

OVERLAND PARK CITY COUNCIL MEETING

April 19, 2010

Mayor Carl R. Gerlach called the Overland Park City Council meeting to order at 7:30 p.m. The following members were present, constituting a quorum:

Mr. Dave Janson, Council President; Mr. Terry Goodman; Mr. George Kandt; Mrs. Terry Happer Scheier; Mr. David White; Mr. Jim Hix; Mr. Fred Spears; Mr. John Skubal; Mr. Curt Skoog; Mrs. Donna Owens; Mr. Dan Stock; and Mr. Paul Lyons.

Also present were: Mr. John M. Nachbar, City Manager; Mr. Bob Watson, City Attorney; Mr. Bill Ebel, Director of Planning and Development Services; Mr. Greg Ruether, Acting Director of Parks Services; Mr. John Douglass, Police Chief; Mr. Bryan Dehner, Fire Chief; Mr. Mike Casey, Deputy Fire Chief; Mr. Bart Budetti, Senior Assistant City Attorney; Mrs. Vicki Irely, Director of Information Technology; Mrs. Kristy Stallings, Deputy City Manager; Mr. Doug Brown, Director of Public Works; Mrs. Tammy Owens, Senior Assistant City Attorney; Mr. Dave Scott, Chief Financial Officer; Mr. Sean Reilly, Communications Manager; Mr. Sandy Queen, Golf Course Operation Manager; Mrs. Leslie Karr, Current Planning Manager; Mr. Mark Stuecheli, Senior Transportation Planner; Mr. Rob Welton, PC Technician; and Ms. Pamela Blaszyk, Recording Secretary. Approximately 120 people were in the audience.

PLEDGE OF ALLEGIANCE

Mayor Carl R. Gerlach led the audience in the Pledge of Allegiance.

Mayor Gerlach recognized the Leadership Overland Park Class and members of the Government classes from Shawnee Mission North High School, Rockhurst High School and Shawnee Mission West High School. He also welcomed Boy Scouts from Troop No. 257 sponsored by Atonement Lutheran Church. The Mayor acknowledged Ms. Nan Wilson, League of Woman Voters and former Planning Commissioner. Ms. Wilson had with her two ladies from the country of Columbia, who were visiting the City to participate in the program, Connecting Future Leaders for Civil Society.

MAYOR CARL R. GERLACH

ELECTION OF COUNCIL PRESIDENT.

Mr. Curt Skoog moved to nominate Mr. Dave Janson to serve as the Council President. The motion was seconded by Mrs. Terry Happer Scheier. Mayor Gerlach asked if there were other nominations, and Mr. Terry Goodman asked that the nominations cease.

The motion to elect Mr. Dave Jason as Council President passed unanimously after receiving 12 ballot votes in his favor.

PROCLAMATION – Proclaiming April 24, 2010, as Blue Valley Northwest “We The People Day” in Overland Park.

Mayor Gerlach invited the members of the “We The People” team from Blue Valley Northwest High School and their sponsor, Mr. Ken Thomas, to come forward.

Mayor Gerlach indicated that this national program, “We The People,” is sponsored by the United States Congress, the Department of Education and the Center for Civic Education. The program focuses on The Declaration of Independence, the Constitution, and the Bill of Rights. On February 1, 2010, the Blue Valley Northwest High School “We The People” team won the state championship for the second consecutive year, and they will compete in the national championship in Washington, D.C., on April 24 through April 26, 2010.

Mayor Gerlach proclaimed April 24, 2010, as Blue Valley Northwest “We The People Day” in Overland Park.

Mr. Ken Thomas, “We The People sponsor,” Blue Valley Northwest High School, indicated that this program was started as a celebration of the Bill of Rights during the Reagan administration. It is a program that is meant to teach the students about their responsibilities as citizens of the United States. Since its inception in 1987, over 30 million students throughout the nation have participated in this program. It is offered in elementary, middle school and high school levels in the Blue Valley School District. These young men and women have studied hard, and they are well versed in what makes up the United States government and how it operates. He expressed appreciation for this recognition.

PROCLAMATION – Proclaiming April 27, 2010, as Golf Day in Overland Park.

Mayor Gerlach invited Golf Course Operation Manager Sandy Queen to meet him at the podium. Mayor Gerlach proclaimed April 27, 2010, as Golf Day in Overland Park, and encouraged the Council and citizens of Overland Park to avail themselves of the opportunities provided by the golf courses and participate in the game of golf and all it offers to Overland Park.

PROCLAMATION – Proclaiming April 30, 2010, as Arbor Day in Overland Park.

Mayor Gerlach invited Ms. AliceLee Hollister, chair, Legacy of Greenery Committee, to come forward. The Mayor noted that Overland Park had been recognized for the 31st consecutive year as a Tree City USA by the National Arbor Day Foundation and the 19th consecutive year with a Tree City USA Growth Award. Mayor Gerlach proclaimed April 30, 2010, as Arbor Day in Overland Park and urged all citizens to support the efforts to preserve the City’s trees and woodlands, to support their City’s urban forest programs and to plant trees.

Ms. AliceLee Hollister, chair, Legacy of Greenery Committee, reported on the Legacy of Greenery Committee activities for the year that included giving away 2,500 seedlings, a mulching project, renovating a City park, and the creation of a card that encourages individuals to collect rain and use it for their gardens. She noted that the Legacy of Greenery Committee will be back before the Council on April 30 to award the winners of the elementary school poster contest with the theme “Trees are Terrific and Energy Wise.” In the fall, the Committee will be presenting the landscape awards to businesses that have achieved exemplary landscaping.

PRESENTATION OF PUBLIC SAFETY COMMITTEE DISTINGUISHED SERVICE AWARD – Timothy McCarthy and Bryan Linde for their lifesaving efforts in pulling a driver out of a burning vehicle.

Fire Chief Bryan Dehner presented a video regarding the lifesaving efforts of Timothy McCarthy and Bryan Linde on March 16, 2010, when they pulled a driver out of a burning vehicle.

Fire Chief Dehner invited Mr. McCarthy and Mr. Linde to join him with Mayor Gerlach, Mr. George Kandt and Police Chief John Douglass at the podium.

Mayor Gerlach stated that in today's world, a lot of people go about their lives and do not want to get involved in helping others. Mr. McCarthy and Mr. Linde did something extraordinary in saving a life. He expressed appreciation for their heroic actions.

As Chair of the Public Safety Committee, Mr. Kandt presented Mr. McCarthy and Mr. Linde each with a plaque to commemorate their service and extraordinary bravery in risking their own safety to save the life of a young man.

Mr. Tim McCarthy, thanked the Council and staff for honoring them.

Mr. Bryan Linde, said he was also appreciative of the recognition.

CITY MANAGER JOHN NACHBAR

No report.

CONSENT AGENDA:

PUBLIC SAFETY

COMMITTEE ITEMS:

ADDENDUM TO USER AGREEMENTS – City of Mission and City of Roeland Park, for agency specific changes relating to connectivity and license issues and billing for future upgrades for the use and operation of Intergraph Public Safety for records management, police dispatch and investigative case management.

AMENDMENT NO. 1 TO AGREEMENT – Harris Corporation, for updates to the System Maintenance Agreement, providing updated pricing for a cost reduction of \$27.24 for 2010, and an overall reduction of \$113.51 for years 2010 to 2013.

AUTHORIZATION TO PURCHASE – Ammunition through December 31, 2011, using the Kansas Department of Administration Statewide Contract.

WAIVE BID PROCESS FOR SOLE SOURCE PURCHASE – Taser International for practice and live cartridges for Police Department hand-held electronic stun devices in the estimated amount of \$11,000.

AGREEMENT – MorphoTrak, Inc., for fingerprint machine maintenance services in the amount of \$19,775.46.

FINANCE, ADMINISTRATION AND ECONOMIC DEVELOPMENT

STAFF ITEMS:

COUNCIL MINUTES – March 8, 2010.

CAPITAL PROJECTS EXPENDITURE ORDINANCE NO. 4B – Outlining the expenditures from the Capital Projects Fund for April 8 through April 14, 2010.

APPLICATION FOR NEW DRINKING ESTABLISHMENT LICENSE – The Click, L.L.C., d/b/a The Click, L.L.C., 7240 Shawnee Mission Parkway, Cavazos Cummings, manager.

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

Fortune Star, d/b/a Fortune Star Restaurant, 7328 W. 119th Street, Helen Lam, manager.

Paradise India, Inc., d/b/a Paradise India, Inc., 7119 W. 135th Street, Yogendra Gupta, manager.

APPLICATION FOR RENEWAL OF CLASS B PRIVATE CLUB LICENSE CONTINGENT ON RECEIVING STATE LICENSE – Red Bull Club, Inc., d/b/a The Fox, 7520 Shawnee Mission Parkway, Timothy Jon Abbott, manager.

APPLICATION FOR NEW CEREAL MALT BEVERAGE LICENSE – Fox and Hound of Kansas, Inc., d/b/a Fox and Hound English Pub and Grille, 10428 Metcalf, Jennifer J. O'Dell, manager.

APPLICATION FOR RENEWAL OF CEREAL MALT BEVERAGE LICENSE – Wal-Mart Stores, Inc., d/b/a Wal-Mart Supercenter No. 1599, 11701 Metcalf, Phil Kritzler, manager.

APPLICATION FOR TEMPORARY PERMIT TO SELL ALCOHOLIC LIQUOR CONTINGENT ON RECEIVING STATE LICENSE – Olathe Rotary Club Foundation, for an event to be held May 1, 2010, from 6 p.m., until 9 p.m., at 6635 W. 151st Street, Terry J. Lynch, manager.

REQUEST TO EXTEND PREMISES TO SELL ALCOHOLIC LIQUOR CONTINGENT ON RECEIVING SPECIAL EVENT PERMIT – Hooters of Overland Park, L.L.C., d/b/a Hooters of Overland Park, 10620 Metcalf, for a one day event, June 3, 2010, 7 p.m. until 10 p.m., Ben Mr. Seiferman, manager, (Special Event Permit No. 2010-144).

Mr. Janson moved to approve the Consent Agenda as presented. The motion was seconded by Mr. Kandt and carried with a roll-call vote of 12 to 0.

REGULAR AGENDA:

PUBLIC SAFETY

COMMITTEE REPORT: George Kandt, Chair

No report.

STAFF REPORT:

No report.

COMMUNITY DEVELOPMENT

COMMITTEE REPORT: Terry Goodman, Chair

No report.

STAFF REPORT:

No report.

PUBLIC WORKS

COMMITTEE REPORT: Terry Happer Scheier, Chair

No report.

STAFF REPORT:

BID TABULATION – 143rd Street Improvements, Quivira to Switzer.

Director of Public Works Doug Brown stated that staff was recommending acceptance of the low bid from McAnany Construction Company for the 143rd Street Improvements, Quivira to Switzer, project in the amount of \$4,301,826.17.

Mrs. Happer Scheier moved to accept the low bid from McAnany Construction Company for the 143rd Street Improvements, Quivira to Switzer, project in the amount of \$4,301,826.17. The motion was seconded by Mr. David White and carried with a vote of 12 to 0.

FINANCE ADMINISTRATION AND ECONOMIC DEVELOPMENT

COMMITTEE REPORT: Jim Hix, Chair

No report.

STAFF REPORT:

ORDINANCE NO. TDD-2872 – Authorizing the City to issue Transportation Development District Sales Tax Revenue Bonds, Series 2010 (Oak Park Mall Project), for the purpose of financing the construction of certain transportation related improvements within the Oak Park Mall Transportation Development District, to fund a debt service reserve fund and to pay certain costs relating to the issuance of the bonds; authorizing the issuer to enter into a trust indenture with UMB Bank, N.A., as trustee; authorizing and approving the execution of

certain other documents; and approving the taking of actions in connection with the issuance of said bonds. (Oak Park Mall Project).

Deputy City Manager Kristy Stallings presented for the Council's consideration Ordinance No. TDD-2872. She noted that this ordinance authorizes the issuance of Transportation Development District Sales Tax Revenue Bonds. These are being issued in conjunction with the Oak Park Mall project. The ordinance in the packet materials had some blanks in it. The final amount of the bond has been sized at \$16,185,000. The ordinance further authorizes the execution of a variety of documents, which were included in the online agenda packet in their substantial form. As they move towards closing and finalizing the transaction, there may be some minor changes to those documents. Mr. Pete Heaven, attorney, Lathrop and Gage, was present to speak on behalf of the property owner of Oak Park Mall. The City's bond counsel, Ms. Janet Garms, Kutak Rock LLP, was also present. Mr. Matt Webster, underwriter, Oppenheimer and Company, Inc., handled the transaction from an investment banking standpoint and was present to make some comments regarding the bond issue.

Mr. Matt Webster, underwriter, Oppenheimer and Company, Inc., stated that as they anticipated, they sold the bonds last Thursday. They were able to sell into a fairly orderly market. They ultimately achieved an average interest rate of 5.8 percent, which was slightly below the target of 6.2 percent to 6.5 percent, which they had estimated. These bonds are supported only by the half cent sales tax on the mall property that is collected on all retail sales. The City has no financial liability for this debt.

Mr. Jim Hix moved to approve Ordinance No. TDD-2872 as presented with the insertion of a principal amount of \$16,185,000. The motion was seconded by Mr. Goodman and carried with a roll-call vote of 12 to 0.

RECOMMENDATIONS FROM THE PLANNING COMMISSION

PLANNING COMMISSION CONSENT AGENDA:

SPECIAL EVENT PERMIT NO. 2010-142 – 9701 West 137th Street. A special event permit is requested to allow a farmer's market on Saturdays from May 1 through October 16, 2010. Application made by the Blue Valley Recreation Commission.

SPECIAL EVENT PERMIT NO. 2010-144 – 10620 Metcalf. A special event permit is requested to allow a tent for a swimsuit competition on Thursday, June 3, 2010. Application made by Ben Seiferman, representing Hooters.

REVISED PRELIMINARY PLAN APPROVAL – Hy-Vee Shopping Center, vicinity of the northwest corner of 135th Street and Antioch. Application made by Tad Gellender. The Planning Commission approved this item on March 22, 2010, by a vote of 11 to 0.

SPECIAL USE PERMIT NO. 2009-48 -8562 West 133rd Street. A special use permit is requested for a three-year period of time to allow a drinking establishment. This property is currently zoned CP-2, Planned General Business District. Application made by SRI Venkateshwara Enterprises, Inc.

The Planning Commission approved this item for a three-year period of time on March 22, 2010, by a vote of 11 to 0. Ordinance No. Z-3444.

SPECIAL USE PERMIT NO. 2010-1 – 9103 Elmhurst Drive. A special use permit is requested for a five-year period of time to allow the renewal of a drinking establishment. This property is currently zoned C-2, General Business District. Application made by Jock's Sports Bar. The Planning Commission approved this item for a five-year period of time on March 22, 2010, by a vote of 11 to 0. Ordinance No. Z-3445.

SPECIAL USE PERMIT NO. 2010-2 – 11200 Mastin. A special use permit is requested for a ten-year period of time to allow the renewal of an animal boarding facility. This property is currently zoned CP-2, Planned General Business District. Application made by Pawz at Play. The Planning Commission approved this item for a ten-year period of time on March 22, 2010, by a vote of 11 to 0. Ordinance No. Z-3446.

SPECIAL USE PERMIT NO. 2010-3 – 8725 Metcalf. A special use permit is requested for a five-year period of time to allow the renewal of a drinking establishment. This property is currently zoned CP-1, Planned Restricted Business District. Application made by 8725 Metcalf II, Inc. The Planning Commission approved this item for a five-year period of time on March 22, 2010. Ordinance No. Z-3447.

REZONING NO. 2010-2 - 8540 Switzer. Rezoning is requested from R-1, Single-Family Residential District, to R-1A, Small-Lot Single-Family Residential District, to allow a small-lot single-family residential development. Application made by Kenneth Purevich. The Planning Commission approved this item on March 22, 2010, by a vote of 11 to 0. Ordinance No. Z-3442.

REZONING NO. 2010-3 – 7615 Shawnee Mission Parkway. Rezoning is requested from C-2, General Business District, to CP-3, Planned Commercial District, to allow a used car dealership and detailing business. Application made by Polsinelli Shughart PC. The Planning Commission approved this item on March 22, 2010, by a vote of 11 to 0. Ordinance No. Z-3443.

UNIFIED DEVELOPMENT ORDINANCE AMENDMENT – NO. ZRR-2856 – Amendments to Unified Development Ordinance for Section 18.140.080 for notification requirements to surrounding property owners and Section 18.140.350 for consideration of variances. Application made by the City of Overland Park. The Planning Commission approved this item on March 22, 2010, by a vote of 11 to 0. Ordinance No. ZRR-2856.

Mr. Goodman asked that Special Event Permit No. 2010-142 be removed from the Planning Commission Consent Agenda for further discussion.

Mayor Gerlach provided an opportunity for members of the audience to address the Council regarding Special Use Permit Nos. 2009-48, 2010-1, 2010-2 and 2010-3, Rezoning Nos. 2010-2 and 2010-3 and Unified Development Ordinance Amendment No. ZRR-2856. There was no response, and the hearing was closed.

Mr. Janson moved to approve the Planning Commission Consent Agenda as stipulated with the exception of Special Event Permit No. 2010-142, which had been removed for further discussion. The motion was seconded by Mr. Kandt and carried with a roll-call vote of 12 to 0.

With regard to Special Event Permit No. 2010-142, Mr. Goodman noted that the parking at the farmer's market, 9701 West 137th Street, was already problematic. He understood that there would perhaps be several new vendors that anticipate doing business at this location, and some of them might have a significant following that would come with them to the Blue Valley Recreation complex. Since parking has already been problematic and is likely to get worse, he wanted to know what plans they had to make sure that they could accommodate the traffic that might attend this event.

Current Planning Manager Leslie Karr replied that the applicant has secured an agreement for overflow parking to be accommodated at the Ritz Charles parking lot across the street. Last year when the application for this event was approved, staff had concerns about parking and traffic circulation. Staff asked the Police Department to monitor the event so they would know how it would work with the tournament activities occurring on the property. It seemed to go well last year, so staff was not anticipating any problems. They did include a stipulation to indicate that the applicant would work with the Police Department to deal with any parking or traffic issues. They could continue to have the Police Department monitor and report back if any issues develop.

Mr. Goodman asked if there are issues, what would be their response. Mrs. Karr replied that if there is a problem that cannot be resolved, the special event permit could be brought back to the Council for revocation.

Mr. Hix recalled that they recently passed an ordinance requiring any organization that was having a parade to pay 50 percent of the cost of police assistance for traffic. He asked if Blue Valley Recreation will be required to pay for a portion of the cost if additional police services are necessary for the traffic. Director of Planning and Development Services Bill Ebel replied that they have not discussed the level of enforcement or engagement by the Police Department. To date, the involvement of the Police Department with this activity has been minimal. If they had a significant event that required additional police officers, they would revisit this issue with the Blue Valley Recreation Commission and either bring back the special event permit for revocation or for additional stipulations to make sure that the event does not interfere with the other activities in that area.

Mr. Jim Hook, applicant, 6545 W. 151st Street, indicated that they understand the concerns that were being expressed by the Council. They do not want to create parking or traffic problems at the Blue Valley Recreation Complex. They will also be watching the situation diligently to make sure they do not have issues with parking. They realize they have had parking problems in the past, which is why they secured an agreement with the Ritz Charles for overflow parking if it is needed during certain events.

Mr. Goodman moved to approve Special Event Permit No. 2010-142. The motion was seconded by Mr. Hix and carried with a vote of 12 to 0.

PLANNING COMMISSION REGULAR AGENDA:

REZONING NO. 2009-6 – Vicinity of the northwest corner of 129th Street and Quivira. Rezoning is requested from RP-OS, Planned Open Space Single-Family Residential District, to RP-3, Planned Garden Apartment District, to allow a multifamily project. Application made by Dennis J. Eskie and Associates, L.L.C. The Planning Commission approved this item on March 22, 2010, by a vote of 11 to 0. (A valid protest petition has been received).

Mrs. Karr indicated that Rezoning No. 2009-6 was a request to rezone a 26.2-acre site at 129th Street and Quivira, from RP-OS, Planned Open Space Single-Family Residential District, to RP-3, Planned Garden Apartment District, to allow a multifamily project. This property is currently undeveloped. The property to the west is developed with homes in the Nottingham by the Green subdivision. Heartland Christian Fellowship is located to the north. Across Quivira to the east is the Amber Meadows subdivision. Adjacent to this property to the east is the Heritage United Methodist Church. To the south is a vacant 8-acre tract.

This property is currently Master Planned for low-density residential development, which allows zero to five dwelling units per acre. That designation is consistent with the existing zoning on the property. Mrs. Karr referred to a map of the area and pointed out the locations that are designated for public and semi-public uses, including sites for churches, schools or other public facilities.

A plan is currently approved for the subject site. The RP-OS plan is for 68 lots. This is a zoning district that allows up to five units per gross acre. It is a zoning district that the City created after they required stream corridor buffers to be provided so that developers could recoup the density that is lost from having to provide a stream corridor setback. The zoning district requires 30 percent open space and allows a minimum lot size of 50 feet wide by 85 feet to 115 feet deep, depending on whether or not the lots back up to open space. The zoning allows single-family structures to have a maximum height of 35 feet.

In 2008, a rezoning request was presented to the City Council that was ultimately denied. With that request, the applicant was asking for RP-4, which is a planned cluster housing district, and RP-5, which is a planned apartment building district. The proposal at that time was for 222 units with an overall density of 8.5 dwelling units per acre. The proposal included 22, three-unit buildings along the western portion of the property. Those units were 3,450 square feet in size. The density for the RP-4 area was 4.2 dwelling units per acre. The RP-5 portion of the project was proposed at the north and east portion of the property, and the density was 15.3 units per acre. It included three, two-story unit buildings along Quivira and seven, three-story buildings in the interior of the property. This portion of the proposal was 15.3 units per acre. The overall density for the property was 8.5 units per acre.

The applicant's current proposal is to rezone the entire property to RP-3. This proposal has 228 dwelling units with an overall density of 8.68 dwelling units per acre. There are 28 buildings. They consist of six- and eight-unit buildings on the western side. The six-unit buildings include attached garages with access from the sides of the buildings. The portion of the development on the north and east part of the property consists of eight- and sixteen-unit buildings with detached garages. This project has 11.69 acres of open space, which is approximately 44.5 percent of the site.

The applicant is proposing additional landscaping along the western boundary of the property. They require a deviation for setbacks for the garages along the northern property line.

This developer will be responsible for constructing 129th Street, which is a collector street. There is a stipulation included in the Staff Comments to require a cul-de-sac at the end of 128th Street; however, the cul-de-sac is not shown on the plan.

The closest multifamily project to the adjacent single-family area is 105 feet.

Mrs. Karr presented an east-west view of a cross section of the proposed development. The right side would be the property line in common with the Heritage United Methodist Church and the left side would be the property line in common with the Nottingham by the Green development. There was also a north/south view of the middle section through the eastern part of the project. On the right side was the property line in common with Heritage United Methodist Church and on the left side was the property line in common with the Heartland Christian Fellowship. The cross views indicated how the land falls and how the buildings lay in relation to the property lines.

This property has two stream corridors. The applicant has a deviation for an east/west corridor on the property. They are required to provide a 60-foot buffer on each side for the stream corridor that runs north/south on the western part of the property. They are also required to provide storm water treatment on this property. They are doing that in the form of rain gardens, native vegetative swales, and an extended wet detention basin on site.

The buildings have an architectural style of English Tudor. The applicant met with the Site Plan Review Committee of the Planning Commission to work out details for the building architecture. Staff and the Planning Commission were of the opinion that the design meets all of the requirements of the Multifamily Design Guidelines in terms of building architecture and design.

There is a stipulation to require a cul-de-sac at the end of 128th Street.

The property is Master Planned low-density residential. As properties are rezoned or have new development plans approved, it is customary for the City to bring the Future Development Plan into compliance with the projects that are approved on the property. Prior to being rezoned RP-OS, this property was shown as blue on the Master Plan for public and semi-public uses, which was consistent with the plan at that time for Heritage United Methodist Church.

Mrs. Karr referred to an aerial photo of the subject site and the surrounding area. She pointed out the KU Edwards Campus to the north, the City's golf course to the northeast, a number of multifamily projects along Quivira, and some multifamily and other non-residential uses along 135th Street.

Staff was asked to prepare a map of the application area to show the areas that are designated for single-family, multifamily, planned multifamily, and mixed use, which could include multifamily. The map also indicated areas that are zoned RP-OS and PRN, which is a mix of residential districts that can include multifamily. There were also church locations.

Mrs. Karr indicated that staff was supportive of this rezoning request. It was staff's opinion that this property was not likely to be developed as single-family, and the application met the requirements in the Comprehensive Plan for transitioning and buffering to lower density projects. It also met all of the Multifamily Design Guidelines.

There was a public hearing held before the Planning Commission on March 22, 2010. Two people spoke during the hearing in opposition to the request. The Planning Commission voted 11 to 0 to recommend approval of the rezoning with stipulations a through v, which included the stipulation for the cul-de-sac at the end of 128th Street. Since a valid protest petition was submitted, ten votes of the Council would be required to approve this item.

Mr. David White asked when the property was zoned RP-OS. Mrs. Karr replied that it was rezoned to RP-OS in 2005. Mr. White asked what density is allowed with an RP-OS zoning. Mrs. Karr replied that an RP-OS zoning allows five dwelling units per gross acre. Mr. White asked what density is allowed for RP-3. Mrs. Karr replied that 12.4 units are allowed per net acre in RP-3 zoning. The overall proposed plan has a density of 8.68 units per acre. Mr. White asked if the additional trees and buffering along the stream corridor were required by the Planning Commission. Mrs. Karr replied that it was proposed by the applicant in the plan. Mr. White asked if staff had looked at the landscaping. Mrs. Karr replied in the affirmative. She added that the landscape plan exceeds the requirements that they have for multifamily, so they were satisfied with the proposal.

Mr. John Skubal clarified that the proposed development was within 105 feet of the closest existing residence. He asked how close the proposed project could be. Mrs. Karr replied that in an RP-3 zoning, the allowed setback was 30 to 35 feet. Mr. Skubal clarified that the setback is almost three times greater than what would be allowed by ordinance. Mrs. Karr added that this property also has the stream corridor ordinance that precludes the development from getting that close to the property line. If it was not for the stream corridor, the development could be closer to the adjacent single family area.

Mayor Gerlach asked what setback would be allowed if this was an R-1 development. Mrs. Karr replied that if this development was zoned R-1, it would still have the stream corridor ordinance setback requirement. Without the stream corridor, there could be a 25-foot setback with an R-1 zoning.

Mr. Goodman stated that he had a question regarding the 8-acre residential site to the south. If this application was to be approved, that adjacent site would become almost a remnant 8 acres. Since staff does not see the subject site as being suitable for single-family development, would it be reasonable to assume that staff would also not see the site to the south as reasonable for single-family development. Would it be likely that site would also be developed with multifamily. Mrs. Karr replied that is possible. With the smaller lot size, the multifamily project becomes more difficult. It could be developed with cul-de-sacs with single-family. Mr. Ebel added that with the construction of 129th Street, it is more likely that the 8 acres would be developed with single-family residential. Mr. Goodman asked if it is possible to develop the 8 acres as single-family residential, why is it unlikely to develop the subject site of more than 20 acres as single-family residential. Mr. Ebel replied that it is a matter of economics, and the applicant may be able to address that question. The construction of

129th Street, which is required, has always been the prohibiting factor with the development of any single-family proposals for the subject site.

Mr. Goodman had asked staff to calculate the density on the developable ground. He understood that 15.3 dwelling units per acre would be the overall density on the developable ground. Mrs. Karr replied that was their calculation by taking out the stream corridor area. Mr. Goodman observed that would include a higher density that would be adjacent to the neighborhood than the 4.2 density that was previously proposed for the western portion of the site. Mrs. Karr replied that would exceed the density that would be allowed in RP-3. Mr. Goodman asked what was the length of the six- and eight-unit buildings. Mrs. Karr replied that the applicant would have that information.

Mr. Goodman added that the transition was mentioned in the Staff Comments. He asked what staff considers to be an adequate transition in this plan. Mrs. Karr replied that there is both open space providing a setback and also additional landscaping and buffering provided. Mr. Goodman asked if the open space, which mostly consists of the streamway corridor, was also a part of the previous plan. Mrs. Karr replied that the open space was a part of the previous rezoning and the RP-OS project. The additional landscaping was not proposed as a part of the existing RP-OS plan.

In comparing the current plan with the last plan, Mr. Goodman noted that with the previous plan, staff indicated that there had been discussions about going entirely to apartments, but staff felt that it was important on the western part of the property to respect the adjacent single-family. They were not comfortable with having the whole site go to apartment development. They were more comfortable with getting a lower-density product on the west end and concentrating the intensity more on the thoroughfare and in between the two churches. He asked what has changed. Mrs. Karr replied that staff supported the last application. If he was to ask staff to pick between the last application and the proposed application, the previous plan had a lot of advantages. In order to maintain the density that was required to make the project feasible, the applicant was taking some of the density and putting it in three-story buildings. When that application was denied and concern was expressed by the Council with the three-story buildings on the property, then the applicant came forward with the proposal for two-story buildings maintaining a similar density. At that point, staff felt that there had been direction given to the applicant that the two-story buildings were preferable versus having three-story buildings on the site. Mr. Goodman asked if staff was comfortable with having two-story apartments on the western portion of the site with the proposed plan, but they were not comfortable with apartments on the west side with the previous plan. Mrs. Karr replied that after their original review of the 2008 plan, the City Council took action on that application, and the direction that came from the Council was that three-story buildings were not appropriate on the property. In order to have a density that would make the project feasible, the two-story buildings were placed throughout the project. The quality of the project remained the same, and staff was comfortable with those changes. Mr. Goodman observed that the finances were driving the recommendations. Mrs. Karr replied that having a density that was workable was a consideration.

With regard to the landscape plan, Mr. Goodman noticed that 9 out of the 12 types of trees that are proposed are deciduous. He asked what would block the view of the subject site in the fall and winter when the trees are leafless. Mrs. Karr replied that

there was to be a double row of evergreen trees along the length of the property for that purpose.

Mr. Goodman referred to the City's medium- and higher-density land use goals. One goal was that the height and bulk of medium-density residential buildings and accessory structures should be oriented away from low-density residential neighborhoods to avoid creating a negative visual effect. Mr. Goodman assumed that would indicate that the ends of the buildings should abut the single-family residential neighborhoods. However, with the proposed plan, every building has the back side facing the single-family residential neighborhood. In light of that goal, Mr. Goodman asked if the proposed plan is consistent with the land use goals. Mrs. Karr replied that the project does orient the long sides of the buildings towards the single-family area. It is not as desirable of an orientation. However, given the type of structure that they desired to have with garages on the ends, it became difficult to fully meet that goal.

Mr. Paul Lyons asked if the 2005 plan that is currently approved included a streamway way setback or did the streamway setback requirement come after the original plan. Mrs. Karr replied that the 2005 plan provided the stream corridor setback. The stream corridor requirements were implemented in 2002. Mr. Lyons noted that the plan does not show a cul-de-sac, although there is a stipulation requiring a cul-de-sac at the end of 128th Street. He asked if the cul-de-sac would encroach on the streamway setback. Mrs. Karr replied in the negative. Mr. Lyons asked how the landscape buffer would change with the cul-de-sac, because it looks like it will encroach into the middle of the landscaping. Mrs. Karr replied that the landscaping would have to be modified if the cul-de-sac is there. Mr. Lyons asked if there is enough room to still provide the screening with the cul-de-sac. Mrs. Karr replied in the affirmative. Mr. Lyons asked which roads would be public and maintained by the City and which roads would be private if the plan was to proceed. Mrs. Karr replied that the City would maintain the cul-de-sac and 129th Street. Those would be the only two public streets. The other streets would be private.

Mr. Fred Spears understood that the subdivision to the west, Nottingham by the Green, and Amber Meadows to the east were developed in the late 1980s and the early 1990s. He asked what was the zoning on the subject site when those subdivisions were developed. Mrs. Karr replied that it was R-1, single-family. The land was rezoned to RP-OS in 2005.

Mr. Spears asked when 129th Street was officially designated as a collector. Mr. Ebel replied that 129th Street has been designated as a collector on the City's Official Road Map for quite some time. Senior Transportation Planner Mark Stuecheli added that the designation of 129th Street as a collector predates the residential development on both sides of Quivira.

Mr. Spears noted that the residents from Nottingham by the Green had expressed concern regarding increased traffic in their subdivision from the increased density in the area. He asked how much the traffic was likely to increase from the proposed project and what was the probability of the need for a traffic signal based on the warrants at 129th Street and Quivira. Mr. Stuecheli replied that is something they cannot predict, but it is a collector street intersecting a busy thoroughfare. If they look at some of the other collectors to the north, there are signals at those locations.

There is potential at some point to warrant a traffic signal, but they cannot guarantee that will happen.

Mr. Spears asked when the stream corridor ordinance was enacted. Mrs. Karr replied it was enacted in 2002. Mr. Spears asked if the church already owned the property at that time. Mrs. Karr replied that the applicant could address that question.

Mr. Dan Stock asked if the 105-foot setback was from the lot line to the apartment building or from the back of the house to the apartment. Mrs. Karr replied that it was the distance from the apartment to the property line. Mr. Stock referred to the sightline chart and noted that he was trying to visualize the proposed plan from the west to the east with Nottingham by the Green looking to the east. He asked what is the height of the apartments. Mrs. Karr replied that the apartments are 33 feet and 9 inches in height. He asked how high is the typical two-story home. Mrs. Karr replied that R-1, Single-Family, allows a height of 35 feet. The height for both apartments and single-family is measured from the average grade at the front to the mid point of the roofline. If there is a walkout basement situation or a two-three split on an apartment in the back, it could be higher. Mr. Stock asked about the view if he was looking to the east from a Nottingham by the Green home. Mrs. Karr replied that the grade is a little lower on the Nottingham by the Green properties, so they might be looking up slightly at the apartments, depending on how tall the homes are in the Nottingham by the Green subdivision. Mr. Stock asked what was the difference in the grade of the Nottingham by the Green subdivision from the subject site. Mrs. Karr replied that the applicant could address that more specifically.

Mr. Korb Maxwell, attorney for the applicant, Polsinelli Shughart, PC, 6201 College Boulevard, stated that he was representing Dennis J. Eskie and Associates, L.L.C., and Heritage United Methodist Church. He noted that the developer of the property is Mr. Eskie, who is a well known developer of commercial and multifamily properties throughout the region. He is highly respected and builds high-quality projects.

Mr. Maxwell referred to the character of the area that surrounds the proposed Edinborough property. He noted that there are several principal land uses in that area that are civic and institutional including the KU Edwards Campus, Heritage United Methodist Church, Heartland Christian Fellowship and the Overland Park Golf Course. It is also surrounded by single-family development with the Nottingham by the Green subdivision to the west and the Amber Meadows subdivision to the east. If they move out further from the property to look at the corridor, from 119th Street and Quivira to 135th Street, there is often multifamily development at the cross sections of arterial streets. Along these corridors, they will find multifamily with standard densities. A standard density for multifamily is 11.5 units or higher throughout the City. The KU Edwards Campus to the north has 11.5 units per acre. The Preserve of Overland Park has 13.2 units per acre, Amlis at Creekside has 14 units per acre, the Crown Chase Apartments have 16.41 units per acre, and Stone Post Ranch has 15.26 units per acre.

The subject site is an infill piece of development. It is the hardest type of project to develop, because there are properties and owners that made investments and came before them. When they develop, they have to do it in a respectful manner. However, they also have to be realistic and look at the physical and financial obstacles or burdens on the property that must be addressed for the site to be developed. The key physical and financial issues they have with this infill piece of property is the

surrounding land uses. Heritage United Methodist Church and Heartland Christian Fellowship are civic and institutional uses, and they are not the perfect adjacent uses to be next to a single-family project. For more than five years, they have been attempting to market the subject site for single-family homes, and they have not been able to attract any developer willing to take on that task.

Other than the surrounding land uses, the main obstacle that is keeping this site from being developed as single family is the construction of 129th Street. A long-term priority of the City has been the completion of 129th Street, which would finalize the street network that was planned many years ago. They are left with a stub that stubs out at the end of Century Street and needs to be continued to Quivira. However, the City does not build collector streets. The City only builds arterial streets. The development community builds the collector streets. That concept works well with green field development where there are many lots to share the cost. The subject site is an infill piece that is 26 acres in size. Since approximately 8 of those acres are dedicated to a streamway corridor, one third of the acres are removed from the calculation, and the cost of building 129th Street becomes too high. It has stopped any ability to be able to develop this site with single-family homes. They tried to market this site for single-family homes during the peak of a housing boom, and they were unable to interest a developer in going forward with that type of plan. The reason for being unable to go forward with single-family development on the subject site was the cost of 129th Street.

In the late 1990s and the early 2000s, the Heritage United Methodist Church acquired the 40 acres that make up the church campus and the 26 acres that are included in the Edinborough proposal. At that time, the church believed that it needed 40 acres for the master plan of the Heritage United Methodist Church campus. After acquiring that property and doing an intense study with the architects, they realized that they would need only 12 to 15 acres for the ultimate goal for their church. In the early 2000s, they begin to consider how the surplus acreage could be marketed and put to a productive use that could interact and work with the church use. They also considered a use that could work with the neighbors. The first plan they began with was the RP-OS rezoning to allow 61 lots. The constant obstacle with that plan was the development of 129th Street.

After trying for many years to develop that land as single-family, they realized that it was futile, and they began the process of considering how this piece could be developed in a respectful manner but with greater density that would still allow the construction of 129th Street. They began a rigorous process of working with the neighbors and the Planning staff, which resulted in the 2008 plan that they presented to the Council one year ago. The 2008 rezoning plan had a net density of 8.5 units per acre. It was made up of a split zoning including a RP-4 zoning on the west side with approximately 3.8 units per acre, which was comprised of threeplex units, and a RP-5 zoning on the east side near Quivira, with approximately 17.7 units per acre with three-story buildings surrounding the inner courtyard. They presented the plan with a recommendation for approval from the Planning staff, the Site Plan Review Committee and the Planning Commission. On that night, a protest petition had been filed by the neighbors and the plan was denied with a vote of 9 to 4. According to the minutes, the vast majority of the Council understood and agreed that multifamily is appropriate for this location. To the land use matter before them, multifamily made sense. However, the Council voted against the application based on the fact that the plan did not make sense with the three-story buildings and the RP-5 zoning.

They went to work to bring forward a new plan that they believe met the Council's dictates of not including three-story buildings and having RP-3 throughout the site. The new plan is all two-story buildings and all RP-3 development. It looks similar to the last plan because with the L-shaped site, the streamway corridor on the west side, and the need to build 129th Street on the bottom of the site, the ways to lay out the site are basically set. The location of the buildings and the ways they interact with the property, the church, the neighborhood and the streets are similar. The difference with this plan is that they have taken away the density that was previously on the courtyard, removed the three-story buildings, and placed throughout the entire site a mixture of six-, eight- and sixteen unit, two-story buildings for an overall RP-3 zoning with a density of 8.6 units per acre. In contrast, the standard density for multifamily in Overland Park is 11.5 units per acre.

This site is not dense. It is a low-density multifamily project. However, low density and a good site design are not the only things that are required when doing an infill development. The key is to make sure that the plan, the site and development interacts well with the adjacent uses. One of the things that Mr. Eskie proposed on his own volition was to take the landscaping features on this plan to the next level. On the west edge, they would plant a double row of eastern red cedars that are 8 feet to 10 feet tall at the time of planting. This would create a large thicket of landscaping. In working with staff, they would add as many additional plantings and native species that they could fit on the site. To put into perspective how much landscaping this is, he asked the architects what the Overland Park code would require. The code would require approximately 216 plantings on the site. Mr. Eskie has committed to provide almost 1,100 plantings on the site. The number that is shown on the preliminary plan is 1,097 plantings. They plan to have approximately 490 evergreen trees and approximately 170 deciduous trees. Because of the double row of eastern red cedars, they are planning on providing substantially more evergreens because of the winters they have here.

Another component to consider was the transportation and traffic. They have also tried to be respectful of the neighbors in this regard. They have done several things to calm traffic. First, on 129th Street, they committed to putting in a median that serves as a blocker and slows down traffic or any of the ill effects that can occur by putting in the collector. They have also added gated features to all of the entrances to Edinborough. Side street parking has been provided throughout the site to further slow down the speed of traffic. They also agree with Mr. Stuecheli and the Planning staff's analysis of the overall traffic that will be created by the project. In the a.m. and p.m. peak hours, they are creating approximately one more car per minute with the additional density on this site. The added traffic is something that can well be handled by the existing street network around the property.

Overland Park, through its design guidelines, requires a high level of architecture. Mr. Eskie also provides a high level of architecture with his projects. They call the proposed project Edinborough, because they want it to have the style of an English village. The features they have planned for the site include cobblestone masonry, high pitched roofs, arched entrances, and a lot of articulation. In each case, they have met or exceeded the multifamily development code. Mr. Maxwell presented a picture of their clubhouse and a color elevation of one of their two-story, sixteen-unit buildings. They believe that this will be a high-quality product for Overland Park. Although the province of this Commission primarily regards the exterior of the buildings, the

interior of the buildings include 9-foot ceilings, crown moldings and gourmet kitchens. This will be a high-quality product.

In the projects that Mr. Eskie develops, he likes to exceed expectations with landscaping and hardscape elements that add to the ambience of the community. He has committed to providing life-size bronze statues throughout the site, high landscaping and private courtyards. Because of the streamway corridor and the courtyard plan, they have approximately 11.7 acres of green space that will be included in this site. That equates to 44 percent of the site being green space. Under the Overland Park code, only 17 percent of the site would be required to be green space. As a part of the high-quality project, they will have several amenities including a salt water pool, tennis courts, volley ball courts and a business center. This is the first multifamily project in the City to meet all of the storm water best management practices (BMPs). They will also include green building principles throughout the site.

There are two deviation requests with this application. The first is a deviation request for a covered garage at the northeast corner of the site that is adjacent to the Heartland Christian Fellowship Church site. In that location, the code calls for a 20-foot setback. They have asked for an 11-foot setback in that area. Heartland Christian Fellowship does not have an issue with the proposed setback. This is a better site layout with the additional green space, and they believe that no harm is done with the deviation. Under the streamway setback, they have asked to be allowed to have a wet detention basin at the headwater of the east/west stream. He has discussed this request with the engineers, and the deviation would have an increased water quality benefit. The water quality that would flow from their engineered detention basin would be better than if they left the stream in its current condition. They believe no harm would be done with the approval of this deviation request. They believe that granting both deviations would result in a better site.

One of the comments that came up several times in comparing the proposed plan from last year's plan was that it was an improvement to take away the three-story buildings. However the comments were also in favor of the three-unit villas to the west, because they made a nice transition to the Nottingham by the Green area. Although they have moved to six- and eight-unit buildings to the west, they still have a nice transition in scope and scale. When they had the three-unit villas previously on the north/south axis, they had approximately 104 feet of building length, and they were 42 feet wide on an east/west basis. When they moved to the six- and eight-unit buildings, they were able to decrease the length of building on the north/south axis, but they increased the width. The part of the building that will be seen the least by the neighbors, which is the width, is the piece that was increased, while the north/south length was decreased. The biggest key to the differences between the three-unit buildings and the six- and eight-unit buildings was the fact that this plan is not feasible if they have two-story buildings around the courtyard and three-unit villas on the west side. That would result in a loss of nearly 50 to 60 units. They looked at the numbers both as a development team and as the church to see if that was possible, and they concluded that it was not possible.

They also asked Grandbridge Real Estate Capital, which is probably the foremost long-term financier of multifamily projects in the Kansas City Market, to look at the numbers. They took Grandbridge Real Estate Capital all of their pro formas and asked them to give the project a second look. They asked if they could drop some units to try to achieve a three-unit villa and a two-story mix. Their answer was an

unqualified “no.” They said that the proposed project could be financed in the current state of the plan. If they lost 50 units, it would be essentially impossible to get financing.

Another issue regarded the requirement for the cul-de-sac in stipulation g. Mr. Maxwell explained that staff had requested that they construct a cul-de-sac bulb at the end of 128th Street. The developer was asking that they not be required to include the cul-de-sac in the plan. They believe that the cul-de-sac is a secondary issue to the land use that they are considering. Since 128th Street was built in 1993, houses have been built on the street, and it has operated at near capacity with six houses on the street for almost 20 years. To date, the lack of a cul-de-sac on 128th Street has not been an issue. It could continue to work like that because 128th Street is only 370 feet in length from Oakmont to the dead end, and the dead end is visible from Oakmont. Since the dead end is visible, it decreases the number of turnarounds on the street. Also, the neighbors in Nottingham by the Green do not want the cul-de-sac to be built. They believe that the cul-de-sac would damage the effect they are trying to create on the western end.

Mr. Maxwell observed that the last time a rezoning for this site was considered one year ago, the development community, the church, the City staff and the Council all understood that single-family would not be developed on this site. The Council sent the applicant back to work further on the plan, and they have worked diligently for one year with staff, the Site Plan Review Committee and the Planning Commission. The Planning Commission unanimously recommended approval of this application to the Council. It is a difficult site with many obstacles. The answer to those obstacles is to have a low-density multifamily project. They believe it is the only answer for overcoming those obstacles. If the plan is approved, the project will be built and 129th Street will be built. They will not require benefit districts or condemnation. The property owner to the south has agreed to give them the necessary right-of-way. They will get the street built, which will provide a critical piece of infrastructure to the neighborhood and the City. The \$30 million construction project will help the economy in Overland Park. They will provide resolution to the church, the developers, the neighbors, the City and this Council if the plan is approved. They believe that this plan meets all of the requirements, and they asked for approval of the plan as submitted. They were in agreement with stipulations a through v with the exception that they were asking for the removal of stipulation g, which required the cul-de-sac bulb at the end of 128th Street.

Mr. Goodman asked how many three-unit buildings there were with the 2008 plan. Mr. Maxwell replied that there were 22 three-unit buildings with 66 units. There are now 18 total buildings on the west side. When they considered the 2008 plan, the majority of the Council was hesitant to approve the three-story buildings. The applicant addressed that concern by presenting all two-story buildings. Mr. Goodman asked if perhaps the Council was not specific enough in their direction. He asked if the direction could have implied that they liked the project except for the three-story part of the development. Mr. Maxwell replied that the direction of the Council was to remove the three-story element. They must work within the confines of reality. They have to work with what can be developed, financed and achieved with the hurdles that the City has presented. The hurdles are that they must build 129th Street and maintain the streamway corridor. With those two mandates, they need to develop 220 units on the site. In taking the three-story buildings from the courtyard, they then had to move the density with the six- and eight-unit buildings that worked

appropriately with the streamway corridor and the neighborhood. Mr. Goodman noted that they are coincidentally including the same number of units that were recommended by their financial consultants. Mr. Maxwell replied that they were deliberately including the recommended number of units. There is a process that they go through with staff. The developers present their initial number of units, and then they work with staff to get to the minimum number of units that will present the best project possible while still making financial sense. Staff did an excellent job in 2008 to help them to create the 222-unit plan. They did an excellent job this time of getting them to the 228-unit plan. Their financial consultant, Grandbridge Real Estate Capital, looked at the numbers, and they concluded that 220-units plus are needed to make this project viable and overcome the cost of 129th Street.

Mr. Goodman observed that to develop this property under any circumstance, the developer would need to build the north side of 129th Street. The additional cost that they are taking on is to build the south side of 129th Street, which is what they would ordinarily not have to pay. They might have the cooperation of the owner to the south, because the owner is giving up an easement in exchange for the potential cost of what the street might have been. He asked about the additional cost for building the south side of 129th Street. Mr. Maxwell replied that their engineers have estimated that the approximate cost would be \$1.1 million to \$1.2 million for the street. The south side of 129th Street would cost approximately \$550,000 to \$600,000. They went to the Public Works Committee several years ago to discuss what would occur if they did not agree to build 129th Street. The City would have been forced to condemn the right-of-way for that street, and they would still have been required to pay for the street with the additional cost for the right-of-way. Mr. Goodman assumed that if they were not faced with the additional \$550,000 cost plus the impact of the streamway corridor, a lower density development would be possible. Mr. Maxwell replied that they would be able to have a development with less density. There would still be a high cost to build a Class A project. There is a high operating and infrastructure cost to build to the City's standards and Mr. Eskie's standards.

When the developer indicated to the church that he was interested in developing this property, Mr. Goodman asked if he noted that there were some factors to consider. First, there was a stubborn landowner to the south that would not pay his half of 129th Street, so they would have the extra cost of the street. Second, because of the streamway corridor, they would not be able to develop a lot of acreage. He asked if the developer indicated a price that they could pay for the land with those factors in mind and still develop an acceptable project. Mr. Maxwell replied that they have looked at the numbers and what the church owes on the land versus what they are getting for the land and what a reasonable transaction would be for multifamily property in the City. The land is already being sold below market. The church is not getting rich from this transaction. A part of the problem is that they are at 8.5 units per acre. The standard density for multifamily development in the City is 11 to 14 units per acre. They already have a lower density than any other multifamily development on the corridor, and they have the issue of 129th Street. This is not an issue with the church. This is an issue with the land. The church has been more than cooperative in working with this developer and pushing for the development of this site for more than five years to try to bring a high-quality project to the City.

In light of the difficulties that are inherent in developing this land with the streamway corridor on this site and the necessity to build 129th Street, Mr. Goodman asked why the developer wanted to build a project with this density in this location. Mr. Maxwell

replied that Mr. Eskie probably asks himself that same question, and the church has been working on this for more than five years. However, this still is an excellent corridor with high value, great demographics, great schools and a great neighborhood next to the KU Edwards Campus with incredibly low vacancies up and down this corridor. Their market studies have shown this area needs more multifamily. They have gone out and looked at the Class A projects, which is what they are going to develop here, and they are not vacant. They are getting good rents, and they are desirable. The individual who looks the most carefully at the market studies is the banker who is going to make the loan, and the developer who is going to sign the papers also carefully considers the market studies. This is a good piece of property that has not been zoned correctly for a number of years given the obstacles that exist with the site. Once this land has the correct zoning and adequate density is allowed, they will be able to develop the site.

Mr. Spears agreed that this site will probably be developed with multifamily. This is infill development on an odd-shaped site that has the stream corridor and a difficult neighbor to the south. He made the motion to reject the 2008 plan because he thought the three-story buildings were too massive and dense. At that point, he probably should have indicated that he liked the rest of the project, and it should remain the same. Although the land is being sold below market, he asked if it is the Council's responsibility to bail out an organization that made a bad decision and initially paid too much for the land. Mr. Maxwell replied that is not what is going on with this situation. The church is not asking for a bail out. They are only asking to be able to make productive use of the land in a way that is respectful to the neighbors, that works within the context of a land use plan and finishes out this corridor. They are asking for answers to the stream corridor and the 129th Street issues to be able to develop this land.

Noting that they previously discussed the linear length of the buildings along the west side that borders Nottingham by the Green, Mr. Spears asked if there would be more square footage of buildings on the western side of the site with the proposed project. Mr. Maxwell replied that with the previous plan, there were 22 buildings and 3,500 square feet on the west side. They now have 18 buildings on the west side with 8,400 square feet. They will have more square footage because the number of units has increased. Because the width has increased, the linear length is shorter. Also, there are now units above the garages. Mr. Spears asked what the Nottingham by the Green residents will see when they look at the subject site. Mr. Maxwell replied that the subject site is slightly higher than the Nottingham by the Green site. They have tried to put in as many trees as they could. The Nottingham by the Green residents will see the tops of roofs. However, if it was RP-OS, they would also see roofs on the site. In RP-OS or RP-1, they can have a building that is 35 feet in height. The proposed buildings will be no more than 33 feet and 9 inches in height. They will have large caliper eastern red cedars along the property line, and they will also have deciduous trees, so they can screen the site as much as possible. The buildings have a substantial residential style, and they will look like the backs of houses.

Mr. Stock asked if they will tear out the riparian corridor and rebuild it. Mr. Maxwell replied that the purpose of the streamway corridor is to keep intact as much of the site as possible. However, the code allows them to plant more in that area, and that is what they intend. Their work is to try to add landscaping and more trees. Mr. Stock asked if the development would be built in phases. He wanted to know what the Nottingham by the Green residents would see when they are looking at the proposed

project. Mr. Maxwell replied that it will be built in one phase. They would build the clubhouse first, because that is the leasing area. As soon as the clubhouse is finished, they will start building the rest of the project at the same time. Mr. Stock clarified that Mr. Maxwell would agree to a stipulation to indicate that the project will be built at the same time.

Mr. Lyons asked how long it will take to complete the project. Mr. Maxwell replied that it would take approximately 18 months to construct the development after the building permit has been issued. Mr. Lyons clarified that the project should be completed in late 2011 or early 2012. He asked if the apartments are to be rented or owner occupied. Mr. Maxwell replied that they would like to have owner occupied condos. Unfortunately, one of the results of the downturn in the market is that there is no demand for the condo market. He did not believe that condo financing would be available any time soon. They will finance this as a multifamily project. It is being built as a high-quality development, and it could be converted someday to an owner occupied condo development. However, it will be a multifamily rental project at this time.

Mr. Lyons asked if this is approved with stipulation g that requires the cul-de-sac at the end of 128th Street, will that keep this project from being built. Mr. Maxwell replied in the negative. They felt that the plan without the cul-de-sac would create a better site for everyone who is involved. However, the main issue tonight is the land use.

Mayor Gerlach referred to the land that backs up on the west side to Nottingham by the Green and south of the clubhouse. With the original single-family plan, there were 17 homes that backed up to Nottingham by the Green. With the 2008 plan, there were six, three-plex villas for a total of 18 units that backed up to Nottingham by the Green. With the proposed plan, there are two, eight-unit buildings and six, six-unit buildings for a total of 52 units that back up to Nottingham by the Green. Mr. Maxwell replied that was why he wanted to look at the length and width of the buildings to show the relative size and scope of those buildings. The proposed buildings carry more units than the three-plex villas. The units are smaller, but there are more units and the square footage has increased.

Mayor Gerlach understood that the letter from Grandbridge Real Estate Capital indicated that they cannot lose 50 units and still have a viable project. He asked if they could decrease the plan by 25 units or 12 units. Mr. Maxwell replied that the need for this site is 220 units plus. The site plan currently has 228 units. They need those units to make the project feasible.

Mr. Dennis J. Eskie, applicant, Dennis J. Eskie and Associates, L.L.C., 12516 High Drive, Leawood, indicated that he has been developing in the metropolitan area for approximately 40 years. He has always tried to do the right thing and be sensitive to the needs of the communities and the neighborhoods. A couple of years ago, they finished a shopping center in Olathe on the northwest corner of 151st Street and Blackbob. They met with the neighbors and built a 6-foot fence in the back with heavy landscaping. They located the center 70 feet away from the closest house. After they built the shopping center, the adjacent residents wanted gates put in the fences at the back of their properties so they could more easily access the shopping center. Mr. Eskie added that he has developed high quality projects throughout the metropolitan area, although he has not previously built in Overland Park. He has

been working on this project for a little more than three years. He has invested approximately \$250,000 in architectural and engineering plans and in time. They have had close to 60 meetings with individuals and with staff. They have adhered to everything that the staff and the Planning Commission have requested. They have built high quality projects elsewhere, and they will do that here as well. Mr. Eskie added that it would be difficult for any developer in any location to build a multifamily project with less than 220 units from a management and financing standpoint. Most institutional lenders and institutional owners will not accept a project less than 200 units. A project with a lower number of units does not operate functionally from a cost standpoint with the management and upkeep. They have gone the extra mile with this project for both the building and landscaping.

With regard to the setbacks, it is 105 feet from the property line to their closest building. It is another 40 or 50 feet to the house. The average distance from the property line to the houses is approximately 250 feet, which is almost two thirds of a football field. If they went to the area today and looked at the subject site from the house that was a distance of 105 feet away from their property line, they could not see a parked truck or something that is 30 feet high on the subject site through the dense vegetation that already exists. His commitment to put more than 1,000 trees on the site is almost unheard of. They are planting a double row of eastern red cedars. They are hearty, fast growing trees, and they create a good wild life environment. The cedars grow 40 feet in height, and it will be difficult to see the subject site. Most of the other trees they are planting are oak trees, and they will be 3 inches to 4 inches in caliper when they are planted. They want to create an environmentally sensitive area for the neighbors and the people who live in the apartments.

They have designed a first class unit for their residents. The crown molding is wood and there are wood doors. The high quality of the project and their work with the staff and Planning Commission will benefit the community in the long term. What they are doing for sustainability with the rain gardens and best management practices is a first for multifamily projects in the City. He asked for the Council to vote in favor of the application.

Mr. Stock asked who is responsible for the maintenance of the island leading into 129th Street. Mr. Eskie replied that they are planting it, and they will maintain it. It is a bio swale.

Mayor Gerlach opened the public hearing regarding this item.

Mr. Mark Epstein, attorney, Roe and Epstein, LLP, indicated that he was representing the Nottingham by the Green subdivision, and a couple of the residents from Nottingham by the Green would also be speaking. In addition, they would be submitting a document indicating the opposition of Amber Meadows to this application.

According to the questions that were asked tonight, Mr. Epstein noted that the Council understands the issues that are involved with the rezoning of this property. They wanted to emphasize that this rezoning is not in compliance with the character of the neighborhood. The applicant compared the zoning to the character of the area. The Golden Criteria referred to the character of the neighborhood. The character of the neighborhood is single-family, owner occupied, detached dwellings. There are some institutional uses such as the golf course and the KU Edwards Center. However,

most of the area is comprised of owner-occupied, single-family detached dwellings with a density of three units or less per acre. Further down the corridor are multifamily uses. Mr. Epstein was of the opinion that the rezoning request was not in character with the surrounding neighborhood, and the proposal for medium density apartment housing represents a drastic change from the planned open space residential development. The applicant was comparing the proposed plan with 8.5 units per acre to other apartments with 11.5 units per acre. That is the wrong analysis, because the property is zoned for low-density residential development with less than five units per acre. The adjacent density to the west, south and north is 4 units or less per acre. In comparison, 8.5 units per acre is a high density.

Mr. Epstein noted that they will hear from neighbors who will testify about their due diligence in looking at the Comprehensive Plan before they purchased their homes. When Nottingham by the Green and Amber Meadows were developed, the subject site was zoned for single-family houses. The residents had a right to rely on the Comprehensive Plan when they made those decisions. Another consideration is the zoning and uses of nearby properties and the extent to which the proposed use would be in harmony with such zonings and uses. The proposed apartment development is not in harmony with the surrounding single-family residential uses. The majority of the property immediately adjacent to the proposed project is zoned single-family detached housing. The underlying zoning for the adjacent church properties is R-1, single-family. The use is institutional; however, the church to the north looks like a house. The proposed use and zoning is not compatible with the adjacent zonings.

The Staff Comments, Section 6.b., indicates that this zoning meets certain goals of the Comprehensive Plan for medium-density development. However, Mr. Epstein was of the opinion that was looking at the wrong set of goals. The zoning for the property is RP-OS, which was implemented in 2005. It is not an outdated zoning. He suggested that they look at the goals of low-density residential. These goals are for neighborhood conservation to maintain the value of properties and to enhance the quality of life, encourage compatible infill development similar to existing and surrounding neighborhoods, promote neighborhood identity, consider land-use relationships, and protect areas planned for low density. Mr. Epstein suggested that this area should be protected for a low-density development. The RP-OS, Planned Open Space Single-Family Residential District, is intended to provide for the development of low-density residential development. Flexibility from the traditional single-family residential standards is offered to allow for creative subdivision design while maintaining low-density, single-family residential character in an opportunity to preserve open space. The proposed RP-3 is not in harmony with the other uses in the immediate area.

Rather than going through all of the Golden Criteria, Mr. Epstein wanted to highlight a few of the criteria including the conformance of the proposed use to the Comprehensive Plan, the land-use intensity system and the other adopted planning policies. The City Planning office indicates in its own notes that portions of this site are not in compliance. The request to go from RP-OS to medium-density apartments is a significant change from the Comprehensive Plan, and it is not consistent or in harmony with the surrounding neighborhood. He asked what is the compelling reason for a change in the zoning. They have not heard any compelling circumstances demonstrated by the applicant in requesting RP-3 zoning in areas designated as low-density residential. If there is no compelling reason for this type of zoning to occur, then it should not be granted.

It is clear that the Council understands that this is not an issue regarding the quality of the development or the ability to make a reasonable return. This is about the right use of this land. Last year when the Council indicated that they did not like the three-story buildings, they assumed that meant that they should take the third story off the buildings and leave the rest of the plan the way that it was presented, which would reduce the effect of density of the project. Instead, last year they had a project that had 222 units, and it was denied. This year the proposed project has 228 units. They have increased the density. With last year's plan, there was a concern with the setback between the new project and the adjoining neighborhood. There was a setback of approximately 160 feet with last year's plan. The proposed plan has a setback of 105 feet from the adjacent neighborhood, and the project is closer to the neighbors. With the previous plan, there were 18 units on the western portion. With the proposed plan, there are 52 units on the western portion of the site. This project has gone the wrong way. The previous project was dense in the northeast corner and had a low density on the western edge, which would have been a decent transition. Now the density has been spread throughout the entire project. There are now more buildings and a higher density near the adjacent residential area. The staff commented last year that they did not want the entire site to be apartments. The proposed plan is now for apartments.

This is not about the quality of the development. This is about the character of the neighborhood, the conformance with the Comprehensive Plan and the appropriate use of the site. They need to consider more than the impediments in developing the site and the cost of the infrastructure. The acquisition of the land is also a component that they do not know anything about. He asked if they should be paying for a bad business decision that was made by someone else. While the applicant is not asking for public assistance, they are asking for an increase in density to make this project more financially feasible. The neighbors are paying the price for that increased density, and the bail out should not be offered at the expense of the neighborhood. This is not the right plan for this piece of ground. This is an infill piece of property because of the way the church divided the land to sell it, which is a self-imposed hardship. He understood that there are development impediments, but there has to be a way to develop the property that does not come at the cost of the adjacent residents. Mr. Epstein asked the Council to deny this proposed rezoning.

Mr. Goodman noted that Mr. Epstein mentioned a couple of times that the Council understands the issues. One of the issues is that this property is encumbered somewhat uniquely by the streamway corridor requirements and the requirement that any developer of this site must construct 129th Street. To what extent did Mr. Epstein believe that the Council would have the latitude to allow additional density here to offset the fact that it will cost more to develop this property than what one might ordinarily expect. Mr. Epstein replied that the answer to that question is that the applicant should propose to pay less for the land. The potential buyer of a house takes into account the repair costs, or they may determine that they do not want the house. He understood the development impediments. Generally, the offset is in the cost of the land if the cost of the infrastructure cannot be decreased. If the 28-acre site was developed with one home, they could probably not require the developer to complete 129th Street. At some point, there is probably a balance where the developer would not have to construct 129th Street or the price would be reduced to offset the cost. He asked why the developer chose this site with the development impediments. He asked if there is a compelling reason to change the zoning and put this development next to these neighbors.

Mr. Goodman referred to the right of the neighbors to rely on the Comprehensive Plan and the concept of compelling reason. He has used that phrase while he has been on the Council. However, there is not a legal standard for a compelling reason. There may be a moral standard that relates to how much value the Council puts into the Comprehensive Plan. He asked if Mr. Epstein was suggesting that because the neighbors bought homes, checked the Comprehensive Plan and found that the adjacent site was zoned R-1, the Council should not have latitude in going forward to depart from the Comprehensive Plan for sound, serious reasons. Mr. Epstein replied that he has found in representing developers that when the staff finds support for something that is not in conformance with the Comprehensive Plan, he hears the planners indicate that the Comprehensive Plan is a living document that needs to be changed from time-to-time. When staff does not support something that is in violation of the Comprehensive Plan, they tell the applicant that they have spent a lot of time and money in preparing the Comprehensive Plan, and this is the guide to which they want them to adhere. It depends on who they ask and when they ask the question. Based on the length of time the property has been zoned RP-OS, he was of the opinion that the neighbors have the right to rely on the Comprehensive Plan. When the surrounding uses are R-1, why should they insert an RP-3 use. This area was Master Planned for low density.

Mayor Gerlach asked if Mr. Epstein was arguing that the zoning for this land should remain RP-OS. Mr. Epstein replied in the negative. He thought that it was critical to note that someone thought that they could develop an RP-OS plan because the streamway corridor and 129th Street were already issues before 2005. Nottingham by the Green and Amber Meadows were already built before 2005. Mayor Gerlach asked what should the land be zoned if it is not RP-OS. Mr. Epstein replied that it is unlikely that this will be developed as single-family residential. Then the question becomes how much density is necessary for the land to be medium density. Five units per acre is medium density. Mayor Gerlach replied that RP-OS is five units per acre. He asked what density Mr. Epstein was willing to accept. Mr. Epstein replied that one of the neighbors would discuss the density that they could accept.

Mr. Lyons asked if Mr. Epstein was representing both Nottingham by the Green and Amber Meadows. Mr. Epstein replied that he was retained by the Nottingham by the Green board, but Amber Meadows has submitted a document indicating their opposition as well. Mr. Lyons understood that the opposition with the last proposal was because of the three-story buildings at the northeast corner of the property. Now that problem has been addressed. He asked why they are still opposing the new plan. Mr. Epstein replied that there were other issues in addition to the three-story buildings. One of the neighbors, Mr. Livingston, has in his possession the board's formal position in opposition to the rezoning. There were enough signatures from Amber Meadows to be a part of the protest petition.

Mr. Lyons noted that Mr. Epstein stated that the neighbors would incur a cost if this project was approved, and he asked why they should bear the expense of this project. He asked what was the cost. Mr. Epstein replied that the cost is the change in the character of the neighborhood. Mr. Lyons asked if there is a dollar impact. Mr. Epstein replied that he learned last year that the Council would not be swayed if he brought in real estate appraisers to tell them that a home that is next to apartments will be on the market for a longer period of time, the return on the investment will go down and properties that are immediately adjacent to apartments will decrease in value. They did not bother to bring in several appraisers to discuss

the value, although that is one of the Golden Criteria. Nor would they hear anything from the applicant to indicate that the proposed development would not adversely impact the value of the adjoining properties. Technically, the burden of proof is on the applicant.

Mr. Spears noted that Mr. Goodman and he have had a number of discussions with people who live in Nottingham by the Green. The gist of the conversations have been that the old plan was a better plan, and they would find that acceptable. He asked if that is an accurate statement. Mr. Epstein replied in the negative. If it was last year's plan and the three-story buildings were only two stories, they would find the plan to be acceptable. They have also tried to reconfigure the proposed plan into a way that they would find to be acceptable. Mr. Spears observed that they have heard people talk about too much density, a setback that is too close and too much traffic. He asked what is the real issue. Mr. Epstein replied those are the issues. They did not bring a traffic study because staff evaluates the traffic concerns. In visiting with the neighbors, they are concerned that there are 222 more units, which would generate more trips per day from that subdivision. The neighbors think there will be increased traffic. The density is a concern. If it were not for the economic issues, he did not think that anyone would try to put that type of a project on that site. Proximity is an issue. They would like to see the plan shifted back to a setback of 160 feet or more and less units that are backing up to Nottingham by the Green. They would like to see smaller floor plans. With the last plan, the buildings that were near Nottingham by the Green mimicked single-family homes. Now they have eight-unit buildings. The issues are density, proximity, the number of buildings that are adjacent to Nottingham by the Green and the traffic. Mr. Spears asked what is the primary issue. Mr. Epstein replied that density is the primary issue.

Mr. Scott Kalinoski, 12244 West 128th Street, was present to represent Nottingham by the Green and Amber Meadows.

Ms. Trudy Moffitt, 12343 West 128th Terrace, said she was also going to speak on behalf of Nottingham by the Green and Amber Meadows. Ms. Moffitt said that she has been a resident of Nottingham by the Green for nearly 14 years. She lives within the 200-foot notification area. Ms. Moffitt has served on the board of Nottingham by the Green for four years, and she was also a past president of the homes association board.

Ms. Moffitt referred to a media presentation which displayed letters from both communities. The primary issues for both communities regarded density and the character of the neighborhood. Amber Meadows residents were concerned with the reliance on the City plan, the density issues, the appropriate placement of the apartment buildings next to single family, the best use of the land, and the need for apartments. Regarding the protest petition, they had more signatures of people who oppose the proposed project versus the number of signatures that were collected to oppose the last plan. There were even some people who signed the petition that live outside of the 200-foot notification area. The opposition was between 90 percent and 100 percent from both communities.

Mr. Kalinoski added that he wanted to address some of the issues in the proposed plan as compared to the 2008 plan. He noted that they are not trying to take away the Council's power to alter the Comprehensive Plan. However, it seems to be too

drastic of a change to go from an RP-OS zoning to a RP-3 zoning. A change from RP-1 to RP-1A is an example of a more reasonable change in the Comprehensive Plan.

With regard to the character of the neighborhood, Ms. Moffitt observed that when she moved into Nottingham by the Green, she was not thinking about the overall area. She was moving to a large community with spacious lots, a golf course running through it and a lot of open space around the subdivision. That and the reputation of Overland Park drew her to the area.

Mr. Kalinoski stated that he used to live in Amber Meadows, and he moved to Nottingham by the Green approximately five years ago. He was directed by one of the neighbors to get a copy of the Comprehensive Plan. He lives next to the subject site. If he has to sell his home, the first question of a potential buyer would regard what is going to be located on the adjacent site. He would lose a percentage of potential buyers if he could not show them a plan that indicates RP-1 homes on the adjacent site. If he says it is going to be multifamily, he will lose some perspective buyers.

In terms of a compelling reason for the rezoning, the only reason he heard tonight for this application regarded the finances of the project. There has not been anything to indicate that the area is in need of more apartments. It seems unfair that the adjacent home owners have to bear the burden of this change.

If they read through the minutes from the meeting when they considered the 2008 plan, the main concerns of the Council were with the three-story buildings and the density. The applicants addressed one concern, and then they increased the density. It seems to them that the neighbors are being punished, since they did not like the last plan. It is incomprehensible to think that a plan with more density would be approved when the last plan was denied.

The applicant is allowed to include the open space from the stream corridor to calculate the density. If they look at the Golden Criteria, all of the criteria are subjective. There is not one criteria there that gives them a hard number that they have to follow. When it comes to density and considering a rezoning, it is important to look at the effect of the density that is located within 105 feet of a residential area.

Regarding the transition from the neighborhood, they should not be able to solve one problem by creating another. Mr. Kalinoski wanted to present another plan that would be better for all the parties.

Mr. Kalinoski recalled that Mr. Maxwell mentioned a change in the length of the buildings. Any benefit they would have received from that is mitigated by the fact that they now have added more buildings on the western side versus the number of buildings with the 2008 plan. Effectively, they have the same linear footage of buildings when they look out of their homes. Because of the width of the buildings, they are pushing the units closer to their subdivision. The change has been a detriment because it has increased more buildings on the western side of the site.

The slope of the contour of the land from the front of his house to the stream corridor probably drops 30 feet. In 20 years when the trees are 30 feet high and he looks out of his kitchen window, he will look at the top of the trees and be able to see the bottoms of the buildings on the other side. To the south on the property line, the difference in the elevation is not as steep. The trees add value at the ground level.

However, the project should be moved further away, and the style of the buildings should mimic the styles of their homes. An eight-unit building is not similar to a single-family home. Apartment buildings are different from three-unit buildings, which are different from single-family homes.

Ms. Moffitt added that if the developer came to them with a proposal that resolved the three-story buildings by taking them down to two-story buildings, and they left the three-unit villas intact on the western edge of the site, she would not be standing here tonight. There would be 170 units with that change. There are still questions about the use being infill and the site being unsuitable for single family, but they realize that times have changed. She could accept the previous plan without the third story on the buildings. The previous plan had a better transition in going from two-story buildings to three-plex villas that were adjacent to Nottingham by the Green. The lot sizes were closer to single-family lots. There was so much more with the previous plan that would have been easier to accept. She felt that the neighborhoods would support the previous plan with her proposed change.

The 2008 plan had 222 units. With the current plan, the developer has proposed 228 units. The plan that Ms. Moffitt was proposing had 170 units. Some of the attributes of a more acceptable proposal would be 25 percent less density, no buildings with more than two stories, building designs that resemble single-family homes similar to the three-plex villas, the same setback that was included with the former plan, and landscaping that was proposed with both the 2008 plan and the current plan. They agree with the developer that there is no need for a cul-de-sac at the end of 128th Street. They would also like decorative wrought iron fencing to separate the subject site from Nottingham by the Green. These are attributes they would consider for multifamily housing on the subject site.

They have shared their preferences with the developer. The developer did not meet with Nottingham by the Green residents between February 2009 and January 2010 when the current application was filed. Nottingham by the Green and Amber Meadows contacted the developer and asked him to meet with them, so they could discuss their concerns. The developer was willing to make some concessions. He removed one eight-unit building and he restored some of the setback they lost on the Nottingham side. He also removed the volleyball court and tennis courts and rearranged some of the buildings. However, they were still concerned with the density and the lack of three-plex villas. Ms. Moffitt was of the opinion that they have not found the right plan.

Mr. Kalinoski stated that the financial viability for development has been the only reason they are discussing a rezoning change for the subject site. They have attempted to present some things to be discussed with the stakeholders. The stakeholders include Nottingham by the Green, Amber Meadows, the City, the developer, United Methodist Church, and the landowner to the south of 129th Street. The current plan penalizes two of the six stakeholders, Nottingham by the Green and Amber Meadows. They purchased their homes with the understanding that R-1 or RP-OS was the zoning on the adjacent site. The plan that is being proposed is not a realistic compromise for the adjacent single-family home owners. Mr. Kalinoski asked if 133rd Street has always been on the Comprehensive Plan. There is already a connector street between Pflumm and Quivira. He asked if 129th Street is needed. If it was not required, they could annex single-family homes as part of Nottingham by the Green. That is one solution. If the City indicates that is not an option, another

option is that the church owns all of the property. They are trying to make enough profit to finance a plan that has already been approved by the City Council. Perhaps the church could alter their plan with the developer and put more density on that side away from Nottingham by the Green. Nottingham by the Green and Amber Meadows will gain nothing from the proposed plan.

Ms. Moffitt added that this is their second time to appear before the Council. They realize that some day something will be developed on the subject site. They would like to propose some stipulations to be included with an approved plan. In an effort to minimize the impact of construction on adjacent neighborhoods, they would ask that construction commence in the following manner. They asked that the landscaping on the west side of the stream corridor be planted prior to the rest of the construction of the buildings to allow the landscape to mature as the project is being constructed. The stream corridor provides some separation, so it should not impact the construction that is occurring with the buildings. In an attempt to avoid unnecessary damage to neighborhood streets and property, and for the safety of their children, all trucks and construction equipment should be restricted to using the Quivira entrance and reasonable hours of operation.

Overland Park is a community of choice that ranks among the best in the nation as a desirable place to live, work and play. It is the product of many right decisions that the Council and their predecessors have made regarding appropriate versus inappropriate land uses. On behalf of those who chose to make Overland Park their home, Ms. Moffitt asked the Council to do the right thing and vote against this zoning request.

Mr. Brian Christensen, 12904 Westgate Street, stated that he lives in Nottingham by the Green. He noted that before they moved to their neighborhood one and a half years ago, they carefully looked at the zoning. He wanted the Council to consider the economic impact that the proposed project would have on the property values of the homes in the adjacent neighborhood. He shopped carefully for his home, and he would have made a different economic decision had he known that the proposed project would be built one block away from his home. He was not there to denigrate people who live in multifamily dwellings, but apartments impact property values. It is a radical decision to go from a single-family zoning to a multifamily zoning. When there was some discussion about the density, Mr. Christensen recalled that a Councilmember asked what the density would be if they excluded the stream corridor. Someone replied that it would be approximately 15 units per acre as opposed to 8.5 units per acre. In comparison to the other multifamily projects along the corridor, that seemed to be substantially different. According to Mr. Christensen, the issue was how many people would be living in the development and how it would impact the traffic flow, property values and his children as they play in the neighborhood.

In response to the suggestion of not including the streamway corridor in the density calculations, Mayor Gerlach explained that cannot be a consideration. When the Council established the streamway corridor ordinance, they indicated that the streamway corridor would be used to calculate the overall density of projects. The calculation of density without the streamway corridor cannot be included in their discussion. With regard to the denigration of home values, it has never been proven that apartments denigrate values in the City, and the law indicates that it would have to be proven for the Council to take that suggestion into account.

Mr. Tom Moser, 129th Street, said he also lives in Nottingham by the Green. All that he heard tonight was that there was economic justification for allowing the developer to go forward with this project. He did not hear any justification for the Nottingham by the Green or Amber Meadows residents. He asked the developer if he would want this project to be located next to his backyard.

Ms. Amy Korf, 15650 Conser, said that she is a member of the Leadership Overland Park Class. As a single mother, she considered herself to be fortunate to be living in southern Johnson County. She has many friends who grew up here and would like to live in the City, but they went away to school and now that they are back, they cannot find affordable housing. This development would be a great place for them to live. She was in favor of the proposed project.

In response to the residents of Nottingham by the Green and Amber Meadows, she understood their concerns. A large Wal-Mart store was built on the site next to her backyard. Many of the residents in her neighborhood came to the public hearing regarding that project. The Wal-Mart project was proposed seven years ago, and now that it is built, it is no longer an issue. It has not affected the value of their homes. Many houses have gone up for sale, and everyone has been able to sell their house at a great rate.

Since no one else wished to speak, Mayor Gerlach closed the public hearing.

Mr. Hix asked staff to discuss the cul-de-sac at the end of 128th Street. It is the one item on which both the developer and the neighborhood agree. Mrs. Karr replied that the City has a policy of providing appropriate turnaround at dead-end streets, which would be a cul-de-sac, to allow for fire trucks or general traffic to turn around at the end of the street. Mr. Hix asked how many homes are located on the referenced portion of 128th Street. Mrs. Karr estimated that there are three or four homes on the street. The street is 350 feet to 400 feet in length.

Mayor Gerlach asked if they do not approve the cul-de-sac, what problems would that cause the Fire Department. Fire Chief Dehner replied that they could back the trucks out of the street without the cul-de-sac bulb. They are at a greater risk if they do not have a way to turn around, but they can reverse out of the street. This was an opportunity to correct something that was left to be finished another day. However, if they leave the cul-de-sac unfinished, the fire trucks will be able to exit the street.

Mr. Goodman indicated that he recently went to look at the cul-de-sac. If development is not approved on the subject site, then 128th Street will remain a stubbed road indefinitely. It has been stubbed since the homes in Nottingham by the Green were built several years ago, and he would concur with the developer and the neighborhood that there is no need for the cul-de-sac bulb to be extended at this time. He also believed that Chief Dehner would tell them if he believed that the lack of a cul-de-sac bulb was presenting a serious danger. Instead, he heard that they have managed to maneuver without the cul-de-sac for 14 years, and they could continue to do that indefinitely in the future.

Mrs. Donna Owens asked for staff clarification regarding the comment that the Council could not consider the denigration of the value of single-family homes as a result of being located next to apartments. Mrs. Karr replied that the character of the area is a factor that can be considered. In terms of specific changes in the value of a

home due to an adjacent project being built, there should be evidence provided as to the impact for that issue to be part of the consideration.

Mr. Skoog moved to approve Rezoning No. 2009-6 without the cul-de-sac at the end of 128th Street. The motion was seconded by Mr. Hix.

Mr. Skoog indicated that he has listened, visited the site and looked at the project plans. His neighborhood, in the vicinity of 95th Street and Roe, is surrounded by two multifamily projects that have been in place for a long time. Rather than a buffer separating his area and the multifamily development, the uses are separated by walls. There are benefits from having multifamily in a neighborhood. When J.C. Nichols prepared a neighborhood, he included multifamily in almost every project that he developed. The reason was that many of the people who buy homes in their neighborhoods first live in the multifamily units in the neighborhood. The multifamily and single-family uses coexist well together.

The subject site is surrounded by a thoroughfare on one side and what is expected to be two large churches on the other sides. The KU Edwards Campus is located to the north. In light of those uses, Mr. Skoog believed that it is appropriate for multifamily to be located on the subject site. The last time the project was considered, the developer was given the opportunity to get his project approved if he would have reduced his three-story buildings to two-story buildings. He would have had the project built already, if it would have been possible under those conditions.

Another factor that is vitally important for the longevity of the development is the quality of project that will be provided with the number of units. In older or established areas, the City has apartment projects that do not have enough units to be sustainable, or they were not built to a good quality. Those neighborhoods are having challenges with their apartment projects. He lives by two high-quality multifamily projects. In reviewing the plans and talking to people who have expertise in construction, the proposed development will be a high-quality project, including the buffer that is being provided for the neighborhood.

Mr. Hix stated that an apartment complex was built immediately adjacent to his neighborhood, and it required a rezoning. His neighborhood opposed the apartment project, but it was still built. It has worked out well, and the apartments have not degraded the property values of the adjacent single-family homes. The multifamily provided a variety in their neighborhood. Their fears were not realized, and the Council has seen that happen over and over again in the City. In reviewing the 2008 plan, the Council made it clear that the majority of them felt that this land would not be developed with a single-family use. The definition of a compelling reason may vary by different individuals. However, they do have an obligation to seek the best and highest use of an infill property. They have an opportunity to have a project that brings a high level of quality that may not again be proposed. When they were considering the 2008 plan, someone on the Council cautioned the neighbors to be careful what they wish for, because they might get it. A less dense development could be built here, but it would almost certainly be of a lower quality. The Council is not obligated to make sure that any landowner makes a profit. They do have an obligation to recognize the realities of the development world and that developers cannot build what they cannot afford. On a global basis, they have an obligation to try to have the highest quality and best use of the land. The applicant could have probably found a

way to eliminate a few units. However, in looking at the project on a macro basis, it will have such a high quality that it will be an asset to the community.

At 11 p.m., Mr. Janson moved to suspend the rules and continue the meeting for another half hour. The motion was seconded by Mrs. Happer Scheier and carried with a vote of 12 to 0.

Mr. Hix added that he carefully listened to every issue that was presented by the neighbors. If they can get a high-quality apartment complex with a density that is less than 9 units per acre, that is a real bonus. In the end, both Nottingham by the Green and Amber Meadows will continue to be outstanding residential communities. There can be hesitancy on the part of future buyers because of ongoing uncertainty regarding the future use of the site, so there will be value in bringing certainty to the use of the site. This is not what many of the neighbors want to hear; however, he believed that the community, including the two adjacent subdivisions, would benefit by having a high quality plan. He seconded the motion for that reason.

Mr. Lyons observed that he supported the motion to deny the 2008 project. His concern at that time was with the size of the three-story buildings in the northeast portion of the project. The applicant has made some adjustments, and the three-story buildings are now two-story buildings. The neighbors indicated that they would have supported the plan had the applicant kept the 2008 plan with the two-story buildings. That is a non-starter because the developer cannot build a project with that density. In reality, that proposal means that the site should be left undeveloped. He did not think that was necessarily a reasonable solution. They have a plan that the developer wishes to build, and they need to look at the plan from the standpoint of whether it is a reasonable use. Mr. Lyons lives in a neighborhood to the north, and an apartment complex is located near his neighborhood. It is not a very good apartment complex, and over the years it has become run down. The other Councilmembers have commented that if they approve this plan, they have an opportunity to have a high-quality multifamily development that could last for many years and be an attractive project for that area. He did not believe that the multifamily would have any material impact on the value of the adjacent homes in the long term. He concluded that he would support the motion, because the proposed project is a reasonable use of the land. If they do not approve this application, the next plan that is presented could be less dense, but it could also be a much lower-quality project.

Mr. White indicated that he viewed the minutes from the consideration of the 2008 application, and he did caution the neighbors to be careful what they wished for, because they might get it. He voted against the motion to deny, because he wanted the plan to be remanded back to the Planning Commission. He opposed the three-story buildings on top of the hill looking over Amber Meadows. At that time, the applicant said that they wanted an up or down vote. The Council told the developer they did not want three-story buildings, and the plan does not have three-story buildings. Now they have sight lines that are not obscured by a third story. They never told the developer he could not have that number of units. The developer has done exactly what the Council told them to do.

Mr. White observed that the days of large-lot subdivisions are gone, because people cannot afford \$500,000 to \$700,000 houses. They need multifamily housing. This is a viable type of development. This applicant would not jeopardize his financial well-being on a risky type of project thinking that he might make a significant profit.

Banks do not loan money for projects that will not make money. As a previous Planning Commissioner, Mr. White has often heard the argument that the multifamily project will result in the diminution of property values in the adjoining single-family area. He has yet to find anyone who could support that argument with evidence. There is no basis for that allegation, because it is only a fear. It is not true. Mr. White added that although he did not prefer to have gated communities, he would accept the gates for this high-quality project.

The argument that the City is somehow responsible for this use by requiring 129th Street and the streamway corridor ordinance is not persuasive. The Governing Body made those public policies, because they are good for the City. The City's streamway corridor ordinance has been touted throughout the nation, because Overland Park was one of the first cities to implement that type of regulation. They also made the decision that 129th Street is going to be connected. He would be voting in favor of the motion.

Mr. Kandt thanked the neighbors for attending the meeting and providing input. It has been helpful to hear the pros and cons that were presented. The Council has to look back to the 2008 plan that was presented that they denied. One of the reasons for that denial was the three-story buildings, and that issue has been addressed with this plan. He also recalled that the Council liked the transition to Nottingham by the Green on the west side of the property with the three-unit villas. That is something that they wanted to remain. He was of the opinion that it is important to have a transition that would be compatible with the character of the neighborhood. As they look at this project, they have to keep in mind how they voted the last time. They should consider if the proposed plan is better or worse than the previous plan. With this plan, more units are closer to the single-family uses. They have two-story homes, but all of the buildings are two stories.

Mr. Kandt agreed that it is realistic to assume that this site would likely be developed as multifamily. However, the Council has a responsibility to be consistent and to uphold their standards for the highest possible use and the best plan. He questioned if this is the best plan. It seems that it is going backwards from where they were in 2008. The plan has more units and more density, and it does not have the same transition to the single-family homes to the west. He was concerned about the proposed plan, and he would not support the motion.

Mr. Goodman stated that one of the foundational issues is the role of the Comprehensive Plan, and the appropriateness of relying on the Comprehensive Plan. The Comprehensive Plan has to mean something. It cannot be so fluid that there are basically no criteria or expectations for when the Council would depart from the Comprehensive Plan. Otherwise, they should not tell citizens to look at the plan. However, there are times when departing from the Comprehensive Plan is appropriate. One of those times is when a parcel of ground has been overcome by events. Perhaps that is what is involved with this land. Those events include the development of public and semi-public uses within the neighborhood. They also include the enactment of the City's Streamway Corridor Ordinance, which added to the expense of the development of the land, and the City's insistence that 129th Street be connected to Quivira, without regard to who pays for the road. There is a case to be made that RP-OS, Single Family, will not be developed here, and it is appropriate to depart from the Comprehensive Plan.

He was troubled with the notion that the unique impacts of the streamway corridor, the construction of 129th Street, and the church setting a minimum price for the land seem to be legitimate reasons for approving a project. However, they are real factors that exist. They cannot change the elements of what it takes to finance a project and make it economically feasible. They have to deal with certain realities.

The last issue was the transition, and that was the issue which he found to be the most troubling. He did not think that this project was as good as the previous project. He would prefer an alternative project with two-story buildings in the northeast section and the three-unit villas to the west. When they were considering the 2008 plan, if he did not advise that they should be careful what they wish for, he was thinking it, because they just might get their wish. That is what has happened in this case. They have a project that might not provide as good of a transition as the 2008 plan. The question then becomes if it is an acceptable transition. He has come to the hard conclusion that it does represent an acceptable transition. He spent an afternoon driving by properties in Ward 4, Ward 5 and Ward 6 that abut single-family residential. The prices on those properties ranged from \$250,000 to values comparable to Nottingham by the Green. He also drove through Deer Creek, which is a high-quality subdivision. There are apartments immediately adjacent to Deer Creek. There is no streamway corridor separating the apartments from the Deer Creek subdivision. The single-family homes in that area have not diminished in value because of those apartments. He drove by several other areas where single-family was separated from multifamily by only a collector street with no buffering or landscaping. He concluded that the proposed plan does not represent his preferred transition, but it is an adequate transition.

The decision then becomes a matter of judgment. He has served as either a Planning Commissioner or a Councilmember for 17 years. In that period of time, he and the other Councilmembers have been blamed for ruining 80 percent of the property values in Overland Park as a result of the decisions they have made. He has been accused of endangering the children, and it has not come true. He predicted that in two to five years, this would be a moot point. He realized that his decision to approve the project was disappointing to many people who he has come to know in the last couple of years.

Mr. Goodman wanted to offer an amendment to the motion to require the final development plan to come back to the Council for approval. He also wanted the motion to be amended to indicate that if the intersection at 129th Street and Quivira should meet the warrants for a traffic signal, the traffic signal would be installed at the expense of the applicant and the church and not at the expense of the City.

As the motion maker, Mr. Skoog accepted the amendments. The seconder, Mr. Hix, also accepted the amendments. Mayor Gerlach clarified that the applicant was in agreement with the amendments to the motion.

Mr. Spears stated that typically when they consider rezonings, the developer has a profit motive, and the residents have a fear motive because of how they may be negatively impacted from the change. He made the motion to deny the 2008 plan, because he did not like the three-story buildings. He did not say anything about the density. He would like to have the 2008 plan with two-story buildings to the east and the three-unit villas to the south and west. However, that is not a realistic expectation. They have already established that this site will be developed with some

type of multifamily. He did not know if this is the best plan. He has heard consistently from the Nottingham by the Green residents that they preferred the 2008 plan. However, he had not talked with anyone from Amber Meadows about the plan. This plan is slightly worse than the last one. Over the last few days, he has wavered between both sides, and he has listened to comments from both sides. His conclusion was that while this might not be a perfect plan, he doubted that they would be presented with a better plan.

Mr. Spears also wanted to add some stipulations. If the developer has not started construction within two years, he wanted the rezoning for the site to be returned to RP-OS. If it is warranted that a traffic signal be put in at 129th Street and Quivira, then the developer of the apartment complex should pay for the signal. The developer should work with the neighbors to the east and west to make sure that they agree to the landscaping details. The developer asked for a streamway setback deviation and a property line deviation. Mr. Spears did not object to either of those deviations.

Mayor Gerlach clarified that the stream setback deviation and the property line deviation were inherently accepted in the motion. He asked if the east/west landscaping was also inherent in bringing the final plan back to the Council. Mr. Goodman replied in the affirmative. In reviewing the final plan, they would have an opportunity to look at the landscaping and the architecture which is conceptual at this point. Regarding the stipulation to revert back to an RP-OS rezoning, Mayor Gerlach noted that the zoning could not revert automatically. However, if the site remains undeveloped in two years, they could rescind the motion. Senior Assistant City Attorney Bart Budetti agreed that there is no automatic rescission of a rezoning. While they could rezone the land, they could not rezone it to another planned district. They would have to rezone the land back to R-1 or another unplanned zoning. Mayor Gerlach clarified that the traffic signal was also already addressed.

At 11:30 p.m., Mr. Spears moved to suspend the rules to continue the meeting another 30 minutes. Mrs. Happer Scheier seconded the motion, which carried with a unanimous vote.

Mr. Stock indicated that he was concerned that the buffer and the streamway corridor be part of phase one if the project is phased. If this comes back as a phased project, he wanted the buffer by the Nottingham by the Green neighborhood to be part of the first phase. Mr. Budetti replied that the developer indicated that he would agree that there would be no phasing of the project.

Mr. Maxwell added that with Mr. Goodman's motion that the final plan will have to come back to the Council, that will be addressed. There is always a phasing plan as part of the final plan. That would be inherent in the fact that they will be bringing back the final plan to the Council.

Mr. Stock added that the community asked that construction traffic approach the development only from Quivira, and that it would not use 129th Street to enter the property from the west. He wanted that to be a stipulation in the approval.

Mayor Gerlach observed that 129th Street would not be open until it is built. They would need to have equipment there to build 129th Street. When they open the street, they could stop the construction traffic from coming from the west. Mr. Stock stated

that his concern was that construction traffic would track a lot of clay and mud through the community. He asked if that would be addressed with the final plan. His experience with 139th Street was that the road was built first. He asked if that is the policy for approaching development in the City when the developer is building a public road. Mr. Ebel replied that is not necessarily the case. It would depend on the developer's plan for construction when he builds the public road. It could be built sometime during the project. They could go over those details with the final plan. In terms of mud on the street, they have standards that their construction inspectors monitor because of the Sediment Erosion Control Program.

Mr. Stock asked for a stipulation that 129th Street not be used as a construction entrance for this project once it is opened. Mayor Gerlach clarified that the developer agreed with that. He asked if the motion maker agreed to the stipulation.

Mr. Skoog indicated that he would rather deal with this issue with the final plan when they go over the phasing of the project. It is a valid concern, but it could be addressed then. Mr. Stock stated that he did not know how it could be addressed with the final plan, since it is a stipulation on the land.

Mr. Hix stated that as a seconder, he would prefer that the amendment indicate that the construction traffic cannot enter the Nottingham by the Green subdivision. If they do not allow construction traffic into the subdivision, they have solved the problem. Mr. Stock replied that there is concern that there will be traffic going west on 129th Street into the neighborhood for the next couple of years and tracking mud. It was brought up by the neighborhood, and he thought it was a fair request, since they have access from Quivira. Mr. Hix replied that once 129th Street is constructed, they can enter off Quivira, but they would still be using 129th Street. If they create a stipulation that the traffic cannot use 129th Street, they would block the use of Quivira as an entrance into the construction site. If they indicate that there would be no use of residential streets for construction traffic, it would solve the problem.

Mr. Stock clarified that the stipulation should indicate that construction traffic should not come from the west to the east on 129th Street, and construction traffic should not enter the Nottingham by the Green community from the east. He was trying to stop construction traffic from going through Nottingham by the Green by stipulation. Mrs. Karr suggested that with the final plan, staff would come back with a stipulation that addresses Mr. Stock's concern, but it would be worded appropriately. They can add stipulations with the final plan, and the stipulations can be carried over to the building permit, so it lasts through the duration of the project construction.

Mrs. Happer Scheier noted that she voted against the 2008 plan because it was too high in density. However, she would be voting in favor of the proposed project. They have talked about eliminating stipulation g. She wanted to make it clear that they want to eliminate the cul-de-sac at the end of 128th Street. Stipulation g.1. refers to the cul-de-sac at the end of 128th Street, but the stipulation also mentions other cul-de-sacs. She wanted to clarify that they should keep the other components of the stipulation. Mr. Ebel replied that it is clear to staff that the cul-de-sac at the end of 128th Street is the part of the stipulation that they need to delete.

Mrs. Owens observed that the property value of a single-family home is a sensitive issue. Most people's investments are primarily in their residence. The proposed project is a high-quality development, and she was impressed with the landscaping.

She supported the 2008 project. She felt that if there was going to be three-story buildings, it would be appropriate to place them at the northeast corner of the site. She spoke with some residents, who indicated to her that they would prefer the 2008 plan over the proposed plan. However, that is not an option this evening. She would be supporting the proposed plan. There is a ground-breaking occurring on Wednesday to open a higher education institution down the street from the subject site. That is going to change the dynamics and values in that area. The home values will increase, and the apartments will be in demand. It is unfortunate that the project could not be less dense, but she believed that the project would ultimately be good for the community.

Mr. Skubal stated that he voted against the 2008 project because of the three-story buildings. He was of the opinion that the proposed plan is better. There is a need for apartment housing. He hoped that some people who were participating in graduate programs across the street would be able to walk to school from these apartments. One positive outcome would be that this property would be coming back to the tax roles. He agreed that if the development is not being constructed within two years, they need to reconsider the zoning. He would vote in favor of the motion.

The motion carried with a roll-call vote of 11 to 1, with Mr. Kandt voting nay.

OLD BUSINESS:

MOTION TO RESCIND THE PREVIOUS ACTION APPROVING REZONING NO. 1989-21, ORDINANCE NO. Z-1968 – Vicinity of the southeast corner of 81st Street and Metcalf. Rezoning No. 1989-21 was approved on October 16, 1989, by a vote of 8 to 2.

Mr. Ebel indicated that this item was to be continued.

Mr. White moved to continue the motion to rescind the previous action approving Rezoning No. 1989-21, Ordinance No. Z-1968, vicinity of the southeast corner of 81st Street and Metcalf, to the May 17, 2010, Council meeting. The motion was seconded by Mrs. Happer Scheier and carried with a vote of 12 to 0.

NEW BUSINESS:

Mr. Janson moved that a non-agenda item relating to the Downtown Farmer's Market be added to the agenda under New Business. The motion was seconded by Mr. Spears and carried with a vote of 12 to 0.

At 11:45 p.m., Mr. Janson moved that the Governing Body recess into an executive session for a period of ten minutes for the purpose of discussing matters subject to the attorney-client privilege relating to the letter received by the City Attorney from an attorney for George Dragush, a former vendor at the Farmer's Market. Following the executive session, the Governing Body will reconvene into regular session in the Council Chambers. The motion was seconded by Mr. Lyons and carried with a vote of 12 to 0.

After the executive session, the Council reconvened into regular session, and at 12 midnight, Mr. Janson moved to adjourn the meeting. After a second by Mr. Skoog, the motion carried with a unanimous vote. Minutes transcribed by Pamela Blaszyk.

Carl R. Gerlach, Mayor

ATTEST:

Marian Cook, City Clerk