

# The City of Lee's Summit

*220 SE Green Street  
Lee's Summit, MO 64063*



## Action Letter

**Tuesday, May 8, 2018**

**5:00 PM**

**City Council Chambers  
City Hall  
220 SE Green Street  
Lee's Summit, MO 64063  
Planning Commission**

Planning Commission

Action Letter

May 8, 2018

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CALL TO ORDER

ROLL CALL

APPROVAL OF AGENDA

A motion was made by Board Member Funk, seconded by Board Member Roberts, that the agenda be approved. The motion carried unanimously.

PUBLIC COMMENTS

APPROVAL OF CONSENT AGENDA

Approval of the April 24, 2018 Planning Commission minutes

**Attachments:** [4-24-18.pdf](#)

**ACTION:** A motion was made by Board Member Funk, seconded by Board Member Sims, that the Minutes be approved. The motion carried by a unanimous vote.

PUBLIC HEARINGS

Continued PUBLIC HEARING - Appl. #PL2018-033 - REZONING from PI to CP-2 and PRELIMINARY DEVELOPMENT PLAN - Oakview Storage Development Phase II, 1410 NE Douglas St.; Oakview Capital Partners, LLC, applicant

**Attachments:** Staff Letter  
REZONING EXHIBIT  
SITE PLAN  
GRADING PLAN  
UTILITY PLAN  
SITE DETAILS  
LANDSCAPE PLAN  
Elevation 2  
Elevation 1  
Prototype Elevations  
Location Map  
PL2018033 TIA.pdf  
PL2018033 Traffic Impact Study.pdf

Chairperson Norbury opened the hearing at 5:05 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Mr. Brad Tidwell stated that he was one of the Oakview partners, adding that the project's engineer was present and could answer any questions.

Chairperson Norbury asked for staff comments.

Ms. Stanton entered Exhibit (A), list of exhibits 1-18 into the record. She displayed a map showing the subject property in relation to other properties including current zoning and how the proposed zoning fit with the surrounding properties. It was currently undeveloped, with a

Planning Commission

Action Letter

May 8, 2018

---

total of five lots; and the applicants were requesting to change the current PI zoning to CP-2. The proposed development would be three one-story retail/restaurant buildings on lots 2, 3 and 4; with the largest building on Lot 2 and the smallest on Lot 4. Only lots 2, 3 and 4 were part of the preliminary development plan. The property was 3.28 acres and the total building area would be 9,104 square feet. Other slides showed the landscape plan and overall site plan. Neighboring properties to the west and south were office/warehouse and manufacturing use, with most of the properties in the Douglas Street corridor being commercial/ retail. Although the City's Comprehensive Plan showed the property as industrial use, the subject property being so close to NE Douglas supported a commercial use.

Ms. Stanton then summarized requested modifications to parking. One would allow one less parking space on Lot 2 should that lot be developed as a restaurant. Staff supported this request, since the proposed restaurant would have a drive-through lane and window. This would reduce the amount of parking needed, since drive-through purchases accounted for 60% to 70% of the transactions at restaurants that offered this option. Regarding parking setbacks, a 110-foot long area between Lots 2 and 3 was set back 18 feet from the right-of-way, reducing the setback by two feet. This was due to the jog in the right-of-way caused by the right turn lane. The distance from curb to parking lot was still 38 feet.

The applicant requested two modifications to landscaping requirements, specifically caliper size. The UDO's minimum was 3 inches when a tree was planted. The applicants were asking for 2.5 inches for shade trees and 2 inches for ornamental trees. Ms. Stanton related that staff was planning to include changes in this requirement in a future UDO amendment, partly because the smaller sizes had a higher survival rate overall. The modification would not apply to Lot 1. Additionally, the UDO required a minimum height of 8 feet at planting for evergreens; and the applicants were requesting 5 feet instead, for the same reasons. These modifications were summarized in staff's Recommendation Items 1 through 4. Recommendation Item 5 required an application to vacate the excess Douglas Street right-of-way before a building permit was issued. Item 6 required a development agreement be executed and recorded, addressing the road improvements that the Transportation Impact Analysis had recommended. Ms. Stanton added that the TIA was included in the packets; however, it was not referenced so staff was adding Item 6. The language was standard when an application included recommendations about traffic.

Chairperson Norbury asked if staff was asking that this last Recommendation Item be added to the application, and Ms. Stanton confirmed that they were.

Following Ms. Stanton's comments, Chairperson Norbury asked if there was anyone present wishing to give testimony, either in support for or opposition to the application. Seeing none, he then opened the hearing for Commissioners' questions for the applicant or staff.

Ms. Roberts asked staff if Douglas Street had any vacant fast-food storefronts at present. Mr. Elam answered that to the best of his knowledge all the fast-food restaurant spaces on Douglas were currently occupied. Both Outback and Fortina Express had closed but they were not fast-food businesses. Ms. Roberts recalled a vacant one next to where Master Wok was, and Mr. Elam identified that as Backyard Burgers, in the space now occupied by Schlotsky's. Regarding the landscaping modification request, Ms. Roberts stated that staff's intention for a UDO amendment notwithstanding, the language still included a reference to "best practices for landscaping". She wanted to know how "best practices" was determined and where the data came from. Mr. Johnson was not sure what exact sources were used; but he had worked for a landscape architect in a previous job and a two-inch caliper did have a higher survival rate. A three-inch caliper tree was more likely to have adapted to its previous location and have a lower chance of thriving after transplanting.

Ms. Roberts asked if this was influenced by location and climate. Mr. Dave Foster of Schlage

Planning Commission

Action Letter

May 8, 2018

---

Associates and landscape architect for the project confirmed that this caliper was common for cities in both Missouri and Kansas. Leawood had been using three-inch caliper but they were considering reducing that. Best practices was generally gleaned from the past experiences of landscape architects and landscaping contractors. Some university studies existed that indicated a higher mortality rate, or at least a longer period of adjustment. The smaller caliper size had become an industry standard.

Chairperson Norbury asked if there were further questions for the applicant or staff. Hearing none, he closed the public hearing at 5:22 p.m. and asked for discussion among the Commission members, or for a motion. He asked Ms. Yendes if the motion needed to recite the language of the added Recommendation Item. Ms. Yendes replied that the City had a record of the language so it could just be referenced.

A motion was made by Board Member Funk, seconded by Board Member Roberts, that this item was recommended for approval as amended to the City Council - Regular Session, due back on 6/7/2018 The motion carried unanimously.

PUBLIC HEARING - Appl. #PL2018-042 - REZONING from R-1 to AG - 3530 SW Pryor Rd.; Paula Diehl, applicant

Attachments: [Staff Letter](#)  
[Diehl site plan](#)  
[Plat](#)  
[Location Map](#)

Chairperson Norbury opened the hearing at 5:24 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Ms. Paul Diehl, the applicant, gave her address as 3420 SW Pryor Road. She had planned to build a shed on her property and had discovered that this would require rezoning.

Chairperson Norbury asked for staff comments.

Ms. Thompson entered Exhibit (A), list of exhibits 1-13 into the record. The applicant requested a rezoning from R-1 to AG, on property located on the west side of SW Pryor Road north of M-150 and south of Hook Road. This was a platted lot with an area of 3.64 acres and the required minimum for AG zoning was 10 acres. The current zoning was R-1, with no principal structure currently on it. It did include an existing storage building and a new storage building that was partially completed. This property and the 11-acre parcel adjacent to the north and northwest had the same owner and they functioned as one property. This adjoining property was zoned AG and had an existing home and horse barn. The smaller R-1 portion of the property was currently in violation of the UDO due to the existence of the two accessory structures with no principal structure. They also exceeded the maximum size allowed for a storage building in R-1. AG zoning did not restrict either size or quantity.

Displaying an image of the site plan, Ms. Thompson pointed out Pryor Road, the existing house to the north, the existing Morton building and the lot boundary with the partially-completed storage shed nearby. A survey showed the three lots including Lot 1, the subject property. It also showed the L-shaped lot that would result with consistent zoning. The 2005 Comprehensive Plan showed this general area as low-density residential. The surrounding properties were a mix of zoning: AG, R-1 and PMIX, with some large-lot residential development. The rezoning would mean the property could be replatted with the north parcel, resulting in a property with consistent AG zoning that would bring the property into compliance with the UDO. Staff recommended approval, with the rezoning not taking effect until the replatting was done.

Planning Commission

Action Letter

May 8, 2018

---

Following Ms. Thompson's comments, Chairperson Norbury asked if there was anyone present wishing to give testimony, either in support for or opposition to the application.

Ms. Teresa Vollenweider gave her address as 5201 NE Maybrook Road in Lee's Summit. She asked if it was correct that the property included two buildings that did not meet the ordinance, so the owner wanted to rezone as AG. Ms. Roberts clarified that one structure was on the portion zoned AG and the other was on the portion zoned R-1. The latter was the problem, because it was not a house, with the house being on the AG property. Ms. Vollenweider stated that this was the opposite of the problem in her own neighborhood.

Chairperson Norbury then asked if the Commission had questions for the applicant or staff.

Chairperson Norbury asked Ms. Diehl when she had acquired the land, and Ms. Diehl answered that she had lived on the property for 26 years. She had owned both lots the entire time. Chairperson Norbury asked if she had obtained permits for the existing building, and Ms. Diehl was not sure. She had gone through the Morton company to have it built and had assumed that they had obtained permits. Chairperson Norbury remarked to Ms. Thompson that that seemed to be a situation of trying to bring the property's zoning classification into compliance with the land's existing use; and Ms. Thompson replied that this was correct.

Chairperson Norbury asked if there were further questions for the applicant or staff. Hearing none, he closed the public hearing at 5:32 p.m. and asked for discussion among the Commission members, or for a motion.

Mr. Funk made a motion to recommend approval of Application PL2018-042, Rezoning from R-1 to AG: 3530 SW Pryor Rd.; Paula Diehl, applicant; subject to staff's letter of May 4, 2018, specifically Recommendation Item 1. Ms. Roberts seconded.

Chairperson Norbury asked if there was any discussion of the motion. Hearing none, he called for a vote.

A motion was made by Board Member Funk, seconded by Board Member Roberts, that this item was recommended for approval to the City Council - Regular Session, due back on 6/7/2018 The motion carried unanimously.

Public Hearing - Application #PL2017-234 - Rezoning from AG to RLL - 5261 NE Maybrook Rd.; Derek D. Collins, applicant.

Planning Commission

Action Letter

May 8, 2018

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**Attachments:** [PC Action Letter 3-13-18](#)

[PL2017-234 Staff Letter.pdf](#)

[Site Plan](#)

[Certificate of Survey](#)

[Protest Petition - Maybrook](#)

[Vollenweider Email to Council](#)

[Applicants letter to Jackson County.pdf](#)

[Jackson County Septic Letter \(2\).pdf](#)

[T. Vollenweider Protest Petition-5-3-2018.pdf](#)

[Location Map](#)

[Mullins Email to PC 5-8-18.pdf](#)

[Mullins Email to City Council 4-12-18](#)

[Septic Site Plan.pdf](#)

[Septic Perc Tests.pdf](#)

[Vollenweider Exhibits from 5-8-18 PC.pdf](#)

[Updated Staff Letter](#)

[PC Action Letter 5-8-18.pdf](#)

Chairperson Norbury opened the hearing at 5:33 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Chairperson Norbury noted that a large number of people might want to give testimony, and reminded participants of expected procedures. It would begin with the person's name and address, and was limited to three minutes.

Mr. Joe Willerth, attorney, gave his address as 334 NE Ralph Powell Road in Lee's Summit. He was representing the applicant, Derek Collins and Stephanie Mullins. Mr. Matt Schlicht of Engineering Solutions was also present. Mr. Willerth related that the subject property was 3.85 acres, which was not enough for the current AG designation. They wanted to build a home on the lot and were requesting to change the zoning to large-lot residential (RLL). The acreage was not being used for agriculture and was below the minimum AG size of 10 acres; and the RLL designation would benefit both this and surrounding properties. It might actually address some of the problems and concerns raised about the past usage of the property including the baseball field. It would be consistent with the low density residential use indicated in the Comprehensive Plan. Mr. Willerth also pointed out that the surrounding properties were zoned AG and included residences.

The baseball field had created considerable complaints and conflict in the neighborhood. The use had been permitted under a 10-year Special Use Permit issued to the property's previous owner. If the rezoning was granted, the baseball field would become an accessory use in an agricultural zone, and this could create some limitations on usage. The applicants did not intend any commercial use for the field. Mr. Willerth then referred the Commission to two applicable UDO sections regarding accessory uses in residential zoning. Table 8-1 did not allow such uses to have lights, to be used for "intensive league play, tournaments or teams outside [of the] subdivision", followed by examples of "other principal use to which the facility is accessory." This prohibited any commercial use.

Mr. Willerth noted that concerns had been whether City staff could regulate the previous ownership and operation. This had ended in July 2017 and if a residence was constructed, the

Planning Commission

Action Letter

May 8, 2018

---

present owners would be better able to monitor its use. He then referred the Commission to the displayed Article 8, "Accessory Uses and Structures", with its definitions and restrictions on non-commercial recreational facilities. The applicants were prepared to comply with all nine conditions listed. Prohibitions included lighting, tournaments or leagues and spectator seats whether permanent or temporary. The article provided details about setbacks included distances from residences and residential zones; the applicants were willing to comply with whatever staff considered applicable. The property met the standard for lot size (Article 8: O5) and requirements for backstops and fencing. The plan did include a new driveway, which would be a more defined entry and minimize the parking problems that had occurred on Maybrook. The applicants did not believe that any additional landscaping was needed.

Mr. Willerth then displayed an aerial view of the area, with a one mile radius marked from the subject property. It showed a number of streets with residences but not much agricultural use. It was clear that the large lots had residences, and adding a residence to the 3.85-acre property was basically what the applicants wanted to do. Mr. Willerth emphasized that the rezoning and plans to build a residence were consistent with the neighborhood and would not damage it. A residential use would, in fact, be the highest and best use at this location.

Mr. Willerth then displayed another image showing the distances from the baseball field to the horse barn on the Vollenweider property as 810 feet and over 1,000 feet from the baseball field to the residence. The residence was surrounded by dense vegetation that would provide a screen in addition to the distance. Concerning noise from the baseball field, Mr. Willerth remarked that without spectators any noise would not carry that far. He then displayed the distances from the baseball field to the Sanko property that was also adjacent. The distance to the property was 386 feet, and to the best of his knowledge Mr. Sanko had not made any objections. His concern was that the baseball field conform to the SUP requirements. When a residence was built, the field would be an accessory use.

Mr. Willerth summarized that the applicants intended the baseball field to have family use only. The 160-foot driveway with a 16 car capacity would address the situation of parking on Maybrook, and the field would be accessed only by one drive. Concerning the three complaints filed with Code Enforcement, the original 2009 complaint was essentially a dispute between a neighbor and Horn Baseball LLC, and the latter entity no longer existed nor owned the property. The other two were an 'electrical' complaint (2014) and one concerning indoor recreational use of the pole barn (2015). The applicants proposed to use the barn for storage, including mowing and baseball equipment. The structure would have no commercial use.

Mr. Willerth then displayed an image of the proposed layout and site plan. A detention basin, which would hold up to 13,000 cubic feet, would be built east of the baseball field to address the problem of water runoff to the property's southwest corner during heavy rains. He also pointed out the location of the home, garage and driveway from Maybrook. Regarding future use of a septic system rather than the sanitary sewer, the applicants had not been able to get an easement from the Vollenweiders on the adjoining property. As this prevented access to the municipal sewer system, the applicants were considering a septic system; and Mr. Willerth pointed out the lateral field and location of the tank. It could be a reliable way of providing septic service on large lots, and was regulated by Jackson County which would set the standards.

Mr. Matt Schlicht of Engineering Solutions gave his business address as 50 SE 30th Street in Lee's Summit. On the displayed site plan, he pointed out a sliver of land at the southeast corner between the subject property and Maybrook. The sanitary sewer system was a little to the south and east of it, and access would require an easement across that small strip of land. Staff had supported the alternative septic system as the lack of access meant there was no direct route to the sewer line. Mr. Tom Hampton, an engineer who had worked in septic design for several years, had done a percolation test that showed the count as being well within acceptable rates for constructing a septic system on site. Details about this test, as well

Planning Commission

Action Letter

May 8, 2018

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as Mr. Hampton's preliminary design letter, were provided in the packets. Information in the letter included the volume of water coming from the residence, the tank size, and general information about the lateral field. Any problems after installation would basically be the property owner's responsibility and the system would be permitted not through the City of Lee's Summit but through the Jackson County Health Department, under the authority of the Missouri Department of Natural Resources. Mr. Schlicht read a statement from the Missouri DNR about septic systems. About one-fourth of US households and one-third of new construction used septic systems, and the DNR made a distinction between those used in past decades and today, which "are able to treat wastewater to levels that protect the environment similar to traditional sewer systems."

Regarding stormwater, there had been significant amounts of standing water at the Maybrook corner. The baseball field had an infiltration area and storage for a small amount of water, about 17 cubic feet. The proposed detention pond would hold many times that, about 13,000 cubic feet. This would not address the problem at the corner but would result in much less runoff.

Ms. Stephanie Mullin, applicant, gave her current address 4234 NE Park Springs Court in Lee's Summit. She related that when she and her husband, Derek Collins, had found this property they had been looking for a location for a single-family home. Her business was at their current address and all three of her sons, currently age 7, 10 and 12, attended school in that area, with her parents about a mile away. Part of the attraction of this property was that it would be in the same school district and still close to family. The previous owner had purchased it not to build a house but as a baseball facility; but she and her family had no intention of giving the field any commercial use and in fact they intended to eventually take it out. It had become an issue for them as well as for the neighbors, as they had often shown up and found people using the field for ball games without permission. They had informed the players that the property now had new owners, and had put up No Trespassing signs.

Ms. Mullin added that they had purchased the property as-is so the ball field equipment was still there. Her sons enjoyed baseball but had several other activities and interests. This was a unique piece of property in a beautiful area within a city, and they were willing to communicate and work with neighbors. Regarding the standing water, Maybrook Creek did sometimes flood and school buses used Maybrook as an alternate route during heavy rains. They had met with Ms. Yendes about the guidelines in the SUP. They had also talked with other near neighbors, specifically Mr. Sanko and Mr. Ruggles, and neither was opposed to either the new residence or the baseball field being given private family use.

Following these presentations, Chairperson Norbury asked for staff comments.

Mr. Johnson entered Exhibit A, list of exhibits 1-18 into the record. He related that staff supported the rezoning to RLL, as it was a compatible use for the area. Assuming County approval of the proposed septic system, adequate infrastructure was in place for building a residence. The baseball field appeared to be the source of any conflict. He confirmed that with the rezoning, the ball field would become an accessory use. Regarding the previous questions about revoking an SUP, this would go before both the Planning Commission and the City Council, which would make the final decision. However, once the ball field became an accessory use it would be under Neighborhood Services complaints. This would require requesting a judge to order actions such as fines or a requirement to dismantle the field, which could take longer.

Guidelines for an accessory use might have to include criteria such as how many games per week and how many people would be there. It was a somewhat gray area in the ordinance. Mr. Johnson added that as an accessory use, any residential property over an acre could have a ball field or, for that matter, a tennis court. The presence of the baseball field was not in itself a basis for denial; nevertheless, rezoning included an evaluation of the uses allowed in that



Planning Commission

Action Letter

May 8, 2018

---

zone. A request for rezoning to commercial or PI would not be acceptable. There was some truth to saying that when it became an accessory use it would be harder to regulate. The 3.85 acres met the minimum standard of .5 acre for RLL, but not the 10-acre minimum for AG.

Mr. Johnson summarized some of the other issues. The owners would need verifiable approval from Jackson County for the onsite septic system before receiving a building permit. Staff engineers had reviewed the stormwater plan and had concluded that it could work and found it an appropriate fit with surrounding uses. They did add an extensive list of conditions. The applicants had to supply a drainage map, provide drainage calculations, a cross-section view of the retention pond, the size of rip-rap and calculations indicating that the rip-rap used was adequate for the volume of water.

Chairperson Norbury asked Mr. Johnson if the list of exhibits included the email sent by Ms. Mullins. Mr. Johnson replied that it was not, and would need to be added before the City Council hearing. Chairperson Norbury designated it as exhibit 19.

Chairperson Norbury then asked if there was anyone present wishing to give testimony, either in support for or opposition to the application, reminding participants of the three-minute limit.

Ms. Teresa Vollenweider gave her address as 5201 NE Maybrook Road in Lee's Summit. She stated that the applicants had people working with them since February 2017, including their real estate agent and Mr. Mike Weisenborn. One communication stated that the hearing was moved to February 27th and Mr. Weisenborn had asked what they could expect and what did they need to prepare for. The applicants did not even need to be at the Planning Commission meeting and she was not sure why a consideration would be granted after the recommendation for denial. Problems involving baseball fields in residential areas had occurred in more than one municipality, and she had provided that information to the Commission. Ms. Vollenweider asserted that originally the field was almost fully constructed before a Special Use Permit was even granted. The City had documentation including time- and date-stamped photos, of numerous violations, which had begun almost immediately. For example, the SUP prohibited signs but the former owner had put them up anyway. The City had done nothing, despite the existence of the SUP and its conditions. Now the neighbors were expected to accept that the City would do anything about violations when it became an accessory use. The neighbors would have to do the work of documentation and they would have to be the ones to testify.

Ms. Nicole Westoff gave her address as 6200 NE Fairview Road. She had known the Collins-Mullins couple for eight years. She knew they had been trying to find property for a house for the last five years. They'd had no connection to the baseball field and any problems involved; and she considered this to be irrelevant since everything the neighbor was referencing went on under the previous owner and had nothing to do with their intent to build a home. She could vouch for their character as neighbors and urged the Commission to grant the rezoning.

Ms. Vollenweider concluded that the City's incompetence and willful blindness concerning the previous problems were her cause for concern. The former owner had said that the field would be 'vacant 99% of the time' and that there were no permanent bases, nor would there be any competitive baseball games. There were violations of most of the SUP's conditions. She also asserted that there were more than three complaints, and the City had them in its database. They had ranked vehicles being parked on both sides of Maybrook as low priority, although it was a narrow road. Concerning the water issue a neighbor, Ms. Linda Tracey, had said she had called and left a voicemail message after the problem got worse in 2012; and nothing had been done.

Ms. Vollenweider read a statement that "after talking with Kent Monter at Public Works they

Planning Commission

Action Letter

May 8, 2018

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are in the process (see attached documents) of getting owner contact Joshua on the phone to correct the water flow problem created when making the field." She added that everything placed on that property had created more water runoff problems, and did not believe that a Special Use Permit even existed on that property at present; as Doug Horn, the former owner, had transferred it to Horn Baseball LLC in 2014. He did not transfer the permit with it. That meant that when the applicants bought the property it did not have an SUP. It was still not clear to her what the future usage of the baseball field would be, and the neighbors had the right to know that in detail. She reminded the Commission of the other previous issues such as number of visitors, traffic, noise, congestion, access for emergency vehicles and impact on the sewer system. At present, it was not clear if the applicants' three sons played in leagues and if so, where they practiced at present; and if the intention was to have league teams practice and play at 5261 Maybrook Road. It was an inappropriate invasion of a quiet neighborhood.

Chairperson Norbury then asked if the Commission had questions for the applicant or staff.

Ms. Arth asked Ms. Mullins when they had purchased the property, and Ms. Mullins answered that it was in July of 2017. The reference in the paperwork to the property being transferred in 2014 was to Mr. Horn transferring the property to Horn Baseball LLC. Ms. Arth then confirmed that the most recent complaints had been in 2015.

Mr. Funk noted to Mr. Collins, applicant, that these complaints had apparently happened before they purchased the property. He asked for a specific answer of what their use of the baseball field would be. Mr. Collins and Ms. Mullins came to the podium, and Ms. Mullins replied that their three sons did play baseball. The two older boys had coaches and specific locations where they practiced. They'd had friends of the younger boy over to practice on the field three times since the purchase. They had no intention of hosting games, league play or otherwise; and their reason for purchasing the land was to build a home. While there would be family use of the ball field, they intended to remove it some time in the future. On the occasions of using the field for practice, they had requested that parents park at the school so these occasions had not involved parking on Maybrook. The couple confirmed for Mr. Funk that they did not intend to give it any more intense use than a basketball hoop or tennis court that might be in a residential yard.

Ms. Roberts asked Mr. Schlicht if he was able to find a failure rate for septic systems in the State of Missouri. Mr. Schlicht answered that he had looked up failure rates across the US. Kentucky had the worst failure rate, at 23% and Indiana, at the other end, a little under 3%. He referred the Commissioners to the letter from Mr. Steve Schnell, wastewater specialist with Jackson County Public Works, which they had in their packets, citing that "out of 133 wastewater permits issued by Jackson County last year, 127 were for new construction and 6 were for replacement systems", only half of which were due to component or usage failures.

Chairperson Norbury asked Ms. Mullins what was her profession, and Ms. Mullins replied that she was an endodontist and periodontist. Mr. Collins did IT work. Chairperson Norbury remarked that this did not sound like either had a professional interest in baseball.

Noting that the baseball field would be an accessory use, Mr. Gustafson asked staff if neighborhood kids getting together there for a baseball game would be allowed under the existing SUP. Mr. Elam answered that it would be, assuming that the property owners were present and gave permission.

Chairperson Norbury asked Ms. Yendes about the status of the SUP once the property changed ownership. Ms. Yendes replied that the Legal Department was actually discussing that at present. Normally, it would take some type of hearing to remove a property right. In the event that Legal ruled that the use was gone, the owner could still appeal it to the Board of Zoning Appeals. Revoking an SUP would go to the Commission and the Council for a hearing.

Planning Commission

Action Letter

May 8, 2018

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The difficulty with determining if the SUP had expired in 2014 was that requirement to notify the City of the transfer was not in the SUP. It was located in the part of the code allowing an SUP to be revoked. She confirmed with Ms. Roberts that it would expire within two years.

Chairperson Norbury asked if there were further questions for the applicant or staff. As there were none, he gave Ms. Vollenweider an extension to finish her testimony.

Ms. Vollenweider stated that the 40'x80' building required an SUP, and she had documentation for that. It had not to date been granted one. She also asserted that some material was missing from what Mr. Johnson had passed out. That included the fact that the cost of the property without the ball field was \$50,000 but with the ball field it was \$203,000. She also wanted to know whether the father was a coach, who provided the liability insurance when the field was used, and whether other players on the childrens' teams would live at home or at 5261 Maybrook. If they said 16 to 18 cars would park there, she wanted to know if that should be multiplied by three since there were three children in residence. Since that could include relatives and friends of other players, she wanted to know what bathroom facilities the owners would provide. If the usage of the septic system the owners would have to put in got to a certain level there could be septic failures and her house would be downhill from them.

Chairperson Norbury stated that the additional letters and documents would be entered into the record as Exhibit 20. He then closed the public hearing at 6:25 p.m. and asked for discussion among the Commission members.

Ms. Roberts stated that she had no intention of holding the current property owner responsible for the actions of the previous owner. She did have a concern about rezoning without the sanitary sewer easement, especially since the septic system would go in within feet of the sewer line. She was not in favor of rezoning under that circumstance, since the State had a recourse for being denied access to the easement. Septic systems did age, and according to the EPA gave the failure rate in Missouri as 30% to 50%. She also referred the applicants and Commission to the Environmental Land Use Planning and Management publication. The reason for the shortage of recent data was that no Federal agency was responsible for septic systems. It had to be collected by states and counties and since no one liked bad news, they did not go looking for that data. Essentially other people did not want to know. The University of Missouri extension had done some research and they said that 70% of septic systems in Missouri were not functioning properly. In 2000, the National Environmental Services Center had said that the 50% of the systems in the US were failing. She added that the State of Missouri did offer grants and loans to property owners to repair these systems. The applicants and staff should not be pretending that that Missouri did not have issues with failed septic systems. The County would inspect it when installed but maintenance was up to the property owner after that and putting private citizens in charge of that was a bad idea. She was personally in favor of the adjacent property owner being required to provide the easement but that was not the City's purview.

Chairperson Norbury shared the concerns about the septic system; however, at present there was no easement although Ms. Mullins had informed staff that she was negotiating with another nearby property owner. The Commission often had to balance various factors in making decisions, and he considered most of the testimony involving actions prior to the applicants' purchase as irrelevant. It was especially disingenuous for the neighbor who had refused the easement to now be complaining about the alternative the owners might have to take. If the Commission did not grant the rezoning, the land would just sit unused indefinitely and residential use was the most appropriate one. He supported approval of the application.

Hearing no further discussion, Chairperson Norbury called for a motion.

Planning Commission

Action Letter

May 8, 2018

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**ACTION:** A motion was made by Board Member Funk, seconded by Board Member Sims, that this Public Hearing - Sworn be recommended for approval. to the City Council - Regular Session, due back on 5/17/2018 The motion carried by the following vote:

OTHER AGENDA ITEMS

ROUNDTABLE

ADJOURNMENT

For your convenience, Planning Commission agendas, as well as videos of Planning Commission meetings, may be viewed on the City's Internet site at "[www.cityofls.net](http://www.cityofls.net)".