

## LEE'S SUMMIT PLANNING COMMISSION

### Minutes of Thursday, December 10, 2020

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The Thursday, December 10, 2020, Lee's Summit Planning Commission meeting was called to order by Chairperson Funk at 5:05 p.m., via video conferencing.

#### OPENING ROLL CALL:

Chairperson Donnie Funk	Present	Mr. John Lovell	Present
Mr. Matt Sanning	Present	Ms. Dana Arth	Present
Ms. Carla Dial	Absent	Mr. Jake Loveless	Present
Mr. Terry Trafton	Present	Mr. Mark Kitchens	Present
Ms. Tanya Jana-Ford	Present		

Also present were Hector Soto, Planning Division Manager; Josh Johnson, Assistant Director of Development Services; Victoria Nelson, Planner; Jennifer Thompson, Senior Staff Planner; David Bushek, Chief Counsel, Economic Development and Planning; Jim Eden, Assistant Fire Chief I, Fire Department; and Sara Beck, Office Coordinator I.

Chairperson Funk requested that anyone with an agenda item at tonight's meeting to turn off their video and audio until that hearing.

**APPROVAL OF AGENDA:** Chairperson Funk announced that there were no changes to the agenda, and asked for a motion to approve. On the motion of Mr. Kitchens, seconded by Mr. Sanning, the Planning Commission voted unanimously by roll call vote to **APPROVE** the agenda as published.

#### PUBLIC COMMENTS

Chairperson Funk stated that public comments related to a specific agenda item could be made during the hearing for that item. Mr. Soto confirmed to Chairperson Funk that no notifications or requests for public comments had been submitted.

<b>1. APPROVAL OF CONSENT AGENDA</b>
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**A. Application #PL2020-303 -- VACATION OF EASEMENT -- 1728 NE Aberdeen Drive; Swim Things, Inc., applicant**

**B. Approval of the November 12, 2020 Planning Commission minutes**

On the motion of Ms. Arth, seconded by Mr. Sanning, the Planning Commission voted unanimously by roll call vote to **APPROVE** the Consent Agenda, Item 1A-B as published.

At the beginning of each hearing, Chairperson Funk asked the applicant and others providing testimony if they were sworn in and if they had any concerns about providing testimony via video conference.

2. <b>Application #PL2020-280 - PRELIMINARY DEVELOPMENT PLAN</b> - Streets of West Pryor, Lots 1 and 2, 2051 and 2061 NW Lowenstein Dr; Street of West Pryor, LLC, applicant
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Chairperson Funk opened the hearing at 5:08 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Mr. Dave Olsson, who was present representing the applicant, gave his business address as 7200 W. 132nd in Overland Park, Kansas. He introduced Mr. Matt Pennington, with Drake Development, who could answer questions. Mr. Olsson stated that the preliminary development plan had been amended for Lots 1 and 2 in the Streets of West Pryor development. This plan was for restaurant uses, with a 5,500 square foot Red Door Grill on Lot 1. Lot 2 would have a 3,200 square foot Shake Shack. The applicant was including both these two lots and proposed use in one presentation. In order to complete the site work necessary to support both restaurants.

Lot 1 in this plan was nearly identical to the previous PDP that was submitted in 2019. In a response to the COVID-19 pandemic, Red Door had expanded its patio area and had redone their menu to include items for pick-up service. The surroundings would include a water feature with a walking trail around it. The fountain structure had just been finished so it was not included on the rendering. It would be located so that it could be seen from the patio area as well as from the drive up window area. The water feature would be landscaped to provide a transition from the trail area to the drive-thru.

The Shake Shack's drive-thru facility was one of the major changes from the original PDP. drive-thru service was an addition in tonight's application. This would be the third Shake Shack in the Kansas City metro area, and the first with a drive-thru option. Displaying a set of colored elevations, Mr. Olsson stated that they represented a significant improvement. The colors in particular were more consistent with those used for the Streets Of West Pryor buildings completed so far. Materials were a combination of masonry and metal panels, with some cement panels.

Mr. Olsson mentioned that the architecture, the square footage had been reduced from the original PDP. They expected the sales volume to meet or exceed the original projections for the sit-down restaurant.

One modification request had been approved for the original PDP. It would reduce the parking lot setback from the right-of-way line; and that was in the current plan. The perimeter adjacent to the Lowenstein and Pryor parking lot areas was identical to what was in the first PDP. The applicants were in agreement with staff's Conditions of Approval.

Following Mr. Olsson's presentation, Chairperson Funk asked for staff comments.

Mr. Thompson entered Exhibit (A), list of exhibits 1-18 into the record. She displayed an aerial and zoning map of the subject property on the west side of Pryor Road, south of Lowenstein Drive and north of Chipman. It was zoned PMIX, with neighboring PMIX property to the north. A tract to the south was also zoned PMIX and had a retention basin and water feature. Lowenstein Park, zoned AG, was to the west and south. Summit Woods shopping center was to the east on Pryor Road. The subject property was 3.19 acres, with the two lots already graded and ready for use. It was part of the Streets of West Pryor development. Tonight's PDP focused on Lot 2, as a new PDP was required for a substantial change; in this case, Lot 2's proposed use as a drive-thru restaurant. There was also slight changes in architectural style and traffic circulation. The previous PDP's criteria had all been met.

Ms. Thompson displayed the same elevations as in Mr. Olsson's presentation, remarking that the modern style was consistent with the Streets of West Pryor development. The metal shown in the elevations was a conditional material, and would require approval from the City Council and Planning Commission.

Ms. Thompson then gave some details for the two requested modifications. The UDO required a 20-foot parking lot setback from a public right-of-way; and the applicants were requesting a 4-foot setback for the part of the parking lot adjacent to Lowenstein. This would accommodate the 10 foot wide walking trail, which would facilitate the greenway connections with the Lowenstein Park. The other requested modification was for the conditional material. This was 25 percent on the north elevation, over 80 percent on the south elevation, where the drive-thru was located, 20 percent on the east elevation and 72 percent on the west elevation. Staff supported this modification, as was consistent with current architectural design trends in general and Shake Shack's style in particular.

Following Ms. Thompson's comments, Chairperson Funk asked there was any public testimony or comment either in support for or opposition to the application. Ms. Thompson confirmed that staff had not received any comments or feedback. Chairperson Funk then asked if the Commissioners had questions for the applicant or staff. There were no questions, and Chairperson Funk closed the public hearing at 5:30 p.m. and asked for discussion among the Commission members, or for a motion.

Mr. Kitchens stated that the presentations were excellent, and that many communities in the metropolitan area would like to have this kind of facility. Mr. Trafton agreed, commenting that he had eaten at the Red Door in Brookside. Mr. Lovell noted that there had been some discussion and concern about the drive-thru component. He felt that the quality of the users would be welcome in the community. Chairperson Funk thanked the developer for bringing this development during this uncertain time. He then called for a motion.

Mr. Trafton made a motion to recommend approval of Application PL2020-280, Preliminary Development Plan: Streets of West Pryor, Lots 1 and 2, 2051 and 2061 NW Lowenstein Dr; Streets of West Pryor, LLC, applicant. Mr. Loveless seconded.

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

On the motion of Mr. Trafton, seconded by Mr. Loveless, the Planning Commission members voted unanimously by roll call vote to recommend **APPROVAL** of Application PL2020-280,

Preliminary Development Plan: Streets of West Pryor, Lots 1 and 2, 2051 and 2061 NW Lowenstein Dr; Street of West Pryor, LLC, applicant.

(The foregoing is a digest of the secretary's notes of the public hearing. The transcript may be obtained.)

<p>3. <b>Application #PL2020-308 -- REZONING</b> from AG and R-1 to R-1 and <b>PRELIMINARY DEVELOPMENT PLAN</b> -- Winterset Valley 14th Plat, Lots 1488-1521 &amp; Tracts A-E; Engineering Solutions, LLC, applicant</p>
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Chairperson Funk opened the hearing at 5:35 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Mr. Matt Schlicht gave his address as Engineering Solutions at 50 SE 30th Street in Lee's Summit. He was appearing on behalf of Gale Communities. This project was the next phase of Winterset Valley. On a displayed street map, Mr. Schlicht pointed out the location of Third Street on the south side and View High on the west, as well as the Meridian apartments and the currently undeveloped Village At View High. The map showed all of Winterset Valley's previous phases. Phases 12 and 13, on the northwest portion, had just been completed. Gale Communities intended to continue the development to the north and some of the undeveloped property zoned R-1 and AG. The current proposal would have 34 residential lots, with five common tracts, based on the same concept as the Ridge At Winterset Summit. Some of the common area trails and amenities already at Winterset would be extended.

The applicants had held two neighborhood meetings. The first, via Zoom, was attended only by owners of the property to the north; and much of the discussion involved the unique waterfall at the northwest corner, which would be preserved and maintained. The following week the applicants had made a follow up visit to walk around the site and identify the natural features. These had been a highlight of the Winterset community from the beginning.

The application included one modification request. Mr. Schlicht displayed a map of an elongated cul-de-sac street that was essentially an existing condition, as it followed the topography of the property as well as the existing road network. The blank tract shown on the map would be part of the Village At View High in the future and would have a connection to that street. At connection would considerably reduce the cul-de-sac length and bring it into conformance with the City code. However, it was still technically an elongated cul-de-sac and would need a modification.

Following Mr. Schlicht's presentation, Chairperson Funk asked for staff comments.

Mr. Soto entered Exhibit (A), list of exhibits 1-15 into the record. He displayed an aerial and zoning map with the subject property outlined in red. There was also some R-1 property further to the north that could be accessed off Chipman Road. All of the existing Winterset property to the south and east had R-1 zoning; and the Village At View High development, with PMIX zoning, was to the south and west. The boundaries of this particular phase surrounded about 25 acres, with 11 of them, at the north end of the property, needing rezoning. The development was consistent with the Comprehensive Plan, which recommended low-density residential use. It was also compatible with adjacent existing uses.

The one requested modification would be to the maximum allowed length of 1,000 feet for a cul-de-sac street. It would allow the proposed length of 1,170 feet. Future development of the properties to the north, west and south might provide some additional access points to reduce the length; but that would be at the point where these surrounding properties were developed. Staff supported the application, subject to this one Condition Of Approval.

Following Mr. Soto's comments, Chairperson Funk asked there was any testimony either in support for or opposition to the application. Mr. Soto stated that some of the property owners were interested in attending the meeting, but were not necessarily going to participate.

Chairperson Funk then asked if the Commissioners had questions for the applicant or staff.

Mr. Lawless asked Chief Eden if he had any concerns about such a long cul-de-sac street. Chief Eden answered that he was comfortable with the currently proposed length, though future development in the area might change the configuration. The plan was also below the 50 required lots on a single access.

Chairperson Funk asked if there were further questions for the applicant or staff. Hearing none, he closed the public hearing at 5:45 p.m. and asked for discussion among the Commission members, or for a motion.

Mr. Loveless made a motion to recommend approval of Application PL2020-308, Rezoning from AG and R-1 to R-1, and Preliminary Development Plan: Winterset Valley 14th Plat, Lots 1488-1521 & Tracts A-E; Engineering Solutions, LLC, applicant. Ms. Arth seconded.

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

On the motion of Mr. Loveless, seconded by Ms. Arth, the Planning Commission members voted unanimously by roll call vote to recommend **APPROVAL** of Application PL2020-308, Rezoning from AG and R-1, to R-1, and Preliminary Development Plan: Winterset Valley 14th Plat, Lots 1488-1521 & Tracts A-E; Engineering Solutions, LLC, applicant.

(The foregoing is a digest of the secretary's notes of the public hearing. The transcript may be obtained)

4. <b>Application #PL2020-240 - REZONING</b> from AG to RLL - Pine Tree Farm Estates, 1050 NE Todd George Rd; Keith Foster, applicant
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Chairperson Funk opened the hearing at 5:47 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Mr. Lawless stated that he would abstain from participating in this application.

Mr. Michael Dodig stated that he was an attorney and gave his business address as 300 SW Main Street in Lee's Summit. He related that Mr. Keith Foster was both the owner and the applicant. His family had lived in Lee's Summit for several generations. Mr. Keith Foster still lived in the community, and near the subject property.

Mr. Dodig had watched the video of the last hearing for this property; and he noted that questions had come up about comparisons of R-1 and RLL zoning classifications. He had been on Lee's Summit's City Council, and specifically on the subcommittee when the UDO was drafted. Before that, development in Lee's Summit was done via a mixture of various policies, precedents and ordinances. Some uniformity, clarity and consistency was needed, so that people submitting applications would know what to expect.

At that time, Lee's Summit had much more AG zoned property than now. Mr. Dodig had heard from a number of people who owned large parcels of land zoned AG, many with one house. Most of them were not interested in using the land for agriculture and wanted to subdivide the property, sell the lots and keep their house. However, the R-1 zoning had a number of requirements that could be costly, and eventually the City Council created the RLL zoning residential classification as a middle ground between R-1 and AG. These properties sometimes did create a buffer zone between those two uses. Zoning classifications often worked in this way, with multi-family housing uses sometimes being between R-1 and commercial uses. Mr. Dodig remarked that tonight's application was the type of project that RLL was intended for. Developments with RLL zoning tended to have fewer, though larger, lots than R-1 developments.

One of the questions concerning zoning changes was whether the new classification was consistent with the general character of the area. In this case, single-family uses were to the west and the south and agricultural zoning and uses to the north and east. This project could be the 'middle ground' in terms of uses as well as location. The long-range planning for this area was low-density residential, which definitely applied to RLL zoning. Mr. Dodig added that he'd received a suggestion, the first he'd heard of this kind, that the project should be R-1, with a density of 2.0, instead of RLL. Usually any complaint about proposed density was that it was too high. Another odd assertion that he had heard from the City Council in another application was an 'upside down' concern over small businesses taking business away from the local Walmart.

Mr. Dodig then displayed photos of the Copperwood Drive area. The background showed a half cul-de-sac where Copperwood Drive turned into Bluff in North Park Village to the west. A second photo showed a closeup of this part of the street. The photo showed the subject property, as well with the house furthest to the east in the R-1 Foxwood project. Another photo showed the subject property looking toward the northeast.

The next photos showed the cul-de-sac in Brookfield from various views. One showed the Northpark Village community swimming pool, which was adjacent to the subject property. The detention basin was nearby. The property due north across the road on Scruggs was zoned AG and had an existing farmhouse, barn and outbuilding. Mr. Dodig summarized that the properties to the north were agricultural and higher density residential to the south. A photo of the house at the corner of Scruggs and Todd George roads showed some of the transitional agricultural character, with a barn and outbuildings in the background. A view of a house on Scruggs Road to the east was typical of properties in RLL zoning.

This zoning did not require design standards, partly because houses were distant enough from each other that design features were not likely to clash. Mr. Dodig displayed a photo showing the example of a few houses on Scruggs near Legacy Park. They were on large lots, with one

having a 'Swiss chalet' appearance and was mostly brick and the other a ranch style house with no brick.

A view of Todd George from its intersection of Scruggs showed part of North Park Village to the right and the existing AG zoned homes to the left. City staff had originally requested that a sidewalk be constructed here, ending at the boundary of North Park Village. At first that did not seem to make any sense because the sidewalk could not go any further than the boundary, as there was not enough room for it beyond that. That part of the road would probably be widened at some point and a sidewalk would be more appropriate then; however, the additional width would occupy space where a sidewalk would have been. It would make more sense to put in a sidewalk within North Park Village but essentially this was a "sidewalk to nowhere." The applicants had met with staff and now planned to either build the sidewalk or put funds in escrow for constructing a sidewalk in some other area nearby.

A photo of two houses within North Park Village showed a cul-de-sac that was the end of Brookfield Drive. Mr. Dodig noted two different styles: a two-story house and one-story ranch style house. He emphasized that it was not necessary for all the houses in the development to be exactly uniform and look alike.

Mr. Dodig requested that the photos he had displayed be entered into the record. He explained that the reason for displaying the photos was to show examples of the character of the area. This was one of the factors in rezoning. This area in particular was essentially a mix of R-1 and AG characteristics.

Traffic issues had been raised when the previous PDP was submitted. Mr. Dodig noted that Brookfield Drive and Copperwood Drive both terminated at the subject property. This was a requirement for North Park Village, as otherwise the subject property would be landlocked. Driveways were not allowed along Scruggs, so the only direction for entrances and exits was to the south. The plat map showed that the cul-de-sac and the 'knuckle' on Copperwood and Bluff were on the Pine Tree Farm property. Mr. Foster had granted easements for those, for the time that the property would be developed with large lots. That had been the plan well before North Park Village was constructed.

Regarding impact from traffic, the cul-de-sac on Brookfield had only two homes and two driveways. The traffic impact of an addition of two dwellings was negligible. Connections between neighborhoods were an important priority of Winterset specifically and Gale Communities in general. Some roads that currently terminated at fields would be extended when those fields were developed; and this property was an example of that. The 'knuckle' on Copperwood had three houses and three driveways; however, most traffic would go in and out via Bluff Street because that was a direct route to Todd George Parkway. That would most likely include the three houses.

The City had also asked the applicant to do a stormwater study. He had not thought that this was required since the project would involve only five houses and the watershed area had been thoroughly studied during construction of North Park Village. The stormwater moved from south to north, passing through the pond at Pine Tree Farm. The amount of runoff was not significant due to the low percentage of impervious coverage. However, City staff had pointed out that this was required in the UDO, and the applicants were not interested in getting around requirements. Mr. Dodig had received two letters that reflected some misunderstanding about how the UDO

worked. They had suggested that the property should be zoned R-1 because the letter writers' properties were. Mr. Dodig pointed out that North Park Village had not been required to put in a sidewalk along Todd George Road because that was not City policy at the time of their application. He regarded this as an example of not all projects being treated the same depending on the timing of UDO requirements. This was not an exclusively R-1 project and should not be held to R-1 requirements; RLL requirements were more consistent in this case. The UDO specified that an RLL project was not required to submit a PDP; nor was it subject to design standards.

There was a suggestion of a traffic issue with vehicles from Pine Tree Farm driving through North Park Village; but again, neighborhoods were specifically designed to be connected so that people could drive from one neighborhood to another. There was not likely to be much impact from only five dwellings, and the suggestion that the zoning be shifted to R-1 would allow a much denser and more intense use. RLL would essentially minimize any traffic impact on other neighborhoods. Some of the concerns had been that without R-1 standards there would be no limits on what people could build; however, this was actually the case with AG zoning.

Mr. Dodig mentioned that there was some history between Summit Homes and Mr. Foster, as they had adjacent property and some stormwater issues. Actually, Mr. Foster had been a good neighbor. He had granted the easement for stormwater and for the sanitary sewer line to run under his property, as well as road easements that provided some connectivity. He had also agreed to do the stormwater study and the sidewalk. Many of the other neighbors had known Mr. Foster and his family for a long time.

Following Mr. Dodig's presentation, Chairperson Funk asked for staff comments.

Mr. Soto entered Exhibit (A), list of exhibits 1-18 into the record. These included the photographs Mr. Dodig had presented as well as correspondence from the adjacent developer and residents to the south. He related that staff had made their presentation at the at the October 22nd meeting; and he would focus and give some clarification to some correspondence he had received in opposition to the PDP and plat. These letters had mentioned concerns that the rezoning application was not accompanied by a preliminary development plan. This one did not, as the UDO did not require a pd to accompany any rezoning for AG, RDR [Rural Density Residential], R-1 or RLL zoning classifications. The exception would be when an application requested a modification to any UDO requirement. The first public hearing on tonight's agenda was an example. The UDO stated that a modification to the UDO could be granted only if there was a preliminary development plan, which was why a PDP was submitted in that case.

The current application did not include any request for a modification; although the preliminary plat for this same project was the next agenda item. It was not on the same agenda at the first meeting where this application was heard; and the application itself had been continued in order for the plat to be on the same agenda to give Commissioners an idea how lots were laid out. Requirements for an RLL rezoning were different from those for rezoning to R-1. However, there was no difference in application submittal requirements between RLL and R-1 projects. From a platting perspective, the only difference between an RLL and R-1 rezoning was that the UDO stated that a request for rezoning to an R-1 district had to be accompanied by a preliminary plat. The UDO was not that explicit about AG, RDR or RLL zoning; so platting would still be required but they did not have to be heard the same time on the same agenda.



Some concerns were raised in the previous public hearing, as well as correspondence, regarding control over the architecture and size of homes. The UDO did not prescribe any particular styles or materials for residential development in the residential zoning districts. The Winterset Valley project, for example, would not have items such as building elevations considered at that point. They would be included in a proposed rezoning to a planned zoning district.

Some questions had been raised about control, or consistency, concerning the size of homes compared with those in surrounding developments. The UDO did not have many specific requirements, though it did require a single-family home to be a minimum of 720 square feet. Some subdivisions did have requirements and standards for architectural styles and material requirements, especially R-1 subdivisions. Examples of this included the adjacent North Park Village, Winterset Valley and Woodland Shores. These had been imposed by the developer, to provide some consistency; and not any City development ordinance. The City did not have the authority to impose or enforce covenant and deed restrictions. In this application, should the developer decide to require certain architectural elements or materials the City would not have any jurisdiction. This application included a narrative provided by the developer affirming the goal of this particular subdivision to have custom-built homes.

Concerning detached accessory structures on property with RLL zoning, the UDO required that an accessory building or use on a residential property required the existence of a single-family home, except in AG zoned properties. Regarding stormwater, a standard condition of approval was that a stormwater study would be required and evaluated by staff at the final plat and design stage, and approved administratively at that time.

This application had two Standard Conditions of Approval. One was for a plat being approved and recorded before issuance of a building permit; and the other made the applicant responsible for right-of-way maintenance including mowing, *“as defined and outlined in the City's Mowing Policy, approved by the City Council on November 3, 2005.”*

Following Mr. Soto's comments, Chairperson Funk asked there was any testimony either in support for or opposition to the application.

Mr. Duane Lockyer gave his address as 1805 NE Griffin Drive, at North Park Village in Lee's Summit. He asked if the Commissioners had any preferences for what type of home for this subdivision, specifically square footage and price range. Mr. Dodig replied that the current plan was to sell the lots, either to individual who wanted to build their choice of a home or to a developer who wanted to build a home on spec and then sell it. They were not imposing any kind of restrictions outside of existing City codes. Prices for the lots had not been set at this point, and they would probably contact real estate professionals and appraisers. It was certain that they would be expensive, due to both the location and the difficulty in finding large lots that were not already developed. They were assuming that buyers would not make that investment in the lot and then build a cheap or sub-standard house. Most likely the size and quality of the homes would be comparable with those in similar developments nearby. When people bought the lots, they would build what they wanted. The lot sizes ranged from a half acre to four acres.

Chairperson Funk then asked if the Commissioners had questions for the applicant or staff.

Mr. Lovell asked if there were lot size requirements for RLL zoning. He also asked what was the difference between RLL and RDR zoning. Mr. Soto replied that RLL required a minimum half acre lot size. The minimum lot size for R-1 lots was 8,400 square feet, and 22,000 square feet for RLL. One acre lot sizes were required for RDR. Mr. Lovell then asked what the original intent was for RLL zoning. Mr. Soto answered that the UDO went into the effect in 2001; and at that time the transition from RDR to R-1 was 43,560 square feet down to 8,400 square feet. RLL zoning was created in 2007, with the idea of a stepped approach and a transition in lot sizes.

Mr. Lovell noted that there was no difference between R-1 in RLL in terms of what was required in platting and preliminary development plans, and Mr. Soto said this was correct. Mr. Lovell asked if a request for rezoning was the reason for not presenting architectural drawings or a preliminary development plan. Mr. Soto answered that the reason for more preliminary development plans being submitted was partly that there was not much undeveloped land left in Lee's Summit. Many of the current projects needed a UDO modification, often due to characteristics of the property; so a rezoning and PDP were often associated with a single-family residential subdivision.

Mr. Lovell noted that previously the City did not have much control over what was built but did work with the developer to make adjustments and changes. The market impact often included existing homeowners' concerns over impact on their property values. Mr. Soto answered that except for a plat that would establish future lot lines, easements or rights-of-way, there would be no additional application for the actual development or construction activity on any individual lot. When North Park Village had submitted its preliminary plat application, the applicants were not required to submit any building elevations. The neighbors in Foxwood East would have no assurance as to what type of design and materials the homes would use unless they negotiated this with the developers to have the ability for some input.

Mr. Soto added that the public process was a matter of submitting a plat to the Planning Commission and City Council, showing lot lines, easements and rights-of-way. A plat was an administrative application, and if an application met the minimum standards of the zoning district, the elected and appointed governing bodies had to approve it.

Mr. Lovell asked that each lot would have to be a minimum half acre if the property was zoned RLL, and Mr. Soto answered that they would. If some developer in the future wanted a smaller minimum lot size, they would have to get the property rezoned.

Mr. Kitchens asked why both a plat and rezoning could not be approved at the same time. Mr. Soto replied that a rezoning required a public hearing, but a plat as an administrative application that did not. That was why a plat was on the agenda separately. Mr. Kitchens then asked Mr. Dodig about a situation where a developer requested something that several neighbors had expressed concerns about. Mr. Dodig responded that the plat was the next item on the agenda. Mr. Soto clarified that this particular application was for the Commission's consideration of whether the land use was appropriate for the zoning district. The separate preliminary plat application would address the subdividing of the property.

Mr. Trafton asked Mr. Dodig if any research on the price point of the lots. Mr. Dodig answered that this had not yet been determined, adding that because not all the lots were the same size, they would not all be the same price. Mr. Trafton asked if there was an estimated price range,

and Mr. Dodig replied that he did not yet have that information. He acknowledged that he was reluctant to make a specific estimate, as he did not yet have any solid information. Mr. Trafton remarked that the Commission had often asked this question of developers, and the developer had not subsequently been held to this approximate estimate; especially in a case where the lots were not yet on the market. He emphasized that developing these lots would not likely have any negative impact on property values nearby. It did sound like the long range expectation in this neighborhood had been all single-family homes.

Mr. Trafton remarked that it was safe to say that the larger lots would be more expensive than the quarter-acre lots a block to the south of this property. Mr. Dodig noted that there was a very wide range of sizes, but they would certainly not be selling a half-acre lot for a lower price than a quarter-acre lot a block away. Mr. Trafton then asked about what was planned for the owner of the pond; and Mr. Dodig replied that it would be owned by Mr. Foster for the foreseeable future. Mr. Trafton remarked that this could be an issue in the long term over who had control over it; though he was aware that buyers in a neighborhood with a lake or pond often wanted a house nearby. Mr. Dodig responded that Mr. Foster would continue as owner of the pond if this application was approved.

Mr. Trafton said he'd wondered if it would be locked into lots 5 or 6, and have a partial owner. He was not sure about how deep the pond was or whether it was a drowning risk for children. In any event, there might be some legal exposure. Mr. Dodig acknowledged that ponds did carry some liability risks. However, if adjacent lot owners were more likely to put up substantial fencing that might mitigate it somewhat.

Mr. Sanning asked Mr. Soto what kind of structures were allowed on this property at present in its AG zoning. Mr. Soto cited a shed, barn or greenhouse as likely choices. There were no legal limitations on accessory structures or to the size of a home. A structure on an AG property would be subject to existing height limits, as well as minimum distances from property lines. Mr. Sanning then noted that minimum lot sizes had been mentioned in tonight's hearing, and asked if it would be possible to make one acre a minimum lot size for an R-1 development. Mr. Soto replied that in a case like that the property owner due that as a deed restriction. Mr. Sanning asked about a situation where a single buyer could purchase a number of the lots, which ranged in size from a half acre to four acres, and Mr. Soto answered that this would be possible.

Mr. Brian Wayner gave his address as 1801 NE Riley Drive in Lee's Summit. He stated that the only property to the north of this rezoning area was an old farmhouse. The Foster family's house was to the east and there were over 40 properties to the south and west. He understood that Mr. Dodig would not be going through this application if his plan did not make financial sense; but this plan in itself was non-conforming in nature. The property would not be subject to an HOA; and it was necessary to go through North Park Village to access it. There was no guarantee that this development would not be a giant eyesore on the top of a hill. A few years after he and his family had bought their house, 35 acres were sold for development and there was no assurance about quality.

Noting the remark that Mr. Foster had been a good neighbor, Mr. Wayner stated that Mr. Foster did not know most of his neighbors, as all the adjacent properties were large ones. When he and his family had moved in, they had understood that there would not be any type of development.

Mr. Sanning noted that there had been some discussion about a broad concept of what might be built on the property. There was always a question of when construction would start after purchase of a property, and he wanted to know if timeliness was a minimum requirement. Mr. Dodig answered that they did not have a time frame in mind at present. Selling or developing the lots would be dictated by the market. They anticipated the large Lot 6 would be the last one sold, as there was a bigger market for half-acre lots than for four-acre lots. When they would be sold depended entirely on the market next year. Mr. Wayner corrected his question, saying that he was asking about the time frame for developing the lots after they were sold. Mr. Dodig did not anticipate imposing any requirements on buyers, in terms of either a time frame or what a buyer intended to build.

Chairperson Funk asked if it was possible that after this property could be rezoned from AG to RLL and platted, someone could purchase a four-acre lot and subdivide it into several other lots. Mr. Soto replied that this was possible, subject to minimum lot requirements of RLL zoning. That zoning would dictate that the subdivided lots could be no smaller than a half acre. Chairperson Funk then asked if the Planning Commission could add language about deed restrictions concerning sizes of structures and prohibition of further subdividing the property in approving this application. Mr. Soto replied that the Commission could add conditions for rezoning.

Mr. Bushek stated that the Commission could condition a zoning approval based on something that could otherwise be a basis for denial. This would be in the form of a recommendation to the City Council; and if the Council had a valid basis for denying the zoning request they could condition approval on addressing that issue involved in that reason for denial. In this case, that would be prohibitions or limits on house size and on further subdividing the property beyond the approved plat. Chairperson Funk acknowledged that a minimum size was in the UDO, but the discussion centered on giving the neighbors some reassurance about the property's use.

Mr. Bushek mentioned that another possible approach would involve a UDO provision, Section 2.050, that allowed the Planning Commission and the City Council to analyze adjacent compatibility. It required an analysis of "adjacency compatibility for single-family detached residential development." It specifically listed 15 characteristics that could be considered and reviewed. The Commission could make a recommendation that a statement of adjacency compatibility be one of the conditions of approval. The Legal Department had prepared language to that effect if the Commission wanted to use it.

Mr. Bushek was not sure it could be used to mandate a minimum house size. Moreover, it might not be possible to prohibit further subdividing, as the legal standard applied to subdivision was different from that of a rezoning. If tonight's plat and request for rezoning were approved and the buyer of the four-acre lot made an application for further subdivision, the City would have to approve it if the application met the required standards.

Mr. Dodig pointed out that Lot 6, the four-acre lot, had access only onto Todd George Road and that access was currently planned to be a driveway. If it was replatted with smaller lots, it would be necessary to add a road.

Mr. Lovell stated that he had just looked at the plat; and noted that at our initial meeting we wanted to see this with the rezoning. He asked if it would be possible to just put up the lots up for sale and require individual buyers to provide some kind of evidence of their plans for the

property, such as architectural drawings. At this point it looked like there was not much of a plan to go with the rezoning.

Mr. Bushek pointed out that applicants frequently made statements in a public setting that were not legally binding. Regardless of representations regarding the value of lots, sales prices, quality of the houses and what construction would look like, the property owner was restricted only by the regulations of that zoning district. That meant that characteristics of a development could in fact change. He reminded the Commission that Legal had prepared specific language addressing adjacency compatibility. He displayed the wording of the UDO's Section 2.050, "Conditions of approval", which was the source of the prepared wording. It required single-family homes be *substantially similar to single-family family detached structures that are located to the west and south of the Property in the Foxwood East plat and North Park Village plat.* This would include *"substantially similar architectural styles and character of structures including elevations, exterior materials and roof pitch."*

Mr. Sanning asked if a property owner in this circumstance had any kind of obligation to conform, appease or do anything in line with the expectations of their neighbors. Being a good neighbor was obviously a good idea; but he wanted to know how the Commission was to decide on this kind of conflict. Mr. Bushek repeated that an applicant would often make representations about their intentions in developing a property. Unless there was an aspect pertaining to the zoning ordinance or the UDO, it was not something the City could dictate or control. The applicant might change their mind or the property might be sold to another owner. Regarding neighboring property owners' concerns, that was one of the reasons for the public hearing process. It was one of the things the Commission would take into account in making a recommendation. The language about adjacency compatibility that he had provided was a mechanism that tied to an existing tool in the UDO to address these issues.

Chairperson Funk asked if there were further questions for the applicant or staff. Hearing none, he closed the public hearing at 7:20 p.m. and asked for discussion among the Commission members, or for a motion.

Mr. Lovell asked if the Commission would have to do some kind of amendment, considering what Mr. Bushek had said about some of the language that could be included. The last time this application was heard, the Commission had mentioned a number of things that needed to be done and had also been promised a plat and PDP in two weeks. This time, more than two weeks later, it looked about the same as it had previously. He was not convinced that the Commission could rely just on promises of being a good neighbor; and did not want to move forward with anything without some protections in place. He was concerned that Mr. Foster was trying to develop property whose value he knew nothing about; though he agreed that this was not the time and place for a dispute about the value

Mr. Bushek stated that if the Commission wanted to include the language he had presented, the motioner could reference the additional language or it could be an amendment to the motion.

Mr. Sanning stated that he did not like the absence of some sort of parameters, considering the adjacent property owner's obligation to conform or create conforming structures, the size of the land and the opportunity they had, in a very desirable area, the potential quality of the homes. However, he did think that the development would bring some unique quality to the area that

might not fit a standard HOA. This had happened in more than one part of Lee's Summit and he was confident that this development would match the quality of the area it was in.

Mr. Kitchens cited several concerns about moving forward at this point. He noted that the Commission had asked to see some drawings and while he understood the procedure of considering the rezoning before the plat, if the developer was bringing something before the Commission they would have asked the same thing, to have the PDP not necessarily to be approved at that same moment as it was with the UDO they required that. The Commission did have the purview of requesting items even if there was no legal standing such as drawings and information about materials. He was also concerned about things brought up in the Commission or during presentations, there was another developer trying to 'go tit for tat' with developments. He could not support that as a civil discourse.

Many residents had brought up "not in my back yard" problems in this area and surrounding neighborhoods, something that was certainly not new to the Commission. He believed that development of this property was kept past the initial point where this area was being developed, and now the owner wanted to subdivide. He did support property rights and the value of ownership; however, in this case the neighbors' arguments were not fully explained. At this point he was reluctant to give his vote in view of the number of things missing. Consequently, he did not intend to vote for approval.

Chairperson Funk remarked that Mr. Dodig had given a good summary and history of the UDO. However, part of the duties of the Commission was to hear and work with the public's comments and do its best to ensure that development was done to the highest of standards. He did have a concern about Mr. Foster intended to develop this land without a clear knowledge of its value. This was not the time and place to dispute the value; however, it was clear these lots would not be inexpensive. Someone who would purchase a lot of that value was not likely to build something cheap. However, to give the assurance to the neighbors, and to be good neighbors, the Commission needed to look at any possible consequences of the property changing hands. If the hearing tonight moved on to the plat and the plats were created, the property would probably be sold quickly. This application would be moving up to the City Council regardless of how the Commission's vote went; and he wanted to consider Mr. Bushek's suggestion of putting some kind of restriction on what was done with the property in the future.

Mr. Sanning made a motion to recommend approval of Application PL2020-240, Rezoning from AG to RLL: Pine Tree Farm Estates, 1050 NE Todd George Rd; Keith Foster, applicant. Mr. Trafton seconded.

Chairperson Funk asked if there was any discussion of the motion.

Mr. Lovell asked for clarification about the mention of moving the application up to the City Council. Chairperson Funk replied that this motion was to recommend approval of the application. The Commission had the option of amending the motion to include the language Mr. Bushek had put in place, or to take a vote on the motion as stated.

Mr. Kitchens asked what the setting might be for Mr. Bushek's suggested language. Mr. Bushek stated that the motion just made was the standard motion to recommend approval of the application to the City Council. At this point, if the Commission wanted his suggestion in the

motion, they would need to make a motion to amend; and then vote to approve an amendment before voting on the application itself.

Mr. Lovell was not sure the Commission was prepared to appropriately create the amendment and motion to cover the issues. Chairperson Funk asked if it was correct that if the Commission moved forward with the motion just made, and the recommendation was not to approve, Mr. Lovell would want to see more information before the application moved forward. Mr. Lovell answered that this was correct. Chairperson Funk stated that if the Commission did not want to consider an amendment, the motion was ready for a vote.

Mr. Trafton recalled that in the past, the Commission would retract the original motion, the vote was taken on whether to include the amendment, and then a vote would be taken. He could retract his second, and Mr. Sanning could retract his original motion; and then they could discuss the amendment.

Mr. Lovell said that his only fear concerning this was whether the Commission would amend the motion correctly and get to where the Commissioners were comfortable with that at this meeting. He was in favor of voting on the motion as it was made.

Mr. Kitchens recalled that Chairperson Funk's original comment about whether the language went far enough. He speculated that once the lots were sold the City might run into issues about individual lots. He remarked that he did not believe the language went far enough; but he did not know how to develop it, or even if that was the Commission's concern.

Chairperson Funk summarized that if the Commission made this addition, they would be putting the only restriction on the property, namely that the houses had to be built to be compatible with adjacent properties. If this was not enough, Mr. Sanning could retract his motion and a new motion made to recommend denial. Another would be to continue the application until the Commission received information that some of the Commissioners wanted to see; or the Commission could vote on the motion as is.

Mr. Sanning asked Mr. Bushek to repeat his recommendation. Mr. Bushek again displayed the wording of the UDO's Section 2.050, stating that if the Commission wanted to include the language, they could simply reference "Section 2.050".

Mr. Sanning stated that he wanted to retain his original motion to recommend approval of this agenda item, omitting the amendment. If it was voted on at this point, the additional language would not be part of the recommendation. In order to include it, there would have to be a motion and vote to amend.

Hearing no further discussion, Chairperson Funk called for a vote.

On the motion of Mr. Sanning, seconded by Mr. Trafton, the Planning Commission members voted by roll call vote of two "yes" (Mr. Trafton and Mr. Sanning) and five "no" (Chairperson Funk, Mr. Kitchens, Mr. Lovell, Ms. Jana-Ford and Ms. Arth) on recommending approval of Application PL2020-240, Rezoning from AG to RLL: Pine Tree Farm Estates, 1050 NE Todd George Rd; Keith Foster, applicant.

(The foregoing is a digest of the secretary's notes of the public hearing. The transcript may be obtained)

## OTHER AGENDA ITEMS

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| 4. <b>Application #PL2020-241 -- PRELIMINARY PLAT</b> -- Pine Tree Farm Estates, Lots 1-6, 1050 NE Todd George Rd; Keith Foster, applicant |
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Mr. Johnson stated that the rezoning application that went with this item had not had a definite vote recommending approval, approval with conditions or denial. The UDO required forwarding a recommendation. Chairperson Funk asked if they should ask for a motion for denial. Mr. Johnson that they had the option of amending the previous motion to include the language about adjacent compatibility. Mr. Kitchens asked if a continuance would be permissible, as it would give the City a chance to meet and work with the applicant.

Chairperson Funk stated that since a motion for approval had not gone forward, the Commission could discuss the amendment Mr. Bushek had brought but the motion would have to include some guidance for Mr. Foster and Mr. Dodig. Further, the adjacent neighbors needed some assurance that future development of this property would be consistent. He understood the concerns expressed by Mr. Kitchens and Mr. Lovell about asking for more detail.

Mr. Elam commented that if the Commission was considering continuing the application, it would be a good idea to ask the applicant whether they would prefer the continuance or a definite vote at tonight's meeting. Chairperson Funk asked if he would need to re-open the public hearing, and Mr. Bushek answered that he would not. The public hearing had been completed in accordance with State law. Chairperson Funk asked Mr. Dodig if he would prefer a continuance and bring back more information or a vote for denial and let the application move forward to the Council. Mr. Dodig stated that he would not favor a continuance.

Chairperson Funk stated that the applicant had taken the trouble and expense of getting the land platted so it could be sold. Once it was sold, the neighbors' reactions would not be relevant to the applicant's concern.

Mr. Trafton remarked that Mr. Bushek had provided language for an amendment. Mr. Johnson clarified that the motion for approval had expired, as the Commission had voted to not approve. The question of a rezoning recommendation had not been answered. The procedure was to provide the Commission with a draft ordinance, so if a condition was added it would be part of the ordinance the Council approved. Chairperson Funk asked if the Commission wanted to take another vote, including the amendment. The other option would be a recommendation for denial. The application would move up to the City Council with a denial by the Planning Commission. He asked if there were any issues about amending the ordinance with the applicant.

Mr. Dodig stated that of course they had been hoping for a vote for approval, and were not in agreement with the amendment. They were not in agreement with the amendment, and he thought it ironic that North Park Village wanted assurances that were not required of them. The applicants had not been required to do a preliminary development plan and they had not submitted elevations because they were not going to be designing the buildings. North Park



Village had not been required to submit elevations or provide any assurances of what the architectural styles should be. The application had been in compliance with the UDO, and the applicants had not been required to submit a preliminary development plan because they had not asked for any waivers or exceptions.

Chairperson Funk noted that the concern they were trying to address was that houses built on the lots would be compatible with the houses in the neighborhood. He asked if any of the Commissioners had another motion.

Mr. Sanning stated that the Commission did not need to promote one HOA's expectations on an area that was not structured in that same way. He was confident that these properties would represent Lee's Summit well. He did not think amendments were needed. The properties could be sold as half acre to four acre lots and there should be some latitude in building.

Mr. Trafton agreed, stating that the applicant had done a good job of proving the application met UDO standards. The layout of the streets in that area made it clear that it was intended for residential development. There were varying levels of quality homes in that area and he was confident that the buyers would have quality homes built. This item was specifically for moving this project forward to the platting stage.

Mr. Trafton made a motion to recommend approval of Application PL2020-241, Preliminary Plat: Pine Tree Farm Estates, Lots 1-6, 1050 NE Todd George Rd; Keith Foster, applicant.

Chairperson Funk asked Mr. Bushek if the Commission could vote on the preliminary plat before the rezoning was approved. Mr. Bushek pointed out that property could be subdivided according to the plat only after it was rezoned. In the past, in a situation where a motion to recommend approval of rezoning was denied, any subsequent motions related to it were in effect denied. The property could not be platted and subdivided while it had AG zoning. Mr. Trafton asked if his motion should be withdrawn and asked what the options were if the Commission did not vote for approval. Chairperson Funk said that the Commission could vote on a motion for denial, which would still move the application forward to the City Council. Mr. Trafton then withdrew his motion.

Mr. Kitchens made a motion to recommend denial of Application PL2020-241, Preliminary Plat: Pine Tree Farm Estates, Lots 1-6, 1050 NE Todd George Rd; Keith Foster, applicant. There was no second, and Chairperson Funk asked the Commission whether they wished to either amend the motion or second it. Mr. Bushek stated that a second was needed to either approve the motion or amend it.

Ms. Jana-Ford seconded the motion, explaining that her video feed was delayed.

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

On the motion of Mr. Kitchens, seconded by Ms. Jana-Ford, the Planning Commission members voted by roll call vote of five "yes" (Chairperson Funk, Mr. Kitchens, Mr. Lovell, Ms. Jana-Ford and Ms. Arth) and two "no" (Mr. Trafton and Mr. Sanning) to recommend **DENIAL** of Application PL2020-241, Preliminary Plat: Pine Tree Farm Estates, Lots 1-6, 1050 NE Todd George Rd; Keith Foster, applicant.

Mr. Bushek asked Mr. Soto if there was any history of this kind of situation in the past. The options were to continue the plat given the vote taken on the rezoning. If they chose the latter, the land could not get a final plat until a rezoning occurred. Mr. Soto said they could recommend approval, but it would become null and void if the City Council did not approve the rezoning.

Mr. Johnson pointed out that a preliminary plat stopped at the Planning Commission level. Staff could not take any action on the plat until rezoning was approved.

Mr. Sanning made a motion to continue Application PL2020-241, Preliminary Plat: Pine Tree Farm Estates, Lots 1-6, 1050 NE Todd George Rd; Keith Foster, applicant be continued until the City's Council's recommendation based on PL2020-240. Mr. Kitchens seconded.

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

On the motion of Mr. Sanning, seconded by Mr. Kitchens, the Planning Commission voted unanimously by roll call vote to **CONTINUE** Application PL2020-241, Preliminary Plat: Pine Tree Farm Estates, Lots 1-6, 1050 NE Todd George Rd; Keith Foster, applicant be continued until the City's Council's recommendation based on PL2020-240

**RESOLUTION #2020-02 Adopting the 2021 Planning Commission Meeting Schedule**

Mr. Trafton made a motion to approve Resolution 2020-02, adopting the 2021 Planning Commission meeting schedule. The Planning Commission voted unanimously by roll call vote to **APPROVE** Resolution 2020-02, adopting the 2021 Planning Commission meeting schedule.

**ROUNDTABLE**

Mr. Kitchens commended Chairperson Funk on his leadership in this meeting.

Mr. Elam reminded the Commission that the joint meeting on the Comprehensive Plan would be on December 17, 2020. Videos of the associated community meeting were available on the City's website.

**ADJOURNMENT**

There being no further business, Chairperson Funk adjourned the meeting at 8:15 p.m.

PC 121020