

OVERLAND PARK PLANNING COMMISSION MEETING

September 13, 1999

The Overland Park Planning Commission meeting was called to order at 1:30 p.m. by Mr. Terry Goodman, Chairman. The following members were present, constituting a quorum:

Mrs. Charlene Conrad; Mrs. Anne Debus; Mr. Tex New; Mrs. Terry Happer Scheier; Mr. John Hermes; Mr. Edward Reitzes; and Mr. Charles W. Hunter. Mr. Jack Nichols, Mr. Tom Lance, and Mr. Robert Sanders were absent.

Also present were: Mr. Roger Peterson, Director of Planning and Development Services; Mr. Bart Budetti, Senior Assistant City Attorney; Mr. Bob Lindeblad, Current Planning Administrator; Mrs. Leslie Karr, Planner; Mr. Scott Koppelman, Senior Planner; Mr. Mark Stuecheli, Senior Transportation Planner; Mr. Bryan Bear, Assistant Planner; Mr. David Dalecky, Planning Technician; and Ms. Pamela Blaszyk, Senior Recording Secretary. Approximately 50 persons were in the audience.

Administrator, Current Planning Bob Lindeblad announced that Consent Agenda items C and D were to be continued to the September 27, 1999, Planning Commission meeting. Item No. 11 was being continued to the October 25, 1999, Planning Commission meeting. Item Nos. 12 and 16 were being continued to the September 27, 1999, Planning Commission meeting. Item Nos. 17 and 20 were to be continued to the October 11, 1999, Planning Commission meeting. Item No. 21 had been withdrawn.

Mr. Edward Reitzes moved to approve the continuance of the referenced items. The motion was seconded by Mrs. Terry Happer Scheier, and carried with a vote of 8 to 0.

APPROVAL OF MINUTES – August 9, 1999

(Approved)

The motion to approve the August 9, 1999, Planning Commission meeting minutes was moved by Mrs. Scheier, and seconded by Mrs. Charlene Conrad. The motion carried with a vote of 8 to 0.

CONSENT AGENDA:

(Approved items A through M, with the exception of items C and D, which were continued)

- A. REVISED PRELIMINARY PLAN APPROVAL - COLLEGE BOULEVARD MEDICAL BUILDING - 5520 College Boulevard. Rees Masiliones Turley Architects, applicant. Ted Greene Company, owner. CP-O zoning granted under Rezoning No. 71-5.
- B. FINAL DEVELOPMENT PLAN APPROVAL - AMLI AT CAMBRIDGE SQUARE - Vicinity of the southeast corner of 107th Street and Nall. Polsinelli, White, Vardeman and Shalton, applicant. AMLI Residential Properties, L.P., owner. RP-5 zoning granted under Rezoning No. 98-27.

- C. FINAL DEVELOPMENT PLAN APPROVAL - THE FOUNTAINS SHOPPING CENTER BUILDING A - Vicinity of the southeast corner of 119th Street and Glenwood. Mr. Steve Terrill, applicant. GK Development, owner. CP-1 zoning granted under Rezoning No. 94-8.
- D. FINAL DEVELOPMENT PLAN APPROVAL - THE FOUNTAINS SHOPPING CENTER BUILDING B - Vicinity of the southeast corner of 119th Street and Glenwood. Mr. Steve Terrill, applicant. GK Development, owner. CP-1 zoning granted under Rezoning No. 94-8.
- E. FINAL DEVELOPMENT PLAN APPROVAL - THE GODDARD SCHOOL - Vicinity of the northeast corner of 143rd Street and Metcalf. Rodino L.P., applicant. Harlan Faust Architects, architect. CP-O zoning granted under Rezoning No. 98-25.
- F. FINAL DEVELOPMENT PLAN APPROVAL - OVERLAND PARK CHURCH OF CHRIST PARKING EXPANSION - 13400 West 119th Street. James Brown Architect and Associates, applicant. Overland Park Church of Christ, owner.
- G. FINAL DEVELOPMENT PLAN APPROVAL - COLUMBIAN CORPORATE CENTER - Vicinity of the northeast corner of 119th Street and Indian Creek Parkway. Polsinelli, White, Vardeman and Shalton, applicant. Columbian National Title Insurance, owner. CP-O zoning granted under Rezoning No. 99-11.
- H. FINAL DEVELOPMENT PLAN APPROVAL - CARPORTS FOR AMLI CREEKSIDE - 11921 Oakmont. AMLI Residential Construction, applicant. RP-3 zoning granted under Rezoning No. 97-50.
- I. PLAT NO. 99-96 - (FINAL) - NICKLAUS GOLF CLUB AT LIONSGATE - 1ST PLAT - Vicinity of the northeast corner of 143rd Street and Lamar. Nicklaus Golf Club at LionsGate L.P., applicant. George Butler Associates, engineer.
- J. PLAT NO. 99-97 - (FINAL) - LIONSGATE BY THE GREEN - Vicinity of 146th Street and Nall Avenue. Shafer, Kline and Warren, applicant/engineer. Saul Ellis and Company, owner.
- K. PLAT NO. 99-98 - (FINAL) - ST. ANDREWS COURT - Vicinity of 133rd Street and Nieman. Uhl Engineering, applicant/engineer. St. Andrews L.L.C., owner.
- L. SIGN APPROVAL - ST. LUKE'S - 12300 Metcalf. KC Sign, applicant. St. Luke's Shawnee Mission Health System, owner. SUP zoning granted under Special Use Permit No. 98-18.
- M. SIGN APPROVAL POLICY - BLUE VALLEY 123 SHOPPING CENTER - Vicinity of the southwest corner of 123rd Street and Blue Valley Parkway. Mr. Andrew Schlagel, applicant. Sierra Pacific c/o Lawrence Ferree, owner. CP-2 zoning granted under Rezoning No. 99-2.

Mr. Lindeblad noted that staff was recommending that stipulation e be removed from Consent Agenda item G. The remaining items were ready for approval, with the

exception of items C and D, which had been continued to the September 27, 1999, Planning Commission meeting.

Mrs. Conrad moved for the approval of Consent Agenda items A, B, E, F, G (as amended), and H through M. After a second by Mr. Reitzes, the motion passed by a unanimous vote.

ZONING TEXT AMENDMENT NO. 99-3 – Amendments to Section 18.270.050, Development and Performance Standards, Section 18.280.050, Development and Performance Standards, and Section 18.440.080, Signs permitted in Commercial and Industrial Districts. Ordinance No. ZRR-2160.

(Approved)

Senior Planner Scott Koppelman explained that the referenced proposed amendments to the Unified Development Ordinance regard auto dealerships. The Planning Commission considered this application on August 9, 1999. During that meeting, concern was expressed about the proposed amendments by representatives of some of the auto dealerships in the northern part of the City. The Planning Commission continued that item and directed the Ordinance Review Committee to discuss the issues. The Ordinance Review Committee met on August 31, 1999, and a representative of the existing auto dealerships was present in the meeting. Because the concerns seemed to regard the perceived impact of the proposed amendments on existing auto dealerships, staff recommended that the sections of the proposed amendments that pertained to existing auto dealerships be deleted. Currently, the ordinance amendments apply only to new auto dealerships south of I-435. With this change, any impact on existing auto dealerships in the northern part of the City would be avoided. However, staff is still concerned about the standards that would be in effect when existing dealerships remodel, expand, or redevelop their facilities. Since the City has hired a consultant to develop Infill and Redevelopment Design Guidelines, staff recommended that the consultant also address standards for existing auto dealerships within that process.

The proposed Zoning Text Amendment addresses only new auto dealerships to the south of I-435. Those standards have remained the same since the last Planning Commission meeting. In discussing this issue, the Ordinance Review Committee concluded that the amendments were appropriate and that it was important to proceed with the ordinance for new auto dealerships. The Committee voted 3 to 0 to recommend approval of Zoning Text Amendment No. 99-3. Staff also recommended approval of this item.

Chairman Goodman provided an opportunity for members of the audience to comment on this item.

Mr. Larry Winn, 7500 College Boulevard, indicated that he concurred with the staff presentation on this issue. He looked forward to meeting with the groups that would be addressing the Infill and Redevelopment Design Guidelines to explore some other concerns pertaining to existing auto dealerships.

As a member of the Ordinance Review Committee, Mrs. Conrad was pleased with Zoning Text Amendment No. 99-03 as it was presented.

Mr. John Hermes added that as a member of the Ordinance Review Committee, this was a difficult item to consider. He appreciated the input from staff and Mr. Winn during the discussion of this issue.

Mr. Charles W. Hunter commented that the intent behind the amendment to the Unified Development Ordinance was to try to buffer some of the neighborhoods to the south from auto dealerships when they want to locate in southern Overland Park. The Committee attempted to weigh all considerations, and he believed that they found a fair solution that would protect the interests of all concerned parties.

Mr. Hunter moved to recommend to the Council the approval of Zoning Text Amendment No. 99-3. Mrs. Conrad seconded the motion, which carried with a unanimous vote.

ZONING TEXT AMENDMENT NO. 99-5 – Amendments to Section 18.370.020, Special Uses Designated, and Section 18.370.040, Development and Performance Standards, to include indoor storage facilities as permitted uses under special use permits. Ordinance No. ZRR-2180.

(Denied)

Assistant Planner Bryan Bear indicated that the City of Overland Park was the applicant for this item. The request was to amend the Unified Development Ordinance to allow indoor self-storage facilities as a permitted use by a special use permit in the C-2, CP-2, C-3, and CP-3 Districts. Currently, self-storage facilities are permitted in the BP, M-1, MP-1, M-2, and MP-2 Districts.

The City Council, at their August 2, 1999, meeting, directed staff to prepare amendments to the Unified Development Ordinance to consider allowing indoor self-storage facilities with a special use permit. That direction was given in response to a rezoning application, which proposed converting an existing retail building into a self-storage facility.

With input from the Ordinance Amendment Committee, staff prepared a draft ordinance that would allow indoor self-storage facilities with a special use permit. The amendments would allow self-storage facilities in a retail setting as long as the change in use would not disturb the retail character prevalent in surrounding developments. Staff was concerned that allowing self-storage facilities in retail settings could jeopardize the long-term viability of surrounding retail developments if the storage facility occupied a large percentage of floor area within a shopping center or if the storage facility was located in a prominent vicinity. The proposed amendments allow the Planning Commission and City Council some discretion in determining whether or not a particular location is appropriate for indoor self storage. The intent is to allow indoor self storage in isolated retail areas that may have poor visibility from a thoroughfare and where this use would not negatively impact surrounding retail uses.

Staff also felt it was important to allow the building and site to be converted back into retail uses in the future. For that reason, the amendments include a requirement that the building be convertible to retail space in the future without major structural changes. Parking and setbacks would have to be maintained for the underlying retail zoning district. Outdoor storage uses and overhead doors to directly access the storage space would be prohibited. In addition, the architectural design of the

shopping center in which the storage facilities are located would need to be maintained. The appropriateness of the recommendations of the Land Use Intensity System would also be reviewed for any special use request for indoor self storage.

The Ordinance Review Committee reviewed the proposed amendment changes on two occasions, most recently during a meeting on August 31, 1999. The Committee was not comfortable allowing indoor self-storage facilities by special use permit in retail areas. The Committee felt that they did not want to open the door to allow storage facilities in shopping centers and other retail establishments in the City. The Committee determined that those facilities are most appropriate in the Business Park and Industrial Districts.

Staff was of the opinion that the proposed ordinance standards could mitigate the potentially negative impacts of the indoor storage facilities and recommended approval of the attached amendments if all of the proposed standards are adopted.

Chairman Goodman asked what would prohibit an individual who owns a building in a CP-2 district from deciding to divide the building into storage spaces and have an internal storage facility. Mr. Bear replied that in the CP-2 zoning district, the primary use in the facility cannot be storage.

Chairman Goodman opened the public hearing on this item.

Mr. Chase Simmons, Polsinelli, White, Vardeman and Shalton, 7500 College Boulevard, was present to express support for the zoning text amendment. However, he wanted to offer an amended version of the zoning text amendment for the Commission's consideration. He was the representative of the proposed developers of a self-storage and corporate storage facility to be located at 105th and Marty, which is the application that instigated this text amendment issue. Mr. Simmons noted that he presented a proposal to the Council and the Planning Commission to allow corporate storage in the existing building (with a slight addition) located at 105th Street and Marty. In his presentation, he explained why he believed this use is appropriate in that location. The Council ultimately decided that the use and the plan was appropriate at that location. However, they questioned how to allow that use in that location while retaining the integrity of the code. Because of the BP zoning district the applicant was requesting, it was necessary to also request several deviations. In addition to the deviations, staff also questioned what other uses would be allowed in that location. Staff offered a possible solution which regarded a text amendment to the special use permit to alleviate some of those concerns. The application was denied with direction to staff to present a zoning text amendment to the Planning Commission and the Council to see if this use could be allowed under a special use permit. Although this request was the result of their application, Mr. Simmons realized that this issue would have wider implications across the metropolitan area. He understood that a text amendment must be considered in terms of what is best for the entire City rather than just one application.

Mr. Simmons clarified that the storage under discussion was not a typical self-storage business. He was proposing storage for retail users that need extra storage space, or for individuals who have businesses in their homes and they need more storage space to store supplies. These types of users would be targeted customers of the storage facility. Mr. Simmons said that he had letters to substantiate the need for this type of storage in the business community, which he may distribute later in the meeting.

This type of storage facility would typically be proposed in areas that are zoned retail but that are no longer viable for traditional retail uses. The buildings may be too small for a large retail use or too large for a strip center. This type of use would be placed in a deteriorating area. If a location is being used for a thriving retail business, no one would apply for self storage in that area as it would not be as profitable of a use. The request is not to allow self storage facilities in retail districts by right. It is only giving the Planning Commission and the City Council the right to consider granting a special permit for the use. There is currently no mechanism by which the Planning Commission can identify a piece of property that is zoned as anything other than industrial and indicate that this use could be included in that district. He did not want to request industrial zoning as all of the industrial uses are not appropriate where this use may be appropriate. The text amendment is only providing an opportunity for the Planning Commission and Council to consider a request to allow this use under a special use permit.

Mr. Simmons wanted to offer some suggestions for amending some of the performance standards that were suggested by staff. He noted that this special use permit is not being treated as other special use permits.

First, Mr. Simmons suggested that self-storage facilities be permitted in the C-1, CP-1, C-2, CP-2, C-3, or CP-3 districts. He explained that staff did not include C-1 and CP-1 in the list of districts. With this change, the Planning Commission would have more flexibility in considering where this use could be located.

Secondly, staff recommended that the Planning Commission and Council should consider a number of factors when considering this special use permit, including the Land Use Intensity (LUI) Guidelines. Mr. Simmons did not object to the other factors as they are always included in the consideration of special use permits. However, Land Use Intensity Guidelines are not necessarily followed with special use permits. For example, when a hotel is built on a site, the LUI Guidelines are not always followed. He suggested that the LUI system should not be a mandatory consideration to allow a self-storage facility under a special use permit. The LUI system is a proxy to consider traffic generation, building mass, parking requirements, and the impact of the development on adjacent properties. It is based on the size of the building on a certain piece of land. That guideline may be misleading because LUI numbers for some of the storage facilities may be high. However, when the impact of a storage facility on adjacent properties or on the road system is considered, the intensity of development is low. These types of uses are good neighbors. There is little traffic generation and they do not require much parking. A perfect example of the aesthetics and the building mass with this type of use is found with the specific application that Mr. Simmons would present later in the meeting. The plan he was to propose included a new façade that would aesthetically improve the current facility. If the LUI guidelines were included in the performance standards to consider this use under a special use permit, the caveat should be included that the LUI standards can be flexible.

Next, Mr. Simmons suggested the addition of the word adversely to the third performance standard so that it would indicate that the storage facility shall not adversely alter the architectural design of a shopping center, and shall conform to the Shopping Center Design Guidelines. He explained that with the application he was going to present, the architectural design of the facility would be changed and it would be an improvement. The building that is there is unsightly and aged. Altering the

architecture would be a positive change in this situation. There may be instances when a storage facility could be appropriate on a piece of land, however, the facility may be in disrepair to the point where it should be demolished or the building may need to be expanded. Mr. Simmons believed that it would be a mistake to prohibit the altering of architecture.

Fourth, another performance standard indicated that at the final development plan stage, the applicant shall demonstrate that the facility can be converted without major structural changes into a space suitable for a generic retail business. Mr. Simmons suggested that this standard should be deleted entirely as this condition is not required with any other special use permit.

A fifth performance standard indicated that all operations shall be within a fully enclosed climate controlled building. Overhead doors or other means that directly access storage space from outside the building are prohibited. Mr. Simmons suggested that the second sentence should indicate that overhead doors or other means that directly access storage space from outside the building must be adequately screened from the public right-of-way. He noted that a loading dock would be needed with this type of facility. As the Council and the Planning Commission considered the overhead doors that were included in the specific application he represented, the concern regarded the screening of the doors. However, they did not suggest that the doors be deleted from the plan. Mr. Simmons stated that this issue should be treated with flexibility in the performance standards.

Finally, staff offered a performance standard which indicated that setbacks and on-site parking setbacks shall be provided as required by the underlying zoning district. Mr. Simmons deleted the reference to parking in this performance standard. Special use permits typically use the setbacks as required by the underlying zoning district. The parking for special use permits is determined by the use. For example, within the CP-2 zoning district, a normal retail use has one set of parking requirements based upon square footage of the facility whereas the parking requirements for restaurants are based upon the number of seats. The Planning Commission and the Council would have an opportunity to deny a request if there was not enough parking for a specific use. A storage facility does not generate the need for a lot of parking space. In the application which would be presented later in the meeting, the parking was based upon the industrial district because they have a large parking area that will not be entirely used.

Staff had expressed concern about the possibility that this storage facility would fail and the location would then not be viable for another retail use. Regarding his specific application, staff questioned what would happen if the addition is built as requested and there was not enough parking for a retail use. Mr. Simmons noted that this site is not currently viable for retail use. The City could be protected by stipulations. For example, a new occupancy permit is needed whenever there is a new occupant in a building, whether or not the exterior is being revised. That triggers an inspection of the building. The code also provides that if the parking requirements are not met with a change in occupancy, the building cannot be used for the requested purpose without changes to the site such as limiting the number of seats in the restaurant or changing the parking layout of the site. The final option would be to ask for a deviation from the parking requirements. The code indicates that the issuance of building permits or certificates of occupancy shall require compliance with the minimum parking

standards even though a development plan may have been approved previously which included fewer parking spaces due to the unknown or changing status of occupancy.

Mr. Simmons showed a display of the building at 105th Street and Marty. He pointed out the current facility and the proposed addition area. If he were granted a special use permit for the proposed use, they would then have a planned zoning district which would restrict the site to the specific use and the specific plan. If the owner wanted to have any other use on the site, they would have to present another application to the City for a rezoning. Staff would suggest that with a change in plan, the underlying zoning district would be in force. However, Mr. Simmons suggested that when the use was changed, the underlying zoning district would realistically no longer be CP-2 because this property could be used only for the specific plan which had been approved under the special use permit.

Mrs. Anne Debus was uncomfortable in considering a specific application with the consideration of an ordinance issue. She noted that ordinance amendment considerations are often instigated by specific applications. However, the discussion of the items should be kept separate.

Mr. Simmons replied that he was using his application as an example to indicate that the only time that this parking requirement becomes a problem is when the building is being changed. The City is protected from allowing a use without enough parking by the code. The parking standards will ensure that the City is protected from allowing a use without enough parking space. He suggested that the Planning Commission should consider the proposed zoning text amendment to allow for a greater flexibility in considering specific applications.

Mrs. Debus asked if staff had input from Mr. Simmons while they were considering the text amendments. Mr. Simmons replied in the affirmative.

Chairman Goodman was not sure that he would abandon the site at 105th and Marty for all profitable retail activity. He could see that the approval of the application would preclude the use of the building for normal CP-2 uses if parking was not adequate after the proposed expansion. He questioned if Mr. Simmons was suggesting that a future applicant may have to deconstruct the building to be able to use the site for its underlying purpose. Mr. Simmons replied in the affirmative. If the site were to be used for retail in the future, it would take an interesting set of circumstances to allow a second redevelopment project on the property. The market conditions in the area would have to change for a retail use to become viable on this site. A self storage facility would not be placed on a prime retail spot. It would be located in a place without good access or visibility. If the site were to be used for retail in the future, it was likely that the facility would be destroyed to allow the construction of a new building. The code protects the City against having to allow a use with inadequate parking space.

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

Mr. Reitzes asked if there was an approval for a special use permit for a self-storage facility in a CP-2 district and that self-storage facility was eventually converted back to a retail use that was appropriate and consistent with the CP-2 zoning, would a rezoning be necessary to allow the new use. Mr. Lindeblad replied that the applicant would need a rezoning and a deviation to keep the building the way it was after

remodeling. He has never known of someone tearing down a building addition to revert back to the old plan. The pressure would be upon the City to allow the square footage to remain and to grant deviations for parking. If this is a special use in a retail district, staff believed that the building and parking ratios should be retained so the facility could be converted back to retail.

Chairman Goodman asked staff to address the proposed changes to the performance standards as recommended by staff. Mr. Bear replied that regarding the suggested addition of the CP-1 district, that is the most restrictive retail district in the City. Staff felt that storage facilities would be more appropriate in the CP-2 and CP-3 districts than they would be in the CP-1 districts. He added that staff did not object to adding the word adversely to the third performance standard. The remaining comments were based upon the fact that staff feels that if these facilities were allowed in a shopping center, they would be permitted as an additional use. Staff looked at a self storage facility as a temporary use rather than a permanent use. A self-storage facility in a shopping center or a retail building could be converted back to retail use in the future. Therefore, staff felt that the setbacks and parking should be provided according to the underlying zoning district and that the Land Use Intensity Guidelines should be followed.

Chairman Goodman referred to the fourth performance standard which regarded major structural changes. He asked for a definition of a major structural change and if they would regard both exterior or interior renovations. Mr. Bear replied that the changes could regard exterior and interior changes. There are often high turnovers in users in a retail or shopping center environment. Staff wanted to be sure that if the self-storage business would move, the facility could be converted back to retail. In some instances, a portion of a shopping center may be converted temporarily into a self-storage space. That seems to be appropriate if the building architecture remains intact and if the facility could be converted back to a retail space in the future. Chairman Goodman noted that a hotel may be allowed under a special use permit and it would be difficult to convert a hotel building for another use. Mr. Bear replied that staff considers hotels to be different as hotels are not often converted into another type of use. If someone would convert a retail building into a self-storage facility, staff felt it should be possible to convert the building back to the original use. If it were not possible to convert the building back, it could jeopardize the integrity and viability of a shopping center. Regarding the fifth performance standard, Mr. Bear noted that it is uncommon to see rows of overhead doors in retail areas. Overhead doors give the facility an industrial appearance. Staff does not have a problem with loading docks to make it possible to access the storage area inside of the facility. In reference to the sixth performance standard, staff felt that parking should be provided on site.

As a member of the Ordinance Review Committee, Mr. Hermes reviewed this issue in depth. He still agreed with the recommendation of the Ordinance Review Committee that this proposed text amendment should be denied.

Mr. Hunter added that in discussing this issue, the Ordinance Review Committee expressed concern about allowing storage facilities in a retail area as it might be detrimental to other retail uses in the area. A storage business would not generate traffic or provide the vitality that a normal retail business would provide. From an aesthetic standpoint, the storage facilities are not as attractive as a normal shopping center. Staff has attempted to mitigate those concerns with the proposed performance

standards. This type of application is uncommon and he did not believe that the ordinance should be amended to provide for a use that is seldom requested.

Mrs. Debus could understand some of the concerns expressed by the Ordinance Review Committee. It was important, if this request were approved, to include the performance standards.

Mrs. Debus moved for the approval of Zoning Text Amendment No. 99-5 with the inclusion of the performance standards, as recommended by staff. The motion was seconded by Mr. Reitzes.

Mr. Reitzes indicated that he had reservations about the original proposal for the 105th and Marty self-storage facility that was another agenda item. He suggested that it would be a mistake to preclude the opportunity to permit a self-storage facility in the C-2, CP-2, C-3, CP-3 districts. He felt that there would be locations where the viability of a retail use may be questionable and a self-storage facility would be a preferred use on a particular property. Having the flexibility to permit that use would benefit the community. To try to devise performance standards to permit the use of a self storage facility in an area that is geared towards retail facilities with parking setbacks and architectural designs is a matter of judgment. Some of those guidelines may not apply as well to a self-storage facility. The performance standards must be carefully considered. He suggested that this use be permitted in a CP-2 or CP-3 district with the performance standards as proposed by the City or modified in some way.

Mrs. Debus felt that strict performance standards are necessary to allow this use under special use permits.

Chairman Goodman suggested that it may be advisable to reconsider the underlying zoning for the area at 105th Street and Marty to determine if the area is still appropriately designated as retail. He was not sure that the site at 105th Street and Marty was no longer appropriate for retail at this time. However, the performance standards cannot be so restrictive as to preclude a reasonable consideration of the special use permit application. The performance standards may rise to that level of restriction. The Chairman believed that the setbacks and parking areas should be retained as a result of the underlying zoning district. He may be willing to allow changes in the architectural design of the building.

The motion to approve Zoning Text Amendment No. 99-5 failed with a vote of 3 to 5, with Chairman Goodman, Mrs. Conrad, Mr. Tex New, Mr. Hermes and Mr. Hunter voting nay.

Mrs. Conrad moved to deny Zoning Text Amendment No. 99-5. Mrs. Conrad explained her conclusion that an amendment to the zoning text was not necessary at this time.

After a second by Mr. New, the motion carried with a vote of 5 to 3, with Chairman Goodman and Commissioners Reitzes and Scheier voting nay.

Chairman Goodman said he voted to deny this motion as he felt that the resolution to this matter would be more appropriately handled with a discussion of the performance standards.

Mr. Reitzes agreed with the Chairman's comment and suggested that there should be more discussion regarding the performance standards.

Mrs. Debus recalled an application that was presented by a retailer who sold large rugs. There were concerns with the LUI standards as they pertained to that application, and with all the storage that was needed. She questioned if a self storage facility would help to alleviate some of the concerns that retailers have regarding storage. A couple of Wal-Mart stores have discussed with the City the use of large trucks for storage behind their building. She questioned if there had been a consideration of assisting the retailers who need extra storage at certain times of the year. Mr. Lindeblad replied that there are many storage facilities near the Wal-Mart on 79th Street. They chose not to use those storage facilities because of the inconvenience. The Council informed Wal-Mart that they would not permit the trucks for storage.

Chairman Goodman asked if the City controls the proportionality of the space a store uses for retail versus storage. Mr. Lindeblad replied in the negative. Some of the stores tend to use more space for retail rather than storage to increase sales. Many cities allow trucks to be parked in back of their stores for additional storage.

ZONING TEXT AMENDMENT NO. 99-6 - Amendments to Section 18.270.020, Permitted Uses in District C-2 and CP-2, and Section 18.270.050, Development and Performance Standards, to include drive-in restaurants. Ordinance No. ZRR-2181.

(Approved)

This proposal regards allowing drive-in restaurants in a CP-2 zoning district. Currently, the Unified Development Ordinance permits drive-through restaurants only in CP-2 and CP-3 districts. Drive-in restaurants where people park in a parking space and are then served in their cars are permitted only in CP-3 districts. On July 26, 1999, the Planning Commission voted to consider amending the Unified Development Ordinance to allow drive-in restaurants in CP-2 zoning districts following a request from representatives of Sonic Drive-In restaurants who have a desire to operate additional businesses in Overland Park. The Planning Commission referred the amendment to the Ordinance Review Committee. In reviewing the proposed amendment, the Committee considered the characteristics of a drive-in restaurant versus a restaurant with a drive-through window. The consensus of the Committee was that noise from order boxes, automobiles running, and trash were the major concerns, not unlike those for drive-through restaurants. Therefore, the Committee unanimously determined that drive-in restaurants should be allowed in the CP-2 district, with the same performance standards that are in place for drive-through restaurants.

The words drive-in have been added to the performance standards that were in place for drive-through restaurants. For example, one proposed standard indicated that no drive-in stall or order box could be located within 200 feet of any residentially zoned property. Currently, no order box for a drive-through restaurant can be located closer than 200 feet from residentially zoned property. Also, if the adjacent property is zoned residential and Master Planned something different, the Planning Commission and Governing Body can waive that 200-foot distance as described in the ordinance. Adequate passenger car stacking space would also be an appropriate requirement with

the drive-in restaurants in CP-2 as there could be a combination drive-in and drive-through restaurant.

Staff and the Ordinance Review Committee recommended approval of the proposed zoning text amendments.

Chairman Goodman opened the public hearing on this item.

Mr. John Petersen, 7500 College Boulevard, was present on behalf of Sonic franchises who instigated the proposed change. He expressed support for the text amendments as presented by staff.

Mrs. Conrad noted that the Ordinance Review Committee concluded that drive-in restaurants could be treated in the same manner that drive-through restaurants are treated. The Committee recommended approval of the request.

Mrs. Conrad moved for the approval of Zoning Text Amendment No. 99-06, as recommended by staff. Mr. Reitzes seconded the motion, which carried with a vote of 8 to 0.

Mr. New left the room at 3 p.m.

REZONING NO. 99-9 - 8110 West 135th Street. Waterway Gas and Wash Company, applicant, is requesting CP-3, Planned Commercial District, to allow for the development of a car wash. This property is currently zoned C-2, General Business District.

(Denied)

Mr. Koppelman noted that this application was considered during the August 23, 1999, Planning Commission meeting. At that meeting, an ordinance amendment allowing tunnel car washes in the CP-2 district was approved and is scheduled for the September 13, 1999, City Council agenda. Therefore, the issues relating to the proposed CP-3 zoning have been eliminated. The applicant is now requesting CP-2 zoning for this site.

During the August 23, 1999, Planning Commission meeting, the issues with this item regarded concern about the proposed right-turn in/right-turn out driveway on 135th Street, the vehicular conflicts at the site driveway closest to 135th Street, and the internal circulation patterns. The Commission continued the application so that these issues could be discussed.

The Site Plan Review Committee met with the applicant on September 7, 1999. Their recommendation is included at the end of the report.

Mr. Koppelman proceeded to explain the location of the subject site and how access is envisioned for this piece of property. He referred to a display of the recently approved master plan for the auto mall and shopping center at the northwest corner of 135th Street and U.S. 69 Highway. U.S. 69 Highway is located to the right of the subject site, 135th Street is located to the south, and Antioch is located to the west of the site. Hemlock is an approved public street that would be constructed concurrent with the development of the auto mall and shopping center. An existing Amoco is on

the subject site. Access to the existing Amoco is via an eastern full access driveway as there is no median along 135th Street at this location. To the west, there is also a right-turn in/right-turn out driveway. Based upon the study that was adopted in 1998, staff envisioned access to this site in the short term with full access from the eastern driveway with a median break. The western driveway would be closed. In the longer-term, when development occurs around the Waterway site, the median break would be closed and full access would occur via Hemlock and a driveway that would be centered on the northern property line of the Waterway property and the southern property line of Terra Venture property to the north. Ultimate access would also come from the north. Eastbound traffic would be able to access the site by a right-in driveway. Westbound traffic would access the median break and use Hemlock to enter the site. The right-in driveway would also provide access to other properties around the Waterway development

Senior Transportation Planner Mark Stuecheli wanted to clarify the background on the 135th Street Corridor Study. The study was approved in 1998 and was based upon the 1986 K-150 Corridor Study. The K-150 Corridor Study included recommendations for full access at the half mile points and right-turn only access at the quarter mile points. He referred to a map and noted the median break locations and the right-turn only access points that were indicated in the 1986 K-150 Corridor Study. After analyzing several scenarios, the most recent study, the 1998 study, includes a recommendation to affirm and continue the current access strategy for 135th Street with two exceptions. First, the study recommended the addition of a full access median break at Hemlock to the west of the subject site. Mr. Stuecheli noted that a couple of other deviations have occurred since 1986 that were related to traffic studies and the need for additional access. Full access was provided for the mall property on the southeast corner of 135th Street and Metcalf. In the area of Payless Cashways, the other thoroughfare intersections were unable to carry the heavy left-turn volumes associated with that development. Because U.S. 69 Highway is located where a median break would normally be placed, an additional median break was required at 135th Street and Hemlock to avoid having problems at 135th Street and Antioch. The other deviation that was recommended was to allow right-in only access to properties at the eighth mile points where conditions indicate that it would provide a benefit and operate properly. The study indicated that there was a potential for a right-in only access at the eighth-mile location near the car wash.

The Council resolution which approved the 1998 study included the adoption of the access guidelines contained in the most recent study. Mr. Stuecheli noted that one of the issues related to the current proposal for full access (a right-in/right-out turn) is that there are many opportunities for additional access deviations from the right-in-only policy that was adopted by the Council. If it is approved in the area of the subject site, which is one of the most heavily traveled areas along the corridor, a precedent would be set for similar requests for areas up and down the corridor.

Regarding the specific factors about the site, Mr. Stuecheli presented a board illustrating the current proposal by the applicant for a right-in/right-out driveway which would include a right-turn lane leading into the site. As a part of that, the traffic study looked at a design feature to avoid a problem situation. The plan proposes a slotted left-turn lane to avoid the U-turn maneuver, as the weaving involved with the attempted U-turn movement would interject serious safety and operational concerns. Staff prepared a dual left-turn lane for future Hemlock. There is a raised median barrier between the left-turn lane and the westbound through

traffic on 135th Street that is designed to eliminate the potential for someone making a right turn out of the site and turning into the left-turn lane and making a U-turn. The driveway will be connecting to a large shopping center at Hemlock. As an alternative for accessing the shopping center via Hemlock, there would be a tendency for quite a few drivers to make a right turn to head west on 135th Street.

The applicant has indicated that the right-in/right-out access is not their specific proposal. However, the traffic study included the right-in/right-out access as an alternative design. In staff's opinion, if the right-in/right-out design is supported by the Planning Commission and the City Council, that should be an integral part of the approval in the form of a stipulation. Mr. Stuecheli emphasized that stipulation would be included only if this design were supported by the City Council. The normal left-turn lane for Hemlock would probably be a 300-foot dual left-turn lane. That would serve a heavy left-turn movement into the site to the south. It was anticipated that a public street would loop around over to Antioch so that a lot of the movement south on Antioch would be accomplished at the Hemlock median break. This side of the left-turn lane would be pushed further back to the east. Staff was concerned that when traffic is coming off the ramp from U.S. 69 Highway and turning left onto Hemlock, there would be less distance to accomplish that maneuver. The volumes of traffic on this section of 135th Street are projected to be in the low 60,000 range, even with a future overpass at 132nd Street. That would be comparable to the existing volume of traffic on Metcalf Avenue south of I-435.

The Public Works Department also has concerns with the concept of a slotted left-turn lane as that configuration has not been used in a similar situation elsewhere in the City. There are some questions about drivers not being familiar with this design and not being sure how to drive through the configuration. A median is being introduced between two through lanes of traffic in the same direction, which can be a potential safety issue. There is the potential that someone will not get in the left-turn lane and try to make a left turn from the through lane. Staff cannot guarantee that would happen, however, that has been an issue in other similar circumstances. In terms of the location, this is probably the worst location along 135th Street for this type of access because of the high traffic volumes and the turning movements in the vicinity.

There are also internal issues associated with this drive. For example, if five vehicles are stacked trying to exit the driveway, they would block the inbound lane. With that scenario, people would find it difficult to access the gas pumps. Having that kind of access that close to a major road with high volumes of traffic would be undesirable. The other potential is that people coming out of the car wash would also have to cut through that line of traffic if they are attempting to go back into the main shopping center. As in many other shopping centers in the City, this would look to everyone else as a pad site. This pad site would use the main access that is used in the overall center. In staff's opinion, this shopping center would have the same type of access that many other retail sites have along the 135th Street Corridor.

Mr. Koppelman noted that the Site Plan Review Committee met on September 7, 1999, to review this proposal. The applicant presented an alternative proposal at that meeting which routed southbound traffic on the east drive through the gas station site in order to limit outbound traffic using the right-out driveway. He understood that proposal was no longer a consideration. However, if necessary, that design could be reconsidered. The Committee also discussed in detail the right-turn out driveway that is a part of the applicant's proposal. Ultimately, the Committee voted 2 to 1 against

the right-turn out movement because it was in violation of the 135th Street Corridor access control guidelines and because it would cause internal circulation problems at the site driveway closest to 135th Street. One Committee member felt that right-turn out driveway was acceptable.

Staff could support the CP-2 zoning on this property, however, the related zoning text ordinance amendment must be approved by the City Council in order for this rezoning application to be approved by the Council. He noted that the related zoning text ordinance amendment was being considered by the Council later in the day. Therefore, staff was comfortable with the Commission acting on the application at this time.

Staff cannot support the proposed plan, as it was submitted, for three reasons. First, the applicant's request for a right-turn out driveway violates the access plan established by the 135th Street Corridor Study. Approval of the right-turn out driveway would set an undesirable precedent for future drives along the 135th Street Corridor.

Second, staff was also concerned with the site plan if the design of the 135th Street driveway permits the right-turn out movement because of the stacking problems that would result. A stack of five cars attempting to exit onto 135th Street would block the southern driveway.

Finally, during times when vehicles are stacking as they wait to exit the site onto 135th Street, internal congestion would likely occur for vehicles exiting the car wash.

For the referenced reasons, staff recommended denial of the plan as submitted.

Mr. Hunter asked if the City approved a right-turn out exit with the Terra Venture plan. Mr. Koppelman replied in the negative. He explained that a right-turn in drive had been approved. Staff was concerned that if a right-turn in/right-turn out access point is approved for Waterway, there would be similar requests for other properties along the corridor.

Mr. Reitzes asked if staff had an idea of how much stacking there would be on the internal drive north of the site if they circulated traffic out of the car wash and gas pumps to the north to Hemlock during the p.m. peak traffic hour. Mr. Stuecheli replied that he has not analyzed that configuration. He assumed that if there was a problem with the volumes of traffic, there would most likely be a traffic signal placed in that location. The design would be somewhat similar with the Oak Park Mall access where the traffic off 95th enters a short drive to a T intersection where the traffic can flow either way. That design operates well under heavy traffic volumes. That design should be more than adequate to handle the future traffic in that area. Mr. Reitzes questioned if the problem of stacking and congestion is being shifted from 135th Street to where the internal drive meets Hemlock. Mr. Stuecheli replied in the negative. He added that heavier volumes of traffic with more direct conflicts were likely to occur along 135th Street as compared to the internal drive. The T intersection design is used at Oak Park Mall and does not demonstrate any kind of congestion problems. Typically, the inbound traffic entering in a T intersection has the right-of-way and does not have to yield to traffic that is already on the system. This design works well in high volume situations. Staff anticipated that there would

be the need for a traffic signal at Hemlock, which would provide for left turns out of the site onto Hemlock.

Chairman Goodman noted that there is currently an Amoco station on the site with an accessory car wash with a full access median cut. The full access median cut would be closed and the landowner cannot stop that from happening. However, they can continue to operate the current Amoco gas station with the accessory car wash indefinitely with a right-in/right-out access. He questioned how many other sites along the corridor will lose an existing right-in/right-out access as a result of subsequent development. Mr. Stuecheli explained that there is a gas station site across from the Amoco station that would have a right-in/right-out configuration. Staff anticipated that there would be a redevelopment request at some time and at that time, staff would pursue access across the property to the south of that site to the future street that would likely be built south of 135th Street.

Chairman Goodman added that the enforcement of the 135th Street Corridor Study would preclude the improvement of the site or the upgrading of the gas station on the south unless the landowner was willing to give up a valuable right-turn out access. The requirement may discourage the landowner to improve or refine their property. Mr. Koppelman replied that this particular property owner may believe that they need to have a certain type of access for their particular use. This piece of property will function like many other pad sites along the 135th Street Corridor and elsewhere in shopping centers in the City where they do not have direct access to the thoroughfare and they have internal access through the shopping center. Staff was willing to wait until a user came along that felt they were able to survive an off access scenario that many other pad sites and shopping centers have throughout the City.

Chairman Goodman asked if there was a safety concern if the Amoco remains in place for the next 10 to 15 years. Mr. Stuecheli replied that if the Amoco facility remains unchanged, staff does not have much control over what happens with that site. As time goes on, volumes will increase on 135th Street and it could become more of an issue. With the current use, there would not necessarily be a major safety issue. Chairman Goodman asked if there would be a significant increase in traffic generated by the Waterway use versus the existing use. Mr. Stuecheli noted that the Waterway use should not be isolated in consideration of the traffic in the area. The driveway would serve the entire site and not just the Waterway use. Chairman Goodman asked if access through the Waterway site was critical to good access and the viability of the Terra Venture development. He previously understood that this access was not needed for the Terra Venture development. Mr. Stuecheli replied that there are two different scenarios if there is no allowance for a convenient access. One scenario is an indirect kind of connection which was studied in between the last meeting and now. Staff did not believe that an indirect connection was a workable alternative. Additional safety problems and accidents would occur on the site with that alternative. The other choice would be to isolate the current proposal as a right-in/right-out access only. That would be an undesirable precedent to set. They are not dealing with the existing site only. They are expanding the land area substantially and redeveloping the site. When a property is redeveloped, it is appropriate to follow the guidelines that are used for other properties which are developed. The definition of a thoroughfare is to move through traffic rather than providing access to abutting properties. To a greater extent, 135th Street is to move the high volumes of traffic that will be using that roadway. The secondary purpose of the roadway is to provide access to abutting property. That is why the 133rd Street and 137th Street parallel access

roads are different than elsewhere in the City. It is clear that this type of direct access to properties after they are redeveloped is not supported by the Master Plan, the 1986 K-150 Corridor Study or the 1998 135th Street Corridor Study.

Mr. Marvin Rainey, attorney, Financial Plaza, 6900 College Boulevard, Suite 1020, said that the site is unique in that there is an existing service station on this tract that is very successful with a high volume of business. The station exceeds the volume of trips for gasoline sales as compared to the volume of business at the other Waterway locations. They have tried to address the traffic issues and employed a traffic engineer to consider alternatives. This site is under a separate ownership and is a valuable site.

Mr. Henry Dubinsky, president, Waterways, 727 Goddard Avenue, Chesterfield, Missouri, said that to save time, the traffic engineer would not reiterate his previous comments. Since the last meeting during which this item was discussed and there was a 5 to 5 vote, Mr. Dubinsky determined that they should look for another solution. In looking for another solution, they suggested two changes to help reduce the amount of shopping center traffic that would travel through the proposed right-out driveway. One suggestion was the now defunct plan to prevent shopping center traffic from driving straight through the proposed right-out driveway to 135th Street. Staff prepared a drawing to illustrate the second suggestion and indicated that if there is going to be a right-turn out, a sign should be installed at the northern entrance to this multipurpose driveway. The message on the sign would be determined via an agreement between the City and adjacent property owners. The sign would likely indicate something like Waterway traffic only. Staff has pointed out that all of the traffic will not necessarily follow those instructions. However, Mr. Dubinsky believed that several drivers would follow the instructions and this would be a significant way to reduce the amount of traffic coming from the shopping center to use the right-turn out driveway.

During the Site Plan Review Committee meeting, Mr. Lance suggested that the applicant consider a change in the site plan so that the building, the gas pumps, and the turn-around end of the car wash would be moved to the north to allow the gas pumps to be moved 40 feet further away from the street in comparison to where they are indicated on the current plan. That could be done, in part, because of the fact that the site plan includes 21 parking spaces, although they believed that they would only need 12 to 14 parking spaces. Pushing the curved linear turnaround to the north would take away some of the parking spaces in the middle of the rear drive leaving enough to meet the parking requirement. The applicant would be willing to use that configuration for this site with the approval of the Commission and the Council. If they were allowed to have a slotted left-turn lane, they would also be willing to pay their share for the cost of that improvement. Mr. Dubinsky wanted to note that the plan that was presented to the Planning Commission also includes a deceleration lane for right-turn traffic into their driveway. Currently eastbound and westbound traffic on 135th Street have two lanes of through traffic in each direction. There is also a third lane, which is not a through lane. This plan calls for the construction of a fourth lane to make the right-turn movement into the site safer. If the City would allow this configuration, they would also be willing to pay for the construction of a fourth lane to the west of the driveway. This is currently a profitable site. If this application is not approved, they will reluctantly keep the facility that is in place and, perhaps, they will present another plan in the future.

Chairman Goodman referred to Mr. Dubinsky's comment that he would pay for his share of the cost for the slotted left-turn lane. He clarified that if this plan were not approved with a capacity for a right-turn out, there would be no need for a slotted left-turn lane. If the slotted left-turn lane was to be built only because an exception was granted to allow Waterway to have a right-turn out driveway, he asked why the applicant should not pay the entire cost of the lane. Mr. Dubinsky replied that the slotted left-turn lane would also be used for access to the property to the south. Mr. Stuechli added that staff has grave concerns about the design of a slotted left-turn lane. Assuming that the right-turn lane is approved to prevent more serious problems, the only reason it would be allowed is because of the driveway that is being requested by this applicant. Therefore, staff believed that the applicant should pay for the entire cost of the driveway. Mr. Stuechli noted that he was referring to the raised median. Mr. Dubinsky added that he would be willing to pay for that improvement. He commented on this issue as it was not addressed by stipulation. Mr. Stuechli commented that if the right-out movement was approved, staff had prepared a stipulation to add to the item.

Mr. Rainey indicated that the City would benefit from this proposed redevelopment. There is an unplanned C-2 zoning at this time. The City would be gaining a planned zoning with aesthetic and architectural improvements, which would result in an upscale facility. Landscaping would also be added. They currently have two right-in/right-out access points, which would be reduced to one right-in/right-out access point. The approval of this plan would provide common driveway easements with adjacent properties, if that is determined to be beneficial. The development on the site would be moved further to the north. The City wanted 40 more feet of right-of-way from this site which could only be accomplished through a redevelopment of the property, through the City acquiring the land by eminent domain, or by the City paying for the property.

The 1986 K-150 Corridor Traffic Study provided for median breaks and traffic signals at the half-mile intersections. The policy was followed until recently as there was not previously as great a traffic demand. The 135th Street Corridor Study in 1998 seemed to indicate that the policy works well when the land is in half-mile segments, however, it is more difficult to follow the policy when there are separate ownerships of the land segments. The 1998 135th Street Corridor Study included a recommendation for increased median breaks and intersections to benefit the public by continuing to move traffic and by reducing the traffic delays. The intersection under discussion with the subject site is at an eighth-mile point. Mr. Rainey read from the study that the analysis of the access alternatives indicated that the provision of additional access, typically at the one-eighth-mile points, would have minimal impact on through movements on 135th Street. Therefore, consideration of additional access at these locations would be consistent with the primary objectives of preserving through movement service along 135th Street. This additional access would be limited to right turns. No median breaks would be considered. However, the key question is whether additional access should allow only right-turns in or both right-turns in and right-turns out for adjacent properties. Mr. Rainey suggested that the study was indicating that the provision of the additional access, typically at the one-eighth-mile point, would have a minimal impact on through movements on 135th Street. He noted that the study is referring to both right-turns in and right-turns out. Regarding right-turns out, the study indicates that if these driveways operate like most other driveways in the area, safe operation would be expected. While waiting to enter the traffic on 135th Street from a driveway, drivers would typically stop and wait for gaps in the

traffic. Once traffic is cleared, drivers could turn. As for the right-turn movement from these driveways, experience on College Boulevard suggests that conditions could be reasonably safe. Another portion of the study indicates that the evaluation of accident experience on a controlled street suggested accident potential would be minimal. The study later included a recommendation to restrict the right-turn in and right-turn out movements, however, the study does not base that recommendation on safety as it indicates that these access points could be expected to be reasonably safe. It also indicates that the right-turn in/right-turn out movement would not adversely impact the movement of through traffic.

In this area between Riley and Hemlock, there are four proposed signalized intersections in a half-mile section including Riley and 135th Street, Hemlock and 135th Street, at a median break at the east ramp to U.S. 69 Highway, and at the west ramp to U.S. 69 Highway. Consequently, the traffic speed is not going to be that high in that area. In comparison, between Antioch and Metcalf on College Boulevard, there is one signalized intersection and eight driveways besides the side streets, with right-turns in and right-turns out. Both the 135th Street Corridor Study and experience indicates that the number of access points does not contribute to the number of accidents. He did not believe that the traffic engineers have ever pointed to safety as being a concern with this issue. The traffic study with this request included a consideration of the weaving movements and of what would be required to make the lane changes. In considering all of these factors, Mr. Rainey believed that the benefits of this application to the City are great and that this plan would not be detrimental to the City in terms of traffic movement or safety on 135th Street.

The applicant agreed with all of the stipulations, although stipulations e and i would have to be changed to accommodate the right-turn out. In stipulation i, the words right-in only would need to be deleted. With stipulation e, the first sentence should be retained and the rest of the stipulation should be deleted if this plan is approved.

Chairman Goodman opened the public hearing on this item. There was no response and the hearing was closed.

Mr. Hermes commented that this was a difficult application to consider. He would not support the proposed plan for the same reasons that staff was recommending denial of this request.

Mr. Reitzes noted that the Site Plan Review Committee carefully considered this item. The concerns regarded the internal circulation on the site, potential accidents, car stacking, traffic congestion, and ingress and egress issues. Arguments could be made to allow only right-turns in or for an access that would allow right-in/right-out turns. He recalled that Mr. Lance was in favor of the right-turn in only and having the exit on the northern side of the property. Mr. Sanders preferred the same configuration although it seemed that he would be willing to accept a right-in/right-out access point. Mr. Reitzes believed that there are some safety concerns with a right-turn out movement because of traffic congestion, cars stacking, the blocking of the driveway, potential accidents, and drivers crossing four lanes of traffic to take a left turn at Hemlock. However, with those concerns aside, this site needs to have an exit from the car wash and the gas pumps directly onto 135th Street. He felt that access needs to be a part of this project. That configuration seemed to make this site work better as a whole. The applicant mentioned that it is not economically viable for there to be gas pumps on this site unless there is a right-turn out onto 135th Street. The car wash

would work without the right-turn out, however, the gas stations would not be successful without the direct access. In considering all of the factors, including the safety factors, Mr. Reitzes concluded that a right-turn out was needed as well as a right-turn in.

Mrs. Debus referred to the suggestion that a sign be used to restrict traffic entering the Waterways. She noted that individuals sometimes drive where they are not supposed to drive. Regardless of the sign, people would likely use that access point to drive out of the shopping center area. Mrs. Debus added that when City staff recommends a configuration for the safety of the citizens, she pays attention to their suggestions.

Mr. Hunter agreed with Mrs. Debus. He was not a traffic expert and did not understand all the impacts associated in the design of intersections. He depended upon the comments offered by the Transportation staff and he would not be voting in favor of this application.

Chairman Goodman noted that the slotted left-turn lane may be questionable. He was unconvinced that by denying this application the Planning Commission would be making the traffic conditions any safer for the citizens. What is currently on the site is a nice functional building that could continue to operate with the present design for several years in the future, which includes a right-in/right-out access. He questioned what was being accomplished with the denial of this application to make the road conditions safer. If there was an attempt to look at the application as a Waterway versus an Amoco scenario, the Waterway use would not make the situation measurably more unsafe. He believed that the site is unique because it is already developed with a current and operating business. The ability to control the right-in/right-out access is different before a site is developed. He questioned to what extent the traffic contributed by the Terra Venture development would make this an unworkable site. He believed that there is some way to control the impact of shopping center traffic on this site whether it is with a Waterway traffic sign or some other method. He would be voting in favor of the application.

Mr. Hermes moved to deny Rezoning No. 99-9. The motion was seconded by Mrs. Debus, and carried with a vote of 4 to 3, with Chairman Goodman, Mrs. Scheier, and Mr. Reitzes voting nay.

REZONING NO. 99-27 - Vicinity of the southeast corner of 151st Street and Conser. Shafer, Kline and Warren, P.A., applicant, is requesting CP-2, Planned General Business District, to allow a commercial development. This property is currently zoned R-1BJ, Single-Family Residential District.

(Denied)

Mr. Koppelman commented that the applicant was requesting a rezoning to CP-2, Planned General Business, for a tract that is located along 151st Street. The properties along 151st Street contain a mix of residential, office, and retail land uses. The subject tract currently contains two single-family residences. To the north, across 151st Street is the relocated Stanley Bank on property zoned CP-O, and a parcel recently rezoned to CP-1 to allow a Dairy Queen. A post office is also to the north on property zoned CP-1. The only CP-1 use permitted on that property is the post office and all other uses are limited to CP-O uses. To the south is a duplex subdivision, and

to the east are single-family homes fronting on 151st Street as well as a subdivision zoned R-2J. To the west, across Conser, is the Stanley Station shopping center.

This application proposes a 15,180-square-foot grocery store and a 5,800-square-foot pad site on this 4.32-acre tract. Access to the site is provided via two driveways on Conser, and one potential future connection to 151st Street across adjacent property to the east. The grocery store is towards the southern end of the site and is oriented towards Conser. The pad site is at the north end of the site, adjacent to 151st Street.

The 20,980 square feet proposed for this site represents a floor area ratio of .095, which translates into a 4.0 Land Use Intensity (LUI). This falls within the LUI range recommended for this parcel.

The building elevations submitted for the grocery store indicate a brick building with a brick and stucco entry element. The loading area will be at the southern end of the site facing Conser. The grocery store would have a 108-foot setback from the south property line and a 45-foot setback from the east property line.

The primary issues with this application regard the proposed land use and the traffic impact of the proposed land use. The Future Development Plan map designates the north one half of this property as appropriate for office land uses and the southern one half as appropriate for medium-density residential land uses. The applicant's proposal for retail zoning on the entire property is not consistent with the Master Plan. Staff will discuss this issue in greater detail later in the report.

Since the development proposal includes a restaurant and supermarket which will generate trips at a much higher rate than the Master Planned land uses on this site, staff required the developer to retain a traffic consultant to prepare a traffic impact study. The consultant followed a scope of work developed by staff. That scope included the review of existing and projected traffic volumes for four development scenarios including existing conditions, existing conditions with full development of the site, projected 2020 conditions with the approved Master Plan land uses on the site, and 2020 conditions with the development of the site as currently proposed. In addition, under each scenario, an additional access alternative was studied to analyze the impact of a potential closure of the outbound and/or inbound left-turn movements at the eastern driveway serving the shopping center west of the proposed development. At the time of the design of the 151st Street improvements, the closures were discussed as a potential alternative if safety and/or operational problems arose in the future as a result of the left-turn movements. The Overland Park Traffic Model was used to generate east-west traffic projections on 151st Street in the year 2020. The scope specified that the intersection of 151st Street and Conser/Newton be analyzed to determine how well the intersection would operate under each of the development scenarios.

Table No. 1 on page No. 51 of Staff Comments contained a listing of expected trips to be generated from the site if it were to be developed as indicated by the Master Plan land uses as compared to the anticipated trip generation totals for the site developed as proposed by the applicant. It should be noted that after the traffic study was completed, the land use on the pad site on 151st Street changed from a bank to a sit-down restaurant. Since the restaurant will generate fewer trips on a daily basis and in the peak hours than the bank, Table No. 1 slightly exaggerates the traffic impact of the project. A review of Table No. 1 shows that the proposed change in the land use mix

on the site will result in very substantial increases in trip generation from the site on a daily basis in the a.m. peak hour and in the critical p.m. peak hour time period. For example, in the p.m. peak hour, trips will increase by 380, which is an 844 percent increase. Table No. 2 illustrates the expected operations of the 151st Street and Conser/Newton intersection under the four land-use scenarios described earlier. Table No. 3 shows the ranges of total delays for each Level of Service category. A review of the results of Table No. 2 shows that the intersection of 151st Street and Conser/Newton should operate in the LOS C range under all current year scenarios and in the LOS D range for all scenarios in the year 2020. Those results would appear to indicate that the proposed project would not adversely impact the area of 151st Street around the site.

However, one other operational impact is critical. Because of the design of the shopping center driveway on the west side of Conser, the amount of available storage area in the northbound dual left-turn lane on Conser is limited to only 140 feet before the driveway is blocked. Also, only about 210 feet of left-turn storage is available for the westbound left-turn movement on 151st Street before access to the post office is blocked. Staff requested that the consultant study the queue lengths at those critical locations for each of the development scenarios. Table No. 4 in Staff Comments lists data relative to this concern. It was determined that queue lengths over 140 feet for northbound traffic on Conser and over 210 feet for westbound traffic on 151st Street at the intersection will disrupt the operation of the shopping center and post office driveways. By reviewing the information included in Table No. 4, it is possible to determine where the most severe impacts will occur. Under the existing conditions, stacking problems will be most evident under the combination of full development of the proposed project and the closure of the shopping center drives. In the 2020 time period, problems arise on Conser under the scenario assuming development of the proposed project and under each of the no left-turn scenarios. The queuing projections for westbound 151st Street under 2020 conditions indicate that through traffic will block the post office drive on a regular basis. In that case, the length of the queue in the westbound left-turn lane is not a critical factor.

After analyzing the queuing data, the Transportation staff questioned the advisability of approving the requested substantial increase in development intensity on this site. The proposed development of the site would severely impact the operation of Conser at 151st Street if the assumption is made that the left-turn movements are likely to be prohibited in the future at the east shopping center drive. Another consideration is the potential for this rezoning to cause the extension of retail uses further to the east. That expansion of higher intensity land uses would most likely result in additional traffic problems on 151st Street. Therefore, the Transportation staff cannot support this request.

The Engineering Services Division reviewed this application. According to Staff Comments, the applicant will be required to show both the existing and proposed site grading on the final development plan. The final development plan must also show the proposed preliminary storm sewer plan. This plan must be consistent with the watersheds established in the 151st Street construction plans.

The Future Development Plan map designates the northern one-half of this property as being appropriate for office and the southern one-half as being appropriate for medium-density residential. The applicant's proposal for retail zoning on the entire property is not consistent with the Master Plan.

Staff reviewed the application in light of the goals and policies of the Master Plan. The following policy was found to be relevant in the consideration of this request: Criteria for the Location of Medium- and Higher-Density Residential Development. Policy 2.3, Protect Areas Planned For Medium- and Higher- Density Residential Development - Avoid reducing the medium- and higher-density residential areas as shown on the Future Development Plan map by allowing encroachment of nonresidential land uses which are not customarily allowed in residential districts. Mr. Koppelman noted that the applicant's proposal for commercial on the subject tract violates this policy.

The following policy was also considered in light of this request. Goal 3: Locational Criteria for Commercial Development - Policy 3.1: Follow Criteria for All Commercial Development - The locational criteria for all commercial development are: a) Limit commercial development to the areas shown as commercial on the Future Development Plan and, where applicable, on specific plan maps; b) Discourage the formation or expansion of strip commercial development by focusing new growth in more clustered patterns. Mr. Koppelman stated that there was an attempt to avoid the expansion of commercial development along 151st Street from Antioch to U.S. 69 Highway. The commercial zoning on the west side of the highway was on the property when the tract was annexed into the City. Staff did not believe that was a good land use pattern and the City's Master Plan included a recommendation for the clustering of commercial development at the intersections of thoroughfares or heavily traveled streets. Staff believed that Conser/Newton was established as the dividing line between commercial development to the west and other medium-density and office development to the east.

Another policy which related to this request is Goal 6: Transportation Considerations - Policy 6.1: Avoid Exceeding Street Capacity - Discourage the expansion of existing or the inclusion of new commercial development in areas where, even with street and traffic signal improvements, the additional traffic generated by such development would exceed the handling capacity of the street system. Mr. Koppelman indicated that the applicant's proposal would have a negative impact on the operation of the signal at 151st Street and Conser, and is in violation of this policy.

Staff did not support the applicant's proposal for the following reasons. First, Conser has been established as the dividing line between commercial development east of U.S. 69 Highway. Allowing the expansion of commercial development to the east would set the precedent for stripping out 151st Street with commercial development. Second, staff feels that the office and medium-density land uses as indicated on the Future Development Plan map are still viable land uses. Finally, the development of the site as proposed would severely impact the operation of Conser at 151st Street if the assumption is made that the left-turn movements are likely to be prohibited in the future at the east shopping center drive.

Should the Planning Commission find the revised plan acceptable, stipulations a through g were included in the report.

Chairman Goodman asked if the northwest corner at the intersection of Metcalf and 151st Street was always zoned as commercial. Mr. Koppelman replied that the northwest corner of 151st Street and Metcalf was zoned as CP-3J when the property was annexed into the City. The southwest corner is zoned CP-2, which is a City

designation. Therefore, that property was zoned after the incorporation occurred. Chairman Goodman asked if the City changed the zoning designation of the southwest corner. Mr. Koppelman replied in the affirmative. He added that when the southwest corner was annexed into the City, the Master Plan showed commercial for that area. The zoning was in conformance with the Master Plan when the tract was annexed into the City. Chairman Goodman clarified that the north side of 151st Street is developed with a bank at 151st Street and Conser, the recently approved Dairy Queen, the post office, and the school property. Chairman Goodman asked if office would be a possible use on the north side of 151st Street. Mr. Koppelman replied that the school property abutting 151st Street in that area is vacant. If the school district gave up a portion of the property, it could be developed as office. That property is currently zoned as residential. To have office or a non-related school use on that tract, it would be necessary to rezone a portion of that property. If there is commercial on 151st Street near Metcalf, and in the area between U.S. 69 Highway and Conser, Chairman Goodman questioned why the subject site should not be developed as commercial in light of the other commercial uses in the vicinity. Mr. Koppelman replied that staff felt that there was enough commercial in the area. The Master Plan specifically shows commercial development at the intersection of thoroughfares. The northwest corner of 151st Street and Metcalf was zoned commercial when it was annexed into the City. The northeast and southeast corners were also zoned commercial. When the study of the Stanley Morris area was conducted, the southwest corner was shown as commercial. From the corner of 151st Street and Metcalf to the west, office uses were indicated with Newton/Conser as the dividing line for commercial to the west. The existing land uses and the Master Plan goals and policies were used to establish the land use designations when the Stanley Morris study was conducted. Chairman Goodman asked if there are separate ownerships of the land south of 151st Street. Mr. Koppelman replied that he understood that the subject site is owned by three different landowners. Chairman Goodman asked if the Planning Commission approved this application, would there be a basis for denying applications for commercial to the east of the subject site. Mr. Koppelman replied it would be difficult to deny such a request.

Mr. Scott Beeler, 9401 Indian Creek Parkway, said he is the attorney for the applicant, Aldi, Inc. Mr. Beeler referred to a map of the subject site and the surrounding area. He commented that often the Planning Commission hears an applicant's perception of how the rezoning of a tract will affect the course of development in an area. Mr. Beeler intended to provide data regarding the development of this corridor on a factual rather than a perceived basis. He explained that Aldi, Inc., a private label grocer, is an international company and they have more than 5,000 stores that are located throughout the world. Aldi, Inc., has recently established a regional distribution center at the southeast quadrant of the intersection of K-7 and K-10 Highways. He understood that the regional distribution center is the largest all brick facility in the Kansas City area. Mr. Beeler displayed pictures of an Aldi facility that was recently completed on a site along the 135th Street Corridor. Immediately to the south of that facility are upscale single-family homes. There is no zoning transition or buffer between the facility and the residential area. He noted that there is a low visual impact with Aldi, Inc., developments and they construct high-quality buildings with a tremendous amount of landscaping. Mr. Beeler mentioned that at the southern portion of the subject site is a green space with mature trees. The plan with this request is to maintain that green space and to add additional ornamental landscaping in that area.

Mr. Beeler noted that staff does not recommend approval of this use as it is not in compliance with the Master Plan. Staff believed that if certain assumptions are made regarding the traffic to be generated by this development, this use could have a detrimental impact on the traffic system. Mr. Beeler wanted to offer a different viewpoint of these two issues.

First, Mr. Beeler referred to the 151st Street Corridor from Antioch on the west to Old Metcalf on the east. To provide a history of this area, Mr. Beeler researched the county and City records since 1981. There have been seven rezoning applications for the area along 151st Street from U.S. 69 Highway to Metcalf. Four of those seven requests have been for a use that is greater in intensity than office. In 1981, a rezoning application was presented to Johnson County to change the zoning to CP-1. Mr. Beeler suggested that the line of demarcation to which staff referred at Conser is not backed up by any historical fact.

In 1981, a zoning application was presented to Johnson County for land located at the midway point between Conser and U.S. 69 Highway. In other words, nineteen years ago, the line at Conser/Newton was crossed with an application to request CP-1. Mr. Beeler read from the county records which indicated that of primary importance to Stanley is the 151st Street Corridor. Although it was originally developed residentially, the character of the 151st Street Corridor has begun to change over the past few years. The area along 151st Street between U.S. 69 Highway and Metcalf Avenue has been reevaluated to have commercial importance. With the advent of development in Oxford Township, greater emphasis has been placed on Stanley to meet diversified needs. Commercial development has already begun on 151st Street. In 1982, another rezoning application was filed and more records were made at the county. At that time, the board was concerned about the use of properties in a commercial manner in residential structures. The township zoning board turned down the application and the County board overturned that decision to allow the applicant to operate retail uses out of residential structures. Several retail uses are allowed under the current property zoning including beauty shops, barber shops, contractors, store front insurance agencies, photography studios, real estate agencies, tailors and dressmaking shops, day-care centers, chiropractors and art studios. These uses were grandfathered in the 1985 annexation agreement. Promises were made to landowners who wanted to be certain that the way in which the corridor was being developed would be followed by the City.

In 1982, an application was presented to rezone land to the east of the subject site from single-family to CP-O. Currently, that site is developed as the State Farm Insurance Agency. In the 1982 records regarding the State Farm tract, it was indicated that under the term, general community characteristics, the 151st Street Corridor within Stanley continues to experience development pressures. The area originally platted and developed for single-family residential use has been assuming more of a commercial appearance. It is anticipated that all of 151st Street from Antioch to Metcalf is expected to be developed commercially. Mr. Beeler noted that the planners at that time had the foresight to know how this property was going to be developed. The only office zoning that existed until 1985 was for the tract to the east of the subject site. All of the other rezoning applications had been commercial in nature over the entire corridor.

After the 1985 annexation, the first office rezoning was presented in 1987 for the irregularly-shaped tract to the east towards Kay Lynn Road. At that time, it was

noted by City staff that this was the first new office building project proposed in the 151st Street corridor. Mr. Beeler emphasized that for all the years up to that time with the county planning for the Stanley area, this was the first office use planned on the corridor. Mr. Beeler noted that the houses fronting 151st Street are in the stage of redevelopment. In 1987, the office zoning for that irregularly-shaped tract was approved. However, the office development was never built. All other applications for the corridor have been commercial. There were comments in the staff records about additional commercial setting a precedent for development in the area. Staff repeated the same type of comments regarding the post office application. Mr. Beeler stated that the post office in Stanley is advertised as a postal store and it is a retail operation. Staff Comments indicated that the placement of the post office in this location does not appear to be in violation of the guidelines of the Master Plan. Currently, the placement of commercial to the east of Conser is in violation of the Master Plan. However, commercial to the east of Conser was allowed in 1987. Staff went on to indicate in 1987 that if the City wishes to promote office uses and zoning along 151st Street, it was advisable to start putting limitations on the commercial rezoning. Staff did not want the City to allow commercial uses in this area, however, a commercial use was permitted with the Dairy Queen. Also, a rezoning has been presented for an instant oil facility adjacent to Newton.

Although staff has expressed concern about the precedent of commercial along this corridor, the commercial uses have been granted three times. Conser has not been a dividing line for commercial use since 1981. This request is not about stripping in commercial development. Every project that has been built in the last 20 years in the one-mile area on 151st Street from Antioch to U.S. 69 Highway has been commercial. A total of 5,280 feet of the properties fronting 151st Street from Conser to Kay Lynn Road have been or are being used for commercial. This leaves a total of 250 feet of frontage in this area that is not used for commercial. The corridor is being developed as the county planners envisioned this area 20 years ago.

Mr. Beeler stated that he submitted for the record the affidavit from the real estate broker regarding the three properties in the subject site. The real estate broker indicated that for the last ten years, she has been involved in the listing and marketing of the property. During the time the properties have been marketed, the real estate broker received only one other offer for the site. That offer was to develop the property commercially. During the time she has marketed the property, no interest was shown for developing the site as office or multifamily.

Mr. Beeler suggested that it was important to compare the data provided in Staff Comments regarding the traffic to be generated from the proposed development versus the traffic that would be generated by the proposed Master Plan use. He noted that there have been some slight adjustments in the traffic numbers in the report by the applicant's traffic consultant. Those numbers have been submitted to staff and the numbers reduce the trips from the proposed development. First, this application includes a request for a restaurant on the pad site rather than a bank. Also, the square footage shown on the traffic study is for a 17,000-square-foot development. However, the Aldi's store will actually be a 15,100-square-foot building. According to Table No. 3 in Staff comments, the intersection of 151st Street and Conser/Newton should operate in the LOS C range under all current scenarios and in the LOS D range for all scenarios in the year 2020. Mr. Beeler added that whether the consideration regards the Master Plan or the proposed development, the intersection functions appropriately. As noted in Staff Comments, the results would appear to indicate that

the proposed project would not adversely impact the area of 151st Street around the site.

Staff Comments further indicate that stacking could occur under certain scenarios. Mr. Beeler noted that the driveway coming out of existing Stanley station may be blocked. The left-turn access points that are referenced in the report are entrances into the Stanley Station and they do not have any relationship to the traffic to be generated out of the subject site. The columns in Table No. 4 of Staff Comments include the traffic categories of northbound left, northbound through, and westbound left. Staff has indicated that they are concerned about the stacking of northbound left and westbound left traffic coming down 151st Street. Under the existing conditions, the northbound left stacking length is 39 feet. The report also notes that there is a clear area for stacking of 140 feet. Existing conditions plus the proposed development are predicted to cause a queue length of 99 feet. There would be 50 feet left for stacking with this project. For conditions in the year 2020 with the proposed development, there would be a queue of 143 feet. Factually speaking, there are no stacking difficulties on Conser related to this project and there would not be problems according to the data provided for the year 2020. Stacking problems with this development are assumed without any evidence. Under the scenario of the 2020 Master Plan and no left turns, there would be a stacking of 186 feet, which is 46 feet beyond what staff finds acceptable. If the owners of the subject site are denied this request on the basis of the traffic report, the Planning Commission has basically told them that even if they present a Master Planned development, their request will be denied. The location of the driveway out of Stanley Station was not selected by the applicant of this project. That is not an issue to be addressed with this plan.

Mr. Beeler stated that he has met several times with the staff to discuss this application. He has met with the neighbors to the south to explain to them that Aldi's, Inc., was willing to provide landscaping to decrease any negative impact from the project. Staff has suggested that Conser/Newton is the dividing line for commercial use. Mr. Beeler did not believe that the facts uphold that opinion. Secondly, staff has indicated that the office and medium-density land uses as indicated on the Future Development Plan are still viable. Mr. Beeler suggested that those land uses have never been viable for this site. He added that since 1987, those uses have not been viable as rezonings were granted to allow the development of office and nothing was been developed. Finally, the staff indicated that the proposed use would severely impact the operation of Conser at 151st Street if the assumption is made that the left-turn movements are likely to be prohibited in the future. Mr. Beeler suggested that the opposite is true. The facts indicate that there are left-turn movements that do not negatively impact the traffic scenario. If they are removed at some point in the future, then the Master Plan would be affecting the street system.

Mr. Beeler agreed with stipulations a through g.

Chairman Goodman commented that he supported the Dairy Queen application because the unique factors with that site seemed to indicate that office may not be the appropriate use for that location. He was concerned with the three separate ownerships of the subject site and with three residentially-sized lots being grouped together and oriented to face Conser. He feared that as uses were chosen for the remaining sites in the area, it could develop into a situation similar to 119th Street and Metcalf. Although he was not necessarily in favor of commercial on this site, he would be more inclined to favor a commercial use if there was one owner for the entire

site. Chairman Goodman asked if someone would purchase the three sites to the east, how would that development be coordinated with this proposal. Mr. Beeler replied that they have been requested in the form of stipulations to provide a joint access and maintenance agreement for ingress and egress through the center of their site to the properties to the east. Although that is not necessary for the proposed use, the applicant is willing to make that concession. Also, the subject property is unique. To the west, behind the Stanley station, there is multifamily zoning, which is an acceptable transitional zoning between single-family and commercial. Therefore, a southern line of demarcation is already in place. There is an eastern line of demarcation with developed properties in place. There is a narrow strip of property which will likely be undevelopable unless it is integrated with these properties. The use of this site is somewhat defined by the uses that are already in place.

Chairman Goodman noted that the proposed plan replaces office and medium-density residential with commercial. He asked if Mr. Beeler believed that medium-density residential was a viable use for the southern portion of the subject site. Mr. Beeler replied negatively. He explained that this parcel is unique as it the only site that runs this deep. The medium-density area to the east is already in place. The only office zoning is to the north towards 151st Street. The borders of the adjacent developments are already defined.

Mrs. Debus suggested that this area was poorly planned before it was annexed into the City. At the time this area was annexed into the City, Stanley Station was built and behind that development was a residential area with the access through the parking lot of Stanley Station. She asked if Conser was developed further to the south to handle some of the traffic from Stanley Station. Mr. Koppelman replied in the affirmative. Noting that the City has a policy against mixing residential and commercial traffic, Mrs. Debus questioned if that was a concern with this application. Mr. Koppelman replied that situation exists currently in this area. Mrs. Debus clarified that the approval of the proposed use would expand that condition.

Chairman Goodman clarified that the medium-density area to the east of the subject tract consists of duplexes that are almost entirely developed on the north and south sides of Kay Lynn.

Mr. Beeler added that Conser serves the residential area to the south. If individuals from the residential area were to use Aldi, they would likely take Conser to the site and return via the same route. Traffic from 151st Street coming to Aldi would turn right and back out to 151st Street the way that they came. There would be no reason for a further mixing of traffic through the neighborhood to the south. He added that Aldi has eight deliveries per week and it is a non-intensive traffic generating store in that regard.

Chairman Goodman opened the public hearing on this item.

Ms. Mary Hall, 7554 West 152nd Street, said her home is to the south of the site in question. Since the development of 151st Street, there has not been a sufficient drainage system to handle the runoff that flows behind Stanley Station, under Conser, and behind her house. Over one foot of her land has eroded away because of the runoff. Blood vials, needles, tree limbs, weeds, and dead animals have been carried with the water and deposited on her property. She has presented petitions to the City because of the trash being left in her backyard and she feared that this development

would result in more debris being left on her property. She presented several pictures of the trash on her lot. The streamway can reach a depth of 15 feet during heavy storms. Ms. Hall was concerned that the increased construction would increase the runoff in the area and she questioned what action the City intended to take to resolve the water problems.

Regarding traffic in the area, Ms. Hall understood that access to the Aldi site would be from Conser rather than from 151st Street. She suggested that it is easier to turn left on 154th Street from Metcalf and to travel through her neighborhood than to turn left at 151st Street. She explained that 154th Street turns into Conser. There is only a yield sign at 152nd Street and Conser. In 1998, a 16-year old individual died at the corner of 152nd Street and Conser as he did not yield to oncoming traffic. Ms. Hall observed that is a dangerous intersection and she has seen several instances when accidents almost occurred. She was also concerned about the environmental impact that increased traffic would have on her neighborhood. Ms. Hall questioned if more businesses would be located on Conser. If some of the exits from the Stanley Station were to be closed, it would cause increased traffic congestion.

Mr. T. J. Riggle, 7722 West 154th Street, encouraged the Commissioners to listen to the City staff. He noted that residential is located to the east and south of the subject site. Although there is retail to the west, there is green space that hides that development. The proposed use would be placed in a residential area. He felt that office or retail would be more suited along 151st Street than to the south in a residential area. There are several places zoned for CP-2 in the general vicinity. He suggested that rather than placing the proposed use in a residential area, it would be preferable to chose a different site. The traffic in the area is already congested. He feared that the approval of this development would increase the runoff in the area. Chairman Goodman noted that water issues would be more fully addressed with the final plan. Mr. Koppelman explained that the applicant would be required to provide for any runoff from the subject site to flow underground in a storm sewer system.

Mrs. Debus asked if staff would address the runoff situation in the area. Mr. Koppelman suggested that the citizens should speak to the Councilmembers who represent their ward. Mrs. Debus asked that staff also take initiative in addressing this concern.

Mr. Riggle added that Conser was intended to serve a residential area rather than to carry delivery trucks. He suggested that the retail development should face 151st Street rather than Conser.

Ms. Cindy Plapp, 7531 Kay Lynn Road, said she is the block captain of the neighborhood watch group for the residents who live on Kay Lynn Road. She was concerned about the depreciation of her property value. Her neighbors also expressed concern about their safety. They wanted to keep their street crime free by keeping out large businesses from the area. The people who live near Price Chopper have experienced vandalism and destruction to their property, and they are disturbed at night by the noise from the delivery trucks. There are some businesses in the area in residential homes. These businesses do not aesthetically change the area nor do they add to the noise level in the area. Ms. Plapp noted that it is already difficult to enter or exit her street because of the heavy traffic conditions. Regarding the runoff in the area, Ms. Plapp suffered flood damage four times in one month since additional development in the area has occurred. She has lived in this area for 20 years and did

not previously have flooding in her home. Ms. Plapp asked that the Commission deny this application.

Ms. Lois Dal Porto, 7522 Kay Lynn Road, said she moved in the area because it was a residential community. She lives behind the subject site. She asked if the applicant is willing to construct a wall to protect the residential area. Ms. Dal Porto was concerned about the safety of the children and the elderly people in the area if this application were approved because of increased traffic. She was against the approval of this request.

Mr. James Reynolds, 7713 West 154th Street, referred to Mr. Beeler's comment that he talked to the residents of the area before they presented their proposal. Mr. Reynolds noted that he did not speak to Mr. Beeler. He said that Conser is the only safe entry and exit point for the residents of Country Oaks, Eastland Meadows, and Brittany Park. The only other access point is 154th Terrace. He did not want an Aldi store to be built on Conser.

Mr. Randy Haines, 7537 Kay Lynn Road, said he lives in a duplex on the south side of Kay Lynn Road. He was against the Aldi store being placed on the southern portion of the subject site as he would see the facility from his property. He was concerned about the noise and trash that would be generated by this development.

Mr. Charles Messenger, said he lives next to the subject site. He would be directly behind the store and he would hear noise from the delivery and trash trucks. Mr. Messenger was opposed to the approval of this request.

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

In response to the public hearing comments, Mr. Beeler indicated that when they held their neighborhood meeting, they discussed the runoff issues with the neighbors. He understood the neighbors have had concerns about these issues for a long period of time. The stream in the area barely traverses the southwest corner of the subject site. He was willing to try to help in that situation, however, the stream is not primarily on this site. Conser Street is identified as a collector street. The CP-2 zoning on the Stanley Station site has a direct outlet point onto Conser as it is a collector. Although Conser also serves a residential area, it is an outlet point for commercial uses. Finally, Mr. Beeler emphasized that they do not own the property to the east of the subject site and it is not a part of the proposed development. He noted that Aldi divides their property from neighboring developments. This plan includes a 108-foot setback from the property to the south. There is a 45-foot setback to the east. The setback to the east is more than 30 percent of what is required and the setback to the south is three times greater than what is required. Aldi is not going to interrupt the green space as it is a mature and aesthetically pleasing buffer.

Mr. Hermes said he would not support this application because of the precedent setting aspect of expanding commercial along 151st Street.

Mr. Reitzes asked if there have been any previous proposals to develop the southern portion of the subject site with multifamily. Mr. Koppelman replied in the negative. Mr. Reitzes asked if Kay Lynn would be extended to Conser if the southern portion of the subject site was developed as multifamily. Mr. Koppelman replied that he did not

have the answer to that question. He added that Kay Lynn is a private street, which would be a factor in that decision.

Chairman Goodman noted that Mr. Beeler had commented on the intent of planners several years ago for the Stanley area by allowing the retail uses in the single-family residences. He asked if the planners intended this area to be commercial, why did they not rezone the land as commercial. Mr. Beeler replied that he believed that the planners intended to make this area commercial on the county's master plan. History speaks to that concept with all the applications. The City is out of step with what has occurred on the corridor. The City wanted to cluster the commercial development and ignored the fact that commercial rezoning had already been granted on 151st Street beyond Conser. He suggested that the precedent had already been set to make the land fronting 151st Street commercial in this area.

Mrs. Debus felt that there was poor planning of this area in the past. When the annexation occurred, this area was seen with a different perspective by professional planners.

Chairman Goodman clarified that the subject site consists of 4.32 acres. If one half of the site were developed as office and the southern portion were developed as medium-density residential, it was unlikely that apartments would be constructed on this site. The multifamily area would likely be developed with duplexes or attached homes. Mr. Koppelman agreed with that observation. He added that the City annexed the area in 1986 and began its Master Plan vision for the Stanley area. Committees were involved with the details of the master plan for the 151st Street corridor. The City's vision is different from the county's vision for the 151st Street corridor. Mr. Koppelman said that what occurred before 1986 in this area is not relevant when considering today's development. The City did not have a lot of input regarding the location of the post office. Staff did not support the approval of the Dairy Queen in this area. He added that Conser is not a collector street.

Chairman Goodman commented that he would not support this application. However, he would not preclude the idea that some type of commercial use may be appropriate for this site. The planners in the past may have been on the right track in indicating that an insurance office or a dentist office might be acceptable for this site, which are quasi commercial uses.

Mrs. Debus moved to deny Rezoning No. 99-27, vicinity of the southeast corner of 151st Street and Conser. The motion was seconded by Mrs. Scheier.

Mr. Reitzes agreed with the comments offered by the Chairman regarding the uses of this tract. It is conceivable to have a commercial use on this site and there were some positive aspects about this application. He did not agree with staff's suggestion that this application would expand commercial development in 151st Street. However, he felt that overall the best course of action is to uphold the Master Plan.

The motion to deny Rezoning No. 99-27 carried with a vote of 7 to 0.

REZONING NO. 99-25 - 7585 West 149th Terrace. Mr. Tracy Chelepis, applicant, is requesting CP-O, Planned Office Building District, to allow for an office building. This property is currently zoned R-1BJ, Single-Family Residential District.

(Approved)

Mr. Bear noted that the Planning Commission last considered this application on July 26, 1999. The Commission felt that the application did not meet the Land Use Intensity Guidelines and voted 5 to 3 to recommend denial of the application. The City Council considered the application on August 16, 1999, and voted to send the application back to the Planning Commission with direction to the applicant to reduce the proposed floor area.

The applicant's proposal remains similar to the previous application, however, the floor area has been reduced from 6,840 square to 5,247 square feet. The Land Use Intensity has been reduced to 4.9 from 5.6 as previously proposed. The applicant is proposing to keep the existing garage on the southwest corner of the site to use the two parking spaces that are available in the garage. Staff recommended that an access easement be granted so that there can be cross access between this development and the property to the west when development occurs on the adjacent site. The property owner would be required to remove the existing garage and add additional parking space whenever the property to the west is developed, presuming that a connection can be made between each parking area.

In staff's opinion, the land use intensity had been reduced to an acceptable level and the mass of the building size has been reduced. Therefore, staff recommended approval of this request, with stipulations a through h.

Mr. Tracy Chelepis, applicant, 7950 College Boulevard, said he was directed by the Council to reach a compromise with City staff. He believed that this is accomplished with the current plan. He agreed to stipulations a through h.

Chairman Goodman opened the public hearing regarding this request. As no one wished to speak, the hearing was closed.

Mrs. Scheier moved for the approval of Rezoning No. 99-25, with stipulations a through h. Mrs. Debus seconded the motion, which carried with a vote of 7 to 0.

REZONING NO. 99-29 - Vicinity of 141st Street and Lamar. A.G. Spanos Companies, applicant, is requesting RP-3, Planned Garden Apartment District, to allow the development of an apartment complex. This property is currently zoned RP-3, Planned Garden Apartment District; and R-1, Single-Family Residential District.

(Approved)

Mr. Lindeblad noted that the applicant was requesting a rezoning from R-1, Single-Family Residential District and RP-3, Planned Garden Apartment District to RP-3, to expand a previously approved apartment complex. The 67-acre tract is located between Metcalf and Lamar at 141st Street. The majority of this site was previously zoned RP-3 for a 692-unit apartment complex. The applicant was seeking to incorporate an 11-acre tract located to the east of Lamar into the Lakes of LionsGate development. The additional land would allow 130 additional units. This development

would result in a density of 12.25 units per acre. The site is divided into three phases. The first two phases are in the same layout as the previously approved plan, with the third phase representing the additional 11 acres along Lamar Avenue. The applicant has also proposed three distinct building styles for the three phases. The building materials include stucco, brick, wood siding, and stone.

The Future Development Plan depicts the majority of this tract as medium-density residential and a small portion of the tract as low-density residential. Therefore, the application is not in conformance with the plan.

This entire parcel is within the overall master plan for the LionsGate development between Metalf and Lamar. The locations of single-family and multifamily development have changed several times as the alignment of Lamar Avenue and 141st Street have changed. The inclusion of the 11 acres of R-1 property to RP-3 is supported by staff as it is surrounded by multifamily on the north, west, and south with Lamar Avenue, a collector street, adjacent to the east. However, staff cannot support any future rezoning of the previously approved single-family development within this area.

The Site Plan Review Committee reviewed the application for compliance with the Multifamily Design Guidelines. The density of 12.25 units per acre requires a 36 percent design incentive bonus. After extensive review, the Committee determined that the site plan met the design requirements, and was approved for a 44.3 percent design incentive bonus for additional open space, vehicular circulation, parking, attached garages, and pedestrian circulation. The Committee also approved the three building elevation designs for the different phases of the development.

Staff recommended approval of the rezoning with stipulations a through e.

Mr. New returned to the meeting at 6 p.m.

Mr. Bill Prelogar, applicant, 10771 Larsen Lane, was present as the representative of A.G. Spanos Companies. He explained that this request is for a small expansion of an existing project that was recently rezoned. Mr. Prelogar presented a map to show that the subject site would fill in an area that is surrounded by multifamily development. A new type of building with a new architectural design has been created. They already have approval for four phases of development. This would be a fifth phase. They have created a different look for each of the five phases. Mr. Prelogar has worked closely with staff to make this an interesting development for the City. As the LionsGate development was proceeding, Lamar was moved to the west and left a small tract that was not a part of the multifamily development. Therefore it seemed to be preferable to include this parcel as a new fifth phase in the development.

Mr. Prelogar accepted stipulations a through e.

Mr. Hermes noticed that this application was not in conformance with the Future Development Plan map. He asked for staff's comments on this issue. Mr. Lindeblad explained that this section has been replanned and rezoned two or three times. The shifting of the multifamily area, Lamar, and 141st Street has resulted in three different configurations for this site during the last several years. The 1998 Future Development Plan showed everything north of 141st Street as multifamily. However, since that time, the LionsGate subdivision realigned Lamar and put single-family

residential back on the west side of Lamar. This year's Master Plan automatically changed that area to low density because of the plat that was approved. The medium-density and the single-family areas have been fluid between Metcalf and Lamar in this area because of the changes. Staff concluded that this request was reasonable to make the tracts cohesive.

Chairman Goodman opened the public hearing on this item. There was no response, and the hearing was closed.

Mrs. Debus moved for the approval of Rezoning No. 99-29, with stipulations a through e. Mr. Reitzes seconded the motion, which carried with a vote of 7-0-1, with Mr. New abstaining.

REZONING NO. 99-30 - 8905 Santa Fe. Polsinelli, White, Vardeman and Shalton, applicant, is requesting CP-3, Planned Commercial District, to allow a Sonic Restaurant. This property is currently zoned CP-2, Planned General Business District.

(Approved)

Planner Leslie Karr noted that the applicant was requesting a rezoning from CP-2, Planned General Business District to CP-3, Planned Commercial District for a Sonic drive-in. In addition to the drive-in stalls, the restaurant would also have a drive-through with service by carhops instead of through a drive-through window. The proposed amendments to the Unified Development Ordinance, which were approved with an earlier agenda item, would allow drive-in restaurants to locate in the CP-2 zoning district subject to a 200-foot separation from residential properties for any point of interaction. The applicant has demonstrated that their proposal meets this requirement.

The existing development on site will be torn down and replaced by a new brick building. The applicant initially proposed to use the lighting of the new Sonic prototype. However, consistent with the approved plan for the Sonic on 75th Street, staff recommended that the neon around the building be removed and replaced with non-illuminated banding, the spotlights in the pylons be eliminated, and the fiberoptic lights in the pylons be non-illuminated. Two of those changes have been made to the plans. Spotlights are still shown in the pylons.

Modifications are proposed to the exiting pavement including a slight reconfiguration of each of the entry drives and provisions for a six-foot setback on the western side of the property. Modifications to the entry drive at the northeast corner of the site may include changes to the adjacent property. This scenario is acceptable provided that permission is obtained from the owner prior to approval of any final plans depicting change off the applicant's tract. The applicant is proposing to use an existing brick trash enclosure on the site. The revised site plan indicates that required setbacks are met with the enclosure.

The only issue that the Transportation staff identified with this application is the proposed length of the drive-through storage lane, which provides a six-car stacking space where an eight-car stacking space is generally recommended. Because the applicant is redeveloping an existing site, staff notes that the previous drive-through lane provided only a five-vehicle stack. It also seems that this drive-through will have

different operating characteristics that could affect the speed of service. As a part of the design, a larger than normal spacing has been provided between the menu board and the front of the pick-up area. It remains to be seen if that operation will be more efficient than a traditional drive-through window operation. However, staff can support the proposed design because of the improvement in drive-through storage compared to the previous layout for the site.

Staff found the application to be in conformance with the Future Development Plan and the goals and policies of the Master Plan. Due to the approval of the related Unified Development Ordinance amendment, staff recommended approval of CP-2 zoning for this application, subject to stipulations a through c. Mrs. Karr read into the record added stipulation d, which indicated that spotlights shall not be permitted in the pylons.

Mr. John Petersen, attorney for the applicant, 7500 College Boulevard, indicated that in light of the approval of Zoning Text Amendment No. 99-6 earlier in the meeting, he would be agreeable in modifying this request from a CP-3 zoning to a CP-2 zoning. He expressed agreement with stipulations a through d. Mr. Petersen added that the neighbors within 200 feet of the subject site were provided with a notice. The neighbors seemed to be pleased with the proposed plan. A representative from Turner Bicycle, the neighboring business to the west of the subject site, raised one issue which Mr. Petersen wanted to mention. He noted that the applicant was maintaining the cross access drive between the grocery store and Turner Bicycle. The Turner Bicycle representative expressed concern about the decrease of the entrance from 35 feet to 25 feet. Although 25 feet is the standard width for an entrance, Mr. Petersen was willing to working with Turner Bicycle and staff to develop a satisfactory solution to this issue. A fast food restaurant has been located on this site for many years. This is an opportunity to revitalize the area.

Chairman Goodman opened the public hearing on this item. As no one wished to speak, the hearing was closed.

Mr. Reitzes moved for the approval of Rezoning No. 99-30, to rezone to CP-2, with stipulations a through c, and with added stipulation d, as read into the record. Mrs. Scheier seconded the motion, which carried with a vote of 8 to 0.

SPECIAL USE PERMIT NO. 99-26 - 8300 College Boulevard. Selective Site Consultants, applicant, is requesting a special use permit for a five-year period of time to allow a monopole communication tower. This property is currently zoned CP-0, Planned Office Building District.

(Continued)

As previously indicated in the meeting, this item was being continued to the October 25, 1999, Planning Commission meeting.

SPECIAL USE PERMIT NO. 99-29 - 13433 Switzer. Mr. Paul Staats, applicant, is requesting a special use permit for an indefinite period of time to allow a special use permit for an animal hospital. This property is currently zoned CP-2, Planned General Business District.

(Continued)

It was noted previously in the meeting that this item was to be continued to the September 27, 1999, Planning Commission meeting.

SPECIAL USE PERMIT NO. 99-30 - Vicinity of the northeast corner of 103rd Street and Metcalf. Nextell Communications, applicant, is requesting a special use permit for a five-year period of time to allow an equipment shelter for a collocated wireless phone tower. This property is currently zoned CP-0, Planned Office Building District; and SUP, Special Use Permit.

(Approved)

Mrs. Karr noted that the applicant was requesting a special use permit to allow an equipment shelter for a collocated wireless phone tower for a five-year period of time. The existing Southwestern Bell Tower is 100 feet in height and is designed to accommodate a total of two users. The location of the Nextell equipment was not included within the previous special use permit application and, therefore, an additional special use permit is required. The site plan indicates that the shelter will be enclosed by a six-foot cedar fence and landscaping. Staff recommended approval of Special Use Permit No. 99-30 for a five-year period of time, with stipulations a through c.

Mr. Larry Louk, applicant, 13632 West 95th Street, explained that this request was an attempt to comply with the Unified Development Ordinance and collocating equipment on an existing tower. Generally these requests are handled in the site plan review, however, Southwestern Bell did not zone enough property for two towers when they presented their request. This is a facility that is needed for Nextell. Mr. Louk indicated agreement with the stipulations.

Chairman Goodman opened the public hearing on this item. As there was no response, the hearing was closed.

Mrs. Conrad moved for the approval of Special Use Permit No. 99-30, for a five-year period of time, with stipulations a through c. After a second by Mrs. Scheier, the motion carried with a unanimous vote.

SPECIAL USE PERMIT NO. 99-31 - 10400 Mastin. Los Portros, Inc., applicant, is requesting a special use permit for a three-year period of time to allow a drinking establishment in conjunction with a restaurant. This property is currently zoned CP-2, Planned General Business District.

(Approved)

Mrs. Karr noted that the applicant was requesting approval of a special use permit for a three-year period of time to allow a drinking establishment in conjunction with a restaurant located at the Wycliff West Shopping Center. Because the applicant's tenant space is within 200 feet of the adjacent Wycliff apartments, a special use permit is required. This request is similar to many other situations throughout the City. From a land use perspective, staff does not anticipate any problems with the drinking establishment at this location. The applicant is still subject to approval of a liquor license by the City Council.

Staff recommended approval of Special Use Permit No. 99-31 for a three-year period of time with no stipulations.

Mr. W. D. Rodgers, commercial realtor, was present to speak in behalf of the applicant. This request was to be allowed to serve liquor and beer with the meals. This restaurant is not primarily a bar, however, it is replacing a bar that was previously located on this site.

Chairman Goodman opened the public hearing on this item. As no one wished to speak, the hearing was closed.

Mrs. Conrad moved for the approval of Special Use Permit No. 99-31, for a three-year period of time, with no stipulations. Mr. Reitzes seconded the motion, which passed with a vote of 8 to 0.

SPECIAL USE PERMIT NO. 99-32 - Vicinity of the southeast corner of 105th Street and Marty. Polsinelli, White, Vardeman and Shalton, applicant, is requesting a special use permit for an indefinite period of time to allow for a corporate storage facility. This property is currently zoned CP-2, Planned General Business District.

(Denied)

Mr. Bear noted that this application is related to Zoning Text Amendment No. 99-5, which was considered earlier on the agenda. Since the Planning Commission recommended that the Council deny the zoning text amendment, staff recommended that either this application be sent with a recommendation for denial to the City Council or that the Planning Commission recommend a continuance until the Council has considered the zoning text amendment.

The site plan is the same as the previous rezoning application. The performance standards that were drafted by staff and the zoning text amendment are not met with this application.

Mr. Chase Simmons, applicant, 7500 College Boulevard, agreed with staff that it would be inconsistent not to recommend a denial for this application. He preferred that there be a denial rather than a continuance to resolve this issue in some manner.

Chairman Goodman felt that the essence of the prior discussion regarded the performance standards. If the performance standards were appropriately drafted, he could support this type of application. He noted that it was possible that the Council could revise the performance standards. If the Planning Commission recommended the denial of this request, they would not have an opportunity to review the request in light of the revised performance standards. Mr. Bear replied that if the Council revised the performance standards, they would likely remand this item back to the Planning Commission unless they had nine votes to override the Planning Commission recommendation. Mr. Simmons added that with the appropriate performance standards, there may be a few people who would be willing to support this request. He anticipated that if the Council would change the performance standards, they would remand this item. He reiterated his request for a denial rather than a continuance to move the request forward.

Chairman Goodman opened the public hearing to consider this request. There was no response and the hearing was closed.

Mrs. Debus moved to deny Special Use Permit No. 99-32, vicinity of the southeast corner of 105th Street and Marty. After a second by Mrs. Conrad, the motion passed with a unanimous vote.

REVISED PRELIMINARY PLAN APPROVAL - ECKERD DRUG - 5601 West 95th Street. Centres Southwest, applicant. Varnum-Armstrong-Deeter, L.L.C., owner. CP-2 zoning granted under Rezoning No. 67-405.

(Continued)

As indicated previously in the meeting, this item was to be continued to the September 27, 1999, Planning Commission meeting.

REVISED PRELIMINARY PLAN APPROVAL - OVERLAND POINTE MARKET PLACE - Vicinity of the northwest corner of 135th Street and U.S. 69 Highway. Polsinelli, White, Vardeman and Shalton, applicant. Terra Venture, Inc., owner.

(Continued)

Earlier in the meeting it was noted that this application was being continued to the October 11, 1999, Planning Commission meeting.

PLAT NO. 99-79 - (PRELIMINARY) - BROOKHOLLOW - Vicinity of the southwest corner of 143rd Street and Switzer. Brookhollow Development Co., L.C., applicant. HNTB, engineer.

(Denied)

Mr. Koppelman said the Planning Commission first considered this item during their August 9, 1999, meeting. At that meeting, the abutting property owner to the south expressed concern about the proposed location of 145th Street, as a portion of the 145th Street right-of-way was planned to be on his property. After significant discussion, the Planning Commission continued the application and requested that the applicant meet with the owner of the adjoining property to the south to discuss the location of 145th Street.

As of the writing of the comments, staff was of the understanding that the applicant discussed options with the abutting property owner to the south, but that no agreement was reached on the location of 145th Street. No revised preliminary plat has been submitted. Therefore, the report in Staff Comments was the same as the report presented during the August 9, 1999, Planning Commission meeting. A representative of the property owner to the south submitted their preferred layout, which was included in the staff report.

The plat, as presented, shows 145th Street along the south property line. A portion of the street was on the applicant's property. The street then straddles the property line and is entirely on the adjoining property to the south where the road intersects Switzer. On page No. 93C of Staff Comments, the portions of the road that the applicant would build or provide escrow for future construction were indicated. The

remainder of the road would be the responsibility of the property owner to the south. Staff was comfortable with this alignment and considered it to be fair and equitable. The plan submitted by the property owner to the south was presented on page No. 93E. Staff would not object to that plan if the radii for the road was found to be acceptable. Staff preferred the applicant's plan and they recommended approval of that plan, with stipulations a through f.

Chairman Goodman noted that the plan on page No. 93E seems to indicate 145th Street as barely touching the property to the south owned by Mr. Bunch. Mr. Koppelman explained that the triangular piece of property is owned by the Bunch family. He clarified that the plan supported by staff shows one half of 145th Street on the Bunch property.

Mr. Mark Simpson, applicant, 10800 Farley, principal with the Brookwood Development Company, agreed with the stipulations. Mr. Simpson stated that he has tried to be accommodating to the neighbor to the south. Previously, the triangle of land was purchased and Mr. Simpson gave that land to Mr. Bunch so he would not object to the City's relocation of Switzer. Ultimately, Mr. Bunch objected to the Switzer realignment and charged the City \$10,000 for a temporary grading easement for his front yard to meet Switzer. He has also received a free sewer line to his house because of the Switzer relocation. Currently, Mr. Bunch objected to the proposed plan that is recommended by staff. Mr. Simpson explained that the Brookwood development is not asking for the road. However, they are willing to concur with staff. HNTB prepared three scenarios of this site. Concept A was the original proposal presented to City staff. Mr. Bunch indicated that concept A placed an undue burden on his property. Consequently staff suggested that the cost of the road be split in half, which is indicated with concept B. Mr. Bunch responded to that concept by presenting concept C. Concept C causes problems for the proposed development. There was a reversed curve, which they did not believe would be approved from an engineering standpoint. With that plan, Lot Nos. 15 and 16 could not be marketed as there would be a road in front and back of the house. The change in the plan would allow Mr. Bunch to avoid providing 1,500 to 2,000 square feet of right-of-way although he had already been given one acre of free land. Mr. Simpson felt that the staff suggestion to place the road on the property line was equitable. He noted that this road was not needed for the Brookwood development, however, it would provide the only access for property owned by Mr. Bunch. Mr. Simpson's development had an access to the north to 143rd Street and to the northeast to Switzer.

Chairman Goodman clarified that concept B was the plan that was presented during the last time the Planning Commission considered this item.

Chairman Goodman opened the public hearing on this item.

Mr. Dan Bunch, 14540 Switzer, said he is the property owner of the adjacent land to the south of the subject site. Thirty days ago, he addressed the Planning Commission regarding this item and they granted a continuance after he explained his concerns. The Planning Commission instructed Mr. Bunch to meet with the developer. Neither he nor his advisors were successful in meeting with the developer. He asked Mr. Schlagel to pass out a diagram of the plan that was presented to him by Mr. Simpson in 1996. He noted that a contract was developed and signed by Mr. Simpson and Mr. Bunch. That contract included an agreement with Mr. Bunch acquiescing to the Brookwood plan, the relocation of Switzer, and the vacation of

existing Switzer. He indicated that the plan presented at that time is different from the applicant's current plan. Mr. Bunch said that there is a 75-foot easement and that Mr. Simpson wanted the road placed on the land owned by Mr. Bunch.

Chairman Goodman asked if staff believed that concept C could be built. Mr. Koppelman replied that there are not street radii indicated on the plan and they could not be certain that it was a workable design. Mr. Stuecheli reviewed the plan briefly and indicated that revisions were needed to the plan to meet City ordinances.

Mr. Andy Schlagel, planning consultant, said he was present in an advisory position to Mr. Bunch. Mr. Bunch asked Mr. Schlagel to prepare an alternative design for the road. Although Mr. Schlagel was not attempting to provide the engineering for the road, they determined it would not hurt to present an alternative design with the road constructed further to the north. He was attempting with the plan to match the road with the center line on the other side of the Switzer Road, keep the road within the power line easement as much as possible, meet the minimum radius, miss the power pole, and adjust the road to connect with 145th Street to the west. Mr. Schlagel understood that this design could be accommodated. He did not believe that there is a great deal of difference with this proposal and the proposal presented by the applicant in terms of the road being in front, behind, or on the side of houses. He attempted to retain the number of lots and the length of street with this plan. He believed it would still be possible for the developer to retain a landscaped easement along the rear of those lots. This configuration does not place the burden of that landscaping on Mr. Bunch. If this street connection is not constructed at this time, Mr. Schlagel suggested that the residents in the subdivision would suffer. Mr. Bunch has no immediate plans for development. He recommended that 145th Street be built at this time as the lots are developed. When Mr. Schlagel had not heard from the developer, he called Mr. Owens with HNTB and met on Thursday afternoon to discuss the plan. Mr. Owens told Mr. Schlagel earlier in the day that they did not find the alternative plan acceptable.

Mr. Ron Bodinson, attorney, 10801 Mastin, Shook, Hardy and Bacon, L.L.P., said he was representing Mr. Bunch. Mr. Bodinson referred to the written development agreement between Mr. Simpson and Mr. Bunch which was entered into in February 1997. In the three-page agreement, Mr. Bunch agreed to the realignment of Switzer and a vacation of Switzer. In return, Mr. Simpson granted to Mr. Bunch the triangular shaped piece of land through which the road is now proposed to be constructed. In that agreement, there was no road on Mr. Bunch's property. The agreement also indicated that there was to be a sewer hookup from the north into Mr. Bunch's property. Mr. Bunch performed his side of the agreement in the vacation of property. Mr. Simpson's development retained a landscaped easement in the triangular shaped tract to beautify Brookwood across the street. Mr. Bunch had two farm easements from his tract to Switzer. The City has put in two easements in the pie shaped tract. The vacation was effective in August. Mr. Simpson is now presenting a plan that violates that agreement. Mr. Bodinson added that Mr. Bunch did not receive \$10,000 from the City for a temporary construction easement. Mr. Bunch gave up valuable property rights in return for receiving the triangular piece of land. The proposed development would take away access rights for Mr. Bunch and put the road in the triangular piece of land and on his northern property line. The alternative plan solves the problem with the applicant's design. The agreement was reaffirmed in September 1998 when Mr. Simpson signed an agreement which indicated that the parties reaffirmed the terms and conditions of that agreement.

The proposed design by the applicant violates the written agreement. The alternative design would solve the problem.

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

Chairman Goodman asked why the location of 145th Street was not determined by the City prior to this dispute. Mr. Koppelman replied that a preliminary plat had not been presented for the property that abutted the northern line of Mr. Bunch's property. In the preliminary plat that was approved in 1997, a portion of the subject site was not included. Mr. Simpson explained that two weeks ago, he purchased the small section of land that started at the centerline of Oxford Mills and included 12 or 13 acres of land to the west of the centerline of old Switzer.

In response to the public hearing, Mr. Simpson explained he had been advised by Assistant City Engineer Mike Ross that there was a delay in the construction of Switzer due to the dispute with Mr. Bunch and that dispute was resolved by paying Mr. Bunch \$10,000 for a temporary construction easement. Staff suggested that the cost of the road be split equally between the two landowners as indicated in concept B, which he believed to be a fair solution. He did not need 145th Street for his development. If staff would agree that the connection of 145th Street was unnecessary, the residents in Brookhollow would have access points at 143rd Street, Switzer Street, or west into Oxford Mills. A fourth entry point is not needed for 50 or 60 homes. He approached staff about developing this tract, and as the Oxford Mills plan had been presented, staff suggested that Mr. Simpson should agree to the construction of 145th Street. His original proposal with concept A was disputed by Mr. Bunch as he felt that too much of the road was on his property. In response, staff suggested that the road be split, as indicated in concept B, equally between the two properties with half of the road on his property and half of the road on Mr. Bunch's property. Concept C would place 80 or 90 percent of the road on his property and he does not need or want the road for his development. The design presented in concept C would make two lots in his subdivision unmarketable.

Mrs. Debus realized that staff was supporting concept B. She asked if staff also supported concept C. Mr. Koppelman replied that if the Planning Commission was to approve that concept, staff would want to see the actual layout with the geometrics of the street to be sure that the City ordinance requirements would be met with that plan. Mrs. Debus asked if a continuance may be advisable. Mr. Koppelman replied in the affirmative.

Chairman Goodman asked what triggered the need for Mr. Simpson to negotiate with Mr. Bunch. Mr. Koppelman explained that the need to relocate Switzer triggered the negotiation. He explained that with the original alignment, old Switzer intersects 143rd Street from the north. Previously in the Master Plan, Switzer jogs and connects so that there is not an offset in the thoroughfares. Mr. Simpson presented a preliminary plat which indicated how Brookwood would align with the road. With the relocation of Switzer, Mr. Bunch would have lost his frontage on a thoroughfare. Staff informed Mr. Simpson that he needed to work out that situation. They resolved the concern by providing Mr. Bunch with a piece of property so he would continue to have frontage on the relocated Switzer. Chairman Goodman clarified that in order to make Brookwood workable, to provide for Switzer to be relocated, and to not diminish Mr. Bunch's frontage on a thoroughfare, Mr. Bunch and Mr. Simpson entered into an agreement whereby Mr. Simpson gave Mr. Bunch a triangular piece of land.

Mr. Koppelman explained that if there is going to be an access that aligns with 145th Street, it will be necessary for that access road to cross the triangular piece of land. In response, Mr. Simpson explained that he did not want the 145th Street connection. That is a connection that was insisted upon by the City. Mr. Bunch has broken his parcel into several tracts of land. Although Mr. Bunch had property with contiguous access to Switzer, his northern two lots were not contiguous to Switzer. Mr. Simpson paid \$20,000 to purchase the triangular piece of property and gave it to Mr. Bunch. Mr. Bunch also indicated that Mr. Simpson would have to pay for his home to be connected to the sewer, to which Mr. Simpson agreed. The only way a public right-of-way from Mr. Bunch's northern tracts to Switzer can be provided is by constructing the road through the referenced triangular piece of land because of the location of the median break. Mr. Simpson explained that he did not give the land to take it away. They gave the land at the insistence of the City and now the City is insisting upon the road connection.

Mr. Reitzes clarified that the applicant does not need the connection of 145th Street, however, the City is insisting upon this connection. Mr. Koppelman explained that the road needs to be built at some time in the future. It does not need to be constructed at this time. Mr. Koppelman said that the road would benefit both the applicant's property and Mr. Bunch's property.

Mr. Schlagel added that Mr. Bunch felt that a deal was made that was based upon a certain set of facts and now the facts have been altered. Chairman Goodman replied that in fairness to the applicant, he would accept Mr. Simpson's statement that the changes were not his choice. Mr. Schlagel indicated that the realignment of Switzer and the establishment of 145th Street on the east side, which creates the future median break and ties down the location of 145th Street on the west side was not instigated by Mr. Bunch.

Mrs. Debus suggested that concept C should be considered. Therefore, she wanted a continuance to allow staff to discover if that plan was viable.

Chairman Goodman clarified that staff could support concept B or C. That does not resolve the question of what is equitable. He was not sure that the Commission should make this type of determination. Mrs. Debus replied that Mr. Bunch does not plan to develop his land. Sometimes landowners are forced into a situation of paying for roads because adjacent properties are being developed. She wanted a continuance to determine if concept C was workable.

Mr. Hermes indicated that this was becoming a court of decision rather than a Planning Commission. The Planning Commission is not to resolve equity issues of this nature.

Chairman Goodman wanted staff to recommend one of the concepts as being the best street alignment and plan for the City.

Mr. Reitzes suggested that in this circumstance, the Planning Commission must consider the interests of both landowners as it relates to land use.

Mr. Koppelman commented that when a preliminary plat is proposed for a piece of property, stub streets are included to intersect adjacent properties. The location of the stub streets impact how that property can be developed. The Planning Commission is

often involved in equitable decisions. He suggested that the Commission needed to act on concept B. If they do not approve of that concept, the plan should be denied or the item should be continued.

Chairman Goodman asked if it was proper to act on concept C with a stipulation indicating that the geometrics must be acceptable. Mr. Koppelman replied negatively.

Mrs. Debus asked if staff had suggested that the adjacent landowner should provide concept C. Mr. Koppelman explained that it was the adjacent landowner's idea to offer that concept. Staff did not make that request.

Mrs. Conrad asked if this item is approved with concept B, would the applicant have to construct part of 145th Street and escrow funds for a part of 145th Street, although the construction does not have to occur at this time. Mr. Koppelman replied that he would add stipulations regarding the unbuilt portion of the road. Mr. Simpson added that he would agree to the escrow stipulations.

Chairman Goodman understood that staff opposed concept A as they felt it was unfair to locate so much of the road on Mr. Bunch's property. Staff supported concept B with half of the road on Mr. Simpson's property and half of the road on Mr. Bunch's property as it was equitable. He asked if staff considered concept C as being unfair to Mr. Simpson. Mr. Koppelman replied that staff felt that concept B was the most equitable plan.

Mr. Koppelman added the three following stipulations: 1) Stipulation g - Concurrent with the platting of any lots or tracts adjacent to planned 145th Street, all of 145th Street on the subject tract shall be final platted; 2) Stipulation h - The owner and/or developer is responsible for the construction of the 145th Street stub street where the full right-of-way for 145th Street is within the plat boundary; 3) Stipulation i - Prior to recording a final plat which includes any portion of the 145th Street right-of-way, the owner and/or developer shall submit to the City an escrow payment for one-half the cost of the future construction of the portion of the 145th Street frontage not being constructed with that phase of the project. The amount of the escrow payment shall be determined by the City staff based upon a cost estimate prepared by a registered civil engineer.

Chairman Goodman asked how Mr. Bunch benefits from the construction of 145th Street. Mr. Koppelman replied that staff believed that Mr. Bunch's property would be developed at some point in time. Presuming that it would be consistent with the Master Plan and be developed as low-density residential, access to that development would have to align with approved 145th Street on the east side of Switzer. There would need to be a public street that comes off Switzer into the north end of Mr. Bunch's property. This alignment accomplishes that design and provides the public street to go through Mr. Bunch's property with street configurations that could be used for his piece of property. Chairman Goodman asked if concept C would also accommodate development on Mr. Bunch's property. Mr. Koppelman replied yes.

Mr. New spoke with Mr. Simpson two or three days ago. He asked Mr. New to keep an open mind about this issue and Mr. New felt he had not been affected by the call. However, he would abstain from voting.

Mrs. Conrad moved for the approval of Preliminary Plat No. 99-79, Brookhollow, with stipulations a through f and with added stipulations g, h, and i. The motion was seconded by Mr. Reitzes.

Mr. Hunter said he would vote in favor of this motion. However, because of the written agreement between the two landowners, Mr. Bunch has the ability to take this matter to court.

Chairman Goodman indicated that he would oppose the motion because he did not believe it is appropriate to attribute to Mr. Bunch imminent plans for the development of his property. The events precipitating this concern were beyond Mr. Bunch's control.

Mr. Hermes added that he would abstain from voting on this item as it is inappropriate for the Commission to craft an application at a public hearing.

The motion failed with a vote of 3 to 3 to 2, with Chairman Goodman, and Commissioners Scheier and Debus voting nay, and with Commissioners New and Hermes abstaining.

Chairman Goodman noted that there would not be enough time to complete the entire agenda in today's meeting. The Chairman determined that he would take the Chair's prerogative in the remaining time to take the agenda out of order and address the Final Development Plan for Papa John's, 5665 West 95th Street.

FINAL DEVELOPMENT PLAN APPROVAL - PAPA JOHN'S - 5665 West 95th Street.
Devlin Partners L.L.C., applicant. CP-2 zoning granted under Rezoning No. 67-405.

(Approved)

Mrs. Karr noted that the applicant was requesting approval to allow exterior modifications to the former Mail and More building for a Papa John's restaurant. The most significant modification is a new arched entry feature. The entry will be constructed of white and green stucco with a red sign area. Other modifications include painting the standing seam metal roof green, a green stucco sign band around the building, painting the building and adding a stucco freezer addition. Providing that the green used on the building matches the green in the adjacent center, staff finds the modifications acceptable. Staff recommended approval of this request, with stipulation a.

Mr. Larry Newman, applicant, 7136 Village Drive, agreed with stipulation a.

Mr. Reitzes moved for the approval of the Final Development Plan for Papa John's, 5665 West 95th Street, with stipulation a. Mrs. Scheier seconded the motion, which carried with a vote of 8 to 0.

It was determined that a Special Planning Commission meeting would be held on September 16, 1999, at 4 p.m. to address the remaining items on the agenda.

Mrs. Scheier moved to continue the balance of the agenda to a Special Planning Commission meeting to be held on September 16, 1999, at 4 p.m. Mr. New seconded the motion, which carried with a vote of 8 to 0.

PLAT NO. 99-95 - (PRELIMINARY REVISED) - BROOKWOOD - 1ST PLAT - Vicinity of the southeast corner of 143rd Street and Switzer. HNTB, Brick Owens, applicant. Brookwood Development Co., L.L.C., owner.

(Continued)

This item was continued to the Special Planning Commission meeting of September 16, 1999.

PLAT NO. 99-94 - (PRELIMINARY) - THE WILDERNESS - 7TH PLAT - Vicinity of the northeast corner of 163rd Terrace and Nall Avenue. The Wilderness Developers, L.L.C., applicant. Phelps Engineering, engineer.

(Continued)

As noted earlier in the meeting, this item was being continued to the October 11, 1999, Planning Commission meeting.

FINAL DEVELOPMENT PLAN APPROVAL - OVERLAND STATION LOT NO. 4 - Vicinity of the southeast corner of 119th Street and Lowell. Polsinelli, White, Vardeman and Shalton, applicant. 119th Street L.L.C., owner. CP-2 zoning granted under Rezoning No. 97-21.

(Withdrawn)

As previously indicated, this item was withdrawn by the applicant.

FINAL DEVELOPMENT PLAN APPROVAL - BEST BUY - 11525 Metcalf. Banks Brothers construction, applicant. Midwest Motor Inns, owner. CP-2 zoning granted under Rezoning No. 93-27.

(Continued)

This item was continued to the Special Planning Commission meeting of September 16, 1999.

As a result of Chairman Goodman's determination to take an agenda item out of order, Item No. 23, the Final Development Plan Approval for Papa John's, 5665 West 95th Street, was approved earlier in the meeting.

PLAT NO. 99-88 - (FINAL) - THE LINKS AT LIONSGATE - 1ST PLAT - Vicinity of the northeast corner of 143rd Street and Lamar. LionsGate Golf Developers, applicant. George Butler Associates, Inc., engineer.

(Continued)

This item was continued to the Special Planning Commission meeting of September 16, 1999.

SIGN APPROVAL POLICY - STANLEY STATION - Vicinity of the southeast corner of 151st Street and U.S. 69 Highway. Sign Systems, applicant.

(Continued)

This item was continued to the Special Planning Commission meeting of September 16, 1999.

SIGN DEVIATION REQUEST - COMMERCE BANK AT VALLEY VIEW - Vicinity of 95th Street and Antioch. Mr. Larry Winn, applicant. Sweers Toben Architecture, architect. CP-2 zoning granted under Rezoning No. 69-486.

(Continued)

This item was continued to the Special Planning Commission meeting of September 16, 1999.

At 7:15 p.m., Chairman Goodman declared the meeting adjourned. Minutes transcribed by Pamela Blaszyk.

Terry Goodman, Chairman