

**MINUTES**

**PLANNING AND ZONING COMMISSION MEETING**

**OCTOBER 4, 2018**

**COMMISSIONERS PRESENT**

**Mr. Dan Harder  
Mr. Michael MacMann  
Ms. Joy Rushing  
Ms. Lee Russell  
Mr. Brian Toohey  
Ms. Tootie Burns  
Ms. Sara Loe**

**COMMISSIONERS ABSENT**

**Mr. Anthony Stanton  
Mr. Rusty Strodman**

**I) CALL TO ORDER**

MS. LOE: I'd like to call the October 4, 2018, Planning and Zoning Meeting to order.

**II) INTRODUCTIONS**

MS. LOE: Ms. Burns, may we have the roll call, please.

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

MS. LOE: Thank you.

**III) APPROVAL OF AGENDA**

MS. LOE: Mr. Zenner, are there any adjustments or additions to the agenda?

MR. ZENNER: No, there are not, ma'am.

MS. LOE: Thank you. Can I get a thumbs-up approval on the agenda? Looks unanimous.

**IV) APPROVAL OF MINUTES**

MS. LOE: Everyone should have received a copy of the September 20th meeting minutes in advance. Does anyone have any corrections or changes? I see none. I'll take a thumbs-up approval on the minutes. Thank you. Also looks unanimous.

**V) TABLING REQUESTS**

MS. LOE: We have several tabling requests in front of us this evening, so we're going to move right into those.

**Case No. 18-76**

**A request by McClure Engineering Company (agent) on behalf of P1316, LLC (owner) for approval of a PD (Planned Development) Plan to be known as Discovery Park South, along with an associated statement of intent and design parameters. The 40.6-acre subject property is located at the southwest corner of Ponderosa and Discovery Parkway. (A request to table this item to the November 8, 2018, Planning Commission meeting has been received. This is the applicant's second request.)**

MS. LOE: Mr. Zenner, may we have a staff report, please?

MR. ZENNER: I will let Mr. Smith deliver that.

MR. SMITH: Thank you, Mr. Zenner. Here the applicant has asked for an additional month to table it just to consider some additional options for the plan, so nothing too dramatic, but they would like the extra month, so we're recommending approval of that.

MS. LOE: Thank you. Is there anyone in the room who would like to come -- any questions for staff? Ms. Russell?

MS. RUSSELL: I don't have any questions for staff. I do need to let you know that I was contacted by the HOA with some issues and they wanted me to go meet. I refused that request and advised them to contact by e-mail anything to Mr. Zenner and to show up at any hearings.

MS. LOE: Are there any other Commissioners who has had any ex parte prior to this meeting related to Case 18-76?

MR. TOOHEY: I had two people show up at my office today and expressed that they felt like they were not being provided enough information on the -- the case.

MS. LOE: Thank you. Anybody else have any ex parte? I would like to disclose that I had a friend contact me via e-mail regarding the case and I forwarded that to Mr. Zenner and recommended she compose an e-mail for communication to be shared with the whole Commission.

MR. ZENNER: And if I may, Ms. Loe, if there are no further Commissioner comments as it relates to disclosures at this point. This is the second tabling request for this item. Pursuant to departmental procedure, any delay in a project over two months from its initial application does require new advertising for a public hearing, as well as would require also a new public information meeting to be held. That public information meeting for this particular project would be held on the 16th of this month at 5:30 p.m. in our City Hall lobby. There will be a meeting very similar to the one that was held previously at which the applicant will have an opportunity to be present to answer questions that the neighbors may have as it relates to revisions to the plan. And we have or will be sending out the notification cards associated with that public information meeting here shortly. So there is additional public process that will be needing to be completed prior to this item coming back to the November 8th meeting. And as Ms. Russell indicated, any correspondence related to concerns with the project, comments as it relates to the appropriateness should be forwarded to our staff. It could be either forwarded to my e-mail directly if that is available to the public or to our general e-mail which is [planning@como.gov](mailto:planning@como.gov), and reference case number 18-76. It will get to the appropriate staff planner that is responsible for this project and preparing the report that would be forthcoming.

MS. LOE: Thank you, Mr. Zenner. Any questions of staff? Mr. MacMann?

MR. MACMANN: Thank you. My standard question here, apparently wasn't last time, is the -- do we have enough time to address this? Is this going to get fixed? I don't mean to be flippant, I just mean to be -- is this enough time is the question I'm asking?

MR. SMITH: I don't know if I can reasonably answer that. If -- if we -- if it's not enough time, they'll have to request a third tabling outside of two months.

MR. MACMANN: All right.

MR. SMITH: And then they'll have to come back and request that specifically in front of P & Z and it's at their discretion at that point.

MR. MACMANN: Okay. Thank you.

MS. LOE: Any additional questions of staff? Seeing none. If anyone in the room wishes to come forward and speak to us about the tabling of this item, so the only thing we're going to be discussing tonight is whether or not to table this case, you may approach the podium and provide any comments on that. If you do come forward, we ask that you give us your name and address for the record. Okay. Seeing none. Any discussion? Mr. MacMann?

MR. MACMANN: If there is no discussion -- did you have a question concerning this? If there is no discussion, I have a motion.

MS. LOE: Please.

MR. MACMANN: In the matter of Case 18-76, a request by McClure Engineering to develop this property for P1316, I move -- so move that we table to 8 November 2018.

MS. RUSHING: Second.

MS. LOE: Second was made by Ms. Rushing. Ms. Burns, may we have a vote?

MS. BURNS: Yes.

**Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Mr. Harder, Mr. MacMann, Ms. Rushing, Ms. Russell, Mr. Toohey, Ms. Burns, Ms. Loe. Motion carries 7-0.**

MS. BURNS: Seven to zero, motion carries.

MS. LOE: Thank you. We'll move on to our next tabling case.

#### **Case No. 18-166**

**A request by A Civil Group (agent), on behalf of Gary Ridenhour (owner), to have 64.32 acres permanently zoned R-1 (One-Family Dwelling), 2.29 acres permanently zoned M-N (Mixed Use-Neighborhood), and 2.38 acres permanently zoned M-C (Mixed Use-Corridor) subject to annexation into the City of Columbia. The subject site contains a total of 68.98 acres and is presently zoned County A-2 (Agriculture). The site is generally located east of Masonic Drive, west of Alfalfa Drive and Oakland Gravel Road, and north of Prathersville Road. (A request to table this item to the October 18, 2018 Planning Commission meeting has been received. This is the applicant's second request to table.)**

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

MR. SMITH: Yes. Thank you. Madam Chairman, this request to table involves the situation where we are developing a development agreement with the applicant. Some additional information came to light recently that involved basically the -- some work that needs to be done on the sanitary sewer lines out there. It also involves Boone County Regional Sewer District. So they have requested additional time to allow us to include that language in the development agreement and get that finished before we come back for a public hearing.

MS. LOE: Thank you. We should do ex parte before we do staff questions, so I'm going to ask if

there's any Commissioners who has had any ex parte prior to this meeting related to Case 18-166. If so, please disclose that now so all Commissioners may have the same information to consider. Seeing none. Are there any questions for staff? Any discussion? Again, okay. If there's anyone in the room that wishes to come forward and speak to us about this tabling? Again, we're just going to be discussing the tabling of this case. You may approach the podium now. Please give us your name and address for the record.

MS. BOOKER: Thank you. My name is Margaret Booker; I live at 6395 North Oakland Gravel Road, so I live due east of the north half of the property, and my family -- my siblings and I own a duplex that is across the road from the property at 2403 East Elaine. We, as a group, the various subdivisions affected have participated and paid attention to this and we're -- we're -- some of us are highly concerned about how this moves forward. We've been waiting to see details from the last postponement which we haven't yet gotten. And according to the potential buyer's representative, the principal of A Civil Group, Jay Gebhardt, we should be getting that report soon and I'm assuming that we haven't seen this because City staff is wrapping everything all into one, but we are anxious to see that before we get to the zoning part of this hearing. So I just wanted to let you know that we are paying attention and that we will be reviewing the report as soon as it becomes available. So otherwise I don't have enough information to really go pro or con. Just concerned.

MS. LOE: I know. I understand. Mr. Smith, will the report be available prior to the October 18th?

MR. SMITH: Yeah. So I'm going to assume that you're referring to just the general staff report on the case that provides additional information and our recommendation. That's generally available the Friday before the Thursday meeting. So if you check our website, by the end of the day Friday, it should be posted at that point.

MS. BOOKER: Okay. Thank you.

MR. ZENNER: Friday will be the -- Friday is the 12th of October.

MS. LOE: Okay. So the 12th of October, the staff report will be out, and that usually does include the information from the civil engineer, any plot plans, and various attachments.

MR. ZENNER: I -- and I will note that there are not just Case 18-166, which is the public hearing component, which is what we are tabling this evening. The corresponding preliminary plat which proposes the division of this property into approximately 165 single-family lots and two commercial lots, that is Case Number 18-167. The reason that has not appeared on any of the agendas up to this point is preliminary plats do not require a public hearing. They are a technical evaluation against the requirements of the Unified Development Code. You will see two staff reports, one for 18-166, which is the zoning recommendations for the property, and then a separate staff report as it relates to the subdivision of the land which is partially what has been delayed as a result of the development of the development agreement. We are, yes, wanting to try to package the entire development proposal together. That is fairly standard for us. And the information that was provided to us last week as it related to issues with the Regional Sewer District were unexpected as it related to the need to add additional language within the development agreement. So two reports, they will be available on the 12th of October, and questions can be directed to Mr. Smith after they become published as he is the one that has conducted the full review

related to both of these requests. And then to just cut the past with Mr. MacMann, it's at this point that, yes, we do -- we are confident that we will make the 18th's meeting. The development agreement is in its final stages of internal staff review at this point to be appropriately delivered before the end of business tomorrow to the applicant so they can review it and provide comment back to us early next week. With that, that's all we have to offer as it relates to this, and we apologize for any inconveniences that this delay has caused for the public that was hopefully expecting a report this evening on this item.

MS. LOE: Thank you, Mr. Zenner.

MR. MACMANN: Thank you, Mr. Zenner.

MS. LOE: Any additional questions from Commissioners -- or discussion? Ms. Russell?

MS. RUSSELL: How about a motion?

MS. LOE: I would take a motion.

MS. RUSSELL: In the case of 18-166, I move to table this case to the October 18, 2018, Planning and Zoning Commission meeting.

MR. MACMANN: Second.

MS. LOE: A second by Mr. MacMann. Ms. Burns, may we have a roll call, please?

MS. BURNS: Yes.

**Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Mr. Harder, Mr. MacMann, Ms. Rushing, Ms. Russell, Mr. Toohey, Ms. Burns, Ms. Loe. Motion carries 7-0.**

MS. BURNS: Seven to zero, motion carries.

MS. LOE: Thank you.

#### **Case No. 18-180**

**A request by Crockett Engineering (agent), on behalf of the City of Columbia (owner), seeking rezoning and PD Plan approval for development of a ten-lot single-family subdivision to be known as "Cullimore Cottages". The subject 1.32-acre site is presently zoned R-MF and is located 350 south of the intersection of North Boulevard and 8th Street. (A request to table this item to the October 18, 2018, Planning Commission meeting has been received. This is the applicant's first request.)**

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

MR. ZENNER: This is a City requested rezoning the planned district plus a development plan. Some comments that were submitted late in the review process have resulted in the necessity to request the tabling to ensure that what is presented to the Planning and Zoning Commission is fully addressing all of our internal review comments. This is a project that will involve the construction of ten affordable cottages very similar to the Lynn Cottage project off of Lynn Street here in Columbia, managed generally by our Community Land Trust and our housing division manager, Randy Cole. So at this point, we are just trying to wrap up final outstanding comments, ensure that the plan development district plan is buttoned up, and we are confident, if not overconfident, that we will have this here at the October 18th meeting. So we are recommending approval of the request to table to allow us the opportunity to finish up the last

details. Mr. Cole will also be in attendance at the meeting to be able to answer any questions that you may have as it relates to the land trust component of this, and I have been informed that a representative from Crockett Engineering will be here, as well as the civil engineers that have prepared the plans on behalf of the City.

MS. LOE: Thank you, Mr. Zenner. For ex parte, I'm going to ask if any Commissioners has had any ex parte prior to the meeting related to Case 18-180, please disclose that now so all Commissioners may have the same information. Mr. MacMann?

MR. MACMANN: Thank you, Madam Chairperson. I -- for full disclosure, this is in my neighborhood. This -- the plans for this are discussed at our neighborhood meeting. It's a very active neighborhood group. So I am aware of the process as it has gone forward, but just, FYI, I am not a voting member of that body and that's quite deliberate on my part so I don't unnecessarily influence them.

MS. LOE: Thank you. Any other Commissioners? I would -- I would like to say that Mr. Cole has explained the storm water issues at the site to me, but that's the only information I have learned about this project. Okay. Any Commissioner discussion or questions for staff? Seeing none. If there's anyone in the room that would like to come forward and speak to the tabling of this case, again we're just discussing tabling right now. Seeing none. Mr. MacMann?

MR. MACMANN: If there is no discussion, I have a motion. In the matter of Case 18-180, to rezone PD and PD plan on North Eighth, I so move to table to date certain 18 October 2018.

MS. RUSSELL: Second.

MS. LOE: Thank you. Second by Ms. Russell. Ms. Burns, may we have a roll call, please?

MS. BURNS: Yes.

**Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Mr. Harder, Mr. MacMann, Ms. Rushing, Ms. Russell, Mr. Toohey, Ms. Burns, Ms. Loe. Motion carries 7-0.**

MS. BURNS: Seven to zero, motion carries.

MS. LOE: Thank you. That includes our tabling portion of the meeting.

## **VI) SUBDIVISIONS**

### **Case No. 18-181**

**A request by Victory Christian Church of Columbia, Inc. (owner) for approval of a design adjustment to Section 29-5.1(d)(2) to allow the waiver of sidewalk construction along the property's Ballenger Lane street frontage, a distance of approximately 1,500 feet. The 13.42-acre subject site is located on the west side of Ballenger Lane, approximately 1,200 feet north of Clark Lane and addressed as 1705 N. Ballenger Lane.**

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

Staff report was given by Mr. Clint Smith of the Planning and Development Department. Staff is recommending the public hearing be opened in this matter to get feedback from applicant and anyone else in the neighborhood that might be affected.

MS. LOE: Thank you, Mr. Smith. Before we ask staff questions, ex parte, I would like to ask any

Commissioner if they've had any ex parte prior to this meeting related to Case 18-181 to please disclose that now so all Commissioners may have the same information before them. Seeing none. Were there any questions of staff? Mr. MacMann?

MR. MACMANN: Just -- I'll save that. Thank you. We'll get to it in a minute in our discussion. Thank you.

MS. LOE: Okay. One saved question. Ms. Rushing?

MS. RUSHING: If they install this sidewalk, it will be in a location where it would survive street widening; is that correct?

MR. SMITH: That would be the goal. So we do have an unimproved street sidewalk standard and that does have a design specification there that should allow a sidewalk to be placed at a certain elevation so it can be retained in case a roadway project -- a road-widening project is implemented in an area, but it is somewhat of an estimate. Unless we had a specific street designed profile for that street, we don't know exactly at what elevation it should be built at. So it gives us a pretty good estimate.

In this case, talking with Public Works, in general, if we can go back here, you can see the sidewalk -- the property line is pretty close to the electric lines, I believe, and I think the design of the site was such that the sidewalk would actually probably be built a little bit on the site. Again, I think that was on the site plan, so that's not definitive. But there is area there that probably would remove it enough from possible roadway construction in the future, but I can't guarantee it, per se.

MS. RUSHING: But if it had to be moved, that would be at the City's cost?

MR. SMITH: Yes. If the City initiated a street project out there and they had to remove the sidewalk, they would -- they would replace it. And just for a point of clarity, that project is not on -- in the CIP currently, not in the ten-year plus plan, either one, so --

MS. RUSHING: Okay.

MS. LOE: Mr. MacMann?

MR. MACMANN: I would like to revisit a couple of those issues. I'm not asking you to explain what I'm about to say, I'm just going to do it as -- make a statement of compare and contrast. This is about the fee in lieu of, and I will get to a question here in just a minute. The \$61 a foot is a great price. My street, Hubbell, the price we got from the City for a sidewalk was \$452 a linear foot, just FYI. Am I correct, Mr. Smith, that this whole area has been requesting sidewalks, the northeast, so to speak, for quite some time, but it's just never made the CIP cut; is that a fair assessment of how these things have gone on Clark and Ballenger and this general area?

MR. SMITH: I don't think I have specific knowledge of any requests specifically from residents for sidewalk out there, but I do understand that this is a project the City identified because there is a lack of general -- any pedestrian opportunities or locations for pedestrians to walk along Ballenger and it is a fairly well traveled roadway, so -- but I'm not -- I'm not aware of any specific requests.

MR. MACMANN: I just -- the Councilperson Skala has attempted for several years to get sidewalks and now he's got Clark -- he's got the space on the side of the road there. Okay. I'm just -- I wanted to bring that up so that was in the record, so this is an area in need, so to speak.

MS. LOE: Any other questions?

MS. RUSSELL: I have one.

MS. LOE: Ms. Russell?

MS. RUSSELL: If, in the future, the City were to decide to put sidewalks in there, would you be able to tax bill them?

MR. SMITH: The City has that -- I don't want to go too far out on a limb. I believe they have that legal ability, but I am fairly sure that has not been exercised in any instances that I can remember.

MS. RUSSELL: Okay. Thank you.

MS. LOE: Mr. Smith, I -- just for clarification. I thought these requests usually came to us at the front end of projects. I was just curious as to why this one appears to be coming to us at the back end of the project?

MR. SMITH: Sure. Usually, they'll come at the front of the project when they're associated with a plat because the plat sometimes is the trigger and they -- they know when they plat the property that sidewalks do come along with that, so they'll ask for the waiver at that point. This had been previously platted or is a legal lot currently, and so the trigger there is basically any new construction along a major roadway still requires sidewalks regardless of whether you're platting or not, so --

MS. LOE: But the new construction is completed?

MR. SMITH: The new construction is completed, and they're allowed to construct the building, but they will not get a final certificate of occupancy until this matter is resolved.

MS. LOE: But they chose to construct the driveway without resolving this matter?

MR. SMITH: That's correct.

MS. LOE: Okay. Thank you. All right. We are going to open up the floor to public comment, so if anyone would like to come forward and comment on this case, they're free to do so. Please provide us with your name and address for the record.

MR. PUTNAM: Okay. Good evening, everybody. My name is Mark Putnam; I live at 4807 Silver Cliff Drive here in Columbia. I'm the pastor of Victory Christian Church of Columbia. I've also been a resident of Columbia since August of 1973, so I'm not a fly-by-night get through this thing. I'm here on behalf of Victory Christian Church to request a sidewalk construction waiver for our property located at 1705 Ballenger Lane. We are asking the City of Columbia to grant us a sidewalk construction waiver because the City of Columbia, along with MoDOT, is constructing 1.3 miles of pedestrian pathways on both sides of Ballenger Lane from Clark Lane to the south to Mexico Gravel Road in the north. The City's Planning Department has said that this pedestrian pathway will provide a minimum level of service for pedestrians. Because this pathway will meet the needs of pedestrians, we believe it is unnecessary for the church to construct an additional sidewalk. Now Tim Teddy, the Director of Community Development, who is here, I've told him I was going to quote him, and he's free to correct me if I say something wrong. We had a discussion, but he's told us that the current sidewalk requirements were meant to be applied to new subdivision developments with a connected sidewalk network that could be built and with improved roads. Ballenger Lane is an unimproved road with old neighborhoods, with no sidewalks. In fact, there



isn't any connected sidewalk networks on Ballenger Lane but 1.3 miles from Clark Lane to Mexico Gravel Road. Because the City is constructing pedestrian pathways the entire length of Ballenger Lane, we feel that they don't really expect to build any sidewalks anytime in the near future or the distant future. We believe a waiver should be granted to the church so we aren't forced to build a sidewalk as we call to nowhere, and that phrase came from the City Community Development who comes to inspect our building. They joke about the sidewalk to nowhere. And because the City is willing to accept a payment from the church of \$91,365 for a fee in lieu of sidewalk construction, we believe that a sidewalk is not really needed. And because no public safety, health, schools, parks, playgrounds, or any other public facilities would be adversely affected by not having a sidewalk in front of the church, we believe a waiver should be granted. In addition, Victory Church has compiled over ten pages of information which addressed every issue that they brought up. Everything they said, we had an alternative and a reason not to build the sidewalk. And so we believe all of that supports our request to not build a sidewalk. We therefore ask that the City would grant our request for a sidewalk construction waiver. Thank you. And I'm willing to answer any questions that you have now.

MS. LOE: Are there any questions for this speaker? Ms. Rushing?

MS. RUSHING: The pedestrian pathway to which you are referring, is that the widened shoulder?

MR. PUTNAM: That is six -- what they tell me, that is a six-foot pedestrian pathway and bicycle path on both sides of the road -- six foot, both sides of Ballenger Lane.

MS. LOE: Ms. Burns?

MS. BURNS: Thank you. So, Pastor, when you constructed and applied for building information and worked with the City, in your request for a waiver, did you understand that a sidewalk was required for this project?

MR. PUTNAM: Someone earlier had asked the question of why did we agree to a plat or a design plan with a sidewalk on it if we didn't want to build one. Well, the answer is very simple. You cannot get a building permit from the City of Columbia without showing a sidewalk on your design plan. And then, at that point, if you want to contest it, which, at that point, I have never been told by anyone with the City of Columbia that you could request a sidewalk waiver until just recently when we started this process because we found out, you know, the only reason we knew about the road was we got this letter from the City of Columbia telling us about the shoulder pathways. At that point, we said why should we build this sidewalk that's going nowhere, and is connecting to nothing. And when Mr. Smith put your -- you know, your map of the streets. These homes, if you go up there and look, these homes are older homes, and you can see they're all running into Ballenger Lane. There are no sidewalks. There's no sidewalks on either side except in Thessolia Subdivision. Those people cannot access our sidewalk. They would have to cross over their backyards, which, by the way, they have a giant privacy fence across the length of their subdivision, huge ditches, huge trees, weeds everywhere. They would have to climb across there, cross Ballenger Lane, which they say is a heavy traffic road, cross our ditch, and get up on that sidewalk. I just don't see that happening.

MS. BURNS: And I -- I appreciate that. My question is, did you understand there was a

requirement to build a sidewalk when you started your project?

MR. PUTNAM: When we did our site plan, we did.

MS. BURNS: Okay. Thank you.

MR. PUTNAM: But can I say something else about that?

MS. BURNS: Sure.

MR. PUTNAM: I don't want to get out of line here.

MS. BURNS: Oh, no. I -- my question is, did you understand that, and you have answered in the affirmative.

MR. PUTNAM: Yes. Our site engineer told us you have to put a sidewalk on your site plan to get it approved by the City. Without it, you don't get a building permit, so you're kind of -- if I can use this word -- I felt held hostage to have to have a sidewalk.

MS. BURNS: Thank you.

MS. LOE: Any other questions for this speaker?

MR. PUTNAM: Can I make one more comment?

MS. LOE: Of course.

MR. PUTMAN: You were talking about if the sidewalk would be placed far enough off the road for the widening plan that they said is not even in the ten-year plan, but may come someday. To do that -- can you put your picture there? Well, you can see it. You can see clear down through there, that whole tree line. To put -- they say we can build that sidewalk. But to do that, our engineer tells us to accommodate the road and do it properly like they will want us to do, we have to tear right down through that whole section of trees and take that out. In addition, if you go back to the other side, we have another set of trees that was there for what they call a Missouri native forest and woods, which we've -- they wanted us to dig and tear that up, but our engineer says we can get -- get a pass on that because it's native Missouri trees. And we kept that for the -- the way we set our building, we kept that for beautifying that whole site, how it looks, so you're not just driving down Ballenger Lane looking at the backside of a building. That's all a nice presentation there, so -- and we've addressed a lot of these. Almost everything they've mentioned, we've addressed in our comments and remarks to the City planners.

MS. LOE: Any additional questions for this speaker? Thank you, Mr. Booker (sic).

MR. PUTNAM: Okay. Thank you very much.

MS. LOE: Any discussion? Or any additional speakers from the public? And we're going to close public comments. Any discussion?

MS. RUSHING: Well, I'll go first. I'm going to vote against the request for a waiver. I am very -- I believe sidewalks are very important and particularly in this area, and that a broadened shoulder is not really adequate space for those people who are on foot. And I've walked a lot in this town, and I've been in areas where you had to walk on the shoulder and it's not a very pleasant experience.

MS. LOE: Mr. MacMann?

MR. MACMANN: If it comes down to just the full waiver, yeah, or a sidewalk, I would vote with Commissioner Rushing. And I would say that the Third Ward, which is where this is located, has tried to

get sidewalks on the CIP repeatedly, but that -- not having the votes, and that's why it's not on the ten-year. And the improvements that you're seeing on Ballenger and the improvements that you're seeing on Clark are a result of two things; one of our Council people working for years to get them on there, and the death and the severe traffic accident for walkers on Clark, not far from Ballenger, which is -- this looks like Ballenger does right there. I believe this is an integral part of the community. It's an integral part of our long-term plan, and, yes, we have older neighborhoods that aren't built with them, but most often in these cases, everyone asks for a waiver. I'm inclined to go with a minimum of a fee in lieu of, regardless of whether I think it's too low, but I am not going to vote for the full waiver.

MS. LOE: Ms. Burns?

MS. BURNS: I have one other question for staff. Were there any pedestrian counts done? Was there a way to do them when you were analyzing this particular property for a site plan and including a sidewalk on it?

MR. SMITH: No. I don't have any pedestrian counts, per se. I don't know if we collect that kind of data, but I didn't also bring that up with our Public Works staff when I was talking with them about that.

MS. BURNS: Thank you.

MS. LOE: Mr. Harder?

MR. HARDER: Has it been established when the widening -- with the walkways along the streets, any idea of when those are supposed to be done projected?

MR. SMITH: I believe -- so they're in the design phase right now, so I would expect probably at least another year, so probably maybe construction next year. I think that would be the goal, but it is --

MR. ZENNER: '19.

MR. SMITH: -- '19. 2019 is what I'm hearing.

MR. HARDER: And to confirm, he had mentioned there were six feet on each side; is that correct?

MR. SMITH: You know, I don't have that number right in front of me, but --

MR. PUTNAM: I have that number.

MR. SMITH: Mr. Putnam may have that number, so that's --

MR. HARDER: Well, you had mentioned it was six feet on each side of the road, and that's -- is that what's on Clark Lane, as well, too, is six feet on each side of the road?

MR. SMITH: I'd say that's approximately correct. I can't be exact, but if I had the full-scale drawings, I could scale them out, but I don't have those right in front of me, so --

MR. PUTNAM: That was on a letter from Public Works.

MS. LOE: Mr. Booker (sic), can you give your name and address again. I'm sorry. Just for the record.

MR. PUTNAM: I'm sorry. I'm sorry. I'm sorry. Mark Putnam, 4807 Silver Cliff Drive, Columbia.

MS. LOE: Oh, sorry.

MS. PUTNAM: Thank you. That was all in here. Thank you very much.

MS. LOE: Ms. Russell?

MS. RUSSELL: I think the fee in lieu of is just outrageous. However, I do think that a sidewalk is needed there. We've always talked about sidewalks and always have to face these waivers, and I think this road needs a sidewalk and it needs to start somewhere. It might right now go to nowhere, but it needs to start somewhere. So I'm willing to make a motion to make it easy to move to approve, but I plan to vote no.

MS. LOE: Thank you for laying out your strategy.

MR. MACMANN: Madam Chairperson, may I direct -- ask a question of Commissioner Russell?

MS. LOE: Yes.

MR. MACMANN: Would you explain that to me? I'm not sure I followed that.

MS. RUSSELL: Instead of moving to deny that everybody has to decide whether they say yes or no, if I move to approve, then everybody can choose to say no and vote down the motion.

MS. RUSHING: Which she intends to do.

MS. RUSSELL: Which I intend to do.

MR. MACMANN: Okay. Because you're making an affirmative motion?

MS. RUSSELL: Correct.

MR. MACMANN: All right. Thank you for the clarification.

MS. RUSHING: So, you've made the motion?

MS. RUSSELL: Yes.

MS. RUSHING: And then I'll second.

MS. RUSSELL: Okay. In the case of 18-180, the Victory Christian Church sidewalk waiver, I move to approve.

MS. RUSHING: Second.

MS. LOE: Okay. We have a second by Ms. Rushing. Ms. Burns, may we have a vote?

MS. BURNS: Yes.

**Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Zero. Voting No: Ms. Rushing, Ms. Russell, Mr. Toohy, Ms. Burns, Ms. Loe, Mr. Harder, Mr. MacMann. Motion is defeated 7-0.**

MS. BURNS: Seven to zero, the motion does not carry.

MS. RUSSELL: And it was six to one. sorry.

MS. BURNS: Six to one, sorry.

MR. ZENNER: Six to one, the motion fails.

MS. LOE: Who voted yes?

MS. RUSSELL: Harder. Didn't Dan -- did you say no?

MR. HARDER: I said no.

MS. RUSSELL: Okay. Then, yeah. Okay. Seven to zero.

MS. LOE: All right. It's a correction. Seven to zero.

MR. ZENNER: Seven-zero.

MS. LOE: Zero-seven.

MR. ZENNER: Zero-seven, that motion fails. And for the purposes of clarification, just so the applicant and the public are aware of what happens now after your recommendation is forwarded. This is a recommendation. Council does have ultimate final decision as to disposition of this particular case and the requested design adjustment. By super majority vote of the Council, the recommendation of denial or failure to obtain approval could be overruled, an alternative could be recommended by City Council as it relates to this. This does show up under old business on the City Council's agenda. And -- so it will show up on Council's old business agenda at the first meeting in November. With that, we are done with this particular case.

MS. LOE: Okay. Thank you.

## **VII) PUBLIC HEARINGS**

### **Case No. 18-182**

**A request by Luebbert Engineering (agent) on behalf of D&D Investments of Columbia, LLC, for approval of a major amendment to the University Chrysler PD Plan. The original development plan (PD Plan) for the site was approved in 1972 and revised in 1975-76 and 1983. The purpose of the PD Plan amendment is to revise the buffer screening detail on the southern property boundary. The 4.63-acre site is zoned PD (Planned Development) and is addressed 1200 I-70 Drive Southwest.**

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

Staff report was given by Ms. Rachel Bacon of the Planning and Development Department. Staff recommends approval of the PD plan amendment.

MS. LOE: Thank you, Ms. Bacon. Before we ask questions of staff, I would like to ask if any Commissioners had any ex parte prior to this meeting related to case 18-182. Seeing none. Are there any -- oh.

MR. MACMANN: Yes. Myself.

MR. LOE: Oh. Mr. MacMann?

MR. MACMANN: Thank you. For everyone's information, about two months ago, the president of a neighborhood association reached out to me in what I thought was a regulatory matter. They gave me a brief rundown, and I'll tell you what I recommended and I'll tell you what they told me. I recommended they contact their Councilperson, office of Neighborhood Services Community Development, and an attorney. They had engaged in all of those behaviors already. So I wanted to let you guys know I have that conversation.

MS. LOE: Thank you, Mr. MacMann. Any other Commissioners? Any questions of staff?

MR. MACMANN: I have questions of staff, if I may, or Dan?

MR. HARDER: I'm just kind of curious why the previous fence came down?

MS. LOE: Mr. Harder?

MR. HARDER: Sorry. Oh, I'm sorry. I didn't know if you said my name first. I was curious why

the previous fence came down.

MS. BACON: I was told it was for maintenance purposes, that it had fallen into disrepair. I didn't see the fence or inspect it prior to it coming down, so I can't really attest to that.

MR. HARDER: Oh, okay.

MS. LOE: Mr. MacMann?

MR. MACMANN: Could you please tell us when that fence came down, or should we wait until the applicant comes up?

MS. BACON: I don't remember the exact date, but the applicant is here, and it was pretty recently. It was just prior to filing this application.

MR. MACMANN: I have one more question, and I understand what legal is about to tell me and what Mr. Zenner is about to tell me, but I need to ask this question so my other Commissioners know. Is this case the subject of any lawsuits at this time?

MR. ZENNER: Mr. Caldera?

MR. CALDERA: Thank you, Mr. MacMann. It is my understanding that, yes, the parties are involved in litigation at this moment, and that there was a preliminary injunction ordered by the judge. Now, based on that, it's my understanding -- I haven't seen the preliminary injunction itself, but I have seen the temporary restraining order. And it's my understanding up to this point that there is nothing enjoining you all from taking the actions tonight. The injunction is actually on the parties' ability to get -- to basically tear anything down and so forth, so it's limited to them, so --

MR. MACMANN: Thank you, Mr. Caldera. Madam Chairperson, I am finished with questions, and at the end of the question period, I would like to make a statement.

MR. LOE: Thank you, Mr. MacMann. Ms. Rushing?

MS. RUSHING: Do you know where the fence was in relation to the edge of the pavement? Was it along the edge of the pavement and now it's going to be set back or --

MS. BACON: So there -- there's a parking lot. Let me see if I have graphic that might --

MR. ZENNER: The original 1972 plan, which did not have a fence on it, required a minimum buffer area of ten feet north of the southerly property line, so the buffer was -- well, would have been, had it been matured, to the residential Highland Subdivision side of the actual fence -- fence's former location. Given where the asphalt edge is right now, the fence was riding the existing asphalt edge or curb. There was, based on plan review that we have conducted, there is a small retaining wall and some other retaining wall improvements that were made towards the westerly end of the property to which the fence was placed behind. In essence, the area in question that the fence would be moved into is this southerly ten feet, as Ms. Bacon pointed out, mandatorily required in the '72 development plan to be left and planned as the buffer, which is, as Mr. Bacon pointed out, inconsistent with what today's regulation are. The fence would have been moved to the property line had our UDC standards existed.

MS. RUSHING: And do you know whether that's going to require moving any of these little outbuildings?

MS. BACON: No, ma'am. It shouldn't affect the existing buildings.

MS. RUSHING: I mean, some of them seem to be pretty close to that --

MS. BACON: You can see where the existing fence is right here, so that's right about ten feet.

MS. RUSHING: Right. But you can -- you can see that some of these are pretty close to that.

MS. BACON: Yeah. And it's not an exact measurement from the aerial by any means.

MS. LOE: Any additional questions? Seeing none. We'd like to open this up to public comment.

#### **PUBLIC HEARING OPENED**

MS. LOE: If anyone wants to come forward and provide any information that might help us in our discussions, that would be wonderful. Please give us your name and address for the public record.

MR. HOLLIS: Good evening. My name is Robert Hollis; I'm an attorney with the VanMatre Law Firm at 1103 East Broadway. I'm here on behalf of the applicant, and I'm not sure where to start now, but I will tell you this. We could speak at length about the existing litigation, and so there are -- there are two lawsuits. There's absolutely no reason whatsoever to get into the substance of those lawsuits. What you have in front of you is a request for an amendment to a plan by the record property owner. It is the property owner of record as of this date, and it is -- I will say this. Based on my experience and I'm sure you would probably agree, is that what you're looking at is something that you typically wouldn't look at. And the reason you wouldn't is because it is minor. It is something that would typically be dealt with administratively. It would never get to you. It's that minor. It's the movement of a fence ten feet onto the boundary of the property line where it should have been in the first place. Now you asked why was it torn down and when was it torn down. Well, it was torn down a couple of months ago and the reason it was is because it was dilapidated, and it was falling down. It had been -- they had tried to repair it over the years. Now why was it there in the first place? We don't know. We don't know. It was the prior property owner. It was a mistake that it was put there in the first place, and it was not required by anything specifically. Of all of the amendments that came through, there was never a requirement for a fence. It just showed up and then -- so it was on a plan. Fine. We're not opposing that. What we're trying to do is comply with what the law says, and the law says -- the law, being the ordinances -- here's where the fence supposed to go. We want to put the fence there. Now why is this not being done administratively? It's not to blame staff. None -- no blame rests with staff whatsoever. It's that there are a couple of property owners. So there are six property owners adjacent to where the fence has been torn down and will be replaced. There are two lawsuits. One lawsuit is where a property owner is saying we own that ten feet. Well, they don't, but anyway that's what the lawsuit says. Anybody can file a lawsuit at any point in time. The other lawsuit was filed by us because one of the neighbors said, after we tore the fence down, hey, would you put a temporary fence up. Sure. So we put a temporary fence up. A couple of weeks passed, they tore the temporary fence down and put a new fence up to the north. Anyway, we said you can't have that -- we didn't tear the fence down like they did. We said you can't have the fence there, and so we took action by filing a lawsuit saying, you have to move that fence. Anyway, all of that, frankly, is absolutely irrelevant to what we're talking about here. What we're talking about is, you have a plan in front of you. The record property owner has submitted that plan. Staff has reviewed it, staff has required what we have proposed, and has recommended approval, and we are willing party in that regard. To the extent that I can answer

any questions or my client can answer any questions, we'd be happy to. You are going to hear some, I'm suspecting, some passionate testimony from adjacent property owners. Keep in mind -- not keep in mind. Just so you know, we have reached out to every adjacent property owner. We have reached out to the neighborhood association to communicate with them to the extent that we can, and all we can do, right, is try. And so what we're required to do is what you have been presented with. We will do our best to answer any questions. Thank you.

MS. LOE: Are there any questions for this speaker? Ms. Rushing?

MS. RUSHING: So what would be the effect if the one property owner who believes that their property line extends to -- into that ten-foot area, what would -- if they are successful with that argument, what would be the effect of that on your plans to put up a fence?

MR. HOLLIS: As of today, it would have no effect whatsoever. It's still PD zoned. It is still going to be property that has to be compliant with the City zoning ordinances. The fence goes where the fence is supposed to go.

MS. RUSHING: But your argument is that it goes ten feet south of where the pavement ends?

MR. HOLLIS: It goes to the property line, right. Right. So you can imagine arguments where if somebody else owned the property, which they don't, are you asking to --

MS. RUSHING: No. I'm just -- it's a what if.

MR. HOLLIS: What if somebody else owned the property? Yeah, that would be confusing. Right.

MS. RUSHING: Okay.

MR. HOLLIS: It still wouldn't change anything, the fact that the property is zoned what it is, and it's still part of a plan. Regardless of who owns it, it's still part of a plan that has to be complied with.

MS. RUSHING: Then do -- okay. Do you intend to make these changes as soon as they're approved by the City?

MR. HOLLIS: Immediately. Correct.

MS. LOE: Mr. MacMann?

MR. MACMANN: For clarity sake, Mr. Hollis, who built this fence?

MR. HOLLIS: Who what?

MR. MACMANN: Who built this fence?

MR. HOLLIS: The prior property owner. I don't recall the name of the entity.

MR. MACMANN: But the folks that owned it before D&D owned it?

MR. HOLLIS: Correct.

MR. MACMANN: Help me understand here and perhaps Ms. Bacon can help me understand here. This fence continues to the west for, I don't know, another 50 or 100 feet and makes a big curve to the south, then it's identical fence?

MR. HOLLIS: Okay. Can I answer?

MR. MACMANN: I'm just trying -- it looks like someone built -- that someone else built the fence and I'm confused.

MR. HOLLIS: So -- so I probably should have brought a graphic. So what you have is you have



from Hunt to --

MR. MACMANN: London.

MR. HOLLIS: -- to west.

MR. MACMANN: Okay.

MR. HOLLIS: So going from east to west, you have a fence that's on the property line of every property owner that goes like this. And what happened was, the prior property owner for this 400 feet built a fence right here, and it fell down.

MR. MACMANN: This property -- let me -- just -- if you don't know the answer, that's fine. But this fence curves in a U going back to -- towards west.

MR. HOLLIS: A U. It's pretty much like this. It's pretty much perpendicular.

MR. MACMANN: All right. Well, apparently, we disagree with what we see. One more question, the last question.

MR. HOLLIS: Okay.

MR. MACMANN: The property south of the -- what is now the edge of the asphalt for these six yards, who has been maintaining this for these many years, since '83 or whatever?

MR. HOLLIS: Are you talking about the property that's south of where the old fence was?

MR. MACMANN: I believe we are speaking the same terms there, yes.

MR. HOLLIS: Yeah. Because I still don't get a U. I don't know what you're talking about when it comes to a U.

MR. MACMANN: Let's -- let's -- let's set that aside, Mr. Hollis, for a moment. The property south of the parking lot, the ten feet in question --

MR. HOLLIS: My client has maintained its property to the extent that it could over -- since it's owned the property, correct.

MR. MACMANN: Thank you, Mr. Hollis. Thank you very much.

MS. LOE: Any additional questions for this speaker?

MS. BURNS: I just wanted to follow up and again just trying to -- with what Mr. MacMann said. So to the best of their ability, so did they come on the other side of the fence and cut grass or rake leaves or trim branches. I'm just trying to figure out who did maintain that property?

MR. HOLLIS: Yeah. Right. So you're asking a question about something in this -- I mean no disrespect whatsoever. You're asking a question about something that's not relevant, because it doesn't have any bearing on what we're talking about with respect to the plan. However, it is in a utility easement, so, yes, it has been maintained by my client as best they could when there was a fence in the way and also when there is a utility easement that restricts what you can and cannot do. What we're proposing to do right now is to build a fence and to put landscaping in a utility easement, which could be ripped out at any point in time, right? Because the City -- so we have -- we have two arms here. We have the Planning Department and then we've got the City utilities that are going -- you know, put in whatever you want, just know we've got power lines above, we've got utilities below. At any point in time, we can rip out your fence, we can rip out any trees that you put in, we can do whatever we want. So that's how it -- I mean,

you can imagine. When you have a utility easement that's in place, which it is in place, it's ten feet wide. We're talking about a 12-foot-wide portion of property. Yeah, we've maintained it, but we're also restricted in that regard.

MS. BURNS: And I appreciate that, and the City would have to have -- they couldn't come in just for no reason. There would have to be a reason in order to rip that out. I don't want to argue that point.

MR. HOLLIS: Not for fun, right. Right.

MS. BURNS: I would hope not.

MR. HOLLIS: Right. I meant if it's -- if it's encroaching upon the lines, or getting close to the lines, or if they have to repair the lines below, and this is a point that's really important that -- I'm not sure -- I know Rachel brought it up, but maybe it should be emphasized, is that the fence where it was before, again a poor decision on the prior property owner. But the fence where it was before blocked the City from getting to their utilities. They -- the only way they could get there was to try to come through these people's property to get there to trim trees and do whatever they wanted to do, and they were hesitant to do that because it's just rude. And so now when the fence goes -- so here again, we've got a fence that goes like this and there's 400 feet where it's up here, now when this is approved, the City can get to it from the north without restriction. And I don't know if there's anybody -- any representative from the City utilities here, but I think they would speak strongly in favor of that, and I've heard them speak strongly in favor of that in preliminary discussions regarding this plan.

MS. LOE: Any additional questions? Thank you, Mr. Hollis.

MR. HOLLIS: Thank you.

MS. LOE: Is there anyone else who would like to come forward and speak on this matter?

MS. GOVERO: My name is Jade Govero; I live at 1119 London Drive. I am one of the property owners south of this boundary. I wanted to thank every one of you for your time and expertise serving on the Commission. It's very important. We -- in addition to being a property owner, I also served as the Highland Park Association president for two years. And as you can see that this plan does encroach ten feet on property that owners have been taking care of for over the past 25 years. Besides the mention of the utilities, the City has always worked with us. And I believe in 2005, the City and the arborist -- utilities arborist worked with us in terms of what trees were being trimmed because we all know that the City prides itself on saving as many trees and -- and keeping the integrity of the trees. And so I believe those are important things to note because this plan would eliminate five mature trees in my backyard that are currently blocking light pollution, sound pollution, not only from the dealership, but from I-70 and the Business Loop. So those trees are vitally important and anything that they have in this plan will not be able to replace that. And it is important to note that I am part of the -- the legal action in which that we have -- me and my husband have filed for a quiet title based on adverse possession on July 20th, we were granted the temporary restraining order on July 30th, and the preliminary injunction on August 27th. So we wanted to be sure to inform the Commission that -- of those legal actions that are pending, we feel that it would be important for the courts to decide who is the true owner because, as I said in Missouri statute, we have the right after so many years of taking care of the property, mowing it, patching the fence, which

was not falling down -- though it needed to be repaired, it was not falling down. We've planted bamboo in certain parts of the portion of my backyard, and many neighbors have taken care of that property as -- as you are supposed to. Because of the fencing, we have exclusive rights to that, so anybody coming in and trying to take care of it is trespassing. It is our property and it has been for decades. So I would ask the Commission to vote against this request because it isn't -- the fence just needs to go back where it's at, and the trees need to stay in place. We cannot lose all these trees.

MS. LOE: Are there any questions for this speaker? Mr. Toohey?

MR. TOOHEY: So how do you feel that the current property owner or the previous property owner were neglecting the care of that part of the property?

MS. GOVERO: How do I -- they were never -- nobody ever came and knocked on the door and said, let me mow your yard, let me patch your fence. So there was just no indication that they were going to take care of it. It is our -- when you walk into the backyard, it's our yard all the way up to that fence. That is just how --

MR. TOOHEY: How long have you lived at the property?

MS. GOVERO: Four years.

MR. TOOHEY: So did you have a survey done when you purchased the property?

MS. GOVERO: No.

MR. TOOHEY: How come?

MS. GOVERO: We just went by the current plots that existed.

MR. TOOHEY: Okay. So how come you just didn't call the City and make a complaint if you felt like the property was being neglected that you didn't own?

MS. GOVERO: Because, like I said, the way that the property is enclosed, it's our property. I can walk right up to that fence and touch it, so it isn't -- was -- appeared to be our responsibility to take care of it. If my dogs got out, it was my dogs getting out on my side of the fence. And so it just -- I would never know besides utilities being above us that there would be any need to call anybody because it appears to be our property.

MR. TOOHEY: Appearing to be your property and being your property are two different things, though. That's what a survey would have demonstrated if you would have done that when you purchased the property.

MS. GOVERO: But there is no barrier and no reason for me not to maintain that portion of my yard.

MR. TOOHEY: The City doesn't have barriers around parks either. So just because they don't have a fence around a park --

MS. LOE: I would just like to interject that I don't think this group is going to be determining who owns what property. So I understand that that's going to be a -- that's a big piece of this puzzle, but as you have already said, you've taken that question to the courts and I think it's the courts who's going to decide that question. I think this group is deliberating what -- on the question of whether or not the fence can be relocated to the location that's been shown in this plan. So I understand this land ownership

question is a whole subcontext that's -- but we can't speak to that. So --

MS. GOVERO: But if we lose trees, and you approve a plan that cuts all the trees, there is no way of us replacing those trees.

MS. LOE: So I would like to explain maybe a little bit why -- why the ordinance does require the fence to be on the property line and why we put the buffer -- landscape buffer on the side of the owners, because we deliberated whether or not to do that with R-1 and R-2, and it was a long discussion. And the reason it came through that way is actually for the very reason you all are in the predicament you are right now, which is, if the landscaping was on the other side, which is where the homeowners are, the R-1, R-2, then the owner that has to provide the buffer would not be able to maintain or would have a difficult time maintaining that landscape. And we felt that we couldn't require them then to put that landscape in and take care of it. So there was a -- I understand this is contrary to how it was done, but what they're asking is in line with what is in the UDC.

MS. GOVERO: I understand that, but in your decision and pending litigation, if you approve these plans and they make changes, we will not be able to reverse that because we cannot put back those trees. So I just ask that you do not approve this plan because of the pending litigation.

MS. LOE: I understand. Mr. MacMann?

MR. MACMANN: I just have one question. Ms. Govero, do you all have a court date, a date certain?

MS. GOVERO: Yes.

MR. MACMANN: What is that date, please?

MS. GOVERO: November 16th.

MR. MACMANN: Thank you very much.

MR. ZENNER: Ms. Loe, before we let this speaker go, I believe -- this is a little bit odd, but I would like to have Mr. Caldera ask the speaker a question if that is okay with the Commissioners.

MS. LOE: I see general agreement, yes.

MR. CALDERA: It's just an informative question because I couldn't find copies of the preliminary injunction. In preliminary injunction that the Court ordered, does that injunction say that the City of Columbia cannot take action?

MS. GOVERO: I don't believe so. We are just asking for you to support the neighbors in this area who have this and to vote no on it.

MR. ZENNER: And in order to potentially -- to provide an alternative to the Commission, based upon the testimony that's been given as it relates to the concern of the vegetation being removed, while the Unified Development Code does provide the option by which five inch or greater DBH trees that are existing to count towards the landscaping and the applicant's desire to allow for those existing trees that meet that criteria to be counted, there is nothing in your recommendations, should you so desire, to condition the removal of that provision specifically as it relates to this plan and not allow them to be treated in an exchange process. We could instead, if you wanted to take, for example, these trees that are clustered on the back of this particular property and ensure that they're preserved, if they're within the

boundary of what is to become a buffer, you could specifically stipulate that they need to remain and they can't be counted to offset, therefore, you're going to end up with greater amounts of vegetation in that particular area. What the applicant is attempting to do is to be able to compensate or offset the existing tree canopy which has been indicated to Ms. Bacon through the review of this project, but they want to coordinate and review the placement of these existing trees within this buffer area with these adjacent property owners. And there's been nothing stated to us at this point, as we have reviewed this project, that would indicate that there is a desire to remove those trees. However, we have to acknowledge the fact that they are in a utility easement which is controlled by the City, and the City has every right to do what it has to do in order to ensure the integrity of its utility network. Obviously, we would like to see the trees preserved personally as a City staff, however, we also have to acknowledge that those trees may be in the placement should the fence be moved to the property line such that the fence is either going to need to step back, and it further perpetuates the current position or the current situation we are in without a fence being at the established property line. Given that the trees may not be along that property line and having them preserved to satisfy or to address the concerns that the residents of London -- of London Street are indicating and are concerned about, the Commission may have options available to them as they make recommendation with this revision. I think as Ms. Loe pointed out, it is very important to keep in mind we are not determining the legal basis by which this ten feet is discussed. We are looking at the legal compliance with the Unified Development Code's screening provisions and as it relates to an amendment to an existing planned district. And I -- I don't want to be unsympathetic to the legal standing and the legal issues that are here; however, the real focus of our effort needs to be tonight does the proposed amendment meet those requirements, and if we can address in any manner the concerns that are being expressed by the property owners that are adjacent to this buffer area, the Commission needs to take appropriate steps in order to do so.

MS. LOE: Any additional questions? I had one follow-up question. The report identified that there were no significant trees, so I'm a bit curious now as to where these trees are located. Are they in the ten-foot easement?

MR. ZENNER: I would like to -- let's clarify what we mean by that, though, Ms. Loe.

MS. LOE: All right.

MR. ZENNER: Significant trees are defined as those trees 20-inch DBH and greater lying outside of the utility easement. We do -- utilities or roads, and that's very specifically called out within the tree preservation standards for the -- in the Unified Development Code in Article -- in Section 4. There may be 20-inch DBH trees located within this utility easement, but they are not by definition significant trees regulatorily. Again, the applicant has stated that they want to work with these owners to preserve those trees if they can.

MS. LOE: The report says five-inch DBH.

MR. ZENNER: Twenty-inch DBH are defined as significant trees by the code. You can credit required landscaping and screening with any tree that is five inches DBH or greater, and in good health. That is how the -- that's how the tradeoff provisions work within the landscaping standards. So we have --

MS. LOE: And were there any trees five-inch DBH?

MR. ZENNER: Yes. Many.

MS. BACON: Yes. Yes.

MR. ZENNER: And I think that's what -- that's what the speaker is referring to, that they have trees that are much greater than five inches in their -- in the backyard area that is on the ten feet, the ten to twelve feet that is currently occupied by the fence.

MS. LOE: All right. More than five inch, less than twenty inch perhaps?

MS. BACON: Here's a -- here's a picture to try to capture those trees. And we do note the impact is much greater for these trees than what would be planted, especially for many years. But I also do want to note that many of these trees are encroaching into the power lines, and so they may have to be trimmed back a little bit. I mean, there's just a fine line. I think we're all aware that the trees do serve a purpose and that there's some challenges.

MS. GOVERO: And like I said, the utility company has come to us when they trim those trees.

MS. LOE: Ms. Burns?

MS. BURNS: Have you had any discussions with the applicant about preserving your trees?

MS. GOVERO: We have a pending lawsuit.

MS. BURNS: That's -- but prior to that, did you have any discussion with the applicant concerning the trees?

MS. GOVERO: We had a very short meeting and there was -- these ideas and the talk about moving the fence and removing all of the trees back last year in May when I had approached my neighbors who this was affecting. We sent a letter and asked them to work with us and then we never heard from them ever again until the fence came down this July.

MS. BURNS: Thank you.

MS. LOE: Additional questions? Thank you. Are there any additional speakers that would like to come forward?

MR. O'NEAL: Good evening. My name is James O'Neal; I live at 1211 London Drive. The -- I have some concerns about the particular drawing that is part of this plan. It -- I don't know. It's a very limited schematic. I believe it's meant to be in general as per -- to the entire length of that area. There are some problems with it. There's -- it shows the location of a water main that's improperly -- it doesn't show the proper location of the water main. The water main is closer to the property line. Actually, it's on the homeowner's side of the property line. And -- then it doesn't address the -- and I mentioned a retaining wall. Two of the properties have a, oh, about a two- to three-foot tall retaining wall, and it doesn't address -- it doesn't address that, as well. And I'd like to also mention that for clarity and all that, that we are also a part of a legal suit involving the adverse possession. I also would like to mention that --

THE COURT REPORTER: He needs to speak in the microphone. I can't hear him.

MR. O'NEAL: Oh, I'm sorry. Oh, I'm sorry. I would also -- did you get everything up to that point?

THE COURT REPORTER: Yes.

MR. O'NEAL: Okay. I'd also like to mention that the -- the fence was removed at -- on or about

July 19th without any notification to any of the property owners. There were other property owners that had animals that would have been let out when they got home, and that would have been out on the highway. We also have small children that we -- came to us in foster care that are under our guardianship, and they don't feel safe in their backyard right now. And I just -- I think this whole plan needs to be reworked. It's not very well thought out. It was not thought out before it was -- the fence was removed, and I just was -- would recommend you deny their request. Thank you.

MS. LOE: Are there any questions for this speaker? Mr. Toohey?

MR. TOOHEY: So do you have a fence on your property that tied -- that tied into that fence?

MR. O'NEAL: Yes.

MR. TOOHEY: So did you ever get permission from the previous property owners --

MR. O'NEAL: That was the fence that -- the fence that tied into that fence was built by the adjacent property owner -- oh, good grief -- ten years ago or better.

MR. TOOHEY: But nobody -- we don't know if they got permission from the previous property owner to be able to tie into that fence?

MR. O'NEAL: No, I don't -- I haven't -- I don't have an answer to that.

MR. TOOHEY: Okay.

MS. LOE: Any additional questions? Thank you.

MR. O'NEAL: Thank you.

MS. LOE: Are there any other speakers that would like to come forward?

MS. EATON-KERSEY: Hello. My name is Susan Eaton-Kersey; I live at 1109 London -- London Drive. I am an adjoining property owner to the Subaru dealership, but not one of these property owners. I would like to address Mr. MacMann's question about who has been taking care of the property. There's only two houses in those six that have actually taken care of their property, and you could actually see that it went all the way to the edge of the asphalt that's there now. One of those owners had a landscape timber, like, flower bed that's already been back to the existing property line. The other one has, like, a playground area back there for their grandkids. But your question is only two of all of those had maintained. I don't have any problems with my fence. My neighbor and I, we redid our fence at our own cost, not even -- just -- just because we had dogs that were getting out. But I just would like to see the fence put back up so the hole is secure -- the neighborhood is secured again. I would like to see the -- the applicant put the -- for the lack of a better word, the ugly side to the -- to the homeowners so that it's harder to scale, harder to climb. Do you understand what I mean by that? And -- but that's all I wanted to do was really address Mr. MacMann's question as to who has been really taking care of the property. Only two of them. Otherwise, it's all overgrown and I have pictures. I didn't bring them printed out. I wished I would have, but they're on my phone should you like to see them. Thank you.

MS. RUSHING: So -- I have a question.

MS. LOE: Ms. Rushing?

MS. RUSHING: So are you saying that none of those property owners except the two exceptions mowed or did anything else with that property?

MS. EATON-KERSEY: They're all overgrown. And I -- there's proof. I mean, pictures are proof. It's all overgrown, tangles, brambles. But only two of them actually kept it mowed, had everything that it was nice yard. Yeah, only two of them.

MS. LOE: Any additional questions for this speaker? Thank you. Is there anyone else that would like to speak on this matter?

MR. GOVERO: Hello. My name is Jeremy Govero; I live at 1119 London Drive. I'm not really sure -- I guess I didn't really plan on speaking, I'm not really sure where the last testimony came from. All six homeowners there take care of their property, maintain all the way towards the established fence since everyone has lived there. It has been that way since -- it has been that way since, like we said before, in the '70s, I believe, whenever initially the fence was put in. That is the same fence that encapsulates the whole neighborhood from beginning all the way around to the other side of the fence. This was not put in by the Subaru dealership or even by the previous owners. This was put in as the neighborhood years and years and years and years ago, and is where it is at. Once again, everyone takes care of their yard at this point. There's many people with children. There's many people with dogs and pets and everything that established this just to make sure -- I understand that this is about the boundary of whether or not to move, and it's not a legal issue. Just to put it in perspective of kind of like the morality almost behind this, this was not presented to homeowners. This came in and was removed in the middle of the night. I personally was on a business trip and had to come home early because was pregnant at home with animals and I had to come and help out. Other people have children and they just came out and there was fence taken down. When we approached the individuals taking it down, they became very aggressive and very rude, and they said they were going call, deal with the sheriff's department was going to come out to set us straight basically. So we called the City police to come out to establish where the line was. We had to get ahold of everyone possible. From day one, they always said this -- as soon as we started talking to them, they were going to move the fence where it should go and they're going to cut down all the trees. The attorney and these gentlemen here all have changed their story many times when it comes up. This is the first time we ever heard of any -- any plan of leaving existing trees ever came up is whenever this happened out here in the lobby at this point. They have not communicated with homeowners at all throughout the process. It has been -- the only time we spoke to three of the planned owners originally whenever we reached out to them because there was a new stake in our yard where they were claiming that's where they were at, and we were just trying to communicate and find out what was going on at that point. There was not even clear communication of whether that was a City easement or not, and that's -- that's kind of how we got to this point. So once again, I didn't plan on speaking, but it is absolutely not true that people are not taking care of this property up to this fence line.

MS. LOE: Questions? Mr. Toohey?

MR. TOOHEY: So you're saying the neighborhood paid for that fence to go in?

MR. GOVERO: I don't know who -- what I'm saying is the same fence encapsulates the whole neighborhood way past this -- this line. This fence was not put in by whatever owner it was of this particular property. This is a huge fence that stretches all the way around all of the property.



MR. TOOHEY: But could that have been a group of property owners together who put that fence up?

MR. GOVERO: I have no idea who put in the fence. Yeah. I do not know who put in the fence. But like I said, this fence was put in as a -- it was way more than any single property. It was not -- the fence does not only address the Subaru dealership in any way.

MS. LOE: Mr. MacMann?

MR. MACMANN: If I may clarify. I have driven this to my previous point, and we'll talk about -- we'll talk about that specifically. It has the appearance -- you do real estate. It has the appearance from the road of a developer demarcation fence when the property was developed. That's what it looks like. I had no idea what it was. That's what it -- that's why I was asking those questions.

MS. LOE: Has the property been surveyed since some of these questions have come up?

MR. GOVERO: I have not -- I have not sought a survey of our own, that's why we were seeking quiet title through adverse possession. Just the Missouri law states ten years. Once again, I know this isn't the legal place for that, but ten years of ownership, and know of maintaining a property, and that's what has happened across -- well beyond ten years on all these property lines.

MR. TOOHEY: So did you -- did your wife not just say you've only lived there four years.

MR. GOVERO: And there's a legal precedent called tacking, which actually backs up to ownership -- previous ownership that owns properties -- previous owners, yeah.

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

MR. GOVERO: Thank you all very much. I appreciate your time.

MS. LOE: Any additional speakers on this matter?

MS. STEVENS: Hi. My name is Lisa Stevens, and I live at 1111 London Drive, which is not in the property dispute. I have lived at 1111 London since 2006. I owned a condo, and the first year I moved in, I had to scoop up a bunch of snow and had to do a lot of --

MS. RUSHING: You're going to have to lean in.

MS. STEVENS: I'm sorry. I realize as a homeowner there are a lot of responsibilities that I didn't have with a condo that I had. One of them was the fence. In the past, I built a fence on both sides of my neighbors. I asked permission. The back fence, I got a call one day from the City telling me that I had overgrown weeds. I take care of my lawn. I didn't have overgrown weeds. I had them come out and look at my property. But what we did notice was there were overgrown weeds behind my fence where University Subaru was. They have a body shop. The City contacted them. Within a week, they had not only taken the weeds out, but they turned around and they -- they dug out every weed, every bad thing that was coming through my fence and they pruned it and they took care of it with a phone call. That -- that was neighborly. I appreciated it. I've had my dog get out. University Subaru has been the first to call me and say, hey, your dog is out. They've been neighborly. I've also got neighbors, Jade. She's here, nine months pregnant, and she's a neighbor. She's been neighborly. I don't like to see any of this, but what is the law is the law. And what we're trying to do here is work together. And I just see no not working together. I, for one, would like to see it end tonight, the fence go up so people didn't have to -- I mean, I

do know that University Subaru has asked property owners to put up a temporary fence while this is going on. Some people have been very pleased with that idea and some people have taken offense and moved it once it's been put up. So please let's get this thing resolved and make everybody happy. I don't know if it's possible.

MS. LOE: Thank you. Are there any questions for this speaker? I don't see any. Thank you. Any additional speakers?

MS. ANDRES: Hello. My name is Dawn Andres; I live at 1215 London, which is on the very corner, and so my property is adjacent to Olive Garden. I've lived at that property since about 1994, so I have a perspective on who has taken care of that land, and I can tell you that my sister who actually owns that property, I live there, but she owns it. The two of us have taken care of that property knowing full well that we did not own it. We knew where that property line was and yet we were required to take care of it simply because nobody else would. So over time, it essentially has become our responsibility. In recent years -- well, at one point, we took a lilac bush and moved that lilac bush back there. We've added other plants. I try to go with sustainable natives if I can, like a service berry bush and a ninebark to make that land look, you know, pretty good. And I also have a garden back there which, at the moment, is crossed over on that property line, and it will take time for me to move that. I'm somewhat ambivalent. I know how hard it is to take care of that land because it is Missouri -- I like to call it the weed state. So I know how hard it's going to be to take care of that land, either for University Chrysler or me in the future. I would appreciate some time in order to -- if I have to move things, to be able to do so for that fence to be moved. So if -- if that fence has to go up right now, I'm not sure I'm going to be able to do it without -- without some help. I have several plants I would like to -- to move off of that property if they are going to just put in this landscaping that they're calling for. And as to the landscaping that they're calling for, I do not see that it will ever get to a point that it would screen from the noise of I-70 or provide a light barrier. They seem to be ornamental in nature. I doubt very seriously they will get above an eight-foot fence. I hope they address that. I would like to see them address that because the sound and the light coming from the property and I-70 is extensive. It's -- it -- it reduces the quality of experience in your backyard. So having mature trees that are of a certain height and fill out allows you to experience less of that noise. I have actually -- my sister and I have put a pond in our backyard also to mask the sound, to help with that. So I would hope that you would take those considerations, the time we've put into the property, the fact that it may change the character of our neighborhood. I would hope you would take that into consideration, as well. Thank you.

MS. LOE: Thank you. Are there any questions for this speaker? Thank you, Ms. Andres. Any additional speakers?

MR. ROBBIE: Hello. My name is Paul Robbie; I live at 1214 London Drive, and thank you all for letting me come here this evening. I don't live adjacent to the property, but I live directly across the property. And I think the last speaker might have touched on what I wanted to ask about. I think some questions is, they talk about a fence, and I was wondering what kind of fence we're talking about. Because I looked on the plans, I also asked their attorney what kind of fence are they talking about, and

he didn't seem to know any specifics of what kind of fence it was. And just the fact that I-70 is probably as closest to any place in Columbia to any residential area and the fact that their business is a noisy business, I would sure like to see maybe some type of an idea of what kind of fence and maybe I don't know what the laws are, or the requirements are, but take in some consideration whether it would be somewhat soundproof. I stand with some neighbors here, but I don't -- I figured someday it's going to get sorted out and there's going to be a fence, so I'd sure like to see that fence to be somewhat soundproof. At times, when you live there -- I live right across the street -- just right across the street from it. The hum kind of puts you to sleep from the highway, but since the fence came down, it's a roar now. And so also I would like to touch on something, whether or not -- maybe it's a question whether or not beings as they've opened this up and decided to do a new fence, is there any other rules or laws about lighting on their property. Should they have certain type of lighting for parking lots and -- and if they're not in compliance, could they be required to be in compliance at this point. Maybe -- maybe somebody could look into that. Maybe somebody could educate them on what they need and maybe make them a little more happier about doing that and maybe being a little better neighbor, because I personally know that their lights affect me and be a little bit quiet about not wanting to care of it. Maybe a little education there on their part might help. And I think I'm probably done. I appreciate the time, and if there is anybody got any questions, I'd --

MS. LOE: So the drawings show an eight-foot wooden privacy fence.

MR. ROBBY: Right.

MS. LOE: But you're asking for more details about what that fence --

MR. ROBBY: Yeah. I would like to -- I hear an eight-foot privacy fence. That's what I hear.

MS. LOE: Eight-foot wooden privacy fence; right.

MR. ROBBY: Privacy fence. It's a privacy fence.

MS. LOE: And to answer your second question, yes, we do have a lighting ordinance, but maybe Ms. Bacon can explain how this would apply to an existing property?

MR. ZENNER: This project is subject to a previously approved development plan that has gone through subsequent amendments. The old code, which had differing lighting standards, are what apply. And as far as we understand at this point, the site is in compliance with that previously applied code. The only way that we end up with revisions to the lighting plan is if the property is significantly modified beyond what is allowed under the existing amendments procedure. This amendment is limited to just this buffer. It is not applying to the remaining portion of the site. I would tell you if this project probably came in today, there are many things that are not consistent with our current regulatory standards that would be required to be upgraded if the site were to be redeveloped as a car lot. But right now, the project, with the exception of this buffer area, is, as we understand it, in compliance. There are no outstanding violations on the project. I would suggest that there appears to be maybe a little bit of a -- there may be a communication blockage between the affected property owners and D&D and the dealership. An olive branch may need to be reached across whatever fence gets built here in the future in order to resolve some of those differences. The -- the owner is here and questions to the owner may be warranted from the Commission and if he is interested in responding to those questions, it -- that's his choice. But I would

suggest that there is nothing that we have found here with the exception of the buffer area that is actually in violation, and to resolve matters that you would like to have taken care of as property owners requires working cooperatively. If there is a glare issue, that is something that can be reported and we can address that through inspection of the site, but it does have to be reported. It does need to be in writing. The complaint needs to be filed with our Building and Site Development Division at which point then we will have an inspector investigate and we will identify what may or may not need to be corrected to bring the property into former compliance -- former regulatory code compliance. We cannot force this property to become compliant with today's standards.

MR. ROBBIE: Can I ask something? Can I ask him something? Is there -- there isn't any -- any laws about lighting a parking lot as to the way they have to do it?

MR. ZENNER: There are today. Unfortunately --

MR. ROBBY: That's -- they're grandfathering something before, but they're not grandfathering the -- their -- okay. Well, I understand. I guess I understand.

MR. ZENNER: The difference -- again, I want to point out. The reason we're here this evening is due to the fact that they could have gone back in and put in 1972 landscaping, which did not have a fence. It had some trees, which were inappropriate for this particular buffer within the span. They have chosen to come and request that the fence be moved to the southern property line and installed and then landscaped in accordance to the current UDC. They are taking upon themselves the responsibility of bringing this buffer area for this -- this distance up to the current regulatory standard. And it is a marked difference along the southerly property line, as you move to the east, that our arborist, in the review of the 1983 expansion plan, identified the need for different landscaping in order to fulfill screening and buffering requirements between an intense automobile use and an existing residential neighborhood, and that could be seen in the field today. So the proposal would in -- to an extent match up with what was through hindsight, I believe, after many complaints of the residential neighbors prior to the acquisition of this property by University Subaru -- I have a whole file on them -- between 1972 and '83 about this particular line. Those complaints were received by our offices. They were corrected as we moved to the east. They did not retroactively come back and take care of them on the west. Today, we're trying to retroactively take care of them, but just not affecting the rest of the project site. We do have mechanisms within our regulatory structure that if there is an issue with the property that you feel it's in violation of a code or a requirement, such as lighting, report that to our Building and Site Development Department on the third floor of City Hall and we will have our inspectors address that.

MR. ROBBIE: And the fence is a wooden fence?

MS. LOE: That's what the drawing says.

MR. ZENNER: It would be, again, a solid privacy fence with landscaping sitting in front of it to the applicant's side.

MS. LOE: Solid wooden fence.

MR. ROBBIE: Okay. I guess I'm --

MS. LOE: Any questions for this speaker? I don't see any. Thank you.

MR. ROBBIE: Thank you all.

MS. LOE: Any final speakers on this matter?

MR. VELAN: I'm Lloyd Velan, and I live at 1203 London Drive, known as Lloyd of London. I'm one of those who have kept up the land behind the house I -- and this is an assumption, and they say you're not supposed to assume all the time, but I assumed that my yard went all the way back to the wooden fence. And so I was one -- I cut the grass underneath the trees and this was my contention when I first heard about. I heard -- was probably one of the first individuals to know that Subaru was going to build a new fence. Two individuals from the other side of the fence approached me and said, did you know that the owners were going to build a new fence? I said no. So then I asked my neighbor if they had heard it. No, they had had (sic). And so this is -- it got off to a bad start at the beginning because we were not officially notified that there was going to be a replacement. We were not notified when a fence would come down and then, to our surprise, a year later, the fence did come down. And as stated before, there were -- one family had small children, two other families had dogs. I kind of conditioned myself when I first moved in, which was four years ago, I put up a fence myself right behind the wooden fence because I figured someday somebody is liable to drive through the wooden one and my dog will be gone, and I did not want that. A statement was made that the fence was literally falling down. That's not 100 percent accurate. They took a chainsaw to take it down, so it wasn't exactly falling. It had holes in it, it needed repair. I repaired some from my side. And then a statement was made on taking care of it. I think every one of us six that are involved directly in this assumed and took care of that. And far as Subaru taking care of it or the previous owners, that was not done by them, I know, because I never seen anyone from there cutting my grass or anybody else's grass or any brush or anything like that. So that's not 100 percent accurate either. And there was a gate that adjoined my yard, but it was screwed shut and wired so nobody ever passed through that. And as far as I know, that was the only way that they had to get to our ground. So like I say, I agree with the lady. I wish we had better peace in the neighborhood. Subaru has not been a bad neighbor to me, I can say that. But if we had been properly notified from the beginning, it would have been a lot better situation. I -- I'm not -- I don't care who owns the ten feet of ground, as far as that goes, but I do care about the trees being removed, and that is my greatest concern. And far as their stating with the electric company in that, we've never, to my knowledge, have had any problem with them coming and trimming our trees and taking care of it as it should be, so that has not been an issue at all. So I -- if you have any question, well, I'd be happy to answer.

MS. LOE: Thank you. Are there any questions for this speaker? I see none. Thank you, sir. Any other speakers? Anybody left? Calling once, calling twice. Okay. We are going to close the public comment period.

**PUBLIC HEARING CLOSED**

MS. LOE: Commissioner discussion? Ms. Rushing?

MS. RUSHING: I believe that this application is premature, and I am uncomfortable in voting in favor of it until the legal issues are resolved. And I don't see any rush in approving this, so I don't see why we couldn't wait until after the legal issues are resolved. And I just have -- I just feel like this may --

application may be part of their litigation strategy and that also concerns me.

MS. LOE: Thank you. Mr. Toohey?

MR. TOOHEY: I have a question for staff. So what triggered this to become a major amendment?

MR. ZENNER: It was the movement of the fence that had by default been placed upon every plan amendment that we have available to us from 1983 moving forward, and then that we were modifying as in the modification procedures for the plan district. A minor amendment is something that does not modify the project such that it changes the amenities, such as landscaping, open space, common area, or recreation facilities. It was our conclusion that the 1972 plan required a landscape area, the fence, which it appeared on every plan revision after 1983 by default defined where it was, and therefore they were wanting to remove a -- an element that had been de facto required. And going back and in the documentation that was provided to the applicant and to the applicant's engineer, between 1976 and, I believe, 1983, or it may have been with the 1983 plan amendment, there were specific provisions within the rendering of the then Planning Commission's decision on approving the modification that was proposed a very bizarre statement, one that said, well, you, the applicant, have a choice. You can either bolster your screening by placing a fence or increasing the number of pine trees you put along this buffer area. Apparently, when the '83 approval came forward for the amendment for the body shop, nothing had been done, and it was at that point that the best we can tell from our staff research of the records, the fence showed up and showed up moving forward to this time today. So they chose at that point, the best we can conclude based on the record, that the fence was there as a mandatory improvement based upon what the Commission's conditions of approval were either in 1976 or 1983. And it does not qualify, in our opinion, when we reviewed this request initially as a minor amendment, because you're moving a plan defined element and it further was encroaching on an area that based on the 1972 plan and the landscaping detail that Ms. Bacon referred to as the area for the plantings, so it was -- while it is swapping where the landscape area would be if we were to take and accept this plan, it still was considered in our mind a major amendment. And as Mr. Hollis pointed out, typically this would have been considered a minor related matter. The preponderance of the evidence that was available to us, however, we did not conclude that it was a minor amendment. And again, as I referred to earlier, I have an entire file of property-owner issues associated with the then University Chrysler dealership and these property owners to the south as it related to maintenance, screening, and all of the other things that we have talked about this evening. And given that and given the history associated with this, we did not feel that this was something that we, as a staff, were comfortable making an amendment recommendation on administratively. We felt that this was a matter that needed to be brought to a public hearing and addressed and discussed. Again, the matter here is, does the proposed change comply with the City's Code requirements, not necessarily the legal issue that is in play due to the land. And our staff analysis finds that this is fully in compliance with the regulatory standards of the Unified Development Code. We have gone through our entire public process and we've rendered that recommendation to you this evening. You do have the option, as with any case, you can take action to approve, deny. You could

recommend tabling as a result of a desire to have more information, so that does -- that would apply in this particular instance. And given the November 16th date of the pending court action, if that is what you so desire, that, I believe, is within your purview per the Code.

MS. LOE: Mr. Toohey?

MR. TOOHEY: That's all.

MS. LOE: Ms. Burns?

MS. BURNS: I appreciate that, Mr. Zenner. I think we have some options here. I, too, don't think there's any hurry in this. I think the tabling might be the best way to go, particularly with the accuracy of some of the information that we have received tonight. We have the applicant's attorney saying that they had fully maintained the property, and we have other property owners saying that they had cut the grass and maintained bushes and put in plantings, so I'm confused and concerned about what I've heard tonight, and would be in favor of a tabling.

MS. LOE: I'm going to jump in again, because I think that goes back to the issue of adverse possession or land ownership, and I don't think that's what's presented in front of us. I think the case in front of us is about whether or not a -- this is a correct location for a fence, and I think we can evaluate that regardless of where the property line is. And I think we can actually comment on some of the information we've gotten tonight, including communication, which does not seem to have been forthcoming on part of this. We could add requirements about trees, and we could talk a little bit about additional screening or other components that we think, regardless of where the fence -- I mean, the fence is going to go on the property line. What we're not deliberating here is where that property line is. Mr. MacMann?

MR. MACMANN: Yes. But as Ms. Rushing says, she expressed a concern that this may be part of the litigation strategy. I don't know. But I do know this; as you guys know, many of you do know, I've been in several civil issues over time. And any action taken by any government body sends a message to the Court. And I'm gravely concerned that we say yes, and the Court is, like, well, the City said it was okay, I don't see what the problem is. I don't want to rubber stamp. I don't want to speak to anyone's motives. We obviously have much conflicting information. The Court is going to see that, too -- conflicting information, and I'm not talking about the veracity of the information. The Court is going to see conflicting information, and I hope they wouldn't think that we played Solomon if we said yes. Well, they figured it out, they know what the land -- laws are. I think with Ms. Burns' point, we don't know. And I don't think waiting till after the 16th, the meeting after that is the 22nd, I don't see how waiting hurts anyone. It would save the trees for the moment. It's just in limbo. This has apparently been something that's gone on for a year at least, and there is conflictual information. I believe they wish to exercise their option, if they're approved, to act right away. I think waiting is best.

MS. LOE: Additional comments?

MR. MACMANN: I have a motion.

MS. LOE: Ms. Russell?

MS. RUSSELL: I have a question for Mr. Zenner. When is the first Commission meeting after

the 16th?

MR. ZENNER: One moment here.

MS. RUSSELL: The 22nd is Thanksgiving.

MR. MACMANN: Oh, it's the Thanksgiving. Oh, thank you.

MS. RUSSELL: I'm sorry. I'm cooking.

MR. ZENNER: Your next meeting after the November 16th would be the December 6th meeting due to the Thanksgiving holiday. We do not meet the second meeting in November.

MS. RUSSELL: If anybody else doesn't have anything to say, I'll make a motion.

MS. LOE: I do feel like this is a decision or a question about simply what happens on the property line, not where the property line is, and I do want to say that. It's clear in my mind, but I do understand Mr. MacMann's comment, and Ms. Rushing, that others may construe that in other ways, so I understand. Ms. Russell?

MS. RUSSELL: I'm not going to make a motion yet, but I do have a comment. I do think it was -- this is just a pretty cut and dried thing. If we approve this and they put up a fence, then, oops, they have to tear it down and -- and that's an expense to them. I think the way this has all happened has been unbelievably inconsiderate, and I don't think waiting is a bad thing. We can just put off making this technical decision until we really truly have more information. That's just my opinion. So with nobody saying anything else, I do have a motion.

MS. LOE: Mr. Hollis wanted to make another --

MR. ZENNER: And let me -- let me preface, however, before you just allow Mr. Hollis to come to the podium.

MS. LOE: Yes.

MR. ZENNER: You would need to reopen the hearing for the purpose of just receiving the one comment or allow others to respond to the one comment, and I believe that it is -- as Mr. Hollis was explaining to me, and I wasn't trying to ignore Ms. Russell. I believe it is germane to the decision as it relates to a motion that may be making. So, Ms. Chairman, if you would like to reopen the hearing, allow Mr. Hollis, and then any of the other adjacent property owners that have given testimony here this evening to come forward and respond, that would be probably appropriate, but you are not obligated to do so.

MS. LOE: Okay. Mr. MacMann first.

MR. MACMANN: I have a comment. I'm sorry, folks, my back is bothering me. I need to stand up. I respect Mr. Hollis' ability to speak, and he should be allowed to speak, but we have folks with kids here and let's be kind of cognizant. This may go on for another minute if Mr. Hollis speaks. Just FYI. Just a procedural comment.

MS. LOE: Any other discussion?

MS. RUSSELL: I don't see any problem with opening it back up.

MR. TOOHEY: If there's relevant information we need to hear, I mean, we've been here until 2:00 in the morning before, so --

MR. MACMANN: True enough.



MS. LOE: So we're going to open the public discussion back up at this time.

**PUBLIC HEARING REOPENED**

MS. LOE: We do need name and address again for the public record.

MR. HOLLIS: Thank you. Robert Hollis, attorney with the VanMatre Law Firm, 1103 East Broadway. And -- and so I have no intention of trying to rebut anything that's been said, but I really do have, I think, everybody's best intentions in mind here. So without rebutting anything that we've heard, I do want to say this, based on what it appears that you're considering and that would be tabling it. And I just want you to know from our perspective, that's okay. It's okay. It's a really bad decision on behalf of the neighbors. It's a bad decision, but if that's your decision, okay. I just want you to understand that we're not opposed. You could table this for a year and it doesn't hurt us. We are trying to get the fence in place for the neighbors. If you want to put that decision off or punt it to City Council or whatever at some later date, that's okay. But just please keep in mind, it does not hurt us in any way, shape, or form. It has no bearing whatsoever on litigation, so just so you know. Thank you.

MS. LOE: Thank you, Mr. Hollis. Any questions for Mr. Hollis? Are there any other speakers that would like to come forward?

MS. STEVENS: Yeah. I have a question.

MS. LOE: You have to come forward and speak into the microphone, please. And please state your name and address.

MS. STEVENS: My name is Lisa Stevens; I'm at 1111 London Drive. And I just --

MR. ZENNER: Before -- before we go down this road, please --

MS. STEVENS: Yes.

MR. ZENNER: -- questions are directed to the Commission and to the Commission only. We are not doing cross-examination of people that are in the audience.

MS. STEVENS: Okay.

MR. ZENNER: So if you could address your question to the Commission, the public hearing is still open. Mr. Hollis can come up and respond to that if he feels it's necessary.

MS. STEVENS: There was a statement made earlier this evening about -- and I think Ms. Burns pointed it out -- where Mr. Hollis said that Subaru was maintaining the property, that ten feet. And I would like for him to have an opportunity to possibly relook at that.

MS. LOE: I just want to reiterate that this isn't a question about who has been taking care of that land or who owns that land. This is a question about whether or not the fence can be built on the property line. So I'm just going to say, as the Chair, I don't think that's really an appropriate question to be brought forth in this setting. I think that's a question for the Court where the case is being brought forward about property issues. I don't mean any disrespect. I just think this isn't the proper setting for that discussion. Are there any other comments?

MR. GOVERO: Yes. My name is Jeremy Govero; I live at 1119 London Drive. I'd just like to also say that I -- I agree with the gentleman here. There is no issue at all with moving this forward and waiting for the courts to decide. I am involved in one of the court cases, and I absolutely feel that they are using

you all as a way and as a mechanism inside of their court case. I have been in the courtroom several times with them now, and I have watched them systematically try to use the City and other options to their advantage inside the situation, just like I was mentioning before with the sheriff's department and these things. And once again, we are very happy being on the other side of the fence to let -- to wait another month or two months to allow this to play out in court and take the right case. And as some of other neighbors have said, the issue, once again, is not some kind of argument over ten foot. It's about the trees, and it's just about the process, to make sure this goes through the right direction. So we are happy to wait a little bit longer and we would love for you all to wait to make a decision until the courts have made a decision. That would be great with us.

MS. LOE: Thank you. Are there any questions for this speaker? I don't see any. Thank you.

MR. GOVERO: Thank you all again.

MS. LOE: All right. Any other speakers? I'd just ask that we not reiterate any comments that would be -- were made previously. We've -- those are in the public record now, so these are just new comments in response to anything that's been said at this point.

MR. O'NEAL: James O'Neal, 1211 London Drive. I have no problem with tabling this matter.

MS. LOE: Thank you, sir. Are there any questions for this speaker? I don't see any. Thank you. Any additional speakers? Seeing none, we're going to close the second round of public hearing.

#### **PUBLIC HEARING CLOSED**

MS. LOE: Commission discussion? Ms. Russell, did you have a motion to make?

MS. RUSSELL: I do have a motion. In the case of 18-182, I move to table the planned development plan major amendment to the Commission meeting on December 6, 2018.

MS. RUSHING: Second.

MR. MACMANN: Second.

MS. LOE: Oh, we have two seconds. I think Ms. Rushing beat Mr. MacMann to the line there, so Ms. Rushing. May we have a vote, please.

MS. BURNS: Absolutely.

**Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Mr. Harder, Mr. MacMann, Ms. Rushing, Ms. Russell, Mr. Toohey, Ms. Burns, Ms. Loe. Motion carries 7-0.**

MS. BURNS: Seven to zero, tabling request carries.

MS. LOE: Thank you. That concludes our public hearings and our cases for the evening. Thank you all for joining us.

#### **VIII) PUBLIC COMMENTS**

MS. LOE: This is our public comments period. Did anyone want to make any additional public comments? Come forward and speak in the microphone. Please give us your name and address.

MS. O'NEAL: I'm Kelly O'Neal; I live at 1211 London. And I really would like to thank you guys from the bottom of heart for taking all this time and it's a big consideration. Thank you.

MS. LOE: You're very welcome. We are happy to hear you. Our job is for the public vetting and

we're -- we couldn't do it without you all coming forward, so thank you for participating. And with that, we have staff comments. We'll give you all a minute to leave, in case you want to hear Mr. Zenner's comments -- colorful comments about the next agenda items.

#### **IX) STAFF COMMENTS**

MR. ZENNER: You're giving me far too much credit, Ms. Loe. Your next meeting will be October 18th, at which this item will not be discussed. So we do have a number of items on your October 18th meeting. They are as follows. We tabled three items this evening, however, only two of them will come back. That is the Cullimore Cottages, PUD zoning and plan, Lake George, which is a planned district off of Richland Road. It is a major amendment to that PD plan, and the plan amendment accompanying with that. So you'll have those two, and then we will have a public hearing/subdivision combo. You will have the Ridenhour permanent zoning. This is the one that is up off of Oakland Gravel Road that we tabled again this evening due to the development agreement that is tied to the second case, which is the preliminary plat for Oakland Crossing, the same property, roughly 69 acres of land at the intersection generally of Prathersville and Oakland Gravel Road on the east side of U.S. 63. Just so we're familiar with where your locations are, obviously, this is the City's Cullimore Cottage project just north of North Avenue and Eighth Street. We have the Lake George property, which is on the lake just to the west, basically, of the Richland Road/Grace Lane/Rolling Hills Road intersection. This is a PUD currently that's an assisted living facility and they are adding a single building, if I'm correct, to the property in order to expand services for those that need them in that type of facility. And then, of course, we have our Ridenhour annexation and permanent zoning; i.e., just the permanent zoning though, remember. And then we have the subdivision plat that's corresponding to that property, as well. Those are your cases for the upcoming 18th's meeting. We will have a work session prior to that meeting at 5:30. During that work session, we will need to conduct the annual election of officers for this coming year. We are a meeting behind actually in doing that, if I am correct. It was brought to my attention by one of our other Commission members last meeting. For some odd reason, we did it late last year, and it just slipped my mind again this year because we're so busy doing other things. We will also probably have some additional follow up if we are able to bring in two of our stakeholder representatives from the Rock Quarry Stakeholder report to provide a little bit of additional background as to how they viewed potentially this 2002 Rock Quarry Scenic Area Plan, the special plan that we had prepared, how that corresponded and potentially what their true intent was with what the report's guidelines are offering and how that may be seen being integrated into either the regulatory standards of the scenic route corridor overlay that exists in the UDC or possibly, as we discussed this evening, a supplement to the actual 2002 plan. Again, we're not under any hurry to move that through, but we do want to provide the recognition through the appropriate process that we're regulatorily required to. We will also potentially have some additional information again to fill in a portion of the meeting as it relates to comprehensive plan update material from Ms. Bacon in order to continue to move forward with that particular process. So that's the items for your work session agenda. If you are not going to be available to be present, please let me know. If you are going to be delayed, please keep in mind that that does affect our ability to hold any business meeting during that work session, so if you can

show up as close to 5:30 as possible, that would be greatly appreciated to staff. That's all we have to offer. Thank you very much for your time tonight.

MS. LOE: Okay, Mr. Zenner. Very colorful, indeed.

**X) COMMISSIONER COMMENTS**

MS. LOE: Any Commissioner comments? Ms. Russell?

**XI) ADJOURNMENT**

MS. RUSSELL: I move to adjourn.

MS. LOE: Any second?

MS. BURNS: Second.

MS. LOE: Second by Ms. Burns. We are adjourned. Thanks, everyone.

(The meeting adjourned at 9:30 p.m.)