There are no sidewalks. So naturally all foot traffic, bike traffic, activities that would otherwise be on sidewalks are on the street. As far as sidewalks on the cul-de-sac, this slide shows a picture that is showing an obvious fact. There are no sidewalks on Stonehaven. So if you built sidewalks on this cul-de-sac, it would literally drop off into grass because there aren't any other sidewalks. As far as sidewalks go -- the sidewalks go with respect to Old Plank, well, let me back up. The original PUD plan explicitly

states sidewalks are not required. There is the agreement that waives sidewalk requirements, but that is only -- if and only if you make the recommendation and make the finding that there would be a minimal use and not reasonably required, which I think that seems fairly obvious because there would be sidewalks leading to grass. Old Plank sidewalk, the \$20 per lineal foot, my client agrees to pay it, agreed to pay it in 2009. Didn't want to, obviously, but did and is doing the same thing again. So those are the old issues. The new issue, which is also related to the sidewalks, and frankly is a suggestion from the homeowner's association, completely separate from my client, but an interested party nonetheless, they suggested a better use of the funds, so \$32,000 is the -- is the bid that we got from Emery Sapp & Sons for the construction of the unnecessary and unwanted access road. So let's spend it somewhere else. That's -- and we agree. We just need to figure out where that is. The homeowner's association says they've got some projects -- some storm water projects, some street projects within The Highlands. We are fine with that. The City says we've got sidewalks that we would like to build on Old Plank. We are fine with that. In talking to the homeowner's association, I said this is really not our issue, you guys figure it out. We'll provide the money, you figure it out. That can be the basis on which this can move forward. I can't speak for the homeowner's association, but I believe that they agree with that. That was just an illustration of what Mr. MacIntyre was describing earlier, and I don't know if this helps a whole lot, but you can see the red part is basically the -- what we are paying for with the payment in lieu of, and then the green parts are what we would be helping fund with the \$32,000 donation, should the homeowner's association and the City staff agree. Oh, sorry, and the park is immediately -- am I out of time? Yeah. Well, yes, so I'm finished. If I could just state the preferred recommendation, it's that approve what we requested with variances from the cul-de-sac and the sidewalks, to the extent that those are necessary, without the access lane, and with the applicant paying \$32,000 for improvements as determined by the homeowner's association and the City. Alternatively, although not preferred, approve the plan as submitted with the same variances.

MR. STRODTMAN: Thank you, Mr. Hollis. Questions for this speaker, Commissioners? Ms. Loe?

MS. LOE: Who maintains Stonehaven?

MR. HOLLIS: The City.

MS. LOE: Thank you.

MR. STRODTMAN: Any additional questions? Ms. Burns?

MS. BURNS: Is there parking on Stonehaven on either side?

MR. HOLLIS: Is it prohibited? I don't know.

MS. BURNS: I'm just thinking about with the proposed park land, I can see that a lot of people would want to park there and walk to the park.

MR. HOLLIS: Well, I don't think there would be access from Stonehaven to the park.

MS. BURNS: Well, if we are talking about a possibility of that, if you had emergency access or a pedway --

MR. HOLLIS: Oh, I guess if -- yeah, if you were going to create access, I think -- it is sort of far-fetched to think that very many people would travel that far walking to get to a park, but --

MS. BURNS: It looked close. I guess it is further away than what I thought.

MR. HOLLIS: Well, it is 2,800 feet of street with only 22 homes on it. So I think -- I think people accessing the park, which is why staff's suggestion makes sense to me, is that they would be coming along Old Plank.

MS. BURNS: I just didn't know if perhaps residents were concerned with the pending park that that might create additional -- not only the cut-through, but people parking there. Because if they parked at the end of Stonehaven, they would be very close to accessing the park.

MR. HOLLIS: Assuming we built the emergency access, plus public access, right. Right. Yeah. That could be a possibility. Again, the neighbors and the association are completely against any sort of access.

MR. STRODTMAN: Ms. Loe?

MS. LOE: Ms. Burns, you're --

MS. BURNS: Absolutely.

MS. LOE: I don't believe we received any letters in our packet. But you have referred to a few. Am I mistaken?

MR. HOLLIS: I don't know.

MS. LOE: So were there letters?

MR. MACINTYRE: Not received --

MS. LOE: Were they submitted to the Planning and Zoning staff? No. All right. Thank you. I just wanted to clarify that.

MR. HOLLIS: I don't know what was in your packet, but I did send you the letter.

MR. MACINTYRE: The HOA letter?

MR. HOLLIS: Right.

MR. MACINTYRE: Yeah. I didn't take that as something to be included in the packet.

MR. HOLLIS: Oh, sorry. Yeah. There is a representative from the homeowner's association that I'm sure will --

MS. LOE: Thank you.

MR. STRODTMAN: Any additional questions? I see none. Thank you.

MR. HOLLIS: Thank you.

MR. SZEWCZYK: I'm Michael Szewczyk; I'm at 1404 Highlands Court. I am the president of The Highlands Homeowners Association. And the letter -- I have three copies, and I'm happy to give them to you. My understanding was that it went to Steve, and then it was going to come to you all. So the letter was written November 7. So it's a really interesting thing, this whole Stonehaven, because it has sat there for 25 to 30 years as a cul-de-sac, a dead-end street, and there has never been a problem on it. Never. And we know that from The Highlands. So we had a meeting -- a homeowner's meeting on

October 28th -- 26th. It was our annual meeting, and this subject came up and we had literally hundreds of homeowners, and we talked about this. And we looked at all the alternatives -- one, Stonehaven connecting through to Old Plank, the second thing, the emergency access road, or third, just having a cul-de-sac there with a pedestrian easement down to Old Plank, so that if Old Plank is ever done -- redone, that there could be access down there for people that want to walk and get down to a sidewalk down there. At that time we had no idea or had not heard about the park that was potentially planned across -- right across the street. You are 100 percent correct. Right across the street from where that would be. So we had thought about all that, and the homeowners without a single person dissenting said why do we need this connection? When that -- when The Highlands was platted, The Highlands Parkway dead ended and there was no other way out of there. Subsequently, we ended up with Highlands Court, which then branched off when Highlands Ridge was developed, which isn't part of The Highlands actually. You could go to Glasgow -- well, you could take Bent Path, go to Glasgow, and get down to Old Plank. And then Forum was put through. So we have two really good ways to get down to Old Plank right now, either through Forum or through Glasgow. And we see this as a completely unnecessary road. And we've just -- we're just sort of befuddled why just because it was on a plat 25 or 30 years ago, do we think we need it now because there really is no reason for it. It would just be a waste of money. So we talked about it and then we thought about this emergency access, and I'm actually an emergency physician. I worked at Boone for 20 years in the emergency department, and I now actually do the physicals for the fire fighters for the City. So I know a lot of them, and I have talked with them. And I talked to Chief White, and I've also talked with the other firefighters and I said has there ever been an emergency on a cul-de-sac where you guys couldn't get through? And not a one of them could tell me of when it happened. So on paper it sounds good, but it really doesn't make any sense because it just doesn't happen. And the fact of the matter is is we know that on Stonehaven it hadn't. And we also know now that if there is 30 houses or less than 30 residences, the fire department doesn't even see it as a problem, and there is only 22 there right now. So we -- we really don't even feel that is necessary. So we talked about it and I said, you know, Highlands Properties -- the developer, and they did a great job in The Highlands, is going to spend money on this emergency access road. Why don't we go talk to them and say the money you're going to spend, can we take and spend that somewhere else for a capital improvement somewhere else? We have sidewalk issues within The Highlands. We have sidewalks that dead end. We have streets that the street department had marked a year and a half, two years ago with spray paint that it needed to be done -- haven't been done yet. We have storm water issues that we've talked to the City about, and they say, well, there's not enough homes involved, you're low priority, it's not our issue that we could get taken care of with this money. So I went and talked to Highlands Properties and I was sort of shocked because they said sure. If you can convince Planning & Zoning, if you can convince the Council, we'll give that money, rather than build a road that is not necessary, we'll give that money so that you guys can make improvements in the neighborhood. And I thought, great, I mean, that's something you just don't see very often, and I thought here we really have a win-win. And I know we talked about win-wins earlier. That

has sort of been the theme tonight, but this is a win-win because the homeowners would win, the City would win, and the developer wins because the developer would look good and is going to spend the money anyways. So that is how we came up with that suggestion. And I think Robert showed some of the slides of why we don't really need it, and we don't. And I think if -- it's -- I know it's really hard for the City to say we don't need a road because it is always roads, roads, roads, but this is one that we truly don't need. And if we do put a pedestrian easement between those two lots so that you can get down to Old Plank, we've got everything we need. The one other thing to consider is, is Stonehaven -- and I know it looks like there is not much going on there -- it connects to The Highlands. Highlands has 500 homes. Most of our homes are under \$200,000. We have a lot of homes that are \$150,000 over by the park. If we let traffic come up Stonehaven, it's going to turn right on Highlands Parkway, it's going to go right by the park where we have hundreds of kids walking across the street there playing ball, that kind of thing. So this is something that I think is more than just Stonehaven. And I think that is why the homeowners were so against it because they saw it as letting these cars come up there where we don't have sidewalks, and yet we have people walking all the time. So I would ask that you do something different and say the cul-de-sac is okay, but let's have a private City partnership. The homeowner's association and the City get together, look at this \$32,000 and figure out where we can spend it so it would benefit the community. And I think it would be a great way to save some money and also get some projects done that really would benefit the neighborhood. So I would ask that you approve the variance to just build a cul-de-sac. Sidewalk issues, it sounds like they are willing to pay for it, and I don't really care about that. So -- but I think the main thing is don't build a 7,500-square-foot road that nobody is going to use. I'll take any questions.

MR. STRODTMAN: Commissioners, is there any questions? I see none. Oh, Mr. Harder?

MR. HARDER: So I'm not sure if I'm asking the right -- so the bicycle and pedestrian access could also be used as an emergency access or for vehicles --

MR. SZEWCYK: No. I -- you know, if you build the emergency access, it has to be 25-feet wide and it is concrete. What I would put in there is I would put a pedestrian pedway or pathway there that would maybe be an easement that was for something, you know, that's a 25-foot easement for a 10-foot, you know, pedestrian pathway that we could put in once Old Plank is redone. Because there is really no reason to go down there at this time. And then people could walk from the neighborhood straight into the park, people from the park could walk up into the neighborhood, but we wouldn't have the car traffic.

MR. STRODTMAN: Ms. Loe?

MR. SZEWCYK: Yeah.

MS. LOE: Quick question. I was just wondering why the neighborhood or association didn't take any action on the waiver after it was approved in 2009.

MR. SZEWCYK: So it would -- it was up to the developers when this lot sold, and my understanding is the lots never sold. So in terms of -- oh, you mean why we didn't come or talk about it or think of this then?

MS. LOE: Well, you had the cul-de-sac approved with emergency egress, I believe, in 2009.

MR. SZEWCYK: Right.

MS. LOE: Why was that not constructed at that time?

MR. SZEWCYK: I think it wasn't constructed because they never sold the lots. I think it was one of those things that -- and you can ask -- you're going to have to ask them that question. But I will also tell you that I wasn't on the board then and the board didn't know what -- you know, I mean, I don't know. But we're -- we know now, so --

MS. LOE: Thank you.

MR. SZEWCYK: But maybe they can tell you.

MR. STRODTMAN: Any additional questions, Commissioners? I see none. Thank you, sir.

MR. SZEWCYK: Thank you. I can make more copies of the letter, but I bet you can do that too.

MS. LOE: We've been sharing it, so I think we're good.

MR. SZEWCYK: Thanks.

MR. STRODTMAN: Anyone else would like to speak on this matter? I see none, so we'll close the public hearing on this case.

PUBLIC HEARING CLOSED

MR. STRODTMAN: Commissioners? Ms. Burns?

MS. BURNS: I have a question for staff. Is there a way to maintain or retain an easement for future if there was a need for connectivity? Because I'm thinking where Glasgow is further to the south and where Old Plank and Forum connect, I don't know how much space is in between. So with a development out there, this seems to be the theme of the night. How do we move traffic efficiently? But if we give up everything by denying or not allowing the opportunity for future development, if we would need to connect through. Is it -- is it, you know -- if -- either-or or is there a way to kick it down the road a little bit?

MR. MACINTYRE: If we're looking -- talking -- since we are talking about changes from what's been submitted and, you know, deem to be in approvable form and has previously been approved, I think that the real issue here is that we're -- we're talking about making a change to something that everyone had previously agreed to do. And it would be certainly expedient and efficient to just stick with that. But given the new ideas that have come up with the prior discussions between staff and the applicant and the homeowner's association presented alternatives and the apparent -- given the apparent reluctance of everyone but perhaps our traffic department and -- or, pardon me -- everyone at the City to give up full access here, except the applicant, I think it's important to note that there is a full 50-foot right-of-way in place right now. That is worth something to us in the way of public improvements also, you know, so if we're going to -- if we want to make a deal, we can certainly discuss other alternatives. I think the crux of my concern or the City's concern would be to not sell ourselves short, so to speak, in the way of giving up all of the value that this has to us -- this right-of-way and this connection. I think also that it is important to point out that some of the projects that were referred to by the homeowner's association

representative, I believe are quite a distance from this site. We did have a meeting with the applicant, and -- to discuss one of those projects -- the storm water related project, and as was expressed, the City doesn't really believe that that is an eligible or a warranted project for public money to be spent on and it is certainly not directly related to this site. What I think we've been discussing now is a project -- potential sidewalk project that we could -- where we could leverage some additional money via payment in lieu toward a future parks project that will actually be used. And that is immediately connected to this site, so I think -- I've lost track of your specific question at this point, but I think that is the direction we need to kind of go on.

MR. ZENNER: To preserve -- Ms. Burns, to preserve the corridor, yes, we -- you could plat an easement, but I think as Mr. MacIntyre has just pointed out, there is already a 50-foot-wide road right-of-way that would have to be vacated in order to basically compress the easement into a smaller location that then would be dedicated through the final platting action that would need to come forward with this. This is the PUD plan, which would constitute, as you are probably aware, the preliminary plat, but accompanying the final plat to create the two lots that you see here on the permanent closure of the cul-de-sac would be a final platting action. And accompanying that would likely be a right-of-way vacation request in order to eliminate the right-of-way. The connectivity that currently proposes -- that the right-of-way proposes is something that we definitely do not want to lose, and we also have the value associated with that right-of-way, which is, as Mr. MacIntyre pointed out, something very valuable to us at this point. Build a road or seek to have that road waived somehow is what really you're at at this point. And what we have agreed on from 2009 is that this access shown here is the substitution to a full 50-foot-wide right-of-way being approved with sidewalks on both sides of it. I will tell you that we have an opportunity at this point in order to have an improvement built, not delayed, and it is not necessarily our general position to take money and then go ahead and build it ourself. The applicant is asking to basically get a waiver, and then pawn potentially or burden the City at some point in the future to build the improvement that they would have otherwise been required to build. And that should be a cost in our mind that is associated to the developer as a result of their application. The fee in lieu of, which is for the frontage on Old Plank or the lack thereof granting the variance along the Old Plank frontage would connect along the parcel's frontages on either side of maybe a pedestrian access across from our City park. And at that point then as the park project may move forward, which if I understand correctly is not going to be potentially a fully-improved active park like most that we see. This is a very rough tract of land over in the CreekrIDGE development. It may be more of a nature area that will be more of walking trails, not actually formal park-type activity, the pedestrian connection is definitely something that should probably be built upfront, not as something that is delayed to some future date. So you could preserve the corridor by simply indicating that the corridor that is shown here as the right-of-way or the travel way for emergency access, which apparently may or may not be necessary according to our other service providers, reduce that down from what I believe is at about a 20-foot-wide right-of-way at this point. So if you were to reduce that down and maintain a -- what would be a standard pedway width, which would be an eight-foot wide easement, four

feet on either side, require the sidewalk to be built according to ADA requirements so people that are handicap can move up and down the grade within this particular area, bing, bang, boom, you've got a sidewalk all the way down from the end of the cul-de-sac completed. You have it connecting to sidewalk along Old Plank Road is what our recommendation is. At that point the remaining pieces that are on either side of the east and west to get you to Glasgow and that will get you back up to Old Plank Road become more of a capital project issue that we would have to potentially move forward as it relates to maybe additional park development on the south side of Old Plank Road. But that would be how you achieve going about doing it. We are leery, I think as a staff, to just say go ahead and waive it and just have them give us some fee in lieu of. No. Build it now because you're going to have to put infrastructure and you're going to have crews out there to do such improvements. It should be built contemporaneously with the actual final platting and the permanent cul-de-sac'ing of the actual Stonehaven Drive.

MS. BURNS: Thank you.

MR. STRODTMAN: Ms. Burns? Ms. Loe? Sorry. It's getting late. Sorry.

MS. LOE: Mr. Zenner, this does feel as if it has gotten kicked down the road a couple of times to borrow an analogy from Ms. Burns. But just to clarify, so this was -- the extension wasn't built in '98 when the request to eliminate it was denied because the -- those two parcels weren't being constructed at that time. And now this is coming up again because they do have offers on those parcels and improvements are impending.

MR. MACINTYRE: I think the original plat probably predated our performance contracts which obligated developers to construct such improvements within three years of final platting way of the streets at least. I --

MS. LOE: Yeah. It's just been lingering --

MR. MACINTYRE: -- haven't look --

MS. LOE: -- out there.

MR. MACINTYRE: It's been lingering.

MS. LOE: So what -- I mean, if this gets -- what happens after tonight if it's -- if the plat -- if the extension is required to go through? Can they just wait another 11 years and come back and say --

MR. ZENNER: Well, the property -- if I am correct, the property has been platted at this point.

MS. LOE: Uh-huh.

MR. ZENNER: And the -- it has not been replatted to this configuration. So the current plat of record has an incomplete Stonehaven that comes to Old Plank Road. In order to be able to obtain a building permit for the two lots that are currently platted on either side of that 50-foot-wide right-of way, you're going to be building a street extemporaneously with trying to obtain a permit because they currently do not have legal access to an improved road. So in 2009 when the proposal was originally submitted to amend the PUD plan which is very similar to this plan, the curvature of the extension is slightly different in order to deal with some modifications we've made as it relates to topography, that plan

ceased. It expired after its five years because there was no activity, no formal final platting to replat the property into this configuration. There was no buyer. And as we understand it, there was no buyer to the property; therefore, it wasn't acted upon. Now you have a buyer willing to move forward with possibly one or both of the lots, and therefore, to allow for the replatting of the property in compliance with this layout, you must reapprove the PUD plan amendment that was originally approved in 2009, and then go through the final platting process to replat the lots, which would then eliminate through a vacation request the rest of the 50-foot right-of-way that was with the original plat -- to replace it with what is shown here.

MS. LOE: It is slightly clearer.

MR. ZENNER: Clearer. It is still -- and we have -- you know, it is almost like this has been kicked over a cliff and it has just existed in limbo.

MS. LOE: Uh-huh.

MR. ZENNER: But right now there is no way to obtain a building permit for these two lots without a roadway or a permanent cul-de-sac, as shown on this plan being built. You're going to do one or the other, and the only way you can do what you are seeing here in front of you is you have to go through a PUD plan amendment reapproval process and then address the issue of the extension of what should have gone to Old Plank Road, as is shown.

MS. LOE: Would they be required to build the full road to Old Plank?

MR. ZENNER: Yes.

MS. LOE: Okay.

MR. ZENNER: Because it will be -- the way that the original lots without replatting the original lots, these last two lots go all the way to Old Plank Road.

MS. LOE: Okay. I guess we started off our evening with a case that the neighborhood was sort of backed into a corner because the City back in the 90s vacated some right-of-ways for a street connection that should have gone through. So I have to admit, I'm a bit leery about vacating any right-of-ways at this time based on that model without -- I mean, we've been seeing developments happening down in this area, so I anticipate this area will continue to grow. That said, we've gotten arguments from the applicant both that no one will use this road and that it will become a cut-through. I tend to side a little bit more with the it won't be used as often. If you look at the CATSO map, Glasgow is identified as the neighborhood connector, and it's shown to connect through to Scott at K through to Old Plank. So I think that's going to be the primary cut-through for this neighborhood. But, I still don't -- I'm not in favor of eliminating other connections. So I'm -- I'm not in favor -- or I'm in favor of denying the request to eliminate the right of way. I'm not -- I'm not as sold on the sidewalks along Stonehaven. So on that one, I'm open on. I'm -- I'm for the sidewalks on Old Plank.

MR. STRODTMAN: Mr. MacMann, did you have a question earlier?

MR. MACMANN: I just -- just a point. If we do nothing and this PUD is not approved and they want to build those houses, they build a road?

MR. ZENNER: That would be correct.

MR. MACMANN: All right. That's -- that's where I was going. We do nothing, the road gets built.

MR. MACINTYRE: Unless they continue to do what has happened for the last 30 years.

MR. MACMANN: Well, if they want to -- if they want to build those houses --

MR. MACINTYRE: Yes. Absolutely.

MR. MACMANN: -- because they currently have no access. That's right. Thank you.

MR. MACINTYRE: The alternative though is that they do nothing.

MR. STRODTMAN: Mr. Toohey?

MR. TOOHEY: I mean, I understand what you are talking about with what we talked about earlier tonight, but the density is so different with this compared to our earlier agenda item. And so I just don't see any point in building that road if it is hardly going to ever be used and the homeowners are saying they don't want it. So why force it upon them if they don't want it and they don't think they are ever going to use it?

MR. STRODTMAN: Mr. MacMann?

MR. MACMANN: This home, I believed Mr. Hollis -- Bobby said 22 lots occupied? Twenty-two. And not to open too big of an old wound, Ridgefield is 25 -- the earlier contentious development where we did exactly the opposite thing.

MS. RUSHING: But the density is much greater.

MR. MACMANN: It certainly is. These lots are twice --

MS. RUSHING: (Inaudible.)

MR. MACMANN: -- at least three acres. I just -- it's difficult for me to manage voting differently -- do you understand what I'm saying? It is okay there, it's not okay here? Connectivity matters, connectivity doesn't matter?

MR. TOOHEY: And I understand that, but there -- the density is so different. I mean, that issue had traffic issues. There is no traffic issues here.

MR. MACMANN: That's true. And I think we need to maybe think carefully about what is going on because as Ms. Loe -- and we've seen these things. There is more and more and more and more things going down there. Mr. Crockett has brought things to us. Other people have brought things to us. And there are a lot of things that are happening on Old Plank.

MR. TOOHEY: But what does that road going to do for those things?

MS. LOE: It's a public street.

MR. STRODTMAN: It would allow a cut-through over to Highland Parkway.

MS. LOE: It's allowing options for traffic and it's of a length that exceeds the existing cul-de-sac length. And despite the low density, I believe it starts setting a poor precedent.

MR. MACMANN: Mr. Toohey, I would love to live on a cul-de-sac. Just FYI. I -- most of us would. I'm just -- I'm trying to make it -- in my mind there has got to be some kind of equivalency, you know, where we treat things fairly. The difference is the density issue, you know.

MR. STRODTMAN: Mr. Zenner?

MR. ZENNER: Well, I think what Mr. MacIntyre and I have been talking while you all have been bantering back and forth is how do we create what Mr. Stanton would like here, is a win-win, so everybody gets your access and we all can move on. As Mr. MacIntyre pointed out in his staff report, density -- obviously, this is 22 lots. The proposed UDC through the fire code section, a single point of ingress/egress is only required or is permitted under the Code up to 30. So the necessity for a secondary access other than that was what was planned initially when The Highlands was developing could be supported as not being needed. Now granted, we have an excessively long cul-de-sac, but the excessively long cul-de-sac has existed for an umpteen number of years, and apparently not presented any impact to our emergency services, while not convenient to other public services, such as trash collection and everything else, it has not been problematic. So closing the terminus of Stonehaven with an appropriate bulbed closure, given its current length and its uncomplete state, not having sidewalks, as Ms. Loe had pointed out on that bulb because there are none on the rest of Stonehaven does seem reasonable to us as a staff based on the condition that is there. However, we are in agreement that it would be inappropriate to just say, okay, let's go ahead and let this project proceed forward with no opportunity to be able to obtain that connection down to Old Plank for pedestrian usage. What we would probably suggest would be that this is currently shown as a 20-foot emergency ingress/egress. As I pointed out, our standard pedway width is a 10-foot -- or is 8-feet wide. We would propose if the Commission is interested as a compromise to the situation that we have here is that the Commission approve the cul-de-sac length ultimately because that's -- why not a variance, it is something that probably does need to be acknowledged, allow the cul-de-sac bulb to be placed with outside walks on the cul-de-sac bulb because it is consistent with what is on Stonehaven, allow the emergency -- allow the emergency access as is shown on this to be reduced to 8 feet, constructed as a pedway by the applicant with the difference of 12 feet of cost being provided as a payment for fee in lieu, and then the sidewalks along Old Plank Road as we have proposed previously be installed so the pedestrian pedway from the end of Stonehaven connects to sidewalk that is along the Old Plank frontage built at grade because obviously we don't have an elevation at this point for future roadway improvements, and they pay the difference between the 20 feet of pavement, an improvement that would have been required with this emergency access, and the 8-foot pedway that they are going to be required to construct under a motion, which means we get 10, 12 feet of payment of lieu of that could be applied to other sidewalk construction to the east or west of their parcel or maybe used to be able to create an access across Old Plank to get to the park. And would still assure that we have a connection that exists for pedestrian usage. The right-of-way would then obviously have to be vacated as a part of a final platting action along with the final plat that the Council would receive as a direct approval action under their authority. Given what I'm hearing and what we believe may be, from our perspective, would be the best solution, that would be where we see this potentially going. We assure our access, we assure at least a pedestrian connection. We take care of the issue that exists, and we allow this particular dead end street to just be capped as it has existed since its original platting or at least 2009. So we've -- we've -- you know, when it was originally

amended to this configuration. I don't -- there's no downside to this 22 homes. It hasn't proven to be a major problem for us as a City in providing service. That would be our suggestion, just to offer it to you all so we can move on if you're inclined to do so. And, of course, that the applicant is willing to potentially agree to those terms.

MR. STRODTMAN: Commissioners? Ms. Rushing?

MS. RUSHING: I'm willing to try and make a motion.

MR. ZENNER: Out of that?

MS. RUSHING: Based on that.

MR. STRODTMAN: Please.

MS. RUSHING: Okay. I move for approval of a request by Highland Properties Company for a major amendment to The Highlands - Phase 8 Final PUD Plan, with granting of a variance for the length of the cul-de-sac, a variance not requiring sidewalks along the cul-de-sac, a variance deleting the requirement of a roadway and including in lieu thereof construction of a pedestrian bicycle pathway, and eight-feet wide, and the differing -- is it 12 feet?

MR. ZENNER: That would be correct.

MS. RUSHING: -- to be paid in lieu to the City for --

MR. ZENNER: Future sidewalk construction.

MS. RUSHING: -- future sidewalk construction and denying the request for variance for the sidewalks along Old Plank Road.

MR. MACMANN: I'll second that motion because you got through all that. And I'm going to vote against it, but that was awesome, Joy. Thank you very much.

MR. STRODTMAN: A motion has been made and put on the table by Ms. Rushing. A second was received by Mr. MacMann. Commissioners, discussion on the motion?

MR. TOOHEY: I still don't think anyone is going to use that pedway. I mean, there is 22 houses there. The density is so sparse. With the density -- where there is more density, there is actually a road that already connects to Old Plank. So I just don't see the need of that pedway when there is only maybe not even 90 people who live --

MR. STRODTMAN: Mr. Stanton?

MR. TOOHEY: -- on that street.

MR. STRODTMAN: I'm sorry. Go ahead. Mr. Toohey, are you finished?

MR. TOOHEY: Yeah.

MR. STRODTMAN: Sorry. Mr. Stanton?

MR. STANTON: This is a compromise to keep the overall master plan of connectivity still in motion. That's the overall plan. We can't keep compromising the master plan, which is to connect all communities. This is in lieu of that. You're right. It probably won't be used right now, but setting up the future connectivity is what we're doing and I think this is a great compromise. I'm ready to vote.

MR. STRODTMAN: Any additional discussion? Ms. Loe?

MS. LOE: Clarification. This proposal is vacating the right-of-way for a road?

MS. RUSHING: Correct.

MS. LOE: Thank you.

MR. ZENNER: That would come as a separate action, Ms. Loe. You're not at this point approving any request to vacate. That would have to be applied for at the time of final platting.

MR. STRODTMAN: Not something that we could craft in our motion?

MR. ZENNER: No.

MR. MACINTYRE: Right. It's just approving --

MR. ZENNER: A vacation of the public right-of-way will actually be a Council action direct to Council. It will not come through the Commission.

MR. STRODTMAN: But the way the motion was made, it -- it does what we're trying to accomplish.

MR. ZENNER: It will -- it implies that the vacation of --

MR. STANTON: The access--

MR. ZENNER: -- the right-of-way will be presented as part of a final plat.

MR. STRODTMAN: But not up to us to make that decision?

MR. ZENNER: That is correct.

MR. STRODTMAN: Okay. Or need to be made in our motion. Any additional discussion, Commissioners? I see none. Ms. Burns, when you are ready for a vote.

MS. BURNS: Yes.

Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Ms. Rushing, Ms. Russell, Mr. Harder, Mr. Stanton, Mr. Strodtman. Voting No: Mr. Toohey, Ms. Burns, Ms. Loe, Mr. MacMann. Motion carries 5-4.

MS. BURNS: Eight to three, motion carries.

MS. LOE: Five to four.

MS. RUSSELL: Five to four.

MS. BURNS: I'm sorry. Five to four. I couldn't count my checkmarks.

MR. STRODTMAN: So our motion --

MR. ZENNER: Five to four?

MS. RUSSELL: Yes.

MS. LOE: Five to four carries.

MR. ZENNER: Thank you.

MR. STRODTMAN: The motion for approval will be forwarded to City Council. It's been three hours since our last break, and I'm in need of a break. So let's take -- we'll do eight minutes this time. We did seven minutes last time. We'll do eight minutes this time. And we'll get back. I apologize for the people that are waiting, but we're trying. So eight minutes.

(Off the record.)

MR. STRODTMAN: Before we get started on our -- we have two public hearings left. For the folks that are here for the UDC discussion, I'm sorry to let you know that we are going to -- we don't think we are going to get done for a little bit longer time, and we don't think it is fair for the rest -- all of us to have to be here, you know, 2:00 or 3:00 a.m., so we are going to have a special session on Monday of next week, the 12th, starting at -- we'll have a work session that starts at 5:00. The actual public part of it -- it won't be a public input, but it will be open to the public will start at 6:00. And then we'll review the amendments to Sections -- Segments Five and Six. So on -- that is 6:00 p.m. on Monday, we will start our amendments to the motion for approval of Segments Five and Six, basically where we left off. And then once that review is done, then we will go into -- back into work session Monday night to continue to discuss items of the UDC, but there will be no formal amendments made in our work session as those will be made on the 15th. So if you are here for the UDC, I apologize that you waited until midnight to get to go home and that we are not going to be able to cover that, but we don't think it is fair to be here until -- start the UDC discussion at 2:00 a.m. either, so hopefully you can make it on the Monday. And it's -- again, there is no public input in that section, so you can always review the minutes to hear what we had to say. And then on the 15th, we will stick with our schedule for the 15th, other than there might be a few amendments made to the overall, as we were going to anyway. Am I all clear, Mr. Zenner?

MR. ZENNER: That I believe is crystal clear. And just so the public understands, those that are watching as well as those that are here, any amendments that are made on Monday the 12th will ultimately be captured into the final errata sheet that will be prepared for the January 5th public hearing if you are unable to review the discussion on the 12th and its minutes. So all of those amendments will be captured. They will be as they were presented this evening on this agenda in a comprehensive errata sheet that will allow us the opportunity at least to be able to get those in time for preparation and then not compound the length -- or extend the length of the December 15th meeting, which has already been scheduled. Tell your friends, tell your neighbors if you are interested in coming that the meeting has changed to the 12th. It will show up on the City calendar as a meeting. However, it will not be advertised within the Tribune due to the limited length of time that we have between now and then. With that, we can move on if you would like.

MR. STRODTMAN: But you are also welcome to stay, Mr. Farnen, so stick around. You made it this long. Right? And before I get started -- just as a reminder -- we mentioned it earlier at the beginning of our meeting, and since it has been several hours ago, just as a reminder, we are all tired and have been here a long time. As we go forward, if a comment has already been made, we would ask not to reiterate those comments over and over. So let's try to be respectful of everyone's time and let's -- but at the same time be thorough.