

OVERLAND PARK CITY COUNCIL MEETING

July 17, 2000

Mayor Ed Eilert called the Overland Park City Council meeting to order at 7:35 p.m. The following members were present, constituting a quorum:

Mr. Neil S. Sader; Mr. George Kandt; Dr. Jack Halligan; Mr. Byron C. Loudon; Mr. Thomas C. "Tim" Owens; Mr. Kris Kobach; Mr. Carl R. Gerlach; and Mr. David G. Belpedio. Mr. Greg L. Musil arrived at 7:50 p.m. Mr. Michael J. Lally was absent. (excused)

Also present were: Mr. John M. Nachbar, City Manager; Mr. Bob Watson, City Attorney; Mr. Roger Peterson, Director of Planning and Development Services; Mr. Bob Jones, Director of Human Resources; Mr. James Cox, Director of Parks and Recreation; Mrs. Kristy Stallings, Director of Finance, Budget and Administration; Mr. John Douglass, Police Chief; Mr. Bob Lowry, Director of Public Works; Mr. Bart Budetti, Senior Assistant City Attorney; Mr. Ken Rodney, Director of Information Technology; Mr. Brian Shields, City Traffic Engineer; Ms. Marian Cook, City Clerk; Mr. Sean Reilly, Manager, Communications; Mr. Bob Lindeblad, Administrator, Current Planning; Mr. Mark Stuecheli, Senior Transportation Planner; Ms. Susan White, Communications Assistant; and Ms. Pamela Blaszyk, Senior Recording Secretary. Approximately 30 persons were in the audience.

PLEDGE OF ALLEGIANCE

Mayor Eilert led the audience in the Pledge of Allegiance.

MAYOR ED EILERT

Mayor Eilert recognized a representative from Boy Scout Troop No. 57, sponsored by Atonement Lutheran Church.

REPORT FROM THE COMMITTEE-OF-THE-WHOLE MEETING OF JULY 17, 2000

Mr. Byron C. Loudon stated that the Committee of the Whole met earlier in the evening and made a recommendation to the Council to approve the 2001 Budget for publication (with the understanding that following publication the expenditures can be reduced but not increased), set a public hearing on the 2001 Budget for August 7, 2000, and scheduled the adoption of the 2001 Budget and the 2001-2005 CIP for August 14, 2000. The motion was seconded by Mr. Neil S. Sader, and carried with a vote of 8 to 0.

CITY MANAGER JOHN M. NACHBAR

REQUEST TO WAIVE BIDDING PROCESS AND AUTHORIZATION TO PURCHASE – J.D. Edwards Financial System for software upgrade in an amount of \$52,000. (Governing Body Report No. 00-12)

Director of Information Technology Ken Rodney presented Report to the Governing Body No. 00-12 and indicated that he was requesting the approval of the purchase of a software upgrade to the J.D. Edwards Financial System that was installed in 1994.

This is an extensive upgrade and will be like installing a new financial system. He asked that the bidding process be waived to purchase the OneWorld financial accounting system from J.D. Edwards at a cost of \$52,000. Mr. Rodney also asked for the approval of Addendum No. 2, Attachment A/O and Attachment U to the January 9, 1995, J.D. Edwards contracts.

Mr. Rodney explained that one of the attachments specifies exactly what is being purchased by the \$52,000. The other attachment regards the annual maintenance services.

Mr. Carl R. Gerlach moved to waive the bid process and to approve the purchase of the OneWorld financial accounting system, in the amount of \$52,000, and to approve Addendum No. 2, Attachment A/O and Attachment U to the January 9, 1995, J.D. Edwards contracts. The motion was seconded by Mr. Thomas C. "Tim" Owens, and carried with a vote of 8 to 0.

CONSENT AGENDA:

COMMUNITY DEVELOPMENT:

STAFF CONSENT ITEM:

AGREEMENT – Brookwood Development, L.L.C., for Right-of-Way maintenance, Brookhollow, 2nd Plat.

PUBLIC SAFETY

COMMITTEE CONSENT ITEMS:

PEDESTRIAN TUNNEL/CROSSING GUARD AT OVERLAND PARK ELEMENTARY SCHOOL RECOMMENDATION – With the tunnel to be kept open, painted, and convex mirrors installed at each tunnel entrance, and a crossing guard to be stationed at the tunnel.

LEASE AGREEMENT – Renewal of lease for one year for substation at Oak Park Mall Shopping Center, in the amount of \$100.

REQUEST TO EXTEND GRANT TO JUNE 30, 2001 – Kansas Sentencing Commission for Large Systems Interface Grant, with the City to be reimbursed \$56,862, the amount spent, and up to the grant award amount of \$68,960 for future expenses.

REQUEST ACCEPTANCE OF GRANT – Kansas Criminal Justice Coordinating Council for Byrne Grant in the amount of \$219,450, requiring a \$73,150 local match.

REQUEST APPROVAL TO APPLY FOR GRANT – U.S. Bureau of Justice Assistance for the 2000 Local Law Enforcement Block Grant requiring a 10 percent match of the grant award amount.

REQUEST APPROVAL TO ACCEPT GRANT – U.S. Bureau of Justice Assistance for the 2000 Bulletproof Vest Grant award, in the amount of \$32,280.44.

CONTRACT – Kustom Signals, Inc., for the purchase of eighteen in-car camera systems.

ORDINANCE NO. PC-2235 – Relating to state changes and enhancing an officer's efficiency in processing offenses.

PUBLIC WORKS

STAFF CONSENT ITEMS:

ACCEPTANCE OF PERMANENT DRAINAGE EASEMENT – Todd Misemer concerning property in the vicinity of 143rd Street and Antioch.

RESOLUTION NO. 3162 – Setting forth findings and determinations of the Governing Body on the advisability of the recreation of Improvement District No. 99-180 for the construction of Grandview from 135th Street south approximately 1320 feet to 137th Street including curb and gutter, sidewalks, storm drainage, street lighting, and all other appurtenances necessary to the project.

RESOLUTION NO. 3163 – Authorizing and providing for the recreation of Improvement District No. 99-180 for the construction of Grandview from 135th Street south approximately 1320 feet to 137th Street including curb and gutter, sidewalks, storm drainage, street lighting, and all other appurtenances necessary to the project.

FINANCE, ADMINISTRATION AND ECONOMIC DEVELOPMENT

STAFF CONSENT ITEMS:

CONFIRMATION OF INVESTEMENTS – Confirming investments in the amount of \$5,000,000 in certificates of deposit.

EXPENDITURE ORDINANCE NO. 7A – Outlining the expenditures from the General Operating Fund for June 22 through July 5, 2000.

CAPITAL PROJECTS EXPENDITURE ORDINANCE NO. 7B – Outlining the expenditures from the Capital Projects Funds for July 6 through July 12, 2000.

Mr. Loudon moved for the approval of the Consent Agenda. Mr. Owens seconded the motion, which carried with a roll-call vote of 8 to 0.

REGULAR AGENDA:

COMMUNITY DEVELOPMENT

COMMITTEE REPORT: Michael J. Lally, Chairman

No report.

STAFF REPORT:

BID TABULATIONS:

St. Andrews Golf Course Parking Lot – Final Phase

Director of Parks and Recreation Jim Cox recommended the acceptance of the low bid, from Clymer-King Construction, Inc., in the amount of \$43,708, for the final phase of the parking lot at St. Andrews Golf Course.

Mr. Loudon moved for the approval of the low bid from Clymer-King Construction, Inc., in the amount of \$43,708, for the final phase of the parking lot at St. Andrews Golf Course. The motion was seconded by Mr. Sader, and carried with a unanimous vote.

Sidewalk Construction – 2000

Mr. Cox recommended the acceptance of the low bid from Murray Construction, in the amount of \$63,893, for sidewalk construction in the year 2000 in a number of park areas.

Mr. Loudon moved to accept the low bid from Murray Construction, in the amount of \$63,893, for sidewalk construction in 2000, in a number of park areas. The motion was seconded by Mr. Owens, and carried with a vote of 8 to 0.

PUBLIC SAFETY

COMMITTEE REPORT: Thomas C. “Tim” Owens, Chairman

Although Mr. Owens had no report, he asked staff to install American flags at the City’s golf courses.

STAFF REPORT:

No report.

PUBLIC WORKS

COMMITTEE REPORT: Byron C. Loudon, Chairman

Although Mr. Loudon had no formal report, he announced that the four members of the Public Works Committee who were present agreed to cancel this month’s Public Works Committee meeting scheduled for July 26, 2000. They will incorporate all of the items into the August agenda.

STAFF REPORT:

BID TABULATION – Grandview, 135th to 137th Streets (Improvement District No. 99-180).

Director of Public Works Bob Lowry recommended the acceptance of the low bid from O’Donnell & Sons Construction, in the amount of \$567,804.15, for the improvement of Grandview, 135th to 137th Streets (Improvement District No. 99-180).

The motion to accept the low bid from O'Donnell & Sons Construction, in the amount of \$567,804.15, was moved by Mr. Owens, and seconded by Dr. Jack Halligan.

Mayor Eilert asked why this item was under budget. Mr. Lowry replied that the improvement district had to be recreated as the bid was over budget. However, the bid was under the engineer's estimate.

The motion to approve the bid from O'Donnell & Sons Construction for the improvement of Grandview, 135th to 137th Streets (Improvement District No. 99-180), carried with a roll-call vote of 8 to 0.

AGREEMENT – HNTB Corporation for engineering services on Grandview from 135th Street to 137th Street.

Mr. Lowry presented the agreement with the HNTB Corporation to provide inspection services on the construction of Grandview from 135th Street to 137th Street.

Mr. Owens moved to approve the agreement with HNTB Corporation, as recommended by staff. The motion was seconded by Mr. Gerlach, and carried with a unanimous vote.

AGREEMENT – HNTB Corporation for engineering services on 119th Street from Nall Avenue to Rosanna Square.

Mr. Lowry indicated that staff was recommending the approval of the contract with HNTB Corporation for engineering services to design the widening of 119th Street from Nall Avenue to Rosanna Square.

Mr. Loudon moved to approve the agreement with HNTB Corporation for engineering services for the widening of 119th Street from Nall Avenue to Rosanna Square. The motion was seconded by Mr. Sader, and carried with a vote of 8 to 0.

ADDENDUM NO. 3 TO AGREEMENT FOR ON-DEMAND CONSULTING ENGINEERING SERVICES – Bartlett & West Engineers, Inc., for engineering services on Metcalf and I-435 and Metcalf and 107th Street.

Mr. Lowry noted that staff was recommending approval of Addendum No. 3 for on-demand consulting engineering services with Bartlett & West Engineers, Inc., to design the improvements to the Metcalf and I-435 intersection, and to the Metcalf and 107th Street intersection.

Mr. Loudon moved to approve Addendum No. 3 to the agreement for on-demand consulting engineering services with Bartlett & West Engineers, Inc., to design the improvements to the Metcalf and I-435 intersection, and to the Metcalf and 107th Street intersection. The motion was seconded by Mr. Gerlach, and carried with a vote of 8 to 0.

FINANCE, ADMINISTRATION AND ECONOMIC DEVELOPMENT

COMMITTEE REPORT: Neil S. Sader, Chairman

Mr. Sader announced that during a Finance, Administration and Economic Development Committee meeting earlier in the evening, the Committee members voted to cancel the July 19, 2000, meeting. One of the items that was postponed by the cancellation of the meeting regards ward boundaries and redistricting. He reminded the Councilmembers that Administrator, Long-Range Planning John Rod had developed some options to consider. It is anticipated that the topic will be discussed during the August Finance, Administration and Economic Development Committee meeting. The Councilmembers were welcome to review the options and recommend other alternatives to Mr. Rod.

STAFF REPORT:

APPLICATIONS FOR RENEWAL OF DRINKING ESTABLISHMENT LICENSES
CONTINGENT ON RECEIVING STATE LICENSES:

Chipotle Mexican Grill of Kansas, L.L.C., d/b/a Chipotle Mexican Grill,
6879 West 91st Street, Sean Gorman, manager.

Garozzo's III, Inc., d/b/a Café Garozzo, 9950 College Boulevard, Michael
Garozzo, manager.

Gourmet Systems of Kansas, Inc., d/b/a Applebee's Neighborhood
Grill & Bar, 11000 Metcalf, Gregory Voss Busing, manager.

Italian Delight of Stanley, Inc., d/b/a Italian Delight of Stanley,
7803 West 151st Street, Tyler Randall, manager.

John's Club, Inc., d/b/a Yonkers, 7706 Shawnee Mission Parkway,
Colleen Funk, manager.

MGMCO, Inc., d/b/a St. Andrews Golf Course, 11099 West 135th Street,
Curtis M. Nelson, manager.

MJJ Enterprise, Inc., d/b/a Chien Dynasty, 9921 West 87th Street, Fang
Wang, manager.

Onate, Inc., d/b/a La Mesa Mexican Restaurant, 9058B Metcalf Avenue,
Bette J. Servos, manager.

Rainbox Ventures, L.L.C., d/b/a Peanut on 76th, 7042 West 76th Street,
George J. Papp, manager.

APPLICATION FOR DRINKING ESTABLISHMENT LICENSE CONTINGENT UPON
SALE OF BUSINESS AND RECEIVING STATE LICENSE – The Peanut on 76th
Street, Inc., d/b/a The Peanut on 76th Street, 7042 West 76th Street, Jenny
Fontaine, manager.

Director of Finance, Budget and Administration Kristy Stallings presented the applications for the renewal of drinking establishment licenses contingent upon receiving state licenses, and an application for a drinking establishment license, contingent upon the sale of the business and receiving the state license.

Dr. Halligan moved for the approval of the licenses, with the contingencies as noted. The motion was seconded by Mr. David G. Belpedio, and carried with a vote of 8 to 0.

NONAGENDA ITEM:

Mr. Gerlach moved to add an item to the agenda. The motion was seconded by Mr. Sader, and carried with a vote of 8 to 0.

APPLICATION FOR RENEWAL OF CLASS A PRIVATE CLUB LICENSE
CONTINGENT ON RECEIVING STATE LICENSE – Milburn Golf & Country Club,
7501 West 69th Street, Cecil Wysong, Jr., manager.

Mrs. Stallings indicated that this application was received late last Friday. The license for the Milburn Golf & Country Club expires on August 1, 2000, which is prior to the next Council meeting. Staff was attempting to work with the country club so they could obtain their renewal.

Mr. Gerlach moved to approve the renewal of the Class A Private Club License, contingent upon receiving a state license. The motion was seconded by Mr. Belpedio, and carried with a unanimous vote.

Mr. Greg L. Musil arrived at the meeting at 7:50 p.m.

RECOMMENDATIONS FROM THE PLANNING COMMISSION

PLANNING COMMISSION CONSENT AGENDA:

FINAL DEVELOPMENT PLAN APPROVAL – Compass Corporate Centre, Phase 2, vicinity of the southwest corner of College Boulevard and King Street. Application made by Polsinelli, White, Vardeman & Shalton. The Planning Commission approved this item on July 10, 2000, by a vote of 9 to 0.

PRELIMINARY PLAN APPROVAL – Flamingo Dance Academy, vicinity of the southeast corner of 151st Street and Glenwood. Application made by Elements Architectural Design. The Planning Commission approved this item on June 26, 2000, by a vote of 6 to 0 to 1.

FINAL APPROVAL PLAT NO. 2000-59 – Deer Creek Park, vicinity of the southeast corner of 127th Street and Metcalf Avenue. Application made by D. K. Metcalf. The Planning Commission approved this item on June 26, 2000, by a vote of 6 to 0 to 1.

FINAL APPROVAL PLAT NO. 2000-60 – Deer Creek Courts, vicinity of the southeast corner of 127th Street and Metcalf Avenue. Application made by D.K. Metcalf. The Planning Commission approved this item on June 26, 2000, by a vote of 6 to 0 to 1.

FINAL APPROVAL PLAT NO. 2000-62 – Quincy Court, 3rd Plat, vicinity of 146th Street and Edgewater Drive. Application made by Thomas French Builder. The Planning Commission approved this item on June 26, 2000, by a vote of 6 to 0 to 1.

SPECIAL USE PERMIT NO. 2000-4 – Vicinity of the southwest corner of 123rd Street and Nall Avenue. Special Use Permit requested for an indefinite period of time to allow an elderly housing development. This property is currently zoned R-1, Single-Family

Residential District. Application made by Andy Schlagel. The Planning Commission denied this item on June 26, 2000, by a vote of 7 to 0. Ordinance No. Z-2801.

SPECIAL USE PERMIT NO. 2000-20 – 8723 West 95th Street. Special Use Permit requested for a three-year period of time to allow a drinking establishment. The property is currently zoned C-2, General Business District. Application made by The Coffee Roaster Café. The Planning Commission approved this item on June 26, 2000, by a vote of 7 to 0. Ordinance No. Z-2816.

Mr. Loudon moved to approve the Planning Commission Consent Agenda, as stipulated. The motion was seconded by Mr. Sader.

Mr. Belpedio asked that item No. 6, Special Use Permit No. 2000-4 be pulled from the Consent Agenda for further consideration.

Mayor Eilert provided an opportunity for members of the audience to address Special Use Permit No. 2000-20.

An unidentified speaker indicated that she understood that Special Use Permit No. 2000-20 was to be approved for one year. However, the applicant was requesting approval for a three-year period of time. Administrator, Current Planning Bob Lindeblad indicated that the Planning Commission recommended approval of this item for one year. Ordinance No. Z-2816 was for a one-year period of time.

The motion to approve the Planning Commission Consent Agenda items, with the exception of item No. 6, carried with a roll-call vote of 9 to 0.

Mr. Sader announced that he would not participate in the discussion or action regarding item No. 6 as his law firm has had previous dealings with the applicant. Mr. Sader left the meeting at 7:55 p.m.

In reference to Special Use Permit No. 2000-4, Mr. Lindeblad noted that when the Council previously considered this item on June 5, 2000, the applicant requested that this item be sent back to the Planning Commission to make significant changes to the site plan. Mr. Lindeblad referred to a copy of the site plan, in Staff Comments, that was submitted for review by the Council on June 5, 2000. This plan included five large apartment buildings for a total of 166 units on the 13.5-acre site. The revisions, which were reviewed by the Planning Commission, only removed two units resulting in a total of 164 units. The revisions also resulted in more units being in fewer larger buildings on the site. The Planning Commission reviewed the revised site plan on June 26, 2000. They still had the opinion that because this site was Master Planned as low-density residential and the eastern one-half of the site was proposed to be developed as an intense apartment complex with large massive buildings, they felt another variety of residential housing on the site on a smaller scale would be more appropriate. However, they did not believe that Single-Family Residential was necessarily appropriate for this site. The Planning Commission concluded that the proposed plan did not fit within the concept of the Master Plan with single-family housing to the east and west. The Planning Commission voted 7 to 0 to recommend denial of the revised plan.

Mayor Eilert asked about the history of this tract and the discussions that have occurred regarding this tract before the City Council. Mr. Lindeblad replied that a

land use for this tract was first discussed before the Council with Village Shalom's requests for their Special Use Permit on the north side of 123rd Street. This land along the west side of Nall, from south of Menorah Hospital down to approximately 128th Street, was undeveloped and Master Planned as low-density residential. The Village Shalom discussion regarded the approval of the multiple-care facility for elderly persons on that site and what impact that could have on the rest of the land south of 123rd Street on the west side of Nall. At that time, there was a discussion about keeping everything south of 123rd Street low-density residential. Several years after that discussion, the Congregation B'nai Jehudah that owned property on the east side of Nall at approximately 125th Street, purchased a portion of the property south of 123rd Street, as shown on page No. 14A of the report in the packet materials. The subject tract sits between the Learning Center of the Congregation B'Nai Jehudah to the south and Menorah Park to the north. The Learning Center was a permitted use in a R-1 Single-Family Residential District and was approved by right with the approval of the plans by the Planning Commission. That left the subject site undeveloped and zoned R-1. It has continually been left on the Master Plan as low-density residential.

Mayor Eilert recalled that when the multiple-care facility was authorized, there were some special issues involved with the west side of the tract. There was a requirement for a certain number of single-family residences to be constructed on that tract. Mr. Lindeblad replied that on the large development plan, the site plan shows some of the Village Shalom single-family type units that are adjacent to the existing single-family residential Dover Estates subdivision. Mayor Eilert recalled at the time the Learning Center was being considered, there was some discussion from a land-use planning standpoint, that it would be better to construct the Learning Center up against 123rd Street leaving the balance for single-family development. That did not occur. He asked what the Planning Commission viewed as an acceptable use for this site. Mr. Lindeblad replied that the Planning Commission suggested uses such as patio homes, town houses, duplexes, fourplexes, or sixplexes so that the development would be on a smaller and less intense scale. The proposed plan has one building that would appear to be a large square of 250 feet long and three stories high on each side. This would appear to be a massive building sitting high on the property. The Commission believed that this looked like an intense apartment complex and preferred a smaller residential type of development for this site.

Mayor Eilert asked if the Planning Commission considered the revised plan. Mr. Lindeblad replied that the Planning Commission considered the plan with 164 units. Earlier in the day, the applicant offered to remove 10 or 12 units and the third story from two of the buildings close to Nall Avenue. He understood that the proposed additional revision would not change the footprints of the buildings and the number of units would then total 152 units. Mayor Eilert asked if this is a typical apartment complex. Mr. Lindeblad replied affirmatively. He noted that the plan includes high-quality large apartment units with secured underground parking. Each building is set up for independent living. Mayor Eilert clarified that the market is aimed at older independent individuals. Mr. Lindeblad replied that the applicant indicated to staff that they would market the development towards senior citizens.

Mr. Musil noted that there are several references to the size and mass of the apartment buildings in Staff Comments. He has driven past the subject site several times. He asked if the Village Shalom assisted-living facility is a two- or three-story structure. Mr. Lindeblad replied that the Village Shalom assisted-living facility has a

combination of one, two, and three stories. The assisted-living facility is located on a hill along Nall. He understood that the one-story portion is adjacent to Nall. The two- and three-stories are located towards the sixplexes which are before the duplexes and single-family area. Mr. Musil clarified that the proposal for the subject site is to remove the third story from building Nos. 1 and 2. Mr. Lindeblad replied that those buildings were previously supposed to be two-three split story structures. Mr. Musil asked if the City were to Master Plan this site, in light of what is developed around the site, would a low-density Master Plan designation be realistic. Mr. Lindeblad replied that a development with a lower intensity profile of buildings would be realistic. It would be possible to develop a range of styles of residential units with five to seven units per acre. Mr. Musil replied that the next higher density for Master Planning would be medium density, which would fit the locational criteria. Mr. Lindeblad commented that in the past this site was not desirable for a medium-density multifamily development because of the low density around the area. There has been an attempt to keep a contiguous area of low-density residential uses together. Mr. Musil asked if there has been any indication in the past that there is any interest in the market in developing duplexes or single-family homes on the entire site. Mr. Lindeblad replied that this developer told the Planning Commission that duplexes and single-family are viable. However, this is the only developer that has been serious about any type of development on this site.

In reference to the medium-density and elder-care facility guidelines, Mr. Gerlach asked if staff was confident that the builder was building an elder care facility. He noted that some of the amenities they were adding with new underground parking would increase the cost of the project. He asked if staff believed this would be an elder care facility rather than another apartment complex. Mr. Lindeblad replied that it appears to be an apartment complex that they will market towards the elderly. The City has no control as to the age of the people who would actually live there. Mr. Gerlach clarified that staff was not sure that this will be an elder care facility although they have a community building and underground parking that would raise the cost dramatically from the cost of a normal apartment. Mr. Lindeblad replied that he believed that the applicant intends to market the units as an elder care facility. He questioned if the subject site is the right location for an upscale apartment project, for the elderly, or for younger people. The age of the residents does not make a difference in the building mass that is proposed. The issue is if an apartment complex was ever envisioned for this tract.

Mr. Belpedio asked if the duplexes located on the north side of 123rd Street next to Dover Estates are occupied. Mr. Lindeblad replied that the Village Shalom representatives indicated that they are having good success in marketing the duplexes. Mr. Belpedio asked if staff felt that the independent living project is consistent with the pattern of development that has occurred in the area. Mr. Lindeblad replied that staff did not believe that the project was consistent with the use in the area.

Mr. George Kandt asked if the revised plan is an improvement over the first plan that was presented. Mr. Lindeblad replied in the negative. He explained that the proposed plan includes a larger three-story building in a U shape and will appear to be a large box. The Site Plan Review Committee and the Planning Commission did not find this plan represented a reduction in intensity or design. The plan indicated more units in fewer buildings. Mr. Kandt asked if the topography of the tract is elevated in comparison to adjacent tracts. Mr. Lindeblad replied that Village Shalom sits on the

highest elevation. From the residences to the west, the land starts sloping towards Nall and then it slopes off to the south. At 123rd Street and Nall on the east side looking southwest across the site, it is barely possible to see the top of the learning center to the south. That elevation is approximately 20 feet lower than the subject site. The mass and the height of the building is not seen in its relationship to the other sites. Single-family is located on the east and west ends of this site. Village Shalom is a big presence on the north side of 123rd Street. To the south of this site, towards the Learning Center, there is a lower elevation. Mr. Kandt asked if there are any buildings at Village Shalom that would be comparable to building No. 3 on the subject site. Mr. Lindeblad replied that he did not have a full plan of Village Shalom at this point. Mr. Kandt noted that staff indicated that the building size and mass are out of character for the area although the tract directly to the north is Village Shalom. Mr. Lindeblad replied that this site should be developed with less of an intensity than Village Shalom. Mr. Kandt asked if the apartment buildings were reduced from three stories to two stories, would staff or the Planning Commission find this plan to be more acceptable. Mr. Lindeblad replied in the negative.

Mr. Andy Schlagel, planning consultant, indicated that he was representing the property owner and developer of the subject site. Mr. Rosemann, the architect, was also present and he spent a considerable amount of time with the staff and the neighbors considering various renditions of the plan. Mr. Schlagel felt it was important to update the Council on what had changed with the plan since the June 5 presentation. Mr. Schlagel referred to a memorandum from Mr. Rosemann, dated July 17, 2000, which indicated that the revised proposal included building Nos. 1 and 2 with two stories and building No. 3 with three stories. This change would reduce the number of units from 164 to 152. He believed that this use would be consistent with the pattern of development in the area.

Mr. Schlagel explained that the plan has been significantly revised since June 5, 2000. This site is a 13.5-acre piece of ground sandwiched between a major elderly care facility to the north and the initial phase of the B'nai Jehudah Learning Center to the south. The Learning Center is a large, expansive structure with another phase to be built which would include expanded parking to be constructed within 50 feet of the western property line. The revised plan incorporates a single-family element along the western edge of the site adjacent to the residential area. They met with the neighbors eight to ten times since June 5 to discuss the proposed project. On June 5, there was neighborhood opposition to this plan from the Dover Estates Homes Association and the Buckingham Estates Homes Association. This evening the representatives from those two groups are in the audience. The applicant signed formal agreements with the homes association representatives that address the items of concern. They have increased the setbacks, introduced a single-family element of seven units, and are making sure that the single-family element along the western edge of the site would be of an endowment nature as are the Village Shalom single-family units to the north. The seven new single-family units were not previously proposed. The next element to the west is 11 duplex units. Previously there were 10 duplex units.

They have requested a special use permit for an independent living facility for the elderly. Throughout these discussions, there have been comments about this being a regular apartment project. Mr. Schlagel noted that if this were a regular apartment project, they would have requested a RP-3 rezoning, designed the units differently, and they would not have included the underground parking, the lap pool, and the recreational facilities in the club house. Nor would they have made provision for food

service to be available for the residents. This project is an independent living elderly housing development that will not be marketed beyond that use.

Building Nos. 1, 2, and 3 have been designed to contain the bulk of the units. From the northwest corner to the southeast corner of the site, there is a 50-foot drop that slopes towards Nall. There is a slight drop proceeding from 123rd Street to the south. The largest proposed building (building No. 3) sits in the middle of the site practically at the lowest point on the site. This 118,000-square-foot building has three stories that transition to two stories and one story. The applicant saw a pattern of development in the area on the tract to the north that moves from single family units to duplex units to sixplex units, and to a building (three times as large as their buildings) that contains assisted living units and transitions back down to Nall. They started with a similar plan with more of a setback and the same tree line. There may be a more defined topography with this site. They are moving in the same progression from single-family units to duplex units to the elderly housing. One benefit with this plan is the underground parking. If this were a conventional apartment project or a town home project, there would be surface parking with more asphalt and less green space.

The developer has insisted that the architect and site plan be carefully designed as a high-quality development. The building materials would be a combination of brick, heavy duty asphalt shingles, and lap siding. Building Nos. 1 and 2 were previously proposed to have two stories on the ends and three stories in the center, to provide an interesting design. However, the applicant was prepared to eliminate the third story on building Nos. 1 and 2. Building No. 3 has been purposefully structured in a C design to try and create an internal courtyard for a focal point and a pickup/drop-off area. This interesting and attractive building would have patios, balconies, and indentations.

They have worked with the Dover and Buckingham representatives to develop a plan that fulfills the developer's vision for this project and gives the neighbors the protection they requested. He reminded the Council that when the Menorah application was being considered, the neighbors were present in the meetings to protect their interests. The neighbors also worked diligently throughout the B'nai Jehudah application process to make sure that their subdivision was protected. Mr. Schlager spent a lot of time discussing this project with the three home owners whose properties are adjacent to the subject site. Mr. Schlager distributed a letter from the Miller and Johnson families indicating that they are pleased with the new plan for the elderly development proposed for land located directly behind their homes.

Mr. Schlager suggested that the action from the Planning Commission to deny this request is based upon the Staff Comments and the zoning history of this 80-acre parcel. They have now been able to deliver a plan that fulfills the desires of the neighbors and the developer. Not one developer has ever approached the property owner or the City to use this narrow tract for the Master Planned low-density use. That use is not practical or in the direction established by the pattern of uses in the area.

Mayor Eilert asked if the internal streets of this project are private. Mr. Schlager replied in the affirmative and explained that it is a gated community. Mayor Eilert asked for more information regarding the endowment which would make sure the properties are developed as single family. Mr. Schlager replied that they have

committed to make the seven single-family units an endowment type ownership package as opposed to a straightforward leasing of the units. This is meant to be a single phase project. They intend to provide final plans for the entire project as soon as permits are available on all three types of units. Mr. Loudon referred to the July 17, 2000, memorandum which indicated that building No. 3 would be a three-story structure with a reconfiguration of the units within. He asked if there would be a change from some of the two-bedroom units to one-bedroom units. Mr. Schlagel replied in the affirmative. He explained that the plans distributed by staff indicate 164 units. Mr. Rosemann's memorandum lists 152 units. By removing the top floor on building Nos. 1 and 2, they lose 12 units and are able to reprogram some units to change the unit mix. Mr. Loudon clarified that the current proposal is for building Nos. 1 and 2 with two stories.

Mr. Belpedio asked for further information about the endowment program.

Mr. Schlagel replied that the endowment is a mechanism to ensure that there will be a reasonable amount of money collected up front to guarantee the payment program over the lifetime use of the house. They were trying to ensure a single-family ownership type of arrangement in the units adjacent to the existing residential areas. There was always the subjective concern about quality. It was noted that there was an agreement with the developer of the tract to the north to have an endowment type of arrangement for their single-family units. The neighbors asked if the developer of the subject tract would also enter into an endowment agreement for the proposed seven single-family residential units. The developer decided to agree to this type of an endowment for those units. Mr. Belpedio asked if there has been a consideration of including the duplex portion of the development in the endowment. Mr. Schlagel replied in the negative. He explained that this was not initially envisioned as an endowment type of development because it is intended to be an independent living as opposed to an assisted-living facility. They determined it was sufficient to include the single-family units that are adjacent to the existing single-family residential areas in the endowment. Mr. Belpedio asked how many units would be removed if the third story in building No. 3 was deleted from the plan. Mr. Schlagel replied that there were eight units on the third story. He added that the topography of the site makes the elevation of the site 30 feet lower than the neighboring tracts. Given the side angles, he doubted that the neighbors would see all three stories of building No. 3.

Mr. Kandt asked what the view would be of building No. 3 from Nall. Mr. Schlagel replied that there is a high bank along Nall. Traveling south on Nall it is not possible to see B'nai Jehudah because of the topography. They believed that because of the slope and the other two-story buildings, it would be possible to only catch a glimpse of the roof of the three-story building. Building No. 3 sits on one of the lowest points on the site and it would not have an overpowering appearance. If there is a glimpse of the building from Nall, they would be facing the courtyard. He added that there is a three-story building sitting on a higher elevation on the tract to the north. Mr. Kandt asked to see a drawing of building No. 3.

Mr. Don Rosemann, architect, Rosemann & Associates indicated that one of the difficulties with the graphic illustration is that the view of the front elevation that does not take into account the topography which will have a considerable impact on what is seen of the building from 123rd Street and Nall. At the corner of 123rd Street and Nall looking to the northwest towards the Village Shalom, the building would not be an imposing structure because of the topography and grade. Conversely, coming from the west from the Dover and Buckingham Estates traveling to the east, the three-story

building may look more imposing. Originally the plan included some larger buildings towards the western edge of the subject site. The neighbors indicated they did not want those buildings next to the property line. That is how the plan evolved. One of the concerns the neighbors had regarded the Shalom building to the north because they are looking at the building from another view. The other critical point is that the three-story structure that is proposed will sit lower to accommodate vehicular access for cars coming off the peripheral road into the site. All the units in this facility are handicapped accessible. This is not a typical apartment complex because of the topography in regard to these three buildings.

Mr. Kris Kobach assumed there had been studies of the marketability of independent living facilities. He assumed that the demographics of the community indicate that there will be a need for this type of facility. Mr. Schlagel agreed that the demographics indicate that this type of facility is needed. The increasing socio-economic opportunities allow senior citizens to retire early, to travel more, and to have more free time. A rapidly growing market sector is interested in selling their single-family home and maintaining a residence with security that would allow them the freedom to travel for extended periods of time. There are 400 units, including 300 independent units and 100 assisted-living units at the southeast corner of 119th and Nall. That project is full with a waiting list, which indicates the strength of interest in this use in the market. A typical individual interested in this type of unit would likely be 55 years of age or older in a higher-income bracket. The individual would likely want to maintain a residence in the area while being free to travel. The infrastructure is also conducive to this use.

Mr. Musil referred to the comment that the three-story building is more interesting architecturally than the two-story buildings. He asked if architectural features could be added to the two-story buildings to make them more interesting in appearance. Mr. Rosemann replied that there is an actual roof break on the plan. The indentations occurring on the elevation are difficult to see on the drawing. They have tried to show a typical elevation on the preliminary plan. They have copper roofs to break up a part of the facade and they are difficult to delineate at this scale and level. When there is a massing with the third floor, more creativity occurs because of the material breaks. There are other architectural features that could be used to break up the mass of the building, such as horizontal siding and color variations. At this point, they have not discussed this issue with staff, the Site Plan Review Committee, or the Planning Commission.

Mr. Belpedio asked if the client would agree to link the development of the single-family homes and duplexes with the development of the larger buildings. Mr. Schlagel replied that they have indicated that this would be a single phase project. They would be willing to agree to a stipulation to that effect.

Dr. Halligan noted that Mr. Belpedio addressed the question about a stipulation concerning the construction of the western buildings being simultaneous with the construction of the eastern buildings. He asked if this special use permit would be revocable if the residents turn out to be other than independent living residents. How could the City verify or act upon a claim that the property was being rented to a segment of the population other than the senior citizens. Senior Assistant City Attorney Bart Budetti replied that from a practical standpoint, it would be extremely difficult and intrusive to collect age information on residents in light of privacy laws. Unless the City was provided with enough information indicating a violation of an

ordinance so that a civil lawsuit could be filed, it was unlikely that the data could be verified. The issue is if they are going to market the units in the proper manner and if most people would be in compliance with what is stipulated. He did not believe that they would have a restrictive covenant to bar the occupancy of people who do not meet the target population. Mr. Schlager indicated that there are already several restrictive covenants drawn and proposed for this project. The marketing is directed towards the segment of the population as described. The rental rate would be two to two and one-half times more than the conventional apartment rates. For example, the top of the line Amlie apartment starts with a rental rate of \$795 to \$850 for a small one-bedroom unit. The rental rates for the units on the subject site would start at \$1,700 to \$2,000 or more per month. A facility with that rental rate that is a handicapped accessible unit with medical services nearby, would likely attract their targeted group. They would not have a basketball court or other amenities to attract a different segment of the population.

Mr. Kandt asked if building Nos. 1 and 2 would be at a higher elevation than building No. 3. Mr. Schlager replied affirmatively. Mr. Kandt asked if building No. 3 would be seen from Nall. Mr. Rosemann replied that the final plans are not set. A portion of a part of the roof may be seen, depending on the view. Mr. Schlager added that he did not feel that the buildings would have the massive appearance that is feared by staff. Mr. Kandt asked if the developer was willing to reduce building No. 3 to two stories. Mr. Schlager questioned what would be accomplished with that change other than to limit their ability to deliver a quality development. This project started with 198 units. They have already decreased the units to 152. Given the location of building No. 3 and how it provides the centerpiece for the development, they sincerely believed that from an architectural viewpoint, this building sets the foundation for the pattern of the other buildings. In addition this building is set at a low elevation. He was not aware of a good reason to further decrease the units. Mr. Kandt replied that by making Building No. 3 a two-story structure, the intensity of the development would be decreased. Mr. Rosemann added that one critical component was the massing and size of the Village Shalom development. During the next phase of the Village Shalom development, another three-story structure is to be constructed. With the landscaping and breakup of the building facades, this project would look less imposing than the project to the north.

Mr. Schlager added that the Johnsons and the Millers strongly endorse this project, as indicated by their letter. The Johnsons were unable to attend the meeting and wanted to make sure that their endorsement of the project was on the record.

Mayor Eilert opened the public hearing on this item.

Mr. Dean Long, 12205 Beverly Street, Dover Estates Subdivision, indicated that he is president of the Dover Estates Homes Association. They have met several times with the applicant to discuss this project. The initial plan did not contain any single-family residential structures. They strongly opposed that plan. Their concern has been to maintain the property values within their subdivision and to maintain the integrity of their neighborhood. The changes in the revised plan are similar to the changes made with the Village Shalom plan. Their initial concern was to make sure there is some type of a buffer at the property line to protect their residential property value. The proposed plan consists of a low- to medium-density residential development. Per their request, all of the higher density portion of the development has been pushed closer to Nall. There is a 30- to 35-foot drop between the western edge of the development that

backs up to Buckingham Estates and Nall. The elevation decreases the height of the rooflines of the two- to three-story buildings. There was some discussion regarding the Village Shalom. He understood that there is one occupant in their single-family residential units. There are three other units that have been completed. Four other units are under construction and 70 percent completed. Mr. Long's former neighbors, who resided at 12201 Beverly, listed their house this spring. That property backs up to Village Shalom. They sold their house within two weeks for an amount that is within a few thousand dollars of their asking price. The new owner informed Mr. Long that when he saw that there were single-family units in Village Shalom behind the Dover Estates development, he agreed to purchase the property. Mr. Long preferred to have the Village Shalom development behind his property than to have that land remain vacant and the future use on that site to be unknown. He felt that a vacant adjacent site would be a deterrent to the value of the property. After having several discussions with the applicant, the board of directors of Dover Estates supports this application.

Mayor Eilert was pleased to note that the Village Shalom requirements were beneficial to adjacent residents. The applicant of the subject site is proposing to use the same buffer pattern with this tract. Mr. Long replied that he initially told the applicant what Village Shalom had done to protect their neighbors with a single-family buffer and by moving the higher density uses further to the west. He agreed that there is a strong parallel between what the applicant has submitted and what was done by Village Shalom to protect the integrity and value of residential property in the adjacent neighborhoods.

Mr. Sheldon Hamilton, 12313 Beverly, said he is a member of the Buckingham Estates Association. His primary concern with this project was the maintenance of the quality of life of residents in their neighborhood and that their property values would be maintained. When he discovered that this was a rental project, Mr. Hamilton was more concerned. Mr. Hamilton met with Mr. Long, the developer, and the planner to look at their work. Mr. Long suggested that the project would be acceptable with the addition of single-family units. They presented the plan to a J.C. Nichols real estate agent who is familiar with the area. The real estate agent indicated that with the plan as proposed, and with the marketing of the project to senior citizens, their property values would likely be maintained. There was an attempt to establish the longevity of people living in the single-family units with the endowment concept. Mr. Hamilton explained that the endowment concept was not included in the memorandum of agreement with the developer. He suggested that an alternative to the endowment requirement could be a minimum rental period for those houses of three to five years that could be broken in the event of death of one of the residents. That option may be preferable as this is a for-profit organization.

Mayor Eilert asked for clarification on the endowment component. Mr. Schlagel replied that the July 17, 2000, memorandum includes a reference to the endowment for the seven single-family units to ensure a longer-term occupancy pattern desired by the neighbors.

Mr. Belpedio asked what is the difference between an endowment and requiring a three to five-year lease. Mr. Budetti replied that he is not familiar with the endowment concept. The City could not enforce a long-term occupancy of the single-family units. If the endowment is not in the deed restriction agreement with the neighbors

(depending upon the nature of the agreement), it may not be enforceable by the neighbors.

The architect indicated that a private deed restriction agreement has been reached between the developer and the Dover Estates Homes Association. At this point, the agreement was executed but not recorded. The agreement was signed by Dover Estates prior to the City's Planning Commission agreement. That plan encompasses the original plan contemplated by the Planning Commission (with the 164 units). Two attachments to the agreement include the site plan and the exterior elevations. If the Council makes a decision tonight that would impact the agreement before it is recorded, it would be necessary to amend the agreement between the developer and Dover Estates. At that time, it would also be possible to incorporate a clarification of the endowment.

Ms. Miller, 6605 West 123rd Street, encouraged the Council to approve this application. She was satisfied with the proposed plan. After almost two years of construction behind her home, she would like this project to be developed and construction in the area to be completed.

As no one else wished to speak, the hearing was closed.

Dr. Halligan moved to approve Ordinance No. Z-2801 (Special Use Permit No. 2000-4), for an indefinite period of time to allow an elderly housing development, with stipulations a through g, and with added stipulation h, indicating that the single-family and duplex units shall be constructed with building Nos. 1, 2, and 3; added stipulation i, indicating that building Nos. 1 and 2 shall be reduced to two stories in height and the total number of units on the site shall be limited to 152; and added stipulation j, indicating that final development plans shall be approved by the City Council.

Dr. Halligan noted that he was willing to approve this application because the neighbors from residential areas of Buckingham and Dover Estates have had significant input and supported the project, although they have not heard from the Hawthorne neighborhood to the east. Since this project has been posted for a considerable period of time, he concluded that their silence implied consent. He added that the topography is right for the development. There is consistency between the proposed project and the project to the north. The density is mitigated significantly by the fact that single-family and duplex units are proposed on the western side of the site. He suggested that there may be a reason to question the original R-1 zoning for this area.

Mr. Belpedio seconded the motion. Mr. Belpedio indicated that he supported this motion and worked with the developer and the neighbors to create the best case scenario with this project. While he appreciated the Planning Commission and staff's attempt to preserve the integrity of the original intent for this site, the development around this property has changed the circumstances with this tract. Home owners in this area are pleased with this development and believe that it would preserve the value of their homes. This project would bring completion to the development of the area. For those reasons, he would support the motion.

Mr. Gerlach agreed that building Nos. 1 and 2 should be reduced to two stories. He asked if a stipulation is needed to specify that the footprints of the buildings will

remain the same to make sure that the development does not expand. Mr. Lindeblad replied that the preliminary plan cannot be adjusted to increase the footprints of the buildings. Mr. Schlager clarified that there is a true reduction of the project from 164 units to 152 units.

Mr. Kandt commented that this is an improvement over the original application that was presented for this site. The density has been reduced. While he would have preferred for building No. 3 to be reduced to two stories, it seemed that this building would not appear to be too cumbersome with the topography of the site. This would be a high-quality development when it is completed. This project is compatible with the surrounding uses including the project to the north with a large three-story building. He indicated his support for this motion.

The motion carried with a roll-call vote of 8 to 0.

PLANNING COMMISSION REGULAR AGENDA:

UNIFIED DEVELOPMENT ORDINANCE AMENDMENT – Unified Development Ordinance Amendment requested to allow amendments to Section 18.430.120. Parking for one- and two-family dwellings to increase the allowable paving area in the required yards. Application made by The City of Overland Park. The Planning Commission approved this item on June 26, 2000, by a vote of 6 to 1. Ordinance No. ZRR-2228.

Mr. Lindeblad noted that staff presented this application to the Planning Commission as the result of a request for a variance from a Unified Development Ordinance. Ordinance Section 18.430.120, Parking for one- and two-family dwellings prohibits the paving of over 35 percent of the front yard for single-family and two-family dwellings. In reviewing compliance with this ordinance during the last several years, staff recognized that the majority of two-family dwellings that were recently constructed with double-car garages have exceeded that requirement. Staff has encouraged double-car garages per building for duplexes. After staff asked the Planning Commission if they wanted to study this issue, the item was sent to the Ordinance Review Committee. The Ordinance Review Committee reviewed numerous subdivisions, lot layouts, and pictures of existing duplexes in these subdivisions. They concluded that the practice of exceeding the 35 percent limit of paved area should continue to be acceptable and advised against making the duplexes a nonconforming use. Therefore, the Committee recommended approval of an amendment to the ordinance to increase the allowable paving area in the front yards of two-family dwellings. One Commissioner did not agree with that concept and believed that wider lots for duplexes should be required. Therefore, the Planning Commission voted 6 to 1 to recommend approval of the ordinance amendment.

Dr. Halligan observed that the pictures distributed regarding this item depicted landscaping in the middle of each of the driveways. He asked if landscaping is a part of the requirement. Without landscaping, the massiveness of concrete would not be relieved. Mr. Lindeblad replied that they did not mandate the landscaping although they discussed that issue. They have good and bad examples of those small strips of landscaping and how they are or are not maintained throughout the City. According to the site plans they have considered and the way garages are developed, it is hard to come up with some consistent regulation that would be meaningful. It is debatable if the green strips are an attractive addition for the duplexes.

Mayor Eilert opened the public hearing on this item. As there was no response, the hearing was closed.

Mr. Owens moved for the approval of Ordinance No. ZRR-2228 (Unified Development Ordinance Amendment). The motion was seconded by Mr. Loudon, and carried with a roll-call vote of 8 to 0.

ADJOURNMENT:

At 9:25 p.m., Mr. Owens moved to adjourn the meeting. The motion was seconded by Mr. Loudon, and carried with a vote of 8 to 0. Minutes transcribed by Pamela Blaszyk.

Ed Eilert, Mayor

ATTEST:

Marian Cook, City Clerk