

**MINUTES**

**PLANNING AND ZONING COMMISSION MEETING**

**COLUMBIA CITY HALL COUNCIL CHAMBER**

**701 EAST BROADWAY, COLUMBIA, MO**

**DECEMBER 7, 2017**

**COMMISSIONERS PRESENT**

**Mr. Rusty Strodtman  
Ms. Tootie Burns  
Ms. Sara Loe  
Ms. Lee Russell  
Mr. Anthony Stanton  
Ms. Joy Rushing  
Mr. Dan Harder  
Mr. Michael MacMann**

**COMMISSIONERS ABSENT**

**Mr. Brian Toohey**

**I) CALL TO ORDER**

MR. STRODTMAN: Good evening. I'd like to call -- go ahead and call to order the Thursday, December 7, 2017, City of Columbia, Missouri, Planning and Zoning Commission regular meeting to order. May we have a roll call, please?

MS. BURNS: Yes. We have eight; we have a quorum.

MR. STRODTMAN: Thank you, Ms. Secretary.

**II) APPROVAL OF AGENDA**

MR. STRODTMAN: Mr. Zenner, is the -- anything needs to be changed on our agenda?

MR. ZENNER: No, not at this point, Mr. Strodtman.

MR. STRODTMAN: Thank you.

**III) APPROVAL OF MINUTES**

MR. STRODTMAN: Commissioners, we were sent out the November 9, 2017, minutes previously. Are there any corrections or notations needed of those minutes from November 9? I see none. Do we just want to do a thumbs up on the minutes?

(Unanimous vote for approval.)

MR. STRODTMAN: We have all thumbs up. Thank you.

**IV) SUBDIVISIONS**

MR. STRODTMAN: At this time, I would like to ask any Commissioner who has had any ex parte communications prior to this meeting related to Case 17-199, please disclose that now so all Commissioners have the same information to consider on behalf of this case in front of us. Thank you, Commissioners.

**Case No. 17-199**

**A request by Engineering Surveys and Services (agent) on behalf of TKG St. Peters Shopping Center, LLC (owners), for approval of a one-lot minor subdivision of their properties on the west side of Providence Road, between Locust Street and Elm Street. The parcel is 3.26 acres and currently undeveloped. The property is zoned M-DT (Mixed-Use Downtown District). The applicant is also seeking a design adjustment regarding the required right-of-way dedication for Providence Road.**

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

Staff report was given by Mr. Rusty Palmer of the Planning and Development Department. Staff recommends approval of the final plat of University Centre Subdivision with design adjustment.

MR. STRODTMAN: Thank you, sir. Thank you for that. Commissioners, questions of Mr. Palmer? Yes, ma'am?

MS. BURNS: I did have one question, and I don't know if this is the time to ask about this. I wondered about the pedestrian crossing at Locust as you're heading into the property. There's increased pedestrian traffic because of Lucky's, and I can only assume with what's coming forward, I don't know if that was discussed in this or if that would be a future discussion.

MR. PALMER: It wasn't really discussed as part of this. If we can go back to the plat. The area here, it's kind of hard to understand what's going on. There's a ten-foot waterline easement that's being dedicated by this plat here. Within that remainder of that little corner there, that's actually an ingress and egress easement. What I'm told is that's sufficient for -- for what will be done in the future there, and it'll be -- I believe -- is that a MoDOT project -- the pedestrian project?

MR. ZENNER: I'm unaware that -- I'm unaware that we have anything, so I would imagine --

MR. PALMER: Right.

MR. ZENNER: -- it would be a MoDOT project if we're not directly involved in some pedestrian crossing here at this point.

MS. BURNS: I drive through that intersection multiple times during the day and pedestrians are trying to get across, and most of the traffic is turning to head south on Providence Road. And I think sometimes you see concern as pedestrians -- if someone is making that left turn out of Locust to head south onto Providence. It would -- I guess it would be nice if it was a clearer marked or a signalized intersection with a crosswalk and maybe a pedestrian crossing, but I'll tell MoDOT that.

MR. STRODTMAN: Additional questions, Commissioners? I have a quick question, Mr. Palmer. Is the TCE a typical requirement that we would put in place with that as part of our approval?

MR. PALMER: I believe they're usually more between MoDOT and the property owner, but, at this point, MoDOT saw the need for it and asked that it be a condition.

MR. STRODTMAN: Okay. I was just curious. I didn't -- I had not seen that before. I was just --

MR. ZENNER: And this isn't the first instance in which we have had a TCE raised as part of platting issue. Over on College, we had a similar situation with the reconstruction of the fraternity house

just north of Sanborn Hill. There was a -- there was a necessity for the TCE, so somewhat of the language in the staff report that Mr. Palmer prepared was similar to language that we had prepared for that previous platting action.

MR. STRODTMAN: Thank you. This is -- it's not a public hearing, but it is, as in past practices, we will open this up to anyone that's in the audience that would like to come forward and give us any relevant information. We just ask that you give us your name and address first.

MR. REID: Good evening. My name is Tim Reid; I'm with Engineering Surveys and Services. We're -- we agree with the staff report and the staff recommendation. The condition of the temporary construction easement, we just want to make sure it's understood that it'll be a five-foot temporary construction easement and we want to put a term on the -- a length on the duration, so we'd like it to run through 2018. I believe the project is supposed to happen in summer or fall, but the property owner doesn't want to let this condition linger on forever. So they're happy to grant a temporary construction easement for this sidewalk construction, but we just want it to be the five-foot width and through 2018.

MR. STRODTMAN: Commissioners, any questions of this speaker? I see none. Thank you, Mr. Reid.

MR. REID: Thank you.

MR. STRODTMAN: Anyone else like to come forward and speak with us? I see none. Commissioners? Yes, Mr. MacMann?

MR. MACMANN: I have a redirect for staff. Mr. Palmer, is a TCE that extends throughout calendar 2018 sufficient time?

MR. PALMER: MoDOT has indicated a project completion date of November 2018, so I would assume --

MR. MACMANN: Well, we -- if MoDOT runs over a month or two months, is that a problem? Do we have -- do we have a problem there Mr. Reid?

MR. PALMER: I think that would have to be part of the discussion when the TCE is granted of whether or not an overrun is permitted.

MR. MACMANN: And that will be included in the ordinance when it is -- is that correct?

MR. PALMER: No, I don't believe so. That will be part of the --

MR. MACMANN: That will be part of the development agreement?

MR. PALMER: The condition will be that they grant the easement and then, I believe, beyond that, it would be left to the -- an agreement between MoDOT or the City, whomever is asking for the easement and the property owner.

MR. ZENNER: I would suggest to -- if MoDOT's intention is to have the project completed by November of 2018, not begun -- obviously, you're not going to make sidewalk improvements in the winter -- that TCE would probably be obtained in the spring to early summer, which, at that point, giving maybe adequate time. If the TCE is not -- if, for some reason, MoDOT, however, runs into difficulties in getting to that project due to other projects within its maintenance world, a time restriction upon the

dedication or the provision of the TCE may present a problem. The TCE and the construction project are outside of the City's control, however. A much simpler approach would have been to have had the TCE granted at this time when the plat is being produced to then be, at some point, abandoned after the project has been completed. What we're asking for and what this is -- what the condition is similar to is similar to our College Avenue project where the City was not asked to restrict when it could come or MoDOT could come and ask for that TCE. It was all dependent upon when they could get to the construction project. We do have a defined completion date, but we don't know what may happen between now and that point. I would suggest that if, at a minimum, to ensure that we have some overlap possibly due to a project overrun or delay, that the TCE have a specified time frame of probably 18 months at which point that would put it into the spring of '19, to which they could then acquire it if necessary, not just the calendar year of '18. That would be the suggestion as an alternative. I don't know if that impacts the applicant or the applicant's client by extending it for those additional six months, but that would be a question to ask them. That would be our take, I think, that we have some flexibility. I will be quite honest to tell you that while this recommendation may be forwarded to City Council, City Council and the law department may determine that they are not going to approve anything with a time limitation for a TCE for a pending project. And while the request is going to be made here, may be included in your recommendation, and may be reiterated at Council, I don't know if it will make the ordinance.

MR. MACMANN: All right. I just -- thank you for clarifying that because I -- given what I do for a living and given what I've seen on construction projects -- Mr. Reid, no disrespect intended. Mr. Chairman, can I call Mr. Reid back up, please?

MR. STRODTMAN: Yes, sir. Mr. Reid? Would you also give us your name and address, please.

MR. REID: Sure. My name is Tim Reid, a land surveyor with Engineering Surveys and Services.

MR. MACMANN: Just to follow up a little bit. It's just -- you and I both know that may be -- that may be too tight. That may not work, and that's why I did that follow-up question, so --

MR. REID: Okay. Well, and that's not acceptable to the property owner because the property owner has all sorts of things going on with this site, and they just don't -- they just don't want a -- a --

MR. MACMANN: A lingering --

MR. REID: -- condition that long lingering. They're happy to discuss with MoDOT their -- MoDOT's needs. MoDOT may not even need a construction easement to build this sidewalk. So if we can just limit it to the five-foot width for -- for the year 2018 and then, at some point, if MoDOT sees that that's not going to be reasonable, they can approach the property owner to see if they can do something to -- to make it work or extend the construction easement for another few months, but 18 months is too long to -- for the property owner --

MR. MACMANN: And the reason -- okay. The reason I brought that up is because you -- you set that condition forward and that's something that we have almost no control over. Right?

MR. REID: Well, this is new to me, also -- the -- a condition for a temporary construction easement. Usually, MoDOT will just discuss that with the property owner and perhaps this was just an

easy mechanism for MoDOT to -- to tag this onto the plat.

MR. MACMANN: To put here, yeah.

MR. REID: Yeah.

MR. MACMANN: All right. Well, thank you very much.

MR. REID: Thank you.

MR. MACMANN: I just wanted to let you know that we might be able -- not be able to guarantee that.

MR. STRODTMAN: Commissioners, additional discussion? Motion? Questions for staff? Clarification, if needed? Ms. Rushing?

MS. RUSHING: My question is if you don't believe that the temporary construction easement is necessary, how do we separate that out for purposes of voting on the application?

MR. PALMER: MoDOT's comment was that it would be necessary.

MS. RUSHING: But that's MoDOT's -- I mean, that's up to them, isn't it? I mean, they -- they have the ability to get a construction easement if they want it.

MR. PALMER: Yeah, potentially. I mean, it -- like I said, it's always going to be -- it's typically a -- an agreement between the -- between MoDOT and the property owner, and they would just seek that as a standalone easement on their own and not as a condition of a plat. That's -- that can be done, so --

MS. RUSHING: So is this something the City normally does on behalf of MoDOT or is this an unusual circumstance?

MR. PALMER: Well, this is MoDOT make a request for the -- for the TCE condition.

MR. ZENNER: As part of our overall review team.

MR. PALMER: As part of -- yeah.

MS. RUSHING: But they're doing it through our approval process?

MR. ZENNER: As part of our review team, Ms. Rushing. So MoDOT is requested to submit comments as it relates to platting actions within the City of Columbia along its primary roadway frontages. So not unlike any other reviewing department, MoDOT is making a request that the plat's approval be conditioned upon the issuance of a TCE. In this instance, we would consider them an extension of the City of Columbia. Given the fact that this property is being replatted, the TCE is being asked for outside of their right-of-way, which is why it must be identified. As Mr. Palmer has pointed out, that TCE is within an existing ten-foot platted City of Columbia utility easement. That does not necessarily mean that that utility easement was reserved for the purposes of allowing a temporary construction easement for a sidewalk project, so you will have overlapping easements in place for two different purposes. And that is why this is being requested as part of the platting action. It is the appropriate location to request that this be done. If the City of Columbia was doing the project, we would require the TCE to be shown on the plat probably at this point.

MS. RUSHING: And I understand that.

MR. ZENNER: So --

MS. RUSHING: But this isn't the City of Columbia that's requesting the easement.

MR. ZENNER: They are requesting it, though, as part of the review team as though they were part of the City of Columbia.

MR. STRODTMAN: Commissioners? Mr. Stanton?

MR. STANTON: This is a unique situation and being the fact I'm in construction, I would feel uneasy about putting some kind of pressure on MoDOT. You don't know what's there, you know, what might happen. You -- we talked about scheduling. We don't know about, you know, this may not be a priority for MoDOT at this particular time. I wouldn't want them to start and then they have some unforeseen situation where they may need a little bit more time and then now it's -- now they're in the jaws of the owner to -- to maintain that easement. Unless there's something -- I mean, like, normal practice. -- hey, I get -- I need -- I need the construction easement until the end of -- end of the project. The project is going to have its own schedule anyway. Every project does, has a -- has a completion time and a number of days to complete it. I think that's sufficient enough to deal with this, and I'm almost inclined to not even approve this if it's that much of a problem.

MR. STRODTMAN: Commissioners, additional discussion? Mr. MacMann?

MR. MACMANN: I have a question for staff to follow up on what Mr. Stanton said. We can approve this without the TCE?

MR. ZENNER: As is any recommendation of a reviewing department, yes, you can. We would not advise that. The request has been made that -- MoDOT could negotiate for the easement itself, and that would be -- that is the prerogative of the Planning Commission. It is a request of a reviewing department. There is not a regulatory obligation for that TCE to be provided.

MR. MACMANN: I just -- and I appreciate this, Mr. Zenner. I'm just -- I think we're almost in the position that it feels as if -- and Mr. Stanton and I both work in construction. It feels as if we're being asked to sort of half promise something that we can't possibly influence or deliver, and we have no influence over.

MR. ZENNER: Well, and I --

MR. MACMANN: Even if the City Council were to approve it, that would still --

MR. ZENNER: Hence my -- hence my original comment that a -- a time-frame restriction on the request to have a TCE established, I don't know if our City's legal department would accept that as part of what the ordinance that would be produced to approve this plat would actually include. It is a condition -- it is a condition that a TCE be granted upon request. I am -- have recently become aware that they're desiring a time-frame restriction, so this is news to us, as well, not having had an opportunity by which to react with the -- and to the asking for that, is that reasonable. I do not believe we want to delay the processing of this plat and quite honestly --

MR. MACMANN: I have no desire to delay the plat. I'm just -- I --

MR. ZENNER: If it's the Commission's desire that because it does seem, as you have said, half promising something that may not be able to be delivered, if you want to leave that request off the table

and not as a condition, as it has been presented, that is the Commission's prerogative. You can -- you could approve it --

MR. MACMANN: But would the -- could the applicant, just to revisit that quickly, the applicant is more than welcome to revisit that with legal, MoDOT, or Council?

MR. ZENNER: That is correct. And this item will not be presented to City Council until the second meeting, I believe, in January, so, I mean, we have adequate time in which to have MoDOT generate a request within the 2018 calendar year for a TCE after they've had an opportunity to discuss with the applicant --

MR. MACMANN: Let me revisit one thing real quick. We have -- and done this this year, I know, have approved something and then there have been other details worked out before it went to Council?

MR. ZENNER: That is correct. And that is -- and that's, I guess, what I'm suggesting. If the Commission is uncomfortable with approving the plat, if you're willing to approve the plat, but you're uncomfortable with approving it with the condition, don't approve it with the condition. We will, as a staff, and I imagine the applicant will -- or the applicant won't. I'm sure we will, as a staff, contact MoDOT, explain to them what has transpired. MoDOT then needs to take action in order to secure that temporary construction easement through their means, not through the means of the platting action. Now, if MoDOT wants to send a representative to City Council and say, no, you need to approve the plat with the condition, that's MoDOT's choice.

MR. MACMANN: All right. Let me back up one quick -- though, Commissioner Loe, you have a question. I was about to make a motion.

MS. LOE: No. I think Mr. Zenner answered it in his comments. Thank you.

MR. STRODTMAN: We will take a motion, Mr. MacMann.

MR. MACMANN: I would like to make a motion, and Attorney Caldera, if you could help me here a little bit. I want to make sure I get this correctly. I would like to make a motion to approve this plat as is without the TCE condition.

MR. CALDERA: What about --

MR. ZENNER: The design adjustment, sir.

MR. PALMER: The design adjustment.

MR. CALDERA: Are you seeking to approve the final plat --

MR. MACMANN: Plat.

MR. CALDERA: -- with the design adjustment, but without the additional condition of the TCE?

MR. MACMANN: Correct.

MR. CALDERA: That's -- that's the motion you need to make.

MS. RUSHING: Second.

MS. LEE: He's revising it.

MR. STRODTMAN: Are you going to redo -- are you going to revise your motion?

MR. MACMANN: I just want to make -- I want to make sure that we've got it -- we have enough

uncertainty here. I just wanted to add a little bit more in.

MR. STRODTMAN: Ms. Rushing, I'll remove your second then. Okay. Go ahead, Mr. MacMann. We'll start over.

MR. MACMANN: I move to approve the plat of University Centre Subdivision and the requested design adjustment subject to the application -- wait. I'll withdraw the last section. I move to approve the plat of the University Centre Subdivision and requested design adjustment. That's Case 17-199.

MR. STRODTMAN: Thank you, Mr. MacMann. Do we have a second?

MS. RUSHING: Second.

MR. STRODTMAN: Ms. Rushing, thank you.

MR. MACMANN: Thank you.

MR. STRODTMAN: Commissioners, further discussion or any clarification needed on this motion? Mr. Stanton?

MR. STANTON: They need the construction easements. That needs to be made a win-win situation between MoDOT and the owners to make this go through -- my opinion.

MR. STRODTMAN: Thank you. Any additional questions or comments, Commissioners? If not, Ms. Secretary, when you have a chance for a roll call.

MS. BURNS: Yes.

**Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Ms. Loe, Mr. Harder, Mr. MacMann, Mr. Strodtman, Ms. Rushing, Ms. Russell, Ms. Burns. Voting No: Mr. Stanton. Motion carries 7-1.**

MS. BURNS: Seven to one, motion carries.

MR. STRODTMAN: Thank you, Ms. Burns. Our recommendation for approval will be forwarded to City Council for their recommendation.

Moving on to Case 18-6. At this time, I would ask any Commissioner who has had an ex parte communications prior to this meeting related to this case, Case 18-6, please disclose that now so that all Commissioners have the same information to consider on behalf of this case in front of us.

#### **Case 18-6**

**A request by Allstate Consultants (agent) on behalf of Lutheran Senior Services (owner) for approval of a two-lot final plat, constituting a replat of Lots 1 and 2 of Lenoir Subdivision, to be known as Lenoir Subdivision Plat 2, and a design adjustment from 29-5.1(b.2.ii), which requires areas identified as sensitive land to not be included on lots intended for development. The 110.3-acre property is located at the southeast corner of New Haven Road and Lenoir Street, and is addressed as 3300 New Haven Avenue.**

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

Staff report was given by Mr. Clint Smith of the Planning and Development Department. Staff recommends approval of the final plat of Lenoir Subdivision Plat 2 with design adjustment.

MR. STRODTMAN: Thank you, sir. Commissioners, any questions for staff? I see none. As is

in past practices, this is not a public hearing, but we'll open it up to anyone that's in the audience that would like to come forward and give us any relevant information.

MR. HARRINGTON: Good evening, I'm Brian Harrington with Allstate Consultants here on behalf of Lutheran Senior Services. I don't really have anything further to add to the -- to the staff report. I thought it was good, but I would be happy to answer any questions that you have.

MR. STRODTMAN: Commissioners, any questions for this speaker? I see none. Thank you, Mr. Harrington.

MR. HARRINGTON: Thank you.

MR. STRODTMAN: Thank you. Any additional speakers like to come forward? I see none. Commissioners, any discussion? Questions? Mr. Stanton?

MR. STANTON: I'd like to make a motion.

MR. STRODTMAN: We will take that motion.

MR. STANTON: As it relates to Case 18-29, Lenoir Subdivision Plat 2 replat design adjustment, I move to approve.

MR. MACMANN: Second.

MR. STANTON: 18-6. I'm sorry. I'm -- as it relates to 18-6. I'm sorry.

MR. STRODTMAN: So the motion is for Case 18-6, as opposed to 18-29.

MR. MACMANN: And I still second.

MR. STRODTMAN: The motion has been made by Mr. Stanton for approval of Case 18-6, and was seconded by Mr. MacMann. Is there discussion or -- discussion needed on this motion? I see none. Ms. Burns, when you're ready for a roll call.

MS. BURNS: Yes.

**Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Ms. Loe, Mr. Harder, Mr. MacMann, Mr. Stanton, Mr. Strodtman, Ms. Rushing, Ms. Russell, Ms. Burns. Motion carries 8-0.**

MS. BURNS: Eight to zero, motion carries.

MR. STRODTMAN: Thank you, Ms. Burns. Our recommendation for approval of a two-lot final plat will be forwarded to City Council for their recommendation. At this time, I'd like to ask any Commissioner who has had any ex parte communications prior to this meeting related to Case 18-29, please disclose that now so all Commissioners have the same information to consider on behalf of this case in front of us. Thank you, Commissioners.

#### **Case No. 18-29**

**A request by Allstate Consultants (agent) on behalf of Elvin E. Sapp Revocable Trust (owner) for approval of a five-lot preliminary plat to be known as Bluff Creek Estates Plat 9, and a design adjustment to 29-5.1(f.2.ii) to allow more than 30 lots from a single point of access. The request is a revision to a portion of the existing preliminary plat of Bluff Creek Estates Phase 1. The 6.17-acre subject site is located on the east side of Bluff Creek Drive, approximately 2,400 feet**

**north of Grindstone Parkway.**

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

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

- Approval of the revised preliminary plat of Bluff Creek Estates Plat 9; and
- Denial of the design adjustment.

MR. STRODTMAN: Thank you, Mr. Smith. Commissioners, any questions of staff? Ms. Loe?

MS. LOE: Mr. Smith, is the previously approved plat plan, is that still valid?

MR. SMITH: It is. Per our old subdivision standards, once you final platted a portion of a preliminary plat, that preliminary plat became vested. It did not expire.

MS. LOE: So they could build the cul-de-sac plan?

MR. SMITH: That is correct. If they chose to move forward with the existing layout, it would not be considered a revised preliminary, it would be considered a final major, and that actually would go straight to Council. It wouldn't come back in front of the Planning and Zoning Commission unless they also still requested the design adjustment.

MS. LOE: Okay. But they don't need the design adjustment since it's already been approved?

MR. SMITH: They would still need the design adjustment because under the old code, 100 lots was the maximum. So that has still been exceeded even if we use the old subdivision regulations.

MS. LOE: So do they need the design adjustment to build any new structures on that road at this time?

MR. SMITH: At this time, that is correct, yes.

MS. LOE: Got it. The neighborhood collector, so on the CATSO plan, Bluff Creek Drive is identified as a neighborhood collector?

MR. SMITH: That's correct.

MS. LOE: Is it a type A or a type B?

MR. SMITH: I'm not sure. I'd have to review that. I believe it was probably built prior to the new standards in the appendix for the street design standards, but it probably falls within one of those two, and we could look it up if we have –

MS. LOE: Well, type B doesn't allow driveways, and the new proposal adds driveways to the collector. So it would be, I would think, critical to identify which one it falls under in order to approve one plan over the other.

MR. ZENNER: You said type B does not allow them?

MS. LOE: Yes.

MR. ZENNER: Just type A?

MS. LOE: Type A does.

MR. ZENNER: And based on the improvements that have been platted and the driveway connections, I would -- again, Ms. Loe, it was viewed as a type A, and when we created the two standards

at the time we revised our street cross sections, this roadway existed and that decision is made by our traffic engineering department at this point, as we move forward, even with the two. But the development, as you see here on this aerial photograph, has direct driveway connections to Bluff Creek and, therefore, we would not be otherwise restricting them just because now we have a type A and a type B. We would be holding consistent.

MS. LOE: Thank you.

MR. STRODTMAN: Ms. Russell?

MS. RUSSELL: Would we be able to approve the design adjustment pending the approval by the fire department, or is the City Council going to just -- is that going to be part of City Council's decision regardless?

MR. SMITH: If you -- if you approve the design adjustment, then, no. That basically waives the requirement for them to need the second access point. If you don't approve the design adjustment, then they can still receive approval if they go to the fire department and get the approval from the fire department. So they don't need the design adjustment if they go that avenue. And at this point, we have -- there has not been a conversation yet on -- on what it would take for the fire department directly between the applicant and the fire department on what that would take, but there are some avenues there, I think, that are available.

MR. ZENNER: And if I am correct, Mr. Smith, that is specifically dealing with -- the preliminary, as Mr. Smith has pointed out, the design adjustment is not a necessity for the preliminary. It is either approval of the design adjustment or authorization by the fire department for an alternative means would be necessary in order to secure final plat approval. So you could approve it -- we would probably recommend do not condition the preliminary plat on the authorization by the fire department, just --

MR. SMITH: Because that's already required by the --

MR. ZENNER: That's already required, and that would be a requirement should Council decide not to approve the design adjustment, as well, if that is the direction the Commission may be leaning in. The alternative that exists then to the applicant is seek approval from the fire service concurrent with the final plat, because the Council is going to be faced with the same question: Can you approve the preliminary plat without the design adjustment? Yes, you can, but they can't -- the applicant can't build anything until he complies with either the second access or the fire service grants them waiver or grants them permission otherwise by meeting another standard within the fire code.

MS. RUSSELL: Okay. Thank you.

MR. STRODTMAN: Mr. MacMann?

MR. MACMANN: Thank you, Mr. Chairman. Let's clarify a process for me here, would you please, Manager Zenner? Chief White hasn't seen this yet; is that correct?

MR. SMITH: No. The fire department has reviewed it. They have --

MR. MACMANN: And they've said no?

MR. SMITH: They have said it doesn't meet the UDC standards. And we had the conversation

that -- on what it would take for them to grant approval through the International Fire Code. And at this point then, it would just be a matter of them receiving some sort of commitment or plans from the applicant in order to approve that alternative. So they've seen it and I think they have something in mind, but, at this point, the applicant has requested the design adjustment, and that is what we're processing.

MR. MACMANN: Okay. I wondered how we got here. That's why I asked that question. Thank you.

MR. STRODTMAN: Any additional questions of staff, Commissioners? I see none. As is in past practice, we'll open up this Subdivision Case 18-29 to anyone that's in the audience that would like to come forward.

MR. SHY: Mr. Chairman and Commission, I am Ron Shy at Allstate Consultants, and I, too, wonder sometimes how we got here. The design adjustments that are required for a subdivision that was platted preliminarily in 1992 seems unfortunate or unfair to a client to have to comply with the UDC at this point, but especially when you're -- you're reducing the number of lots from ten to five. I understand the situation with regard to driveways onto the road, but I looked at the staff report with regard to the significance of that and the significance of the meeting the criteria for -- for the design adjustment, and I think that significant -- based on the report is certainly different than what I would call significant as far as impact on this drive with these four lots. But, anyway, I just wanted to clarify that fact, plus that -- plus the developer would love to just build these four houses and be done with the design adjustment and, hopefully, that's the way this turns out.

MR. STRODTMAN: Commissioners, any questions for this speaker? I see none. Thank you, Mr. Shy.

MR. SHY: Thank you.

MR. STRODTMAN: Thank you. Any additional speakers like to come forward? I see none. Commissioners, discussion? Additional questions from staff? A motion? Ms. Loe?

MS. LOE: Just clarification. On the neighborhood collector, it's option A that permits driveways, not option B. For me, the biggest concern was clarifying that the collector or that the lot rearrangement, that did seem to me to be a change, but I guess I do consider this to be a life safety issue, and it is the fire code that it's tripping, so I don't feel comfortable waiving or approving the design adjustment without the fire department input. So I would make a motion if -- so I would move in the case of 18-29 to approved the revised preliminary plat of Bluff Creek Estates Plat 9, and deny the design adjustment.

MR. STANTON: Second.

MR. STRODTMAN: Thank you, Ms. Loe. We've -- Ms. Loe has made a recommendation -- a motion on Case 18-29, and it has received a second by Mr. Stanton. Commissioners, is there any discussion needed on this motion? I see none. Ms. Burns, when you're ready.

MS. BURNS: Yes.

**Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Ms. Loe, Mr. Harder, Mr. MacMann, Mr. Stanton, Mr. Strodtman, Ms. Rushing, Ms. Russell, Ms. Burns. Motion carries**

8-0.

MS. BURNS: Eight to zero, motion carries.

MR. STRODTMAN: Thank you, Ms. Burns. Our recommendation for approval of Case 18-29 --

MR. ZENNER: Mr. Chairman?

MR. STRODTMAN: Yes, Mr. Zenner?

MR. ZENNER: As a procedural matter for City Council, this is a preliminary plat with a requested design adjustment. It will be required approval by ordinance, which is a two reading process versus a single read for a resolution, which is standard. Council will have the authority to override the Planning and Zoning Commission's denial of the design adjustment by a super majority vote of five of the seven Council members.

MR. STRODTMAN: Thank you, Mr. Zenner.

**V) PUBLIC HEARINGS**

MR. STRODTMAN: At this time, I would ask any Commissioners who have had any ex parte communications prior to this meeting related to this case, please disclose that now so all Commissioners have the same information to consider on behalf of this case in front of us. I see none. Thank you.

**Case No. 17-238**

**A request by Smith Lewis, LLP (agent), on behalf of NGT, Inc. (owners) to annex 10.36 acres of land into the City of Columbia and have it designated as M-N (Mixed-Use Neighborhood District) as its permanent City zoning. The subject 10.36-acre tract is located at the northwest corner of Brushwood Lake Road and Scott Boulevard. The subject property is currently zoned Boone County A-R (Agriculture Residential).**

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

Staff report was given by Mr. Rusty Palmer of the Planning and Development Department. Staff recommends approval of the annexation and permanent zoning.

MR. STRODTMAN: Thank you. Ms. Loe?

MS. LOE: Can you comment on the fact that 90 percent of the site is in the floodplain?

MR. PALMER: Yeah. I'm glad you brought that up. It is -- a bulk of the property is in the floodplain and then the remainder almost completely is in the -- sorry. The bulk is in the floodway and the remainder is in the floodplain, as well. So that is not a consideration necessarily of an annexation and a rezoning. The applicant is currently in the process of having the flood map changed because of fill that has been placed on the site. And I believe in 2010, they received a land disturbance permit from the County in order to remove illegal or inappropriate fill so that they could properly do it for that -- for that purpose. And so if you go out there now and you can kind of tell from the aerial there, that portion of it closest to the intersection has been filled substantially. So that's yet to be determined, but they -- I believe they have applied for a change to the FEMA map in that location.

MS. RUSHING: That eastern part of the property, however, is significantly below the roadway level.

MR. PALMER: Correct.

MR. ZENNER: And I think what Mr. Palmer is trying to point out here is we're talking about with this application the appropriateness of the zoning designation --

MS. RUSHING: Okay.

MR. ZENNER: -- not the developability of the property at this point. The developability of the property is determined at the -- at the time of subdivision and design planning. In order to secure the ability to be able to develop the site, regardless of what jurisdiction this may lie within, it must be annexed into the City of Columbia to receive services. So annexation is a prerequisite to be able to proceed forward to development. Development may or may not be possible on this site based on other regulatory standards. The applicant was advised of that at the time the concept review was held. The applicant is here this evening and can address what efforts they are undertaking at this point in order to resolve the floodplain and floodway related issues. Brushwood Lake Road, which is what is defined or depicted on this graphic in the northern reaches of this property, was relocated as part of the Scott Boulevard reconstruction project to get it out of the floodway. That roadway, as it has been relocated right now, is not in it. Therefore, that portion of the site provided the appropriate floodplain development permit is obtained, if it is in the floodplain or the flood fringe, is allowable to be developed. If it is part of the FPO, it, under our regulations within the code as has been brought to light earlier this week by an application, where the sensitive features analysis map would require, as part of the subdivision process again, would require the identification of all floodway and flood fringe or floodplain, the applications provisions of the code back in Article I specifically indicate where there is a conflict between an overlay zoning designation and any other provision of the code, the overlay regulation shall apply regardless if it is more or less stringent than the other portions of the City Code, meaning the FPO allows development within the flood fringe provided you meet the requirements that are within the code itself. Therefore, any area that is out of the floodway, which is nondevelopable by FEMA's regulations and nondevelopable by the City of Columbia's standards, is developable provide you meet the requirements contained with the FPO and you meet the floodplain development permitting requirements. So the issue of the area that is within the floodplain as being nondevelopable is a nonissue given that the code exempts our ability to classify that as part of the sensitive features and regulate it out of development. That is what the code reads right now and that is something that has recently come to light. So that, however, is an issue that's discussed at the development stage and at the platting stage. Right now, we're dealing with is M-N, given the land use context, an appropriate use. If you believe that it is not, and that some other zoning designation may be more appropriate here, that is a decision that the Planning Commission needs to consider as part of rendering its recommendation on the permanent zoning. Annexation, as we have discussed before, however, is a Council prerogative. It is a policy-related matter. If the City Council determines that this property is an appropriate extension of the City's boundary, their annexation -- their consideration of annexing the property and assigning a zoning classification to it, be that what the Planning Commission recommends or what they determine to be appropriate based on the applicant's request, ultimately lies

with them. At this point, we present to you what the applicant is seeking and we present to you our analysis that the M-N zoning district is appropriate, given the land-use context, hence our recommendation. The environmental issues we'll deal with at the time that those need to be dealt with, and that would be at subdivision platting.

MR. STRODTMAN: Thank you, Mr. Zenner. Ms. Loe?

MS. LOE: We've had some cases come through already and part of the discussion was whether the zoning was appropriate for a site that was located in the floodway, and we decided that a residential designation was not appropriate and that the site should remain at an agricultural, so that's why I'm bringing this up because I'm wondering if maybe this shouldn't be M-N, but maybe remain more in the agricultural due to the nature of the sensitive areas located on the site. So I do feel it's still a pertinent question, not something that would come up later.

MR. ZENNER: And I'm not suggesting, Ms. Loe, that it is not a pertinent question and it is not something pertinent to your debate. What I am telling you is that just because the property lies within the floodplain does not render it nondevelopable.

MS. LOE: That's -- that's an interesting point. I'm wondering if we need to bring that earlier case back forward, because I do think that we were following a slightly different line of argument on that one, and I would like us to remain consistent as possible.

MR. ZENNER: Well, no case that has been presented this evening is impacted by that at this juncture.

MS. LOE: Not this evening, earlier this --

MR. ZENNER: That case is actually already on its way to City Council, so that is something that will have to be dealt with at the Council level. This is information that unfortunately came to our attention earlier this week and impacts cases moving forward.

MS. LOE: And I agree, and I think that it's -- if this is the case, it's very -- and maybe it's something we need to address in the UDC because --

MR. ZENNER: That would -- that would be something that we would be bringing to your attention, given the fact that the exemption that is defined within the particular section 29-1.6, relationship to other ordinances, when we -- when you read this section, you can read this section and make an interpretation of the language as it relates to the overlays applying specifically to our urban conservation district overlays, not necessarily meaning to apply to all overlay districts. However, unfortunately, the way that the code is currently written, without it being comprehensively amended, it applies to all overlay districts. It does not call out our urban conservation. It says overlay. And as such, that is how we have to review the code and interpret it at this point. It is definitely an item, as I was informed earlier this week of this particular finding, that came as a shock to me, as well, and that one that we will have to discuss as a staff and as a Commission moving forward as we present text amendments. But for this point right now, what I can tell you is where we run into the issue of environmentally or sensitive land features that are part of the floodplain, those areas can, if an applicant is willing to identify those and cull them out within a

preservation easement area and avoid development within them, however, they are not regulatorily obligated to do so given the regulation that I have just quoted to you that allows them to utilize the overlay provision.

MS. LOE: This is -- I'm just -- this is confusing because we have been through a similar case and I remember stating that I agree FEMA does allow development in the flood fringe, but the UDC, as we were interpreting it on that case, did not.

MR. ZENNER: And the UDC --

MS. LOE: And now it sounds like we're -- you just said previously FEMA and the City would allow development in the flood fringe and --

MR. ZENNER: I believe, Ms. Loe, what we were looking at was we were looking at the specific section as it related to the sensitive features, the sensitive features which are inclusive of the floodplain.

MS. LOE: I understand. I'm not sure I understand this well enough to make a decision on this case.

MR. ZENNER: And that is -- and that's fine. I raise the point because the question has come, is the land area, if it is zoned M-N, developable. And if it is, it is considered a developable feature per the code, and our recommendation and our analysis is based on the fact that that is considered a developable area provided it meets the regulatory standards; the floodplain development permit standards, and that it would also meet our other platting requirements. If the Commission has a -- has a differing opinion of the intensity of that use, that is the Commission's decision.

MS. RUSHING: Well, and I share Ms. Loe's concern because the area we were talking about previously, if I recall the same one that you do, the -- the possibility of flooding, although there was a record of flooding in that area, it was at least flatter. This lays -- the property is way below where the roadway is, which, to me, means it's really sensitive to flooding, much -- you know. And I think an issue arises when we aren't consistent as to why we're not consistent, and that bothers me.

MR. STRODTMAN: Mr. MacMann?

MR. MACMANN: If I may. It sounds like we have to resolve some textual issues. I'm sorry to the applicant for us digressing here. We're feeling our way forward on the new code and some of the applications. I would suggest that just to kind of be on the record that a way to resolve this -- to resolve this is to take this particular type of overlay out and any applicant at any time is certainly welcome to attempt to upgrade any of their properties to take them out of the floodplains or floodplain fringe, but I think, in the future, we might be hesitant to issue -- approve preliminary plats or zoning changes before that work happens, just -- that's just my thought because again where we were a little bit ago in the evening where we're approving something or we're asked to approve something or recommend something where the agency -- there are other agencies bigger and different than us that have to make the final approval for anything to go forward.

MR. STRODTMAN: Thank you, Mr. MacMann. Mr. Stanton?

MR. STANTON: My fellow colleagues, I think I just need to iterate that this is just an annexation

just to get it into the City. So, all the stuff that concerns us still has to -- can be addressed later and definitely the market can tell, and I'm definitely going to say again, the last case we talked about, I built in New Orleans, and the Indians said don't build there, and they did it anyway. It has nothing to do with this being annexed into the City. I think that -- I -- my personal opinion is I think we -- they need an opportunity to be able to connect to City resources. The market and Mother Nature and FEMA and all that will determine what they can do with that later.

MR. STRODTMAN: Thank you, Mr. Stanton. Any additional discussion, Commissioners? If not, I'll open it up to the audience to come forward.

#### **PUBLIC HEARING OPENED**

MR. STRODTMAN: Okay. This is a public hearing, so Case 17-238. If there's anyone in the audience that would like to come forward at this time, we would welcome that.

MS. LAMAR: Good evening. My name is Phebe Lamar, and I'm here on behalf of NGT, Inc., which is the owner of the property that's at issue. As staff has already informed you, we're here seeking to have the property at the corner of Brushwood Lake Road and Scott Boulevard annexed and zoned M-N as it's annexed. The zoning that's requested fits this location well. It's right at the roundabout at the intersection of Vawter School Road and Scott Boulevard. It has planned commercial zoning on two of the other three corners of the roundabout. The final -- the final fourth corner has not yet been annexed at this time. In order to obtain utilities for this site, it's necessary to obtain annexation because there are utilities available and, at least the last I knew -- and I'm not as familiar with the UDC as you all, but the last I knew, it was required that if you were within a certain number of feet of City utilities that you actually hook onto those utilities. So if we don't annex and we don't allow them to hook onto those utilities, then we are preventing them from having utility service on this site. The intersection at which this property is located is busy enough that it might have made sense to request zoning as mixed-use corridor rather than mixed-use neighborhood, but in order to accommodate concerns of residential properties that are located within fairly close proximity of this property, my client instead elected to request the mixed-use neighborhood, which is a step down. The property owner submitted -- submitted previously an application to FEMA to have this property recategorized as far as whether or not it falls within a floodplain. That application was submitted in April. It has -- there's been a number of things go back and forth since then. It hasn't actually been issued as of this point, but we have no reason to believe that it won't be. We also will be submitting to the County Commission an application to vacate the prior location of Brushwood Lake Road, which was, as staff mentioned, reconfigured in order to accommodate the extension of Scott Boulevard. We believe that that will actually be approved in March. My client is not intending to immediately develop this property, but is trying to put himself into a position that they can sell the property to somebody who will be developing it. In the course of submitting the plat and submitting for permits and all of that sort of thing, all of the issues with regard to floodplain, flood fringe, et cetera, will be explored and certainly figured out prior to the time that somebody else buys this property. And that will also be the City's opportunity to obtain additional right-of-way that's needed for Brushwood Lake Road, as well as for the roundabout at

that intersection. The uses that are included in M-N zoning makes sense in this location and annexation is reasonable based on the utilities that already crossing the property. As a result, we would request that you all annex this property into the City of Columbia and also zone it M-N, which fits within the -- within the zoning classifications that are already present surrounding this. For all these reasons, we ask that you approve this application. Isaac Cox, who represents the owner, is here this evening, and so am I, and we're happy to answer any questions that you have.

MR. STRODTMAN: Thank you. Commissioners, any questions of this speaker? I see none. Oh, sorry. Ms. Loe?

MS. LOE: Ms. Lamar, can you just comment on what types of uses that you anticipate that you're requesting the M-N zoning for?

MS. LAMAR: The uses that are included in M-N zoning.

MS. LOE: So shopping, service facilities?

MS. LAMAR: Those are the same -- those are very similar uses to those that are permitted catty-cornered across in the Copperstone commercial zoning, and that's what we're looking to do.

MS. LOE: Thank you.

MS. LAMAR: Sure.

MR. STRODTMAN: Any additional questions? Thank you, Ms. Lamar.

MS. LAMAR: Thank you.

MR. STRODTMAN: Anyone else like to come forward this evening?

MR. COX: My name is Isaac Cox; I'm a realtor with ReMax/Boone Realty, 33 East Broadway, 65203. I just want to make myself available for questions for you folks and, before you do that, briefly explain our letter of map amendment application that we have submitted to FEMA. There are 3.78 acres on that property that have been elevated well beyond the flood level, and we've been conservative with that request just to prevent any issues going through FEMA. The request for additional information that they've had have been all clerical. There hasn't been any issue with us stepping too close to the boundaries or the flood level. Scott Boulevard is not the flood level. The flood level is much lower than that. Every piece of footage that we're requesting to be removed from that flood map is at least two feet above the 100-year floodplain level.

MR. STRODTMAN: Thank you, sir. Commissioners, any questions of this speaker? Ms. -- I'm just having trouble with your name this evening. Ms. Burns?

MS. BURNS: Has FEMA indicated when they might be able to give you a final ruling on this?

MR. COX: Very soon. Stan Shawver's signature on another part of our application was the last thing they requested. I -- you know, no. I can't speculate on when FEMA is going to get it done to us. I, obviously, would have appreciated it to be done before now, but I understand they have to go through their due diligence.

MS. BURNS: I just feel like there's so many things that need to be tied up about this before we zone it in at an M-N zoning situation. And you said you applied in April?

MR. COX: Correct.

MS. BURNS: Okay. Thank you.

MR. STRODTMAN: Ms. Loe?

MS. LOE: You said 3.78 acres would be raised above floodplain level?

MR. COX: Is raised above floodplain level. Correct.

MS. LOE: So what are you planning -- or what's the plans for the remaining 7.4 acres, approximately?

MR. COX: That would be up to the future developer. I mean, just -- like, we can't say.

MS. LOE: Even though most of that's in the floodway?

MR. COX: Oh, I would think it would behoove somebody to possibly develop -- you know, begin a development on the 3.78 acres and possibly raise the remaining property up over time, just like the current owner has.

MS. LOE: Can I ask staff a question? Do we allow raising floodway?

MR. ZENNER: I'd have to confer our floodplain administrator. I do not believe we will allow work within the floodway. I'm sure that there is a FEMA process for raising or filling in the floodway and that's probably --

MS. LOE: But there has to be a net zero.

MR. ZENNER: Yeah. There has to be no rise and a variety of other things associated with that. So I imagine there is a process, but the letter of map revision, which Mr. Cox is referring to would obviously, on the platting end of it, eliminate the 3.76 acres or that -- roughly that amount of area on a final plat from having to be identified as being sensitive featured land per the sensitivity map. Whatever area may lie then beyond that that's in the fringe, as I was explaining earlier, which is considered developable provided it is elevated two feet above, which is permitted per the floodplain development permit process, could be developed given the fact that it's going to be in the FPO overlay unless we amend the text. So the impact initially, and I think this goes to Ms. Burns' point, and I think Mr. Cox's point, if the LOMA were -- have already been issued, we'd be talking roughly an annexation of the entire tract of land because you have to bring the whole tract in, but you'd only be able to develop approximately 3.75 or so acres of that. So the intensity of an M-N use is going to be restricted based to that developable footprint. And while the uses are similar to what is Copperstone in the M-N zoning district, which is actually C-3 -- it's a C-P zone -- the actual intensity of those uses is slightly less because our M-C, which would be now the comparable C-3 corridor, the M-N is your neighborhood uses, so there are variations in the intensities of retail -- single-shop retail space and some other activities that are similar in both zoning districts, but because of the variation, the step-down -- neighborhood step-down from the corridor, you are going to see less intense, but similar uses. So I think what the applicant was trying to attempt is -- I believe Mr. Palmer pointed out, as well as Ms. Lamar -- is the transition into the neighborhood, into the neighborhood setting that's behind this property and then moving up towards the park. That's the recognition of M-N. I know when Mr. Cox came to me initially and asked about this site and what the appropriate zoning was, there

was lengthy discussion about M-C, and either my powers of persuasion or his understanding of what the Commission's concerns may have been weighed heavily into how the application finally got submitted. However, it is consistent with -- with this node, and the M-N, from staff's perspective, would be appropriate. They were limiting, and you don't know what may happen in the future, but you're limiting with the LOMA really the impact of that development area of a significant development to the three -- the 3.75 or 3.76 acres at this point. And it's going to be more up toward the corner; that is, where the roundabout -- the additional right-of-way and where the major improvements are there at the corner itself. In general, what I can tell you is that the floodway is off limits from development, period -- and unless you go through probably a much more elaborate process, and that is how our development permitting program works. And then floodway or floodplain development is slightly relaxed, but still has regulatory standards that do have to be met. And there are protective standards within the overlay that are similar to -- you know, we basically adopt FEMA's requirements to be part of the FEMA program for flood insurance.

MS. LAMAR: There's also --

MR. ZENNER: I think the platting of all of those features and the identification of those comes out at the platting stage. So the developable portion, the seven acres and what's actually truly developable will be better understood as we get to the platting component of this. The intensity of this development, it's difficult to say don't look at it from the whole, but I think it's -- it's fairly understandable that you take out the floodway. You can't develop in that today. Then you have to take out the stream buffer. We still have climax forest preservation possibly on a portion of the site that's going to need to be retained. And then you're going to have to deal with what is really not developable land because of other requirements. So, you know, a conservative estimate, you're dealing with only three and a third, three and three-quarter acres of land to be developed really out of a ten-plus acre tract.

MR. COX: Still a significant developable, marketable piece.

MR. STRODTMAN: Mr. MacMann?

MR. MACMANN: Thank you, Mr. Chairman. Mr. Cox, this -- you say you're anticipating Brushwood being vacated in March perhaps from the County?

MR. COX: That's correct.

MR. MACMANN: When did you all ask them to vacate that?

MR. COX: We have a petition to submit tomorrow for signatures. Uh-huh.

MR. MACMANN: Okay. You haven't yet submitted that. All right. Question of staff. I'm going to hold that for right now, though. Thank you.

MR. STRODTMAN: Any additional questions of this speaker? I see none. Thank you, Mr. Cox. Any additional speakers like to come forward? I see none. We'll go ahead and close the public hearing.

#### **PUBLIC HEARING CLOSED**

MR. STRODTMAN: Commissioners, additional questions. Ms. Russell?

MS. RUSSELL: I don't have a question as much as a comment. I agree with Mr. Stanton. This is an annexation. We will have plenty of opportunities to address what happens to it later on. They're really

just asking for the annexation so that they can connect to the City services, and I just think it bothers me that we are taking away the opportunity for them to make a better sale of this property by denying it, and we'll have lots of time to tell -- to voice our opinion of what goes there.

MR. STRODTMAN: Mr. MacMann?

MR. MACMANN: I agree with Lee and Anthony on some of these points. I -- I think annexation is fine. I -- and I even think all these other sensitive issues being resolved, M-N is what should go here. And I'm glad we've had this discussion now, although we've taken a little time away from the applicant, because I think we need to get a little better process going about which comes first, you know. We've got County issues, we've got FEMA issues, we've got sensitivity issues. But as far as the annexation goes, I'm fine with that, because they should -- they should be connected. And I would like a little better process for determining what comes first and when we do zoning and stuff. I appreciate all of this. I agree with Commissioner Russell that this will be resolved at the platting process. I just wanted to make that comment.

MR. STRODTMAN: Commissioners? Mr. Stanton?

MR. STANTON: Oh. I commend Ms. Loe for bringing up this issue constantly. It needs to be in our mind constantly, floodway, floodplain, all of that, but we're just asking for annexation. So, if there's not anything else to discuss, I would like to make a motion, sir. As it relates to Case 17-238, NGT, Incorporated, annexation and zoning, I move to approve annexation and permanent zoning.

MS. RUSSELL: Second.

MR. ZENNER: Mr. Chairman?

MS. RUSHING: What zoning are you approving?

MS. RUSSELL: M-N, the zoning.

MR. STRODTMAN: Yes, Mr. Zenner? Is that your question?

MR. ZENNER: Well, no. I think we need to clarify the fact for the public record, so the record is correct. You are not acting on the annexation. That is a policy issue of City Council. You are only recommending the permanent zoning of this property. So if the motion can be refrained --

MR. STANTON: Okay.

MR. ZENNER -- reframed to only reflect the zoning recommendation, annexation is a policy matter of City Council.

MR. STANTON: I move, as it relates to Case 17-238, NGT, Incorporated, the permanent zoning of M-N.

MS. RUSSELL: Second.

MR. STRODTMAN: Thank you, Mr. Stanton, for the motion. Thank you, Ms. Russell, for the second. Commissioners, discussion needed on this motion? Ms. Loe?

MS. LOE: I just want to comment that I don't have any conflict with the annexation. However, I don't feel like we've gotten all the information necessary. You've applied for the LOMA, but it hasn't been approved. We've run into some interpretation changes in UDC that, based on the information I have, and

then does not seem to me to be appropriate for the information I have in my hand. I understand changes are pending or in the works, but I just wanted to put that comment out there.

MR. STRODTMAN: Thank you, Ms. Loe. Any additional discussion needed? Mr. MacMann?

MR. MACMANN: Just real quickly. I'm glad Ms. Loe brought us back to -- brought me back to reality there. I'm being asked to approve something that's going to get a LOMA, that's going to be done by the County. I think they both are. That shouldn't be the criterion that I should use to judge this. I should judge it as it is right now. Thank you. And it's a floodway and a floodplain right now, so thank you for bringing that back up.

MR. STRODTMAN: Yes, Mr. MacMann. Any additional discussion on this motion?

Ms. Rushing?

MS. RUSHING: I agree with Ms. Loe. I just think that zoning at M-N is misleading at this point.

MR. STRODTMAN: Thank you, Ms. Rushing. Mr. Stanton?

MR. STANTON: This is just -- this is the zoning they intend to use. All these issues that we have discussed before are still on the table. They may be -- we don't know whether -- they don't know how much space they're going to have until they get all of these what ifs answered. We're just kind of giving them this is the -- this is the playing field, these are the parameters, and then we'll see what happens when all these other things come into place. They may not be able to develop it all.

MS. RUSHING: Well, but when they come into place, they can rezone it.

MR. STANTON: Yeah, they could. But at least let them get annexed and get the ball rolling, in my opinion.

MR. STRODTMAN: Thank you. Any additional discussion on this motion before we ask for a roll call? Ms. Burns, when you're ready.

MS. BURNS: Yes.

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

MS. BURNS: Four to four; motion is tied.

MR. STRODTMAN: That's a first.

MR. ZENNER: No recommendation. Correct?

MR. STANTON: Mr. Chairman, do we need to get a coin out?

MR. MACMANN: No. It has to be an affirmation. But that's -- four-four is a no.

MR. ZENNER: Four-four is a no.

MR. MACMANN: Four-four is a no. It has to be a positive motion.

MR. STRODTMAN: Okay. So are we -- okay with that staff? That's -- it would be forwarded on for approval to the City --

MR. ZENNER: Well, you'll forward it on for something for Council, so --

MS. BURNS: Our recommendation will be forwarded.

MR. STRODTMAN: Our recommendation will be forwarded to City Council for their consideration.

MR. ZENNER: Recommendation of -- yeah. Let me take a look at our Rules of Procedure here for you.

MR. MACMANN: It's -- it's a no.

MR. ZENNER: Tie votes. In the event -- according to your Rules of Procedure, Section 21, in the event of a tie vote on a motion, the motion shall be sent to -- shall be sent forward to the City Council without a recommendation, but with an indication of a tie vote, so that is how it will be sent forward.

MR. STRODTMAN: There are -- so our tied vote will be sent to City Council for their consideration?

MR. ZENNER: That's correct.

MR. STANTON: I have a question for staff. So it still goes to City Council for annexation. The zoning of that possibly annexed land is up for grabs. Is that what we basically determined? But we have not established a zoning?

MR. ZENNER: No. You have not -- you have not made a recommendation on the zoning. The applicant's recommendation or the applicant's request will be forwarded for M-N with an indication that the Planning and Zoning Commission had a tie vote, which, in essence, represents a non- --

MR. STANTON: We didn't have this discussion.

MR. ZENNER: -- a non -- well, you had the discussion quite lengthily, quite honestly, and the Commission -- or the Council will be having to render a decision. And to answer the first part of your question, Mr. Stanton, yes. The City Council will be being -- will be receiving for their December 18th meeting a resolution to set a public hearing for January 2nd to discuss -- have a public hearing on the request to annex the land into the City as required by state statute. The request to zone the property to M-N will be introduced at that same meeting. And then on the January 16th Council meeting, they will be taking a final vote on establishing or applying zoning to the property, as well as rendering a final decision on the annexation to bring it into the City. Once that process is finished, as we have discussed this evening, there will be final platting required to be coming in at a later date that would address many of the questions that have been raised this evening as to the developable area and other aspects of what may or may not be permitted on this property.

MR. STRODTMAN: Thank you, Mr. Zenner.

#### **VI) PUBLIC COMMENTS**

MR. STRODTMAN: Do we have any public comments this evening? Anybody from the public like to come forward? I see none.

#### **VII) STAFF COMMENTS**

MR. STRODTMAN: Mr. Zenner? Mr. Palmer?

MR. ZENNER: The next meeting is going to be on December 21st. We have a number of items on that agenda, so hopefully you all are going to be in attendance. There are a total of seven. We saved all the goodies for the end of the year for you, so Christmas gifts and all. Just remember, it's coal in your

stocking. We do have, however, two subdivision items, Bright Star Subdivision. This is -- if you're familiar with where the Jimmy John's is off of West Broadway just before we come into the big Scott curve, Bright Star is an existing daycare facility that is behind the Jimmy John's, behind where our water lift station is, off of what used to be the right-of-way for West Broadway. This is a one-lot final plat. The parcel was created by deed and we're trying to clean it up and get it to be a legal lot so they can get a building permit to build on a vacant tract of land out there. You have another final plat and a design adjustment for the Branham-Renfro Subdivision. This is a parcel that is located at the intersection generally of West Boulevard and Stadium Boulevard. It has -- the design adjustment that is associated with that is a sidewalk design adjustment. This was a lot that was recently subject to a property transfer between the City of Columbia and the Branhams. Plat was submitted early in 2017, and that is why it has such a low case number associated with it. We needed to resolve the property transfer and transaction issue before we could process the final plat. With the transfer being taken care of, we are able to move the final plat forward now. You have the Villas at Old Hawthorne. This is a major revision to the existing planned development out in that project. We're revising the PUD plan, the former PUD plan layout which serves also as the subject site's preliminary plat. Therefore, in order to increase the total number of lots, they're changing product type, which is allowed under the PUD. However, the lots that were originally shown on the PUD plan do not accommodate the proposed product. They went from an attached single-family product now to single-family housing, and they're adding a couple of additional lots, so that's what that major revision deals with. Paris Road Plaza, this is just to the southwest of the interchange of U.S. 63 and Paris Road. This is currently a commercially zoned PD plan. This is the site of the Orscheln's that is up on Paris Road just on the, again, south side of the U.S. 63 interchange. They are proposing to rezone not the Orscheln site, but the two undeveloped tracts of land to the north and the south of Orscheln's from its current PD, which is allowed to have roughly 28,000 square feet of commercial development on it, to the I-G zoning district in order to increase general marketability of the property for users that have been approaching the planned owner. Centerstate Plat 14, this is a parcel that is to the north of the Vandiver roundabout that is on the east side of U.S. 63 that connects Vandiver to Mexico Gravel Road. That segment of roadway that was built between the two roundabouts, this currently was zoned as part of the original Centerstate planned district plan back in the late '90s, maybe early -- early '90s or late '90s -- I can't remember -- PD, no development plan on it. It was for commercial purposes. Again, this is an area that lies between basically the 63 right-of-way and the connecting road between Vandiver and Mexico Gravel, generally an area that's no-man's land, and the applicant is seeking to pull it out of the commercial PD to be able to put it into an industrial use for the purposes of dealing with actually what we talked about this evening in our work session for trade shop, contractor's type office uses that may be more appropriate in this general location lying between the two roundabouts and having easier access to U.S. 63. The planned district does not provide or permit that type of activity. It does fall more into the industrial zoning district and, therefore, an industrial zoning classification has been requested. There is also an accompanying final plat to this particular project that would be presented to the City Council. There will be

a preliminary plat with this and that may also be added to this agenda or added to the following agenda, first agenda in -- first available agenda in January. And then the last project we have is Red Oak Marketplace. This is south of the Grindstone Walmart where we have The Den, we have the new My [sic] Pie and other commercial development down in that area. The bank is directly across the street from the subject site. This is another major plan revision. This property was zoned in the early to mid 2000s to allow for commercial development under a C-P zoning designation. The one lot in question was actually a single larger lot. It has been final platted with the one single larger lot. It is proposed to be divided into four smaller lots, so there is a final plat that would accompany this, but going directly to Council. The PD plan is being submitted with the four lots, so there was never a PD plan submitted on this project when it was originally approved. It just received zoning entitlement. The PD plan now is coming in with the four lots shown. That would constitute the preliminary, so if the Commission recommends approval of the PD, then we basically process the PD plan to City Council and, concurrently, we would process the requested final plat since it would be consistent with the Red Oak -- the preliminary or PD plan that goes along with it. So you have an opportunity to understand where these projects are, if you're not familiar with project names or general location, our Bright Star project, again, just off the map here with the Bright Star project is the big curve that goes into Scott. This is the front commercially developed property. Here is the Jimmy John's that you can see off of Broadway just before you pass Strawn Road. Our Branham-Renfro project there at the corner of West and Stadium. Our Villas at Old Hawthorne project and the area that is being modified is in the center, Clint, if I am correct -- the center that's not highlighted in the red is the area that's being modified from the original approval. Our Paris Road Plaza project, as I said, the building in the middle of that is Orscheln's. We're looking at rezoning -- considering rezoning of the adjacent out parcels to the north and south. And then you have your Centerstate Plat 14 rezoning request from PD, the Centerstate PD to I-G, and then your Red Oak Marketplace, the last developable lot in the Red Oak development proposed to be platted, PD planned as four lots, developed with commercial development consistent with the adjacent commercial center, and then final platted into that same four-lot configuration. This evening we covered some significant ground as it related to interpretation of the City code. I do apologize for bringing that issue up, however, felt it was relevant as part of the discussion. Unfortunately, and I think Mr. MacMann hit on this topic, we are learning this code as we engage in projects. And, unfortunately, at times, the application of particular standards may appear to be not consistent, incongruent, as though we may be favoring one perspective versus another. It is as a result of the fact that we are dealing with multiple layers within the code and provisions that got created that not all of us are familiar with. This particular issue with sensitive features is one that we have to revisit as a staff. We have to revisit as a Commission. I believe the application of the standards as they are presented at this point do warrant a discussion within a work session so we are all on the same playing page. What I can tell you from a staff administration perspective, as we are presented the information that we have received, we have to accordingly react to that information and without -- without anything to the contrary to tell me that what I am reading and what I am seeing we have applied previously, we have applied

previously, unfortunately, in error. And our error, to some extent, has been extended to the Commission in your decision-making, which obviously then creates the appearance of being inconsistent. However, when we receive new information, when we receive something that would define an error on staff's part that can be verified through the code, we are required to react to that. And, unfortunately, as much as I think it frustrates some on the Commission, it comes as a shock to us that, ultimately, our consultants wrote in provisions that we read, we reviewed. Unfortunately, we read and reviewed what we understood the content to mean, not what was actually written. And as -- as an administrator, as an individual that actually participated in that process at great length, it comes as a shock to me when I come across applicants and consultants presenting us information to justify their position that we have said, no, you're wrong on, and they come back and they present to us in fact, no, we, as the consultant, are right, it obviously can be an embarrassment. But we have to accept, I think, the reality that that is how this code is written, and that is, at this point, how we have to react to that code. There is not, in my opinion, with what we have had presented to us this evening, you definitely have a section that says one set of provisions is exempt -- is exempted or is overruled regardless if it is more restrictive. The standard practice in planning and the standard practices in law is when you have a conflict between two ordinances, the most restrictive would apply. So I think what common sense would have dictated is the UDC sensitive features standard is the most restrictive, therefore, it was absolute. Unfortunately, we have a provision at the very beginning of the code where you have a conflict between codes that clearly says, no. When you have that conflict, in that instance, the other less stringent regulation would override. It does seem odd, but that's what we're going to have to forward with from this point forward until we amend the regulation, because that is what the code says, that's what was adopted. I can't just decide that I can't apply the adopted code. I think we stand probably even a greater level of challenge if we attempt to do that. This particular observation and this particular revelation to us does definitely impact a project that is forthcoming, and it will change how our staff has to review it based on the fact that the provision reads the way that it does. Ultimately, we will attempt in instances where we can to have the applicants willingly comply with the standards of trying to avoid sensitive features on property, which is what the intent of the code was. However, when our powers of persuasion cannot compel an applicant to do so, we have to rely on what our other regulatory standards, such as our floodplain ordinance, our storm-water ordinance, and other codes that are administered by separate departments and divisions say in the way of development. That is, you know, a short way of saying we may want something that we felt we wanted, we may be able to retain that when we revise the code, which will be, as I said this evening in work session, we will start that process after the beginning of the new year with revisions that we need to make. This will be one of them potentially. We have stuff that we need to deal with with our tree preservation, as well, that have come up that have created a significant issue that you are unaware of, that we have dealt with internally, and we are dealing with in accordance to what the law department has directed us to do. But there are certain standards that do need to be brought back to the attention of the Commission, and they do need to go through a public vetting process. So there are things that we will discuss with you in work session, this

being one of them, because I know that this is a concern. Again, my apologies for having to spring this on you this evening, however, it was, in my opinion, relevant to the discussion at hand. It is something that, as we move forward with future projects, this would have come up because I think there would have been a concern expressed when we actually changed position on a project that would have all the same similar characteristics as what you have already had presented to you. I am fairly confident that the nine of you would have asked us why are you doing something different. That's the explanation. So with that, I wish you all a wonderful and happy holiday season. I will not be here, as I indicated this evening, at our 21st meeting. You are in the capable hands of my wonderful and very dedicated staff. So enjoy your holidays and I will see you after the beginning of the new year. And that is all I have to offer for you this evening.

MR. STRODTMAN: Thank you, Mr. Zenner.

**VIII) COMMISSIONER COMMENTS**

MR. STRODTMAN: Commissioners, comments? Mr. MacMann?

MR. MACMANN: I have a motion.

MR. STRODTMAN: Not yet.

MR. MACMANN: I don't? Okay.

MR. STRODTMAN: I would just real quick like to -- earlier this evening during our work session, we did our annual election of officials, and I'm honored and thankful for being selected to serve as chair for another term, and my companions here to my left also were -- I'd like to congratulate Ms. Loe for being the vice-chair for another year, and Ms. Burns for being our secretary. So thank you two for contributing for another year. And now we would take any motions.

**IX) ADJOURNMENT**

MR. MACMANN: Have a pleasant evening. That's my motion.

MR. STRODTMAN: Is there a second?

MS. RUSSELL: Second.

MR. STRODTMAN: Thumbs up? Adjourned. Have a nice evening.

(The meeting adjourned at 8:57 p.m.)