

PLANNING COMMISSION AGENDA
CITY OF PRAIRIE VILLAGE
MUNICIPAL BUILDING - 7700 MISSION ROAD
TUESDAY, JULY 10, 2012
COUNCIL CHAMBERS
7:00 P.M.

- I. ROLL CALL
- II. APPROVAL OF PC MINUTES - June 6, 2012
- III. PUBLIC HEARINGS
- IV. NON-PUBLIC HEARINGS
PC2012-111 Request for Site Plan Approval for 8' fence
8912 Rosewood Drive
Zoning: R-1a
Applicant: Wendy Hills
- V. OTHER BUSINESS
Discussion of Sign Ordinance Revisions
- VI. ADJOURNMENT

Plans available at City Hall if applicable

If you can not be present, comments can be made by e-mail to
Cityclerk@Pvkansas.com

***Any Commission members having a conflict of interest, shall acknowledge that conflict prior to the hearing of an application, shall not participate in the hearing or discussion, shall not vote on the issue and shall vacate their position at the table until the conclusion of the hearing.**

**PLANNING COMMISSION MINUTES
JUNE 5, 2012**

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, June 5, 2012, in the Council Chambers, 7700 Mission Road. Chairman Ken Vaughn called the meeting to order at 7:20 p.m. with the following members present: Randy Kronblad, Dirk Schafer, Gregory Wolf, Nancy Wallerstein, Bob Lindeblad and Nancy Vennard.

The following persons were present in their advisory capacity to the Planning Commission: Ron Williamson, Planning Consultant; Dennis Enslinger, Assistant City Administrator; Ted Odell, Council Liaison; Jim Brown, Building Official and Joyce Hagen Mundy, City Clerk/Planning Commission Secretary.

APPROVAL OF MINUTES

Randy Kronblad noted on page 7 the third line from the bottom the word "taken" should be "take". Randy Kronblad moved for the approval of the minutes of May 1, 2012, with the corrected noted. The motion was seconded by Gregory Wolf and passed by a vote of 6 to 0 with Bob Lindeblad abstaining.

PUBLIC HEARINGS

**PC2012-06 Request for Special Use Permit for Daycare Program
at 7501 Belinder Avenue**

Chairman Ken Vaughn reviewed the procedures to be followed for the public hearing and confirmed the publication of notice of hearing and mailing of notices to the surrounding property owners.

Alison Ernzen, 7706 Aberdeen, stated she is seeking approval of a special use permit for a child care center that will allow for a maximum of 45 students that will range in age from infancy to age 5. The hours of operation will be 7:30 a.m. to 5:30 p.m., Monday through Friday, year round. The facility will employ up to 9 people who will park in the east lot during the day. The parents will park in the east lot and walk to the door to drop off and pick up their children.

Ken Vaughn confirmed that applicant has received and reviewed the staff comments.

There was no one present to address the Commission on this application. Chairman Ken Vaughn closed the public hearing at 7:25.

Ron Williamson noted the operation will be contained within the existing structure and no changes will occur to the exterior of the building. In 2005, the property was approved for a child care center for the Kansas City Autism Training Center (KCATC) for a maximum of 10 children and the SUP was renewed in 2008. KCATC has

recently moved to a new location. The applicant will use the same facilities that were approved for KCATC. Therefore, a site plan review and approval was not required.

In 2009 a Special Use Permit was approved for Monarch Montessori School. It is in a different part of the building and is accessed from the south side with parking in the west lot.

The applicant held a neighborhood meeting on May 23, 2012 in accordance with the Planning Commission Citizen Participation Policy and two residents attended the meeting. They were concerned about additional on-street parking on 75th Terrace. It was explained that the entrance to the day care center will be on the north side and parking will be in the east lot. There may be some addition traffic on 75th Terrace entering and leaving the east parking lot.

Mr. Williamson noted the only issue from staff is the condition of the pavement in the east parking lot is poor. It is crumbling and breaking up and needs to be repaired. There are also potholes in the driveway on the south side that provides access to 75th Terrace. These are not the responsibility of the applicant, but need to be addressed by the property owner.

Dennis Enslinger noted a similar situation was present with the application by the Montessori School and the property owner did make some improvements at that time. This is a code violation and will be processed as such.

Nancy Vennard noted if the property, which is currently for sale, sells does are these violations required to be fixed. Mr. Enslinger noted that actually, the process would need to start over with the new property owner.

Bob Lindeblad stated he sees this as a code violation and does not feel condition #4 should be a requirement of this application. Mr. Enslinger responded this gives the city additional power in gaining compliance from the property owner.

Ken Vaughn stated he does not feel the applicant should be penalized and concerned with the implications of closing the daycare on both Ms Ernzen and the families she is providing with child care.

Dennis Enslinger asked that the condition remain and noted staff would work with the property owner.

Randy Kronblad felt there should be a time requirement for the property owner to submit a plan for addressing the parking lot issues and suggested 90 days for the requirement.

Nancy Wallerstein asked when Ms Ernzen plans to open her day care. Ms Ernzen responded she already has 15 families signed up and others waiting for approval. She would like to open August 1st.

It was noted the property is currently under foreclosure and will be owned by the Bank of Prairie Village.

Nancy Vennard noted that staff is recommending the permit be approved for five years, not ten as requested by the applicant. The applicant understood and was agreeable to five years.

Chairman Ken Vaughn led the Commission in the following review of factors for consideration:

1. **The proposed special use complies with all applicable provisions of these regulations including intensity of use regulations, yard regulations and use limitations.**

The child care program will be contained within an existing building and fenced playground which is in compliance with the zoning regulations.

2. **The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.**

The child care program will be an asset to the community because it will provide a much needed service for taking care of the children within the local area. It will be located within an existing building and will not adversely affect the welfare or convenience of the public.

3. **The proposed special use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.**

The child care center will be located within an existing structure and use an existing parking lot therefore it should not create any problems for the adjacent property in the neighborhood. The request should be approved for a five year period so it can be reevaluated at that time.

4. **The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it, are such that this special use will not dominate the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use permit will so dominate the immediate neighborhood, consideration shall be given to: a) the location size and nature of the height of the building, structures, walls and fences on the site; and b) the nature and extent of landscaping and screening on the site.**

The child care center will accommodate a group of up to 45 children, and will use the synagogue facility during normal working hours. This use will not have a dominating effect in the neighborhood because it is for a small number of children and it will be located within an existing building. No expansion of the building is proposed.

5. **Off street parking and loading areas will be provided with standards set forth in these regulations and areas shall be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.**

Access to the child care center will be from the existing north driveway and east parking lot. The operation will occur during normal business hours and not during the hours where other major events will occur at the synagogue. The east parking lot is in poor condition and needs to be repaired. This was discussed at length in 2008 when the KCATC application was renewed. Some of the lot was repaired but some of it has deteriorated further.

6. **Adequate utility, drainage and other necessary utilities have been or will be provided.**

Since this use will be occupying an existing facility, utility services are already provided.

7. **Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent hazards and to minimize traffic congestion in public streets and alleys.**

Adequate entrance and exit drives currently exist at the facility and this proposed special use will utilize the existing infrastructure that is already in place. The access drive to 75th Terrace, however, has potholes and needs to be repaired.

8. **Adjoining properties will be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors, or unnecessary intrusive noises.**

This particular use does not have any hazardous materials, processes, odors or intrusive noises that accompany it.

9. **Architectural style and exterior materials are compatible with such style and materials used in the neighborhood in which the proposed structure is to be built or located.**

The special use has not required any changes in the exterior architecture or style of the existing building. It should be pointed out that there are numerous signs on this property that need to be in conformance with the sign codes. There are three signs on 75th Street and one sign on Booth and 75th Terrace.

Dirk Schafer moved the Planning Commission find favorably on the factors for PC2012-06 and recommend the Governing Body approve a Special Use Permit for a child care program at 7501 Belinder Avenue subject to the following conditions:

1. That the child care center be approved for a maximum of 45 children
2. That the child care center be permitted to operate year round from 7:30 a.m. to 5:30 p.m. subject to the licensing requirements by the Kansas Department of Health and Environment.
3. That the special use permit be issued for the child care center for a period of five years from the date of City Council approval and that if the applicant desires to continue the use after that time period expires, they shall file a new application for reconsideration by the Planning Commission and City Council.
4. That the property owner shall submit a plan to the Planning Commission setting out a schedule for repairing and maintaining the east parking lot and the driveway to 75th Terrace within 90 days.
5. That the property owner shall meet with the City Staff to resolve the signing issues.
6. If this permit is found not to be in compliance with the terms of the approval of the Special Use Permit it will become null and void within 90 days of notification of noncompliance unless noncompliance is corrected.

The motion was seconded by Randy Kronblad and passed unanimously.

NON-PUBLIC HEARINGS

PC2012-106 Request for Preliminary & Final Plat Approval 2110 West 72nd Street

Martin Rutiaga, 2110 West 72nd Street, stated he currently owns three lots addressed as 2110 West 72nd Street. All of the lots are 40' wide for a total width of 120'. He would like to split the lot into two 60' lots. Mr. Rutiaga stated he plans to demolish that portion of the home plus an additional 4 feet that is required for the building setback from the side property line. This would reduce the square footage of the dwelling by approximately 217 square feet. The dwelling contains only 1202 square feet so the net result would be a dwelling with only 985 square feet. If this dwelling is not demolished, the applicant plans to add a second floor. There are several homes in this area that are similar in size, but there are many that are larger. The applicant plans to build a new home on the corner lot and may completely demolish the existing home and build a new dwelling on it.

Nancy Vennard confirmed the new home would have a 72nd Street address as this would be required to get the required setbacks.

Dennis Enslinger stated that staff would ensure the existing house has the required five foot setback prior to issuing any permits.

Ken Vaughn asked if he had met with the neighborhood. Mr. Rutiaga replied he met with neighbors on May 9th. Most of the questions were regarding the size of the homes to be built. Mr. Rutiaga stated he plans on building homes similar in size with the neighborhood - four bedroom, 2.5 baths and 1 car garage.

Ron Williamson noted this area was originally platted in 40' wide lots; however, most of the building sites were developed on 60' wide parcels which were a lot and a half. A few were built on 80' parcels which is two lots. The existing dwelling extends into the west proposed lot a distance of approximately 10 feet. The applicant plans to demolish that portion of the home plus an additional 4 feet that is required for the building setback from the side property line. This would reduce the square footage of the dwelling by approximately 217 square feet. The dwelling contains only 1202 square feet so the net result would be a dwelling with only 985 square feet. If this dwelling is not demolished, the applicant plans to add a second floor. There are several homes in this area that are similar in size, but there are many that are larger. The applicant plans to build a new home on the corner lot and may completely demolish the existing home and build a new dwelling on it.

Mr. Williamson noted the size of the homes will be controlled by the zoning requirements; setback, height and lot coverage. However, he noted the front and side setback lines need to be shown on the plat.

Preliminary Plat:

The lot requirements in R-1B are a 60' in width, 100' in depth and a minimum area of 6,000 square feet. The two proposed lots are 60 feet in width, 130 feet in depth with an area of 7,798 square feet. Both lots meet the zoning requirements.

This area is located within Zone X according to FEMA Maps. Zone X is a low hazard area that is outside the 500-year flood level, which means it has less than a 0.2 percent chance to flood annually. The applicant needs to be aware of this condition and may want to set the first floor elevation higher for added protection. FEMA has no requirements for Zone X.

The Preliminary Plat contains most all the information required by the Subdivision Regulations, however no easements are shown. The surveyor stated that no easements are shown on the Granthurst Plat and none were identified in the title opinions. There is a gas line running parallel to the north property line that needs to be in an easement.

The site is currently served by all utilities and connecting to the second lot should be minimal.

Final Plat:

The survey notes do not need to be shown on the plat except for number 5, which acknowledges the flood plain zone.

No easements are shown on the plat, however, there is a gas line running along the north property line and a 10 foot utility easement needs to be dedicated for it. The applicant needs to verify with utilities whether side lot line easements are needed.

The applicant needs to submit proof of ownership including the names of any party that has a mortgage on the property and also submit a statement showing that all taxes due and payable have been paid.

The Final Plat needs to be reviewed by the County Surveyor for accuracy and acceptance.

Bob Lindeblad moved the Planning Commission approve the preliminary and final plat of Rutiaga Ranch and forward it to the City Council for its acceptance of rights-of-way and easements subject to the following conditions:

1. That the applicant add the 10 foot utility easement along the north property line and meet with utilities to determine if side lot easements are necessary before submitting the final plat to the Governing Body.
2. That the applicant submit proof of ownership.
3. That the applicant submit the final plat to the Johnson County Surveyor for a review.
4. That the applicant submit a certificate showing that all taxes and special assessments due and payable have been paid.
5. That the applicant remove Survey Notes except for number 5.
6. That the applicant revise both the preliminary and final plats and submit three copies to the City for final review and approval.
7. That the applicant show the front and side setback lines adjacent to 72nd Street and Eaton Street on the plat.

The motion was seconded by Dirk Schafer and passed 7 to 0.

Ellis Jones, 2110 West 71st Terrace, noted this was not a two story home neighborhood and felt the Commission needed to see the plans for the homes prior to approving the application. Another resident expressed concern whether the house would be addressed on Eaton or 72nd Street.

Nancy Vennard advised the residents the homes have to be addressed on 72nd Street to meet the setback requirements of the approved plat.

PC2012-107 Request for Site Plan approval - Bldg Height Elevation & Retaining Wall at 3704 West 71st Street

Lauren Hickman, with Archetype Design Group, 8010 State Line Road, presented drawings of the proposed new home and reviewed the site plan showing how the requested first floor elevation change of approximately 4.77 would be accommodated.

The existing residence sits at finished first floor elevation of 935.56' and the house to the east sets at 937.85'. The proposed new residence finished first floor elevation would be 940.33' which is 2.48 feet higher than the residence to the east.

Ms Hickman noted showed pictures of how the water from the golf course currently pools and passes across the property. She noted they will submit a drainage plan to public works for approval.

The owner is proposing to tear down the existing dwelling including the removal of the foundation and rebuild an entirely new home. The lot slopes from the rear to the street and in designing the new home the applicant would like to have a side entry garage under the main living area. The existing dwelling was built in 1951 and the site has several mature trees. Unfortunately one of the large oaks (the west one) in the front yard will be removed as a part of this redevelopment. The east oak and the street tree will be saved. The lot is triangular in shape and the grade drops approximately 11 feet from the northeast corner to the southwest corner.

Ms Hickman presented information on the elevations of neighboring properties. She noted the proposed elevation of the garage floor would be 28" above the curb.

Ken Vaughn asked what the first floor elevation was compared to the home immediately to the east. Ms Hickman responded it was 2.48' higher.

Mr. Vaughn noted there is very narrow width on the east to accommodate water flow and asked how surface water would be handled. Ms Hickman stated there are five drain inlets in the front setback and three drain inlets along the patio.

Randy Kronblad expressed concern that moving the existing swale would send water across their neighbor's property. Ken Vaughn stated the proposed swale moves water to the back and creates greater problems.

Jim Litchy, property owner, stated water flows for the entire site have been calculated and all the water will be retained.

Dirk Schafer noted the wall could be reduced. He feels the staff recommendation to reduce the elevation to 10" is reasonable.

Ron Williamson noted the applicant held a neighborhood meeting on May 21, 2012, six neighbors attended the meeting and the applicant explained the project including the proposed rear yard variance, the floor variation change and the design of the residence. The neighbors apparently were not concerned about the variance of the floor elevation change, but one was concerned that although the design was good, it did not fit this area.

When the Planning Commission reviewed issues of infill development in 2001, one of the concerns was the first floor elevation of the new dwelling in tear down rebuild situations. The concern was that significant increases in the height of the first floor elevation could change the character of development on a street which might not be the best for the neighborhood.

The tear down rebuild redevelopment has been very active on West 71st Street and the Planning Commission has approved two elevation changes on lots further to the east. An application was approved at 3303 W. 71st Street for a 1.58 foot increase in March 2006. Also, an application was approved at 3000 W. 71st Street for an increase of 3'10" in July 2006. This was a unique situation because the existing dwelling and the dwelling to the east were set in a depression and therefore were much lower than other dwellings in the area.

The Commission made the following review of the required criteria for granting an elevation change:

1. That there are special circumstances or conditions affecting the property.

This site is different than the previous building elevation changes approved on West 71st Street. The other lots sloped from the street to the golf course and the desire was to have a walk-out basement with tall ceilings. This lot slopes from the golf course to West 71st Street and the objective here is to have the first floor elevation high enough to view the golf course as well as to provide an elevation high enough for the garage so that water drains to the street. The elevation of West 71st Street where the driveway intersects is approximately at elevation 929' and the finished basement or garage floor elevation is 931'. The driveway is approximately 70 feet long and the slope is approximately 2.85%. The slope could be reduced to 2% thereby reducing the garage floor elevation by about 10". This would still allow adequate slope for drainage so that water drains away from the garage doors.

2. That the elevation change is necessary for reasonable and acceptable development of the property in question.

The applicant has proposed a side-entry garage which is aesthetically preferable to having a two-bay garage facing the street. The garage floor level is set at elevation 931.0' in order for the driveway to adequately drain to West 71st Street. However, it appears that the garage floor could be lowered about 10" and still adequately drain.

The first floor elevation was set at 940.33' to allow enough headroom in the basement. This also could be reduced by 10". The proposed elevation also provides a view of the golf course and permits the construction of a patio area with a minimal retaining wall around the perimeter. Based upon how the design utilizes the site to its best advantage it appears to be reasonable for its redevelopment subject to reducing the elevation by approximately 10". Landscaping can make a significant difference in the appearance of the building and it is recommended that the landscape plan be submitted to staff for review and approval.

Nancy Vennard stated the hard surfaces of the street facing walls need to be softened with plantings.

3. That the granting of the building elevation change will not be detrimental to the public welfare or injurious to or adversely affect adjacent property or other property in the vicinity in which the particular property is situated.

The proposed building elevation will be 2.48 feet higher than the dwelling to the east, which is approximately 23 feet from the property line. If the elevation could be reduced by 10", the difference in elevation for the east property would be less than two feet. This is a neighborhood that is experiencing redevelopment and several major expansions and teardown/rebuilds have already occurred in the immediate area. The redevelopment of this lot should not adversely affect the neighbors or the public and it is likely that the property to the east will expand or redevelop at some point in the future.

Dirk Schafer moved the Planning Commission approve a 3.95 foot increase in elevation for the proposed structure at 3704 West 71st Street subject the applicant submitting a landscape plan to staff for review and approval. The motion was seconded by Randy Kronblad and passed unanimously.

SITE PLAN APPROVAL FOR A SOLID WALL

The proposed site plan indicates a number of walls in the front, sides and rear of the property. These walls serve as retaining walls as well as solid walls when they are above grade.

The Planning Commission made the following review of the criteria for approval:

A. The site is capable of accommodating the building, parking areas and drives with appropriate open space and landscape.

The site is 14,549 square feet while the footprint of the proposed residence is 3,472 square feet and therefore the site is adequate to accommodate the residence. The site is a triangular shape and has an eleven foot change in grade which makes it more challenging to redevelop. Also, because of the shape of the lot, development must occur on the eastern portion.

B. Utilities are available with adequate capacity to serve the proposed development.
Utilities are currently in place.

C. The plan provides for adequate management of storm water runoff.

There will be an increase in impervious surface so a storm water plan will need to be approved by Public Works.

D. The plan provides for safe and easy ingress, egress and internal traffic circulation.
N/A

E. The plan is consistent with good land planning and good site engineering design principles.

As previously mentioned, because of the shape of the lot at the grade change, it is a more challenging design to accommodate the desires of the owner. The combination of retaining walls and solid walls on the east, west and north sides are needed in order to accommodate the grade changes as proposed. The side-entry garage is preferable to a front-entry, but it does create more design issues in resolving the grading of the site. Appropriate landscaping can soften the appearance of the concrete walls. Based on the concept of the design, the plan is consistent with good land planning and site engineering.

F. An appropriate degree of compatibility will prevail between the architectural quality of the proposed building and the surrounding neighborhood.

For this particular site plan the approval is limited to the solid walls only. The design of the residence is not subject to review and approval. It appears from the plans that the top of the wall on the north side is elevated 941.5'. The existing grade at the northeast corner of the proposed dwelling is approximately 935.5' which means that the wall would be six feet in that location. The wall along the north will vary from about 3.5' on the east to 6.5' on the west. The proposed exterior finish of the walls will be a board form concrete design. The house finish is a masonry veneer. A masonry veneer finish on the wall would be more compatible with the finish of the house. It would not need to be a 4" veneer that is on the house, but a similar material. There are less expensive finishes that would be compatible.

G. The plan represents an overall development pattern that is consistent with the comprehensive plan and other adopted planning policies.

One of the principles of the Village Vision was to focus on redevelopment and reinvestment in the community. The goal is to provide a wider range of housing choices to make the housing stock more competitive with other parts of the metropolitan area. More than 80% of the housing stock in Prairie Village was built prior to 1970 and does not contain the amenities desired by today's home buyers.

Randy Kronblad moved the Planning Commission approve the proposed site plan for 3704 West 71st Street for the requested solid walls subject to the following conditions:

1. That the building elevation change is approved by the Planning Commission. If it is not approved a new design will need to be proposed and submitted for approval by the Planning Commission.
2. That the applicant submit a landscape plan to staff for review and approval.
3. That the walls be either a masonry veneer finish or form concrete that is compatible with the finish of the house and that the applicant submit sample materials to staff for review and approval.

The motion was seconded by Gregory Wolf and passed unanimously.

**PC2012-108 Request for Site Plan Approval - Hen House Renovation
4050 West 83rd Street**

Tom Proebstle, with Generator Studios, addressed the Commission on behalf of Owen Buckley and Lane4 requesting approval of facade changes for the Hen House Market and for the site plan for Phase 3. The site plan for Phase 1 included the east side of Corinth Square and the area around the new CVS store. Phase 2 included the main core of the center, the parking lot to the south and a portion of the parking lot on the west side. On the overall Master Plan for the Center, the Hen House area was indicated as a "Future Phase to be Determined." However, since it has moved up on the priority list it has been designated as Phase 3.

The interior layout of the store is being changed significantly and the primary change that affects the exterior is the reduction from two entrances to one centralized entrance. There are two existing emergency exits on the south facade. The new entrance will be in the center of the building and a new cedar canopy will be constructed at that location. There also will be two new cedar lattice pergolas constructed north and south of the entrance. These two pergolas are located in line with the new crosswalks that will extend from the main core of the center. A new stucco finish is proposed for the fascia and the panels above the store veneer. Samples of the materials were presented. The roof material will remain as it is; however, a corrugated steel screen will be installed at the roof perimeter to screen the roof top HVAC units (RTU). Some of the RTUS are taller than the screen, but they are located toward the center of the roof and cannot be seen from the ground.

Mr. Proebstle noted the walkways will connect the main center to Hen House. Additional sidewalk area has been added in the front to allow for more outdoor sales area and better pedestrian access. There will be a marquee entry with new signage. The architectural finishes will incorporate features of the main center; however, they are not copying everything, but some of the same materials will be used.

Mr. Proebstle reviewed the elevations noting the new two story entrance with a stone base and double columns similar to the design of the main center. In between the existing pillars will be stone and stucco. They will not be attempting to patch in new stone with the old stone. The additional windows shown correspond with the café area of the store. There are no changes proposed for the north, south or west elevations, other than repainting the fascia.

Randy Kronblad confirmed the windows are clear.

Tom Proebstle addressed the conditions of approval recommended by staff. He stated the addition of additional landscaping would be difficult. Mr. Williamson noted staff is not asking for planter boxes everywhere but feels that some additional landscaping is needed.

With the existing trees and landscaping on the west side of the building, they do not feel aesthetic design amenities are necessary. Regarding the proposed window installations, Mr. Proebstle noted they correspond with changes to the interior of the store for the proposed café area and cannot simply be moved for more balance.

More window area is shown on the new elevations than were shown on the elevations submitted with the applications.

#10) Hen House wants to get rid of the sliver windows.

Nancy Vennard suggested the entrance canopy could be centered on the building and confirmed there would be merchandise outside of the store. Dirk Schafer noted the sidewalk in front of the store is incredibly busy.

Owen Buckley, with Lane4, stated they would like to have more landscaping but feels that needs to wait until how the merchandising area is going to be set up.

Bob Lindeblad agreed the sidewalk is busy and feels that landscape bed would get in the way. There is landscaping in the new wider islands in the parking lot. He feels condition #1 should be removed.

Dirk Schafer noted this is a huge investment and questioned the need for further upgrades on the north and south elevations. Dennis Enslinger responded that since some of funding is from the CID funds from which 1% was committed to the promotion of the arts, staff felt this was an opportunity to do something artistic and break up this large plain façade.

Ken Vaughn noted that Lane4 is interested in making the building attractive and he feels they will monitor the possibility of such changes down the road.

The Commission agreed to delete conditions #7, #8 & #10.

It was suggested that the symmetry could be improved by centering over the glass and not at the center. Bob Lindeblad confirmed the depth of the overhang was three feet. Ken Vaughn isn't sure the proposed move would improve the appearance. Owen Buckley noted the movement isn't possible because of the location of the bank located within Hen House. The Commission agreed to delete condition #10

Ron Williamson noted painting all the RTUs the same color as the screen would help them blend. The final location of all RTUs has not been determined at this time but many will be in the same location as they are now. The plans do not indicate that the screen will be included on the west facade which is viewed from Somerset Drive. He stated the RTUs must be screened on all sides of the building.

The curb will be extended east an additional 5' and a proposed 8' outdoor sales area for seasonal items will be provided along the face of the building. In order to provide a 48" ADA accessible aisle along the front of the building, the sales area will need to be reduced to 7' in width. To allow for vehicle overhang, a minimum distance of 6' is needed from the curb.

Staff feels the west elevation which is the service area needs to be upgraded along with the other elevations. Mr. Williamson noted since the project is a renovation with no new buildings, a neighborhood meeting was not required.

Dennis Enslinger noted that since CID funds will be used in part to fund this renovation, the City Council reviewed the plans at their meeting on May 21st. Their comments were that it needs to be coordinated in design with the rest of the center; minimal change is proposed and a higher level of design was anticipated; more landscaping is needed; and the north and south walls need a more aesthetic treatment.

The Planning Commission reviewed the following criteria for site plan approval:

A. The site is capable of accommodating the building, parking area, and drives for the appropriate open space and landscape.

The site is fully developed and the proposed site plan is to improve pedestrian environmental and the building and site aesthetics. Existing parking areas and drives will be utilized but enhanced with dedicated pedestrian ways and landscaping. The crosswalks to the core building will be completed with this phase.

It was anticipated that some landscaping would be included to break up the hard surface between the parking spaces and the east building facade. Landscape beds are located on the north and south sides of the building. Consideration should be given to providing more greenspace between the buildings and the parking. This would be accomplished using planters or beds by reducing the 8' wide outdoor sales area in some locations.

The landscape along Somerset Drive that screens this building is thin in places and some plants need to be added. There are a few gaps in the yew hedge which need to be filled in. Also some of the pine trees that provide screening appear to be a variety that has been dying recently and they will need to be replaced in the future.

B. Utilities are available with adequate capacity to serve the proposed development.

Utilities are currently in place serving the Corinth Center and are adequate.

C. The plan provides for adequate management of stormwater runoff.

The proposed plan does not change the amount of impervious area and therefore a stormwater management plan was not required.

D. The plan provides for safe and easy ingress, egress and internal traffic circulation.

The pattern of vehicular traffic in Phase 3 is not proposed to change from what currently exists; however, there will be improvements for pedestrian circulation. Walkways will be provided between Hen House and the core building. This will make the Center more accessible for pedestrians.

E. The plan is consistent with good planning and site engineering design principles.

Essentially the renovation plan is consistent with good planning and design principles. Pedestrian circulation is being addressed; however more landscape beds between the building and parking spaces would be an improvement. Adequate ADA access is being provided along the entire east facade of the building.

F. An appropriate degree of compatibility will prevail between the architectural quality of the proposed building and the surrounding neighborhood.

The proposed improvements to Hen House appear to follow the general design concept as presented previously in Phase 2. Similar building materials are being used that were previously presented to the Planning Commission. The building facade renovations will improve the quality and aesthetic appeal of the Center. However, there are some comments to consider when approving the elevations. The new entrance has an odd appearance and from a design perspective, the new store front windows would look better if they were on the south side of the entrance under the new entrance canopy. Currently the north and south corner panels on the east elevation are stone from the sidewalk to the eaves. They have windows so it is difficult to extend the stone to fill in the windows, but the new stone veneer could be used to fill those panels.

The north and south facades remain as exist. These walls are large and some materials or features need to be added that would make them more attractive. Both walls are very visible to the shopping center entrances and some aesthetic improvement is needed. The new fascia or at least its color that is proposed on the east elevation should also continue on the north, west and south elevations.

The signs on the east facade exceed the maximum allowable square footage permitted in the ordinance unless sign standards are approved. The maximum square feet allowed per facade is 50 including all sub tenant signs and the proposed signage is 73.9 square feet. The sign calculations in table 4.0 do not appear to be accurate. In scaling the Hen House sign, it appears to be approximately 88 square feet in area. The proportions of the sign to the building facade appear to be in scale. The signage needs to be dimensioned, detailed and included on a sheet to be added to the Sign Standards for the center.

External lighting fixtures are not shown on the drawings. If any are used they shall be the same as the fixtures approved for the rest of the center.

G. The plan represents an overall development pattern that is consistent with the comprehensive plan and other adopted planning policies.

One of the principles of the Village Vision was to focus on redevelopment and reinvestment in the community. These issues have become primary goals for the City and this project represents a step in that direction. This is the opportunity to enhance the aesthetics of Corinth Square so that it appeals to today's market demands.

Randy Kronblad moved the Planning Commission approve the site plan for exterior renovations for Hen House Building Facade and Phase 3 of Corinth Square North subject to the following conditions:

- 1) That yews be added to fill the gaps in the yew hedge adjacent to Somerset Drive.
- 2) If the pines die in the screening belt along Somerset Drive, they be replaced with evergreen trees subject to the approval of Staff.

- 3) That an outdoor lighting plan be submitted for Phase 3 in accordance with the outdoor lighting ordinance for review and approval by Staff.
- 4) That a minimum 48-inch wide accessible walkway be maintained between the building and the parking lot curb so as to not be obstructed by vehicle overhangs onto the sidewalk.
- 5) That the signs are approved as submitted on the applicant's drawings subject to the applicant preparing a sheet detailing and dimensioning the signs to attach to the Corinth Square North Sign Standards.
- 6) That the final plan for the proposed RTU screening be submitted to Staff for review and approval prior to issuing a permit and any RTUs that are taller than the screen be painted the same color as the screen.
- 7) That the Planning Commission approve the concept drawings for the building elevations as revised with the provision that detail drawings will be submitted to Staff for review and approval including all revisions prior to obtaining a building permit. If the detailed drawings vary significantly from the concept drawings, the plans will be resubmitted to the Planning Commission for review and approval.

The motion was seconded by Bob Lindeblad and passed unanimously.

PC2012-109 Request for Sign Approval & Revised Sign Standards-2200 West 75th Street

Stephanie Warden, D.D.S., 2200 West 75th Street, and Allen Harris with ALH Homes Renovations at 2200 West 75th Street, Suite 102 appeared before the Commission requesting approval for two free standing blade signs on the east side of the office building located at 2200 W. 75th Street.

Dr. Warden and Mr. Harris explained the current difficulty their clients have identifying where their offices are located. The proposed signs are relatively small in size and designed to assist people once they are in the parking lot to get to the appropriate side of the building and entrance.

Dr. Sidney McKnight, owner of the office building, noted the slope of the parking lot makes it difficult for older clients. He added there are no entrances to the building facing south.

It was confirmed the office building did not have any façade signs.

Bob Lindeblad confirmed there are the only three tenants in the office building.

Dennis Enslinger provided the following history on signage at this location:

In March of 2008, the Planning Commission considered an application for sign standards, at the subject property, (PC2007-104) which included a monument sign and two building façade signs. As part of this application, the Planning Commission

held a general discussion on sign standards which resulted in the following policy being adopted in 2008:

The Planning Commission may, in the process of approving sign standards, approve deviations for the standard requirements as follows, provided said deviations will provide an equal or better development, adjacent properties will not be adversely impacted, and the spirit and intent of regulation will not be violated by granting of the deviation:

1. One sign may be permitted per façade with no requirement that the tenant has direct outside entrance or that the sign be adjacent to its space.
2. That text not be restricted on monument signs provided the sign is designed and built primarily of brick, stone and masonry, complements the building and does not include a case or enclosed cabinet design.

During the discussion related to the previous case, PC2007-104, the property owner of record Dr. Sid McKnight, indicated that he would not request approval for the façade signs if the Planning Commission granted him the ability to have three lines of text on the monument sign. The Planning Commission approved the revised sign standards to allow for the construction of the monument sign (with three lines of text) with the condition that no façade signs be allowed on the building.

Sometime in the last few years the applicants have installed two free-standing blade signs on the east side of the office building. There was no sign permit issued or approval of revised sign standards for the site. Staff contacted the applicants and indicated that the signs were in violation of the approved sign standards and it would be necessary to secure the required approvals.

The proposed signs are located on the east side of the existing structure and face 75th Street. They are directly adjacent to the structure and each flank an existing door and are directly outside corresponding leased area. The sign poles are constructed of tubular steel and the sign is painted steel and are not illuminated.

The proposed signs differ slightly in height based on the design of the signs. The Stephanie Warden sign is 8.5 feet in height and the ALH sign is approximately 9.5 feet in height. The Stephanie Warden sign is approximately 2.6 sq.ft. and the ALH sign is approximately 3.8 sq.ft..

Planning Commission expressed concern with approving these signs and subsequent request by other office building tenants for individual signs. Mr. Vaughn noted this would not be a significant problem for one or three tenant office buildings, but it would for the balance of office buildings in the city.

Bob Lindeblad suggested the placement of signs by the appropriate entrance doors for the businesses, such as a directory sign. He noted sign regulations are determined by zoning districts. He acknowledged the challenges faced by these businesses, but feels the city needs to follow the established rules and not deviate from code.

Randy Kronblad asked that staff work with the applicants to locate appropriate signage on the exterior façade. He noted the challenges of the poorly designed

building with no visible entrances and feels the City needs to provide support in addressing their issues and concerns.

Possible signage changes were discussed by the Commissioners. Dennis Enslinger stated staff would come back with some alternate proposals for consideration by the Commission. Nancy Wallerstein noted she wants the businesses to be successful within the regulations set by the city.

**PC2012-110 Request for Replat of 75 Mission Office Condominiums
3864 West 75th Street**

Paul Wrablica with Telecom Realty Consultants at 3864 West 75th Street, stated he is proposing to purchase 969 square feet from a condominium currently owned by the Alzheimer's Association which is approximately 2,848 square feet. The building is a platted condominium project and the County Surveyor would not accept the filing of a survey for the proposed division.

Ron Williamson noted this plat is a technical requirement necessary to convey the ownership.

The Final Plat needs to have certifications for the approval of the Planning Commission and acceptance by the Governing Body. In addition the plat is subject to the approval of the County Surveyor.

Nancy Vennard moved the Planning Commission approve the Final Plat of 75 Mission Office Condominiums 2nd Plat subject to the following conditions and recommend acceptance of the plat to the Governing Body:

1. That the applicant add approval certification of the Planning Commission.
2. That the applicant add acceptance certification of the Governing Body.
3. That the plat be submitted to the County Surveyor for review and approval.
4. That three copies of the final revised plat be submitted to the City.

The motion was seconded by Dirk Schafer and passed by a vote of 6 to 0.

**PC2011-06 Request for Site Plan Approval - Windows
3975 West 83rd Street**

Jim Berry, 3840 West 139th Terrace, representing Tide Cleaners at 3975 West 83rd Street, appeared before the Commission requesting approval of window graphics on two windows of their facility. The proposed window graphic cover 100% of the entire bay windows.

Mr. Berry noted the covering is neither a sign nor advertising. It is a digital screen designed and used to hide the industrial equipment that is in the building. Lane4, the property owner, has approve the proposal for the window on the west and requested the other window be entirely white. Mr. Berry shared photos of the proposed screenings and the material used. He also showed photos of a similar screening application at a Tide Cleaner facility located in Leawood. He stated only the north and southwest façade windows would be covered. All others would be open.

Bob Lindeblad asked how far from the screenings would be from the window. Mr. Berry responded they would be placed directly next to the window. Mr. Lindeblad stated he would prefer a matted neutral color rather than the white requested by Lane4.

Randy Kronblad noted there are films that can be applied to glass that are transparent without graphics that could be applied in a neutral tone that would mask the industrial equipment and does not draw attention.

Nancy Vennard expressed concern that there be consistency with the coverings.

Gregory Wolf confirmed that the placement of blinds would not need any approval.

Bob Lindeblad stated he wants the building façade to keep its integrity and not to have something that will draw attention to the window. Ken Vaughn noted there appeared to be agreement for a solid neutral color, not white.

Dennis Enslinger stated he would prefer a blind or an open window, noting this would become difficult to enforce over time.

Staff noted that Window graphics have been approved by the Planning Commission for Walgreens and Noodles as a part of their site plan approval. If window graphics are considered the same as window signs, then they can only cover 20% of the window. The Walgreen's and Noodles window graphics did not cover all of the windows. This is the third request and it is likely that there will be more requests in the future. There needs to be a process and some standards established in the Zoning Ordinance to address window graphics.

Bob Lindeblad moved the Planning Commission approve the screening of the west and north windows with a solid neutral material approved by staff. The motion was seconded by Nancy Wallerstein and passed unanimously.

OTHER BUSINESS

Next Meeting

The July Planning Commission meeting will be held on Tuesday, July 10th, not July 3rd due to the holiday. The filing deadline for that meeting is Friday, June 8th. No applications have been filed at this time. If no applications are filed, staff will bring potential revisions to the sign regulations for consideration by the Commission. The Commission agreed this needed to be reviewed again and noted problems they have seen particularly with temporary signs.

ADJOURNMENT

With no further business to come before the Planning Commission, Chairman Ken Vaughn adjourned the meeting at 9:50 p.m.

Ken Vaughn
Chairman

CITY OF PRAIRIE VILLAGE

STAFF REPORT

TO: Prairie Village Planning Commission
FROM: Dennis Enslinger, Assistant City Administrator
APPLICATION: PC 2012-111: Request for Approval of 8 foot fence at 8912 Rosewood Drive
DATE: July 10, 2012 Planning Commission Meeting

Application: PC 2012-111

Request: Site Plan approval of an 8 foot Fence

Property Address: 8912 Rosewood Drive

Applicant: Wendy Hills

Current Zoning and Land Use: R-1a, Single-Family Residential

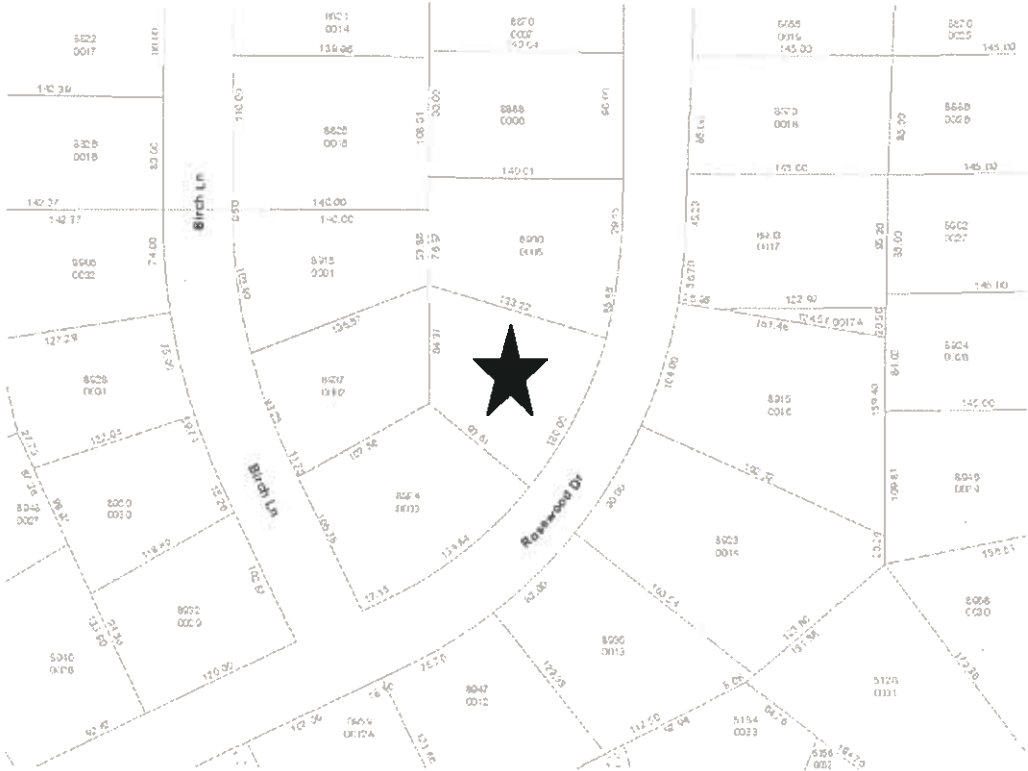
Surrounding Zoning and Land Use: North ,South, East and West: R1-a, Single-Family Residential developed with single family residential dwellings.

Legal Description: West Riding Lot 4 Block 2

Property Area: 0.26 Acres (11,351.80 square feet)

Related Case Files: West Riding Final Plat

Attachments: Application, drawings, photos, and adjacent property owner letters.



General Location Map

Aerial Map



STAFF COMMENTS:

The applicant is requesting approval of a waiver from Section 19.44.025 B. 3. which limits a fence height to 6 feet. The applicant is requesting the Planning Commission approve a site plan to allow for the construction of an 8 foot fence along a portion of the rear property.

The applicant is requesting to construct the fence along the north and west property lines to help address privacy concerns per Section 19.044.025.G. The applicant has provided an explanation of the privacy concerns related to her property and those adjacent properties. She has also provided letters from adjacent property owners in support of the proposed fence.

The fence will be in addition to the existing fence which serves to create an enclosure for the adjacent properties. The fence will consist of eco mesh and in some areas a geolam wall to create a greater sense of privacy. The eco mesh will be planted with vines to provide a "green wall" effect. The fence is approximately 30% of the fence line. There is also a water feature element which will be constructed and is integral to the fence.

The applicant has provided some sight-line drawings to help illustrate the privacy concerns from adjacent properties. The applicant held a neighborhood meeting on June 28th. One adjacent property owner was in attendance. A summary of the meeting is included in the attached materials.

The one issue that the applicant should address is how they plan on maintaining the space between the two fence structures. The applicant has indicated she will address this issue at the Planning Commission meeting.

RECOMMENDATION:

Given the nature of the adjacent lots and the privacy concerns from the property owner and surrounding property owners, staff recommends approval of the waiver for the 8 foot fence as presented.

Photos of the existing site:



June 26, 2012

Mr. Dennis Enslinger
Assistant City Administrator
City of Prairie Village
7700 Mission Road
Prairie Village, KS 66208

Dear Mr. Enslinger:

Thank you for the opportunity to present additional information to you in considering our request for a waiver of Section 19.44.025 for the height of a partial fence proposed for my project. Below please find information that I hope is helpful in your analysis and recommendation to the Planning Commission.

A. BACKGROUND: I purchased my home, which was in foreclosure and had been vacant for approximately 18 months, in March of 2007. I spent several years working on the interior of the home and the front landscape, during which time the backyard remained completely empty, without any trees, shrubs or other landscaping (other than the existing grass) and only a 2-step wooden stoop off the kitchen patio door. In the last year, I have had 2 landscapers look at my backyard and propose ideas for a master plan, but neither of them understood what I wanted to create. A third landscape architect, Kurt Kraisinger with Lorax Design Group, then took a look at the property and we discussed what I wanted to accomplish, which was essentially an outdoor living area that would be an extension of the house itself, with a design slant that was fairly clean and modern, but that would also fit in with the design and character of the exterior of the house and the neighborhood itself. We spent the next a fairly substantial amount of time further discussing various ideas and design elements, and then refining the design to something that we felt was a contemporary use of the oddly shaped lot and aesthetically pleasing, while maintaining the identity and character of my home and the surrounding neighborhood.

B. PRIVACY CONCERNS: As explained in the application filed with the Board of Zoning Appeals, my lot has some inherent challenges to deal with in terms of creating a private space in which I can enjoy the outdoors. The backyard is very narrow and the odd shape of it – somewhat triangular - made the design difficult in terms of creating a comfortable, contemporary space with modern amenities. My primary concern has always been the lack of privacy I have in the backyard. I seem to be the low spot in the neighborhood, with most of the surrounding neighbors having homes on lots that are elevated much higher than mine, with views directly into my entire backyard. For example, the neighbors to the west of me, Mike & Gaye McIntosh, spend a great deal of time on their back patio, which faces my yard and home. Seated at their patio table, they are able to look down and see directly into my entire back yard, with the exception of the area directly next to the fence of course, as well having a direct view into my rear-facing windows and patio door. In talking to them about the project, I have been on their patio and noted that they can also see directly onto the patio of my neighbors to the north, Paul & Anna Raccuglia. Phil & Wilma Rubenstein own the home directly northwest of my yard, and can also see directly into my backyard from both their main and second story levels. While I

genuinely like my neighbors, I rarely spend any time in my backyard since I feel somewhat that I am living in a fishbowl for all to see and it can be a little unnerving at times.

In coming up with a design that would afford me a small bit of privacy, Kurt and I discussed the possibility of planting some shrubbery that would grow very tall and help block the view. However, I didn't feel that lining the perimeter of my property with Green Giant Arborvitae would be very neighborly or that my neighbors would have appreciated their view of not only my yard, but their view of most everything, being obscured. Because the yard is so narrow, we thought that some type of taller screen would be the best solution in that it would provide some amount of privacy for me while still being respectful of my neighbors, and it would also be the most efficient use of space and not take up too much depth in an already narrow yard. Planting beds would probably have taken up 3 -- 4' of depth, in an already narrow space, to adequately provide for large vertical shrubs, while the fence/screen probably takes up only about 1', which also maximizes the space I have available for patio, grill area, etc.

We thought the best location for some private space would be closest to the fence line, away from the house (areas near the house are in full view of the neighbors, even with the existing fence), and designated the NW "corner" of the yard as a conversation/seating area to be screened off. Because of the topography of my lot and the fact that the existing 6' fence fails to provide much, if any, privacy, we extended the proposed screening to 8', but limited it to a small length on the west side and a length on the west side that corresponded to part of the existing fence and the size of the proposed patio. I understand that one of the Planning Commission's concerns may be that the height creates something that is overbearing or powerful, but I think that we have created a design that is very attractive and softened by other elements:

- On the west side, the fence is punctuated by an integrated water feature and will include several plantings of taller grasses, both of which will soften the look from inside my yard. The length on the west side was kept at the minimal amount to provide for only enough to encompass and account for the amount of patio needed for seating, the planting bed for the grasses and to accommodate the integrated water feature. We also believe that this will not be overpowering to the neighbors since the additional 2' will extend in length for only approximately 30% of the entire existing fence line and is in the far corner of the yard, and the existing fence is of a different material and direction, which will provide visual texture that will also soften the appearance from the McIntoshs' view.
- On the north side, the additional height will all be greenery once the vines are established, which I'm told will take approximately 6 months, and will have an appearance similar to a hedge for both myself and my neighbors, which we believe works to also soften the height is on both sides.
- I think that it is also important to note that I have discussed the project with the surrounding neighbors, including, in particular, the McIntoshs to the west and the Raccuglias to the north, who have been very excited and supportive of the project. The McIntoshs are hopeful that they will also be able to enjoy the ambient noise of the water feature and the Raccuglias are hopeful that the north side will provide them some additional privacy as well (with respect to the view of their patio from the McIntosh patio). Both the McIntoshs and the Raccuglias

have formal provided letters of support, along with several other neighbors. I have enclosed copies of the support letters I have in hand, and will provide additional letters that I am waiting on upon receipt.

C. ADDITIONAL CONSIDERATIONS: Although the application to the Planning Commission does not require the same analysis as that of the Board of Zoning Appeals, I thought it might be helpful to discuss how some of the same considerations are met with respect to the fence.

- Inherent Challenges of the Lot/Uniqueness – As discussed above, the topography, narrowness and odd shape of the backyard result in little to no real sense of privacy, which would greatly enhance my use and enjoyment of the space. The grade variations between my lot and the neighbors and the resulting lack of privacy is not resolved by the existing fence. We believe that the current design is reasonable given the site limitations and desire for a small degree of privacy, and that the proposed fence has been kept at a minimum to balance my concerns for privacy, efficiency of space and the integrated design features, while keeping it "neighbor friendly" for my surrounding neighbors in size (height and length), scale and appearance.
- Rights of Adjacent Neighbors - No adjacent property owner's rights are adversely affected by the requested variance. The design was presented to each of the adjoining neighbors, whom are all supportive and encouraging of the project, including the proposed fence. Additionally, the 2 neighbors with whom the fence line is shared believe that they will also receive additional benefit from the height of the fence and water feature (ambient noise and additional privacy themselves).
- Unnecessary hardship – Essentially, without the waiver, the privacy issue will not improve since the existing 6' fence does not provide any real privacy. The proposed fence will create a small area of privacy and also be the most efficient use of space in that it requires less depth in the already narrow backyard than plantings would. It allows me to maximize the patio space for a conversation area, which would be reduced by planting beds if we had utilized shrubbery as a solution. The fence is an important part of the overall plan and is integrated both structurally and aesthetically with other design elements, and I believe that reducing the proposed fence to a height of 6' would negatively impact the overall design aesthetic.
- Public health, safety, morals, order, convenience, prosperity and general welfare – The master landscaping plan and the proposed fence itself will not adversely affect the public health, safety, morals, order, convenience, prosperity and general welfare. The fence and its integrated features are structurally sound, will enhance the overall project and the neighborhood

itself, including the enjoyment by the neighbors of their property. Public order should be enhanced by the improvement and development of the property as a whole, which should also increase property values. The proposed master plan, including the fence, will not be detrimental to the public at large and will also be an improvement that adds value to the community.

- General spirit and intent of zoning regulations. Neither the fence, nor the project as a whole, will be in violation of the spirit (purposes) and intent of Section 19.44.025, which are to (i) buffer or screen uses that may have a negative impact on adjacent uses; (ii) to provide privacy in outdoor spaces, (iii) to provide safety from hazards such as swimming pools, hot tubs, spas and other similar facilities, and (iv) to enhance the quality of appearance of developed land use. The proposed fence will provide a slight, but not overbearing, improvement in privacy for not only me, but the surrounding neighbors and will greatly enhance the appearance of the backyard while remaining attractive on both sides, which will promote the purposes set forth above.

We believe that the proposed fence is a reasonable solution given the sight limitations and challenges. We have limited the length of fencing for which we are requesting the waiver to the minimum amount necessary to address my privacy concerns and stay true to the overall design aesthetic. Additionally, we have tried to address potential concerns about the appearance of the fence from both my perspective and that of my adjoining neighbors and made conscious design decisions intended to produce the most attractive design possible on both sides of the fence. I believe that we've been successful in ensuring that any concerns regarding the height are addressed by softening the appearance with various textures that are appealing to everyone affected. I chose to also leave the existing fence in place as to ensure that the neighbors retained as much of a uniform visual appearance on their properties as possible. Importantly, the adjacent homeowners have shown a great deal of support and enthusiasm for the project, including the fence, and are hopeful that they will benefit from it and its integrated features as well. I think that the overall aesthetic provides for a contemporary design and use that improves the condition of the property, while also maintaining the character of not only my home but the neighborhood itself. Therefore, we would respectfully request that the Planning Commission approve the waiver from Section 19.44.025 for this project.

Thank you in advance for your time and consideration. Please do not hesitate to contact me in advance of the hearing on July 10th for any reason at 913.236.2013.

Sincerely,



Wendy Hills
8912 Rosewood Drive

June 21, 2012

Mr. Dennis Enslinger
Assistant City Administrator
City of Prairie Village
7700 Mission Road
Prairie Village, KS 66208

Re: Landscaping project at 8912 Rosewood Drive (the "Hills Residence")

Dear Mr. Enslinger:

We reside at 8900 Rosewood Drive, which is directly north of the Hills Residence and shares a common fence line with Ms. Hills as our backyards are adjacent to each other. Ms. Hills has discussed her project with us on several occasions to date and has shown us the site plan and 3-D drawings of the proposed project, including the 8' fence/green wall and integrated water feature. We are providing this letter to you to confirm our support of the Hills project and that we have no objections to her proposed project, including the fence.

Sincerely,



Paul and Anna Raccuglia

Phone: 913-220-0457

June 21, 2012

Mr. Dennis Enslinger
Assistant City Administrator
City of Prairie Village
7700 Mission Road
Prairie Village, KS 66208

Re: Landscaping project at 8912 Rosewood Drive (the "Hills Residence")

Dear Mr. Enslinger:

I reside at 8924 Rosewood Drive, which is directly south of the Hills Residence and shares a common fence line with Ms. Hills as our backyards are adjacent to each other. Ms. Hills has discussed her project with me on several occasions to date and has shown me the site plan and 3-D drawings of the proposed project, including the 8' fence/green wall and integrated water feature. I am providing this letter to you to confirm my support of the Hills project and that I have no objections to her proposed project, including the fence.

Sincerely,



Lenore Handlen

Phone: 913-341-8815

June 21, 2012

Mr. Dennis Enslinger
Assistant City Administrator
City of Prairie Village
7700 Mission Road
Prairie Village, KS 66208

Re: Landscaping project at 8912 Rosewood Drive (the "Hills Residence")

Dear Mr. Enslinger:

We reside at 8735 Birch Lane, which is directly west of the Hills Residence and shares a common fence line with Ms. Hills as our backyards are adjacent to each other. Ms. Hills has discussed her project with us on several occasions to date and had shown us the site plan and 3-D drawings of the proposed project, including the 8' fence and integrated water feature that will run parallel to the existing fence that separates our properties. We are providing this letter to you to confirm our support of the Hills project and that we have no objections to her proposed project, including the fence.

Sincerely,

Mike McIntosh
Gaye McIntosh

Mike and Gaye McIntosh

Phone: (913) 381-9029

Dennis Enslinger

From: Wendy Hills [Whills@waddell.com]
Sent: Friday, June 29, 2012 3:43 PM
To: Dennis Enslinger
Subject: FW: Improvements at the Hills Property

Dennis --

Below is an additional e-mail of support from one of the neighbors.

Thanks, Wendy

From: Brian.Murray@hcamidwest.com [mailto:Brian.Murray@hcamidwest.com]
Sent: Thursday, June 28, 2012 5:20 PM
To: Wendy Hills
Subject: Improvements at the Hills Property

Ms. Hills,

This letter comes to you in an effort to express our appreciation in advising us as to the planned upgrades to your residence.

To this point, the upgrades to your home have been a welcome sight in the neighborhood. Since discussing the proposed outdoor enhancements yesterday, we wish to share our approval as well.

Should you require add'l correspondence w/ this matter or would like to have someone contact us, please feel free to provide our information . . .

Brian and Carrie Murray
8888 Rosewood Drive
Prairie Village, KS 66207

briamurray@hotmail.com

816.332.3971

Thank you and we hope your exterior project goes smoothly.

Sincerely,
Brian Murray

Brian Murray | Director - Business Development | HCA Midwest - Centerpoint Medical Center | Office - 816.698.7188 | Mobile - 816.332.3971 Brian.Murray@hcahealthcare.com

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Dennis Enslinger

From: Wendy Hills [Whills@waddell.com]
Sent: Tuesday, June 26, 2012 12:34 PM
To: Dennis Enslinger
Subject: FW: (no subject)

Dennis – please see the below e-mail I received regarding the project.

Thank you,

Wendy

From: Jbwissman@aol.com [<mailto:Jbwissman@aol.com>]
Sent: Tuesday, June 26, 2012 11:17 AM
To: Wendy Hills
Subject: (no subject)

My wife and I find no objections to the variance from Section 19.06.035 of the Zoning Ordinance to reduce the rear yard setback from 25 feet to 18 for the property located at 8912 Rosewood Drive and zoned R-1a Single Family Residential, that you have requested. We wish you well!

**John & Ann Wissman
8873 Rosewood Drive
Prairie Village, KS 66207**

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June 21, 2012

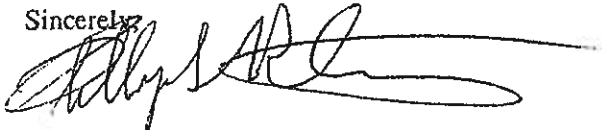
Mr. Dennis Enslinger
Assistant City Administrator
City of Prairie Village
7700 Mission Road
Prairie Village, KS 66208

Re: Landscaping project at 8912 Rosewood Drive (the "Hills Residence")

Dear Mr. Enslinger:

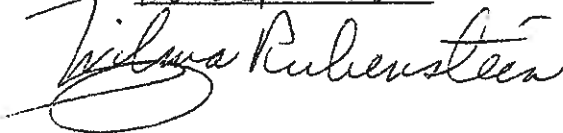
We reside at 8915 Birch Lane, which is directly northwest of the Hills Residence. We do not share a common fence line with Ms. Hills, but have a direct view of her backyard from our home. Ms. Hills has discussed her project with us on several occasions to date and has shown us the site plan and 3-D drawings of the proposed project, including the 8' fence and integrated water feature. We are providing this letter to you to confirm our support of the Hills project and that we have no objections to her proposed project, including the fence.

Sincerely,



Phil & Wilma Rubenstein

Phone: 913-381-8072



June 21, 2012

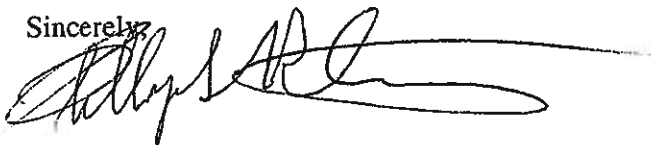
Mr. Dennis Enslinger
Assistant City Administrator
City of Prairie Village
7700 Mission Road
Prairie Village, KS 66208

Re: Landscaping project at 8912 Rosewood Drive (the "Hills Residence")

Dear Mr. Enslinger:

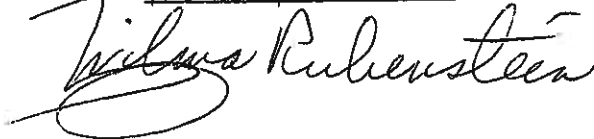
We reside at 8915 Birch Lane, which is directly northwest of the Hills Residence. We do not share a common fence line with Ms. Hills, but have a direct view of her backyard from our home. Ms. Hills has discussed her project with us on several occasions to date and has shown us the site plan and 3-D drawings of the proposed project, including the 8' fence and integrated water feature. We are providing this letter to you to confirm our support of the Hills project and that we have no objections to her proposed project, including the fence.

Sincerely,



Phil & Wilma Rubenstein

Phone: 913-381-8072



June 29, 2012

VIA E-MAIL

Mr. Dennis Enslinger
Assistant City Administrator
7700 Mission Road
Prairie Village, KS 66208

Re: Neighborhood Meeting

Dear Dennis:

The required neighborhood meeting was held last night, June 28th, at 6:00 p.m. at the Prairie Village Community Center. Mike & Gaye McIntosh were the only attendees. As you know, I've reviewed the project with the McIntoshs, and we again looked at the site plan, construction documents and 3-D renderings. They have submitted a letter of support of the project and again voiced their support for the project as a whole. I believe they may be in attendance at the hearing on July 10th.

In response to the certified letters mailed out, I received support from 3 additional neighbors who were notified but who did not attend the meeting – Ann & John Wissman, Richard Ringer and Brian Murray. Each of them has or will be submitting written support for the project.

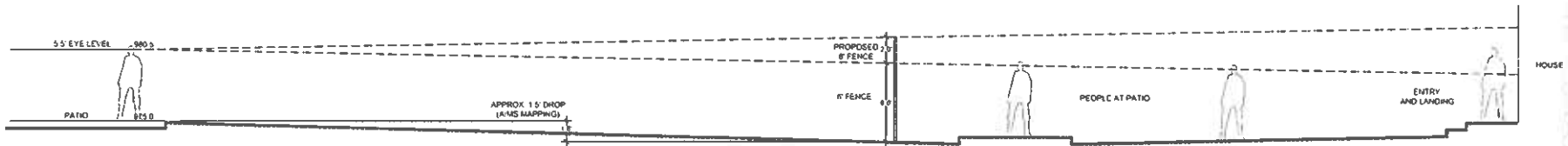
Attached is the attendance sheet from the meeting. Please let me know if there is anything else that I can provide to you.

Sincerely,

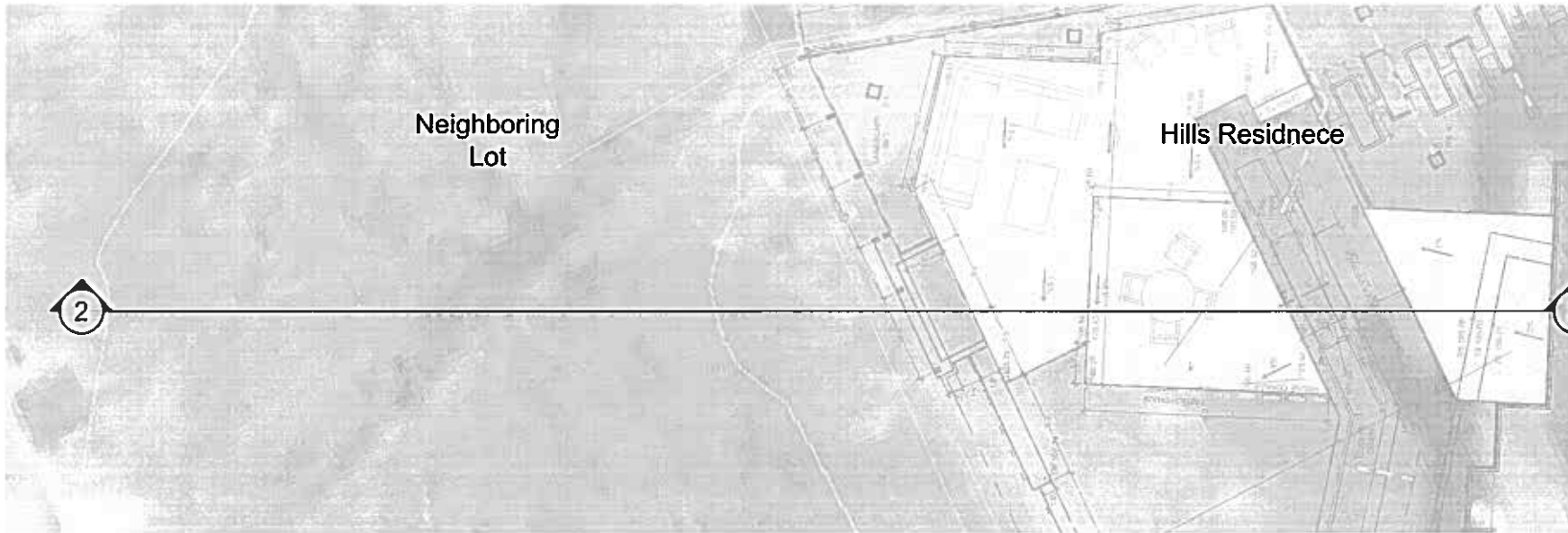


Wendy Hills

Att.



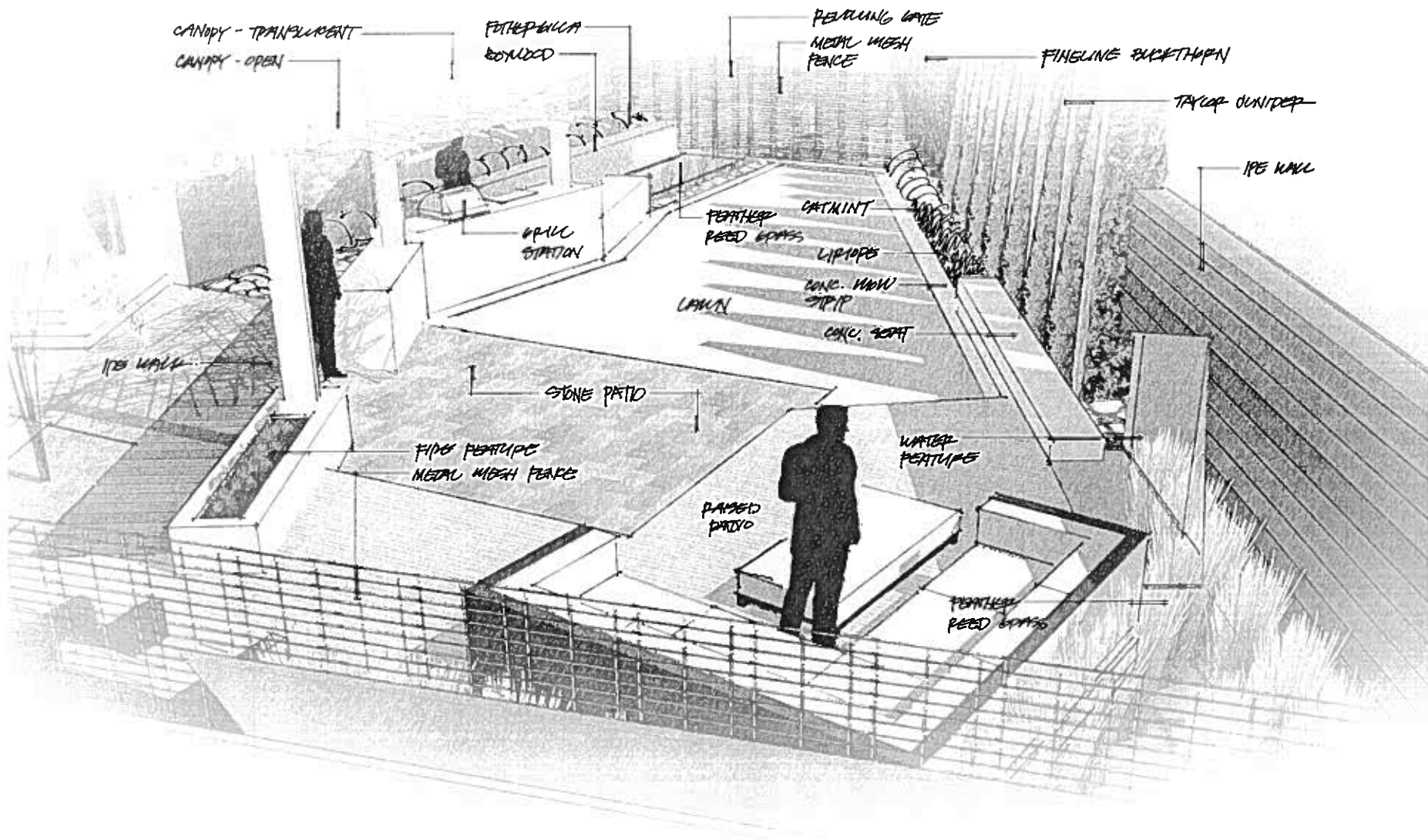
Sight Line Section 1/8th scale



Reference Plan 1/8th scale

10 scale



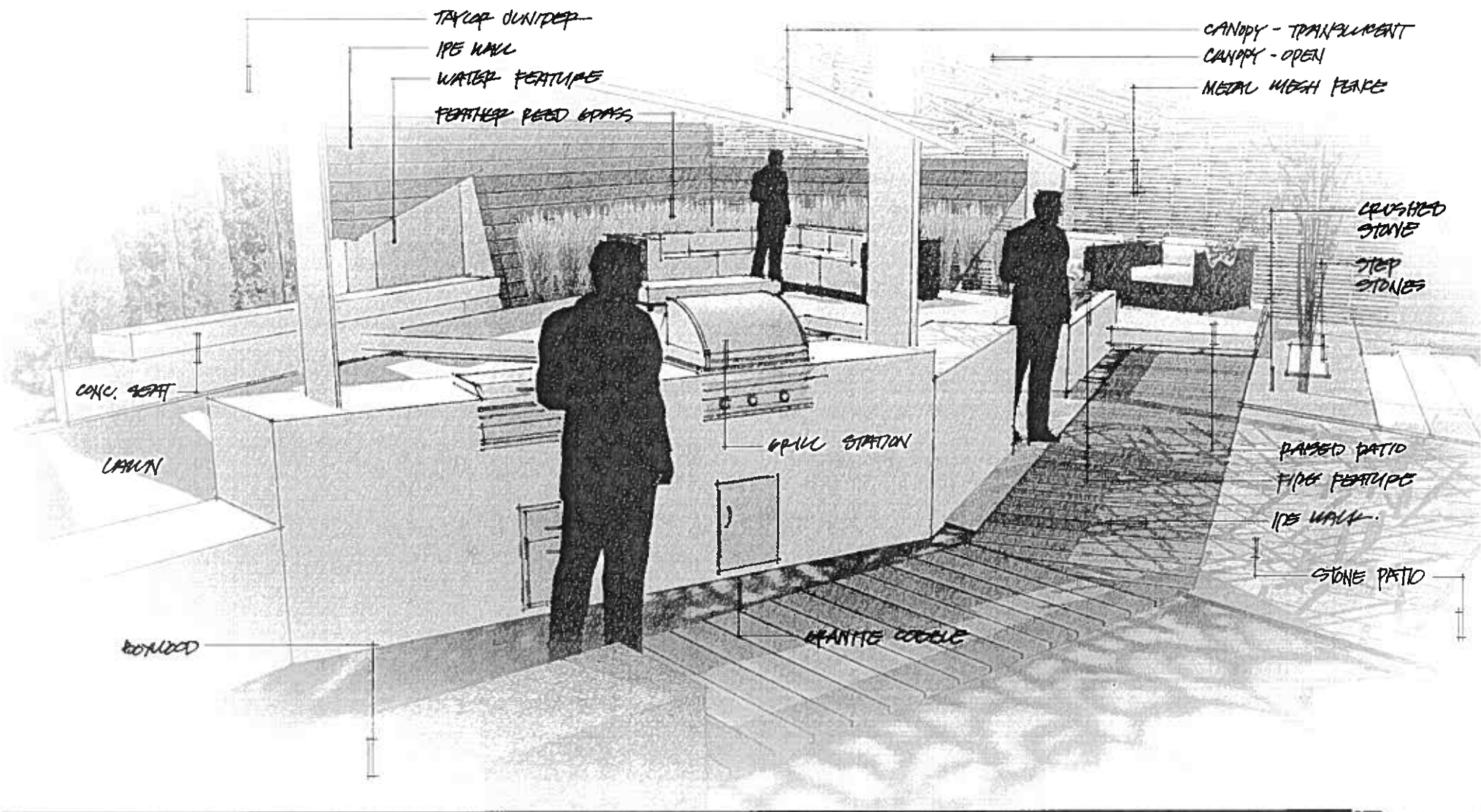


HILLS RESIDENCE - Prairie Village, Kansas

concept view - 2

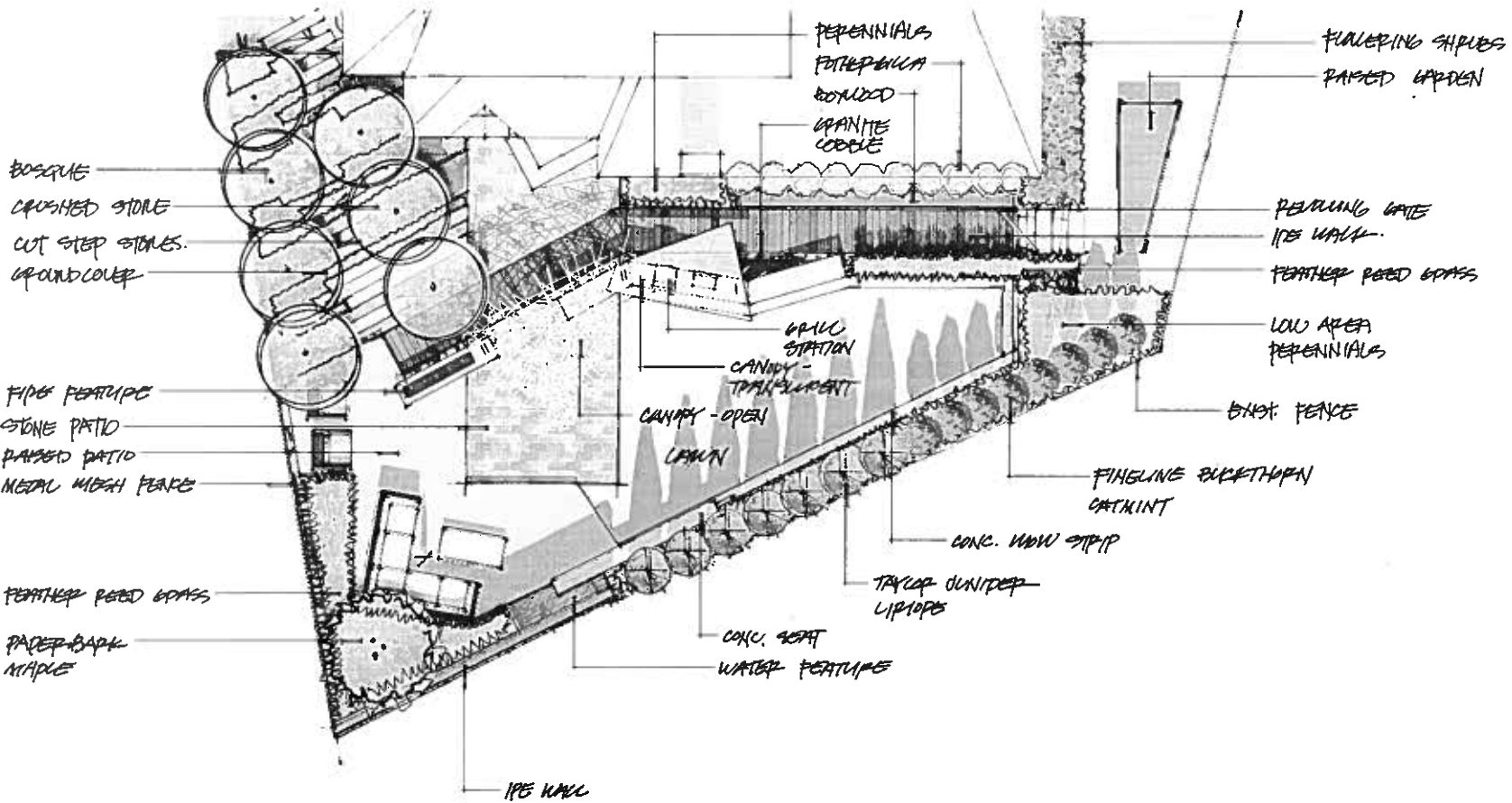
10.10.11





HILLS RESIDENCE - Prairie Village, Kansas concept view - 1 10.10.11



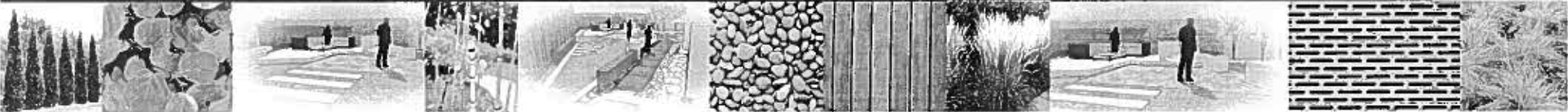


10 scale

HILLS RESIDENCE - Prairie Village, Kansas

concept plan

10.10.11



June 29, 2012

VIA E-MAIL

Mr. Dennis Enslinger
Assistant City Administrator
7700 Mission Road
Prairie Village, KS 66208

Re: Neighborhood Meeting

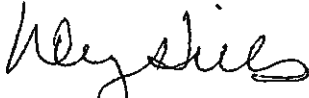
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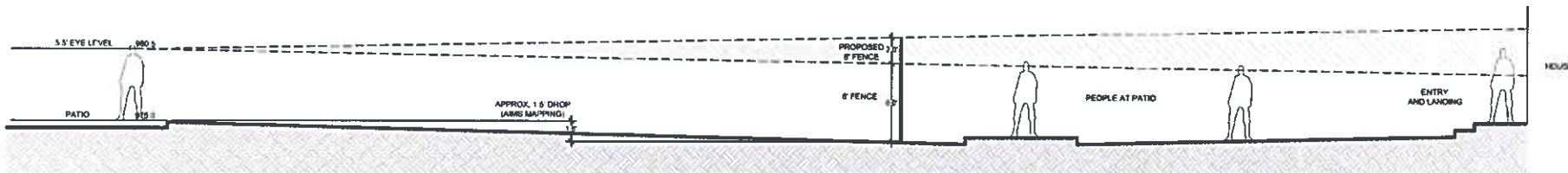
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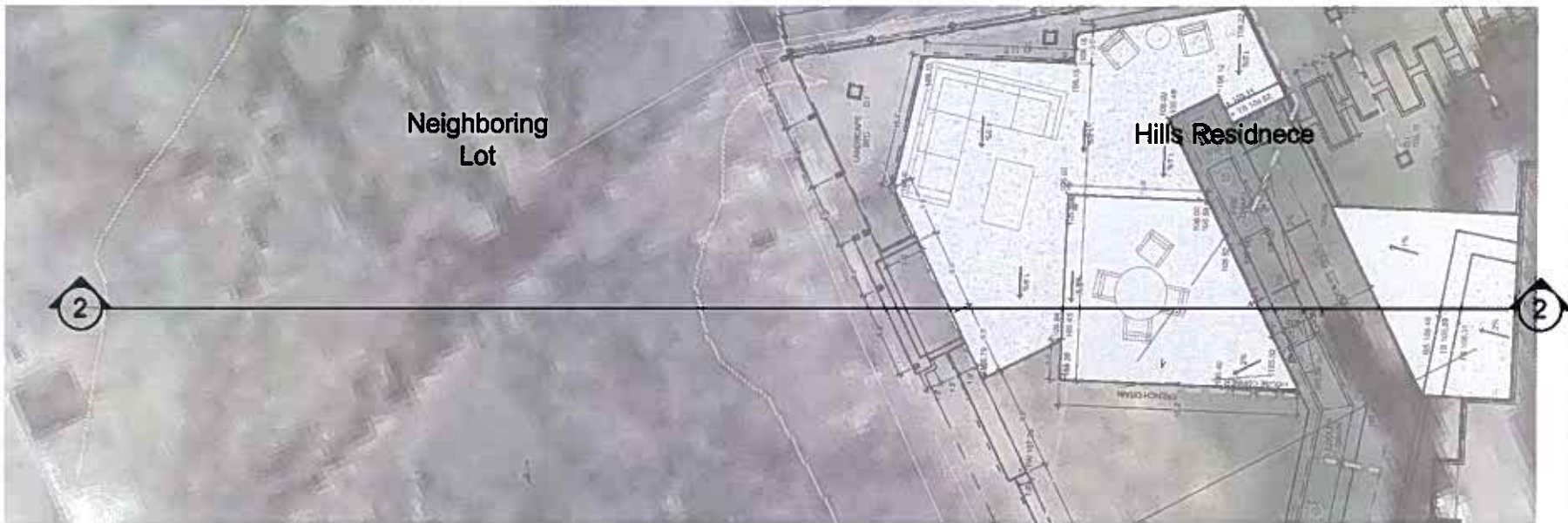


Wendy Hills

Att.



Sight Line Section 1/8th scale

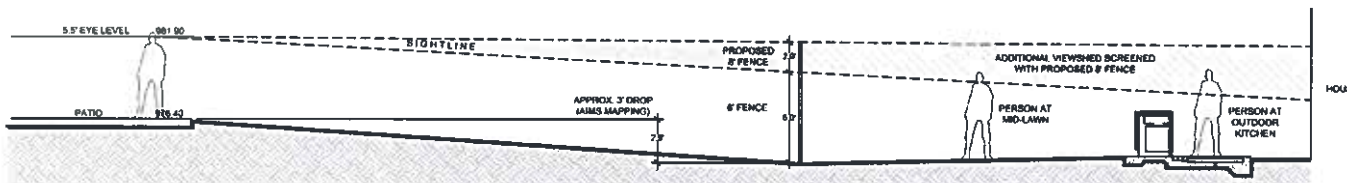


Reference Plan 1/8th scale



10 scale





Sight Line Section 1/8th scale



Reference Plan 1/8th scale



10 scale



FEATURE	PRODUCT INFO	COMMENT
INDIANA LIMESTONE VENEER		CUT/ HONED
E.W. GOLD STONE VENEER		
GRANITE COBBLE		
GRAY CONCRETE		
EXPOSED AGGREGATE CONC.		
GEOLAM CLADDING	ALLEGRO 1	SCREW OR HIDDEN FAST.
IPE WALK		
ECO MESH	MCHOLS, 2" WIDTH	GALVANIZED
GRILL	OCI 30" ELITE	
DRAWER/ DOOR COMBO	OCI #32CU	TRASH IN LIEU OF TANK
DROP IN COOLER	OCI #DC3	
ENCLOSED CABINET	OCI #SSC22X30	
LIGHTED BOULDERS (SYNTH)		
PERGOLA	MACHINEHEAD	CUSTOM

FEATURE	PRODUCT INFO	COMMENT
SLIDING GATE		CONCEALED ROLLERS
ROTATING GATE		SELF CLOSING
WATER FALL	SHEER CURTAIN	
DRAIN INLETS		
SLOT DRAIN	STEGMEIER	

E PRODUCT SCHEDULE

SCALE: N.T.S.



D VIEW - PERGOLA

SCALE: N.T.S.



C CONCEPT VIEW - PERGOLA

SCALE: N.T.S.

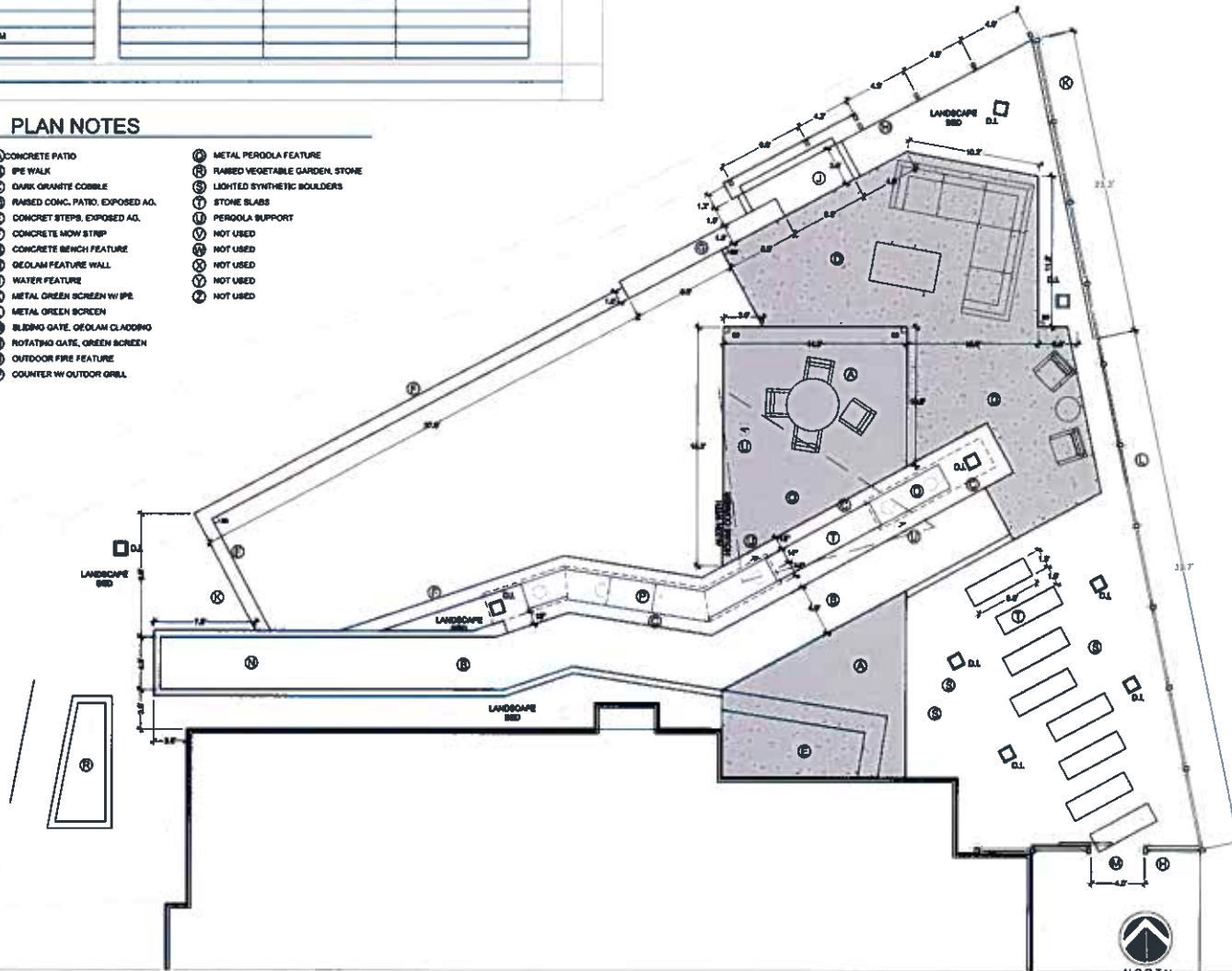


B CONCEPT VIEW - PERGOLA PLAN

SCALE: N.T.S.

PLAN NOTES

- | | |
|-----------------------------------|----------------------------------|
| ① CONCRETE PATIO | ⑩ METAL PERGOLA FEATURE |
| ② IPE WALK | ⑪ RAISED VEGETABLE GARDEN, STONE |
| ③ DARK GRANITE COBBLE | ⑫ LIGHTED SYNTHETIC BOULDERS |
| ④ RAISED CONC. PATIO, EXPOSED AG. | ⑬ STONE SLABS |
| ⑤ CONCRET STEPS, EXPOSED AG. | ⑭ PERGOLA SUPPORT |
| ⑥ CONCRETE MOW STRIP | ⑮ NOT USED |
| ⑦ CONCRETE BENCH FEATURE | ⑯ NOT USED |
| ⑧ GEOLAM FEATURE WALL | ⑰ NOT USED |
| ⑨ WATER FEATURE | ⑱ NOT USED |
| ⑩ METAL GREEN SCREEN W/ IPE | ⑲ NOT USED |
| ⑪ METAL GREEN SCREEN | ⑳ NOT USED |
| ⑫ SLIDING GATE, GEOLAM CLADDING | |
| ⑬ ROTATING GATE, GREEN SCREEN | |
| ⑭ OUTDOOR FIRE FEATURE | |
| ⑮ COUNTER W/ OUTDOOR GRILL | |



A SITE PLAN

SCALE: 1/8" = 1'-0"



HILLS RESIDENCE
8812 ROSEWOOD DRIVE
PRAIRIE VILLAGE, KANSAS

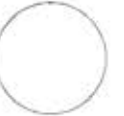
REVISION:

02.20.12
LAYOUT & MATERIALS
PLAN

L101



LORAX
DESIGN GROUP
1111 N. 27th Street
Olathe, MO 66045
Tel: 816.241.1111
www.loraxdesign.com

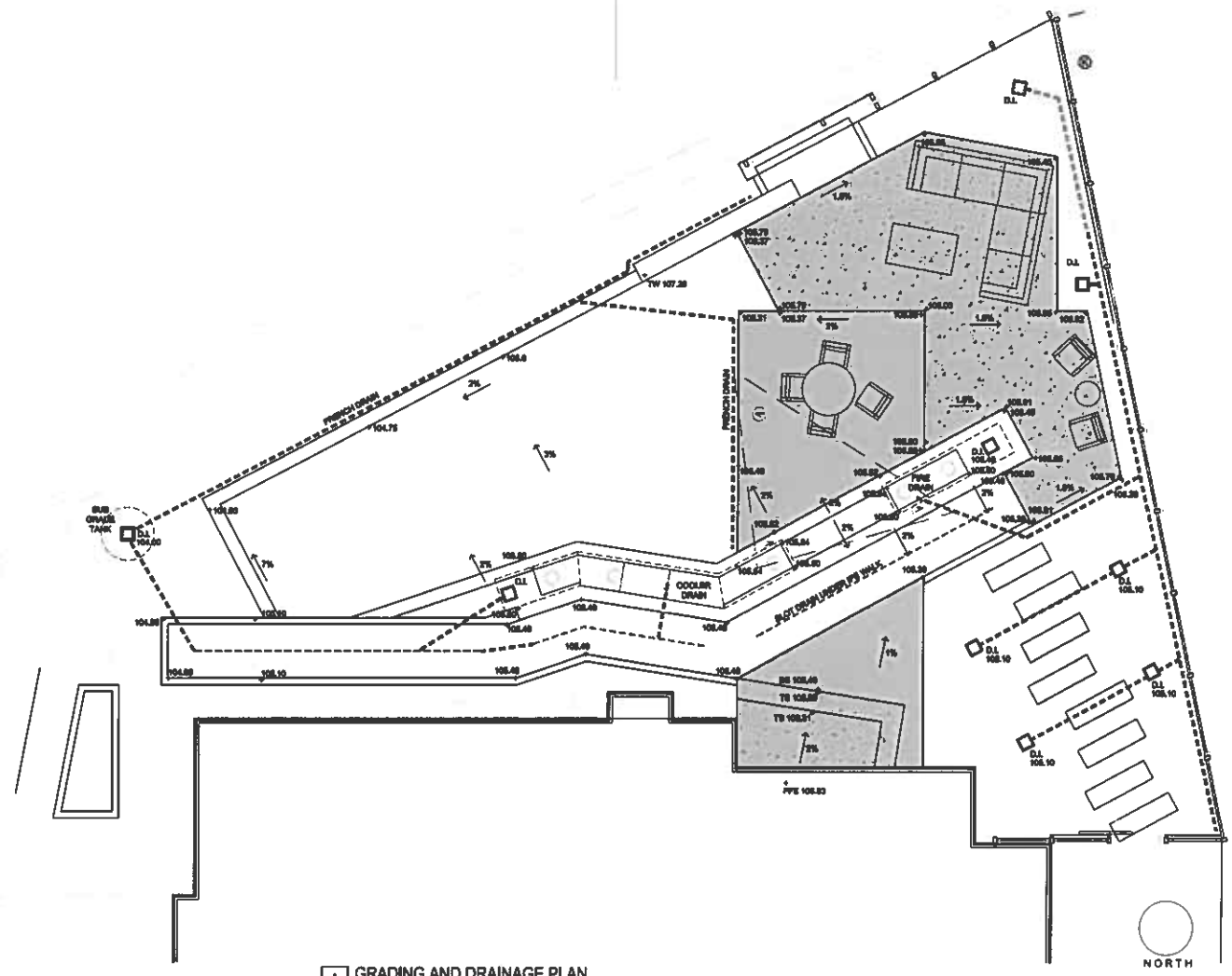


HILLS RESIDENCE
8912 ROSEWOOD DRIVE
PRAIRIE VILLAGE, KANSAS

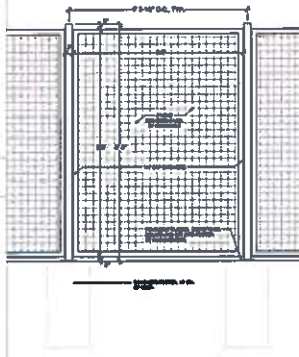
REVISION:

02.28.12
GRADING AND
DRAINAGE PLAN

L102



A GRADING AND DRAINAGE PLAN
SCALE: 1"=10'



G VIEW KITCHEN CANOPY
SCALE: NTS

F VIEW - PERGOLA
SCALE: NTS

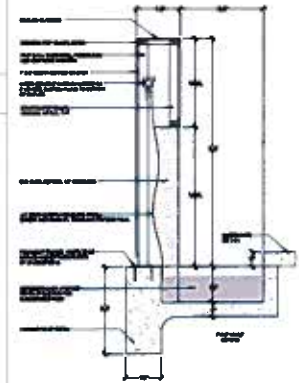


J IMAGE - SWING GATE
SCALE: NTS



H IMAGE - SLIDING GATE
SCALE: NTS

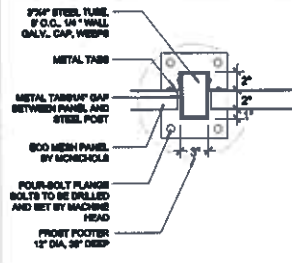
G ELEVATION - ECO MESH
SCALE: 1"=10'



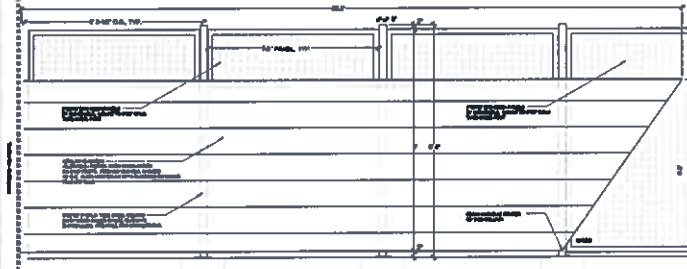
F SECTION - WATER FEATURE
SCALE: 1"=10'



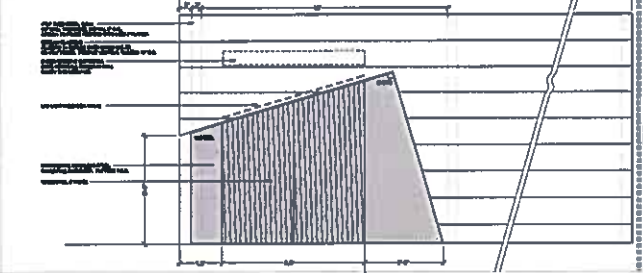
E ILLUSTRATIVE VIEW - GEOLAM FEATURE WALL
SCALE: 1"=10'



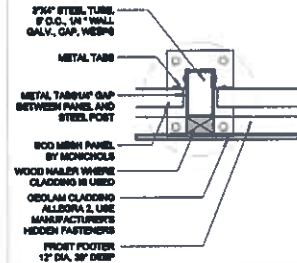
D PLAN - WALL / FENCE COLUMN
SCALE: 1"=10'



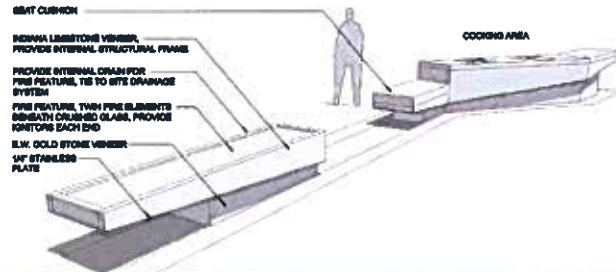
B ELEVATION - GEOLAM WALL WITH ECO MESH
SCALE: 1"=10'



A ELEVATION - GEOLAM WALL W/ WATER FEATURE
SCALE: 1"=10'

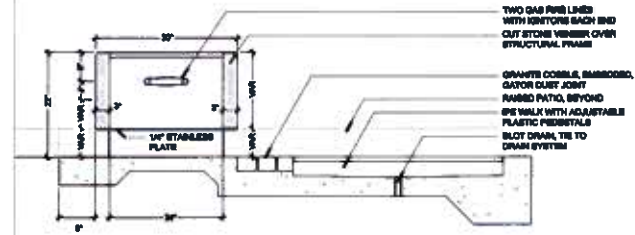


C PLAN - WALL / FENCE COLUMN
SCALE: 1"=10'



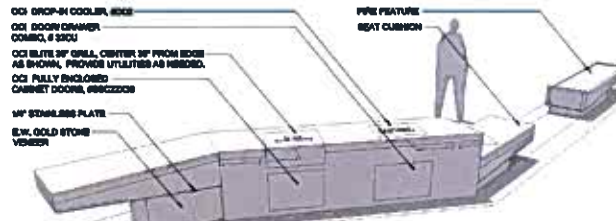
H ILLUSTRATIVE VIEW - FIRE AREA

SCALE: N.T.S.



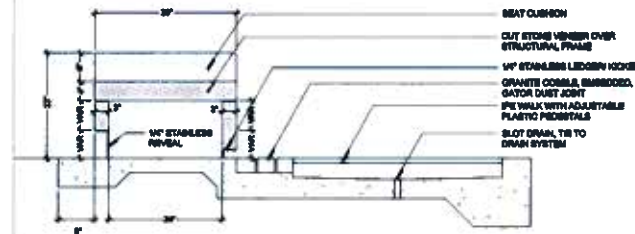
D SECTION - FIRE FEATURE AREA

SCALE: 1"=1'-0"



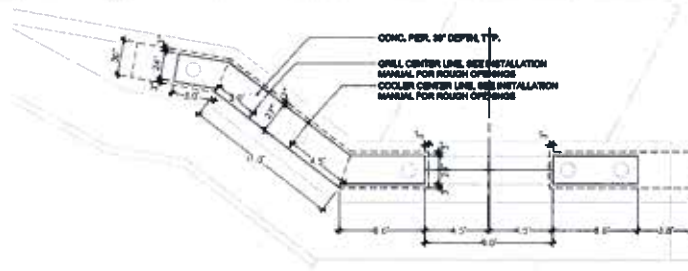
G ILLUSTRATIVE VIEW - KITCHEN AREA

SCALE: N.T.S.



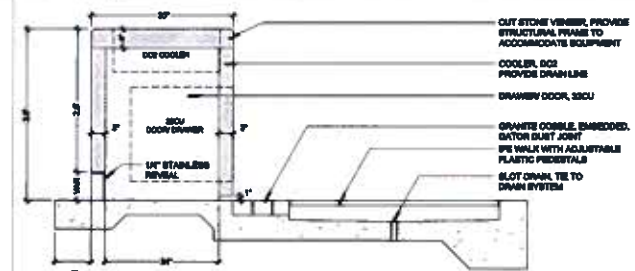
C SECTION - PERGOLA SEATING AREA

SCALE: 1"=1'-0"



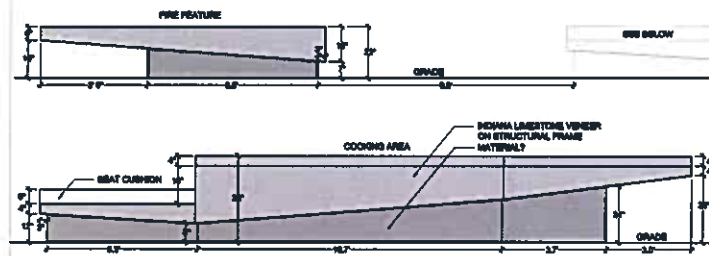
F PLAN - KITCHEN AREA

SCALE: N.T.S.



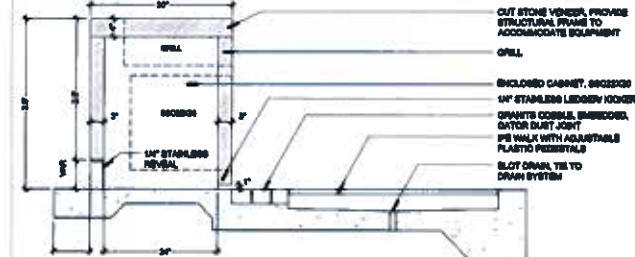
B SECTION - COOLER AREA

SCALE: 1"=1'-0"



E FLATTENED ELEVATION - KITCHEN AREA

SCALE: N.T.S.



A SECTION - GRILL AREA

SCALE: 1"=1'-0"



REVISION:

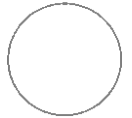
02.21.12

DETAILS

L104



LORAX
DESIGN GROUP
13123 W. 114TH STREET
OVERLAND PARK, MISSOURI 66213
TEL: 913.241.1111
WWW.LORAXDESIGNGROUP.COM



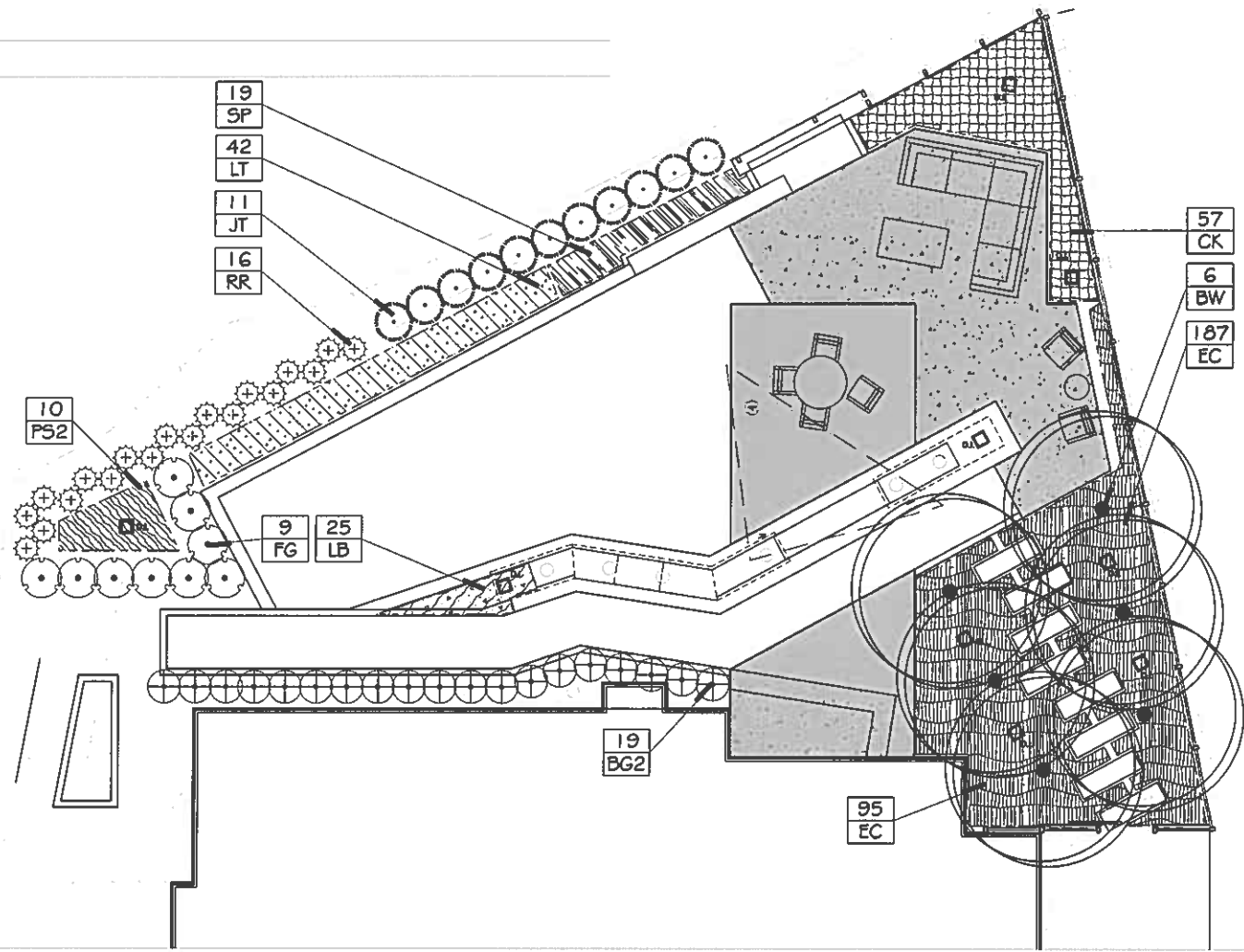
HILLS RESIDENCE
8812 ROSEWOOD DRIVE
PRAIRIE VILLAGE, KANSAS

REVISION:

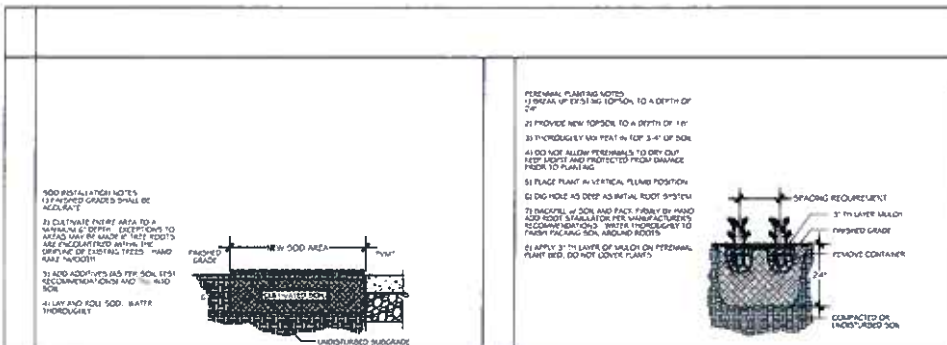
02.20.12

LANDSCAPE PLAN

L105

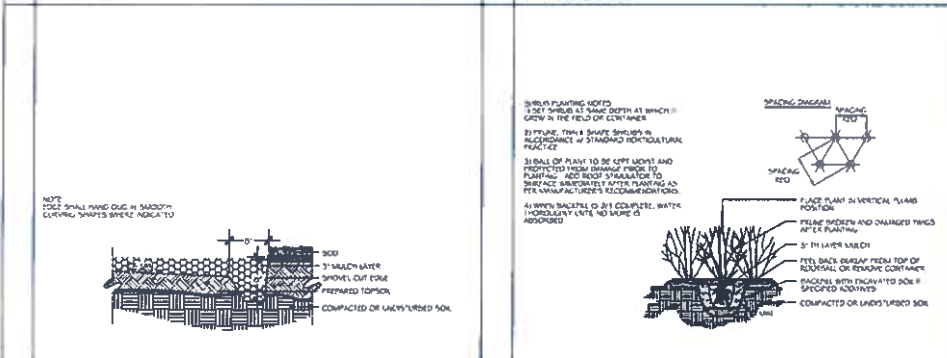


A LANDSCAPE PLAN
SCALE: 1/8" = 1'-0"



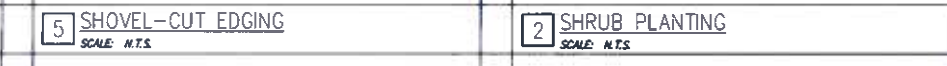
6 SOD INSTALLATION

SCALE: N.T.S.



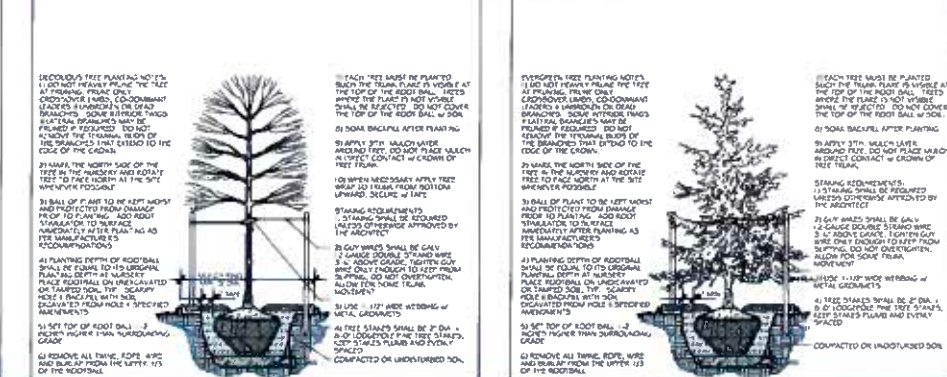
3 PERENNIAL PLANTING

SCALE: N.T.S.



5 SHOVEL-CUT EDGING

SCALE: N.T.S.



4 DECIDUOUS TREE PLANTING

SCALE: N.T.S.



1 EVERGREEN TREE PLANTING

SCALE: N.T.S.

PLANT SCHEDULE

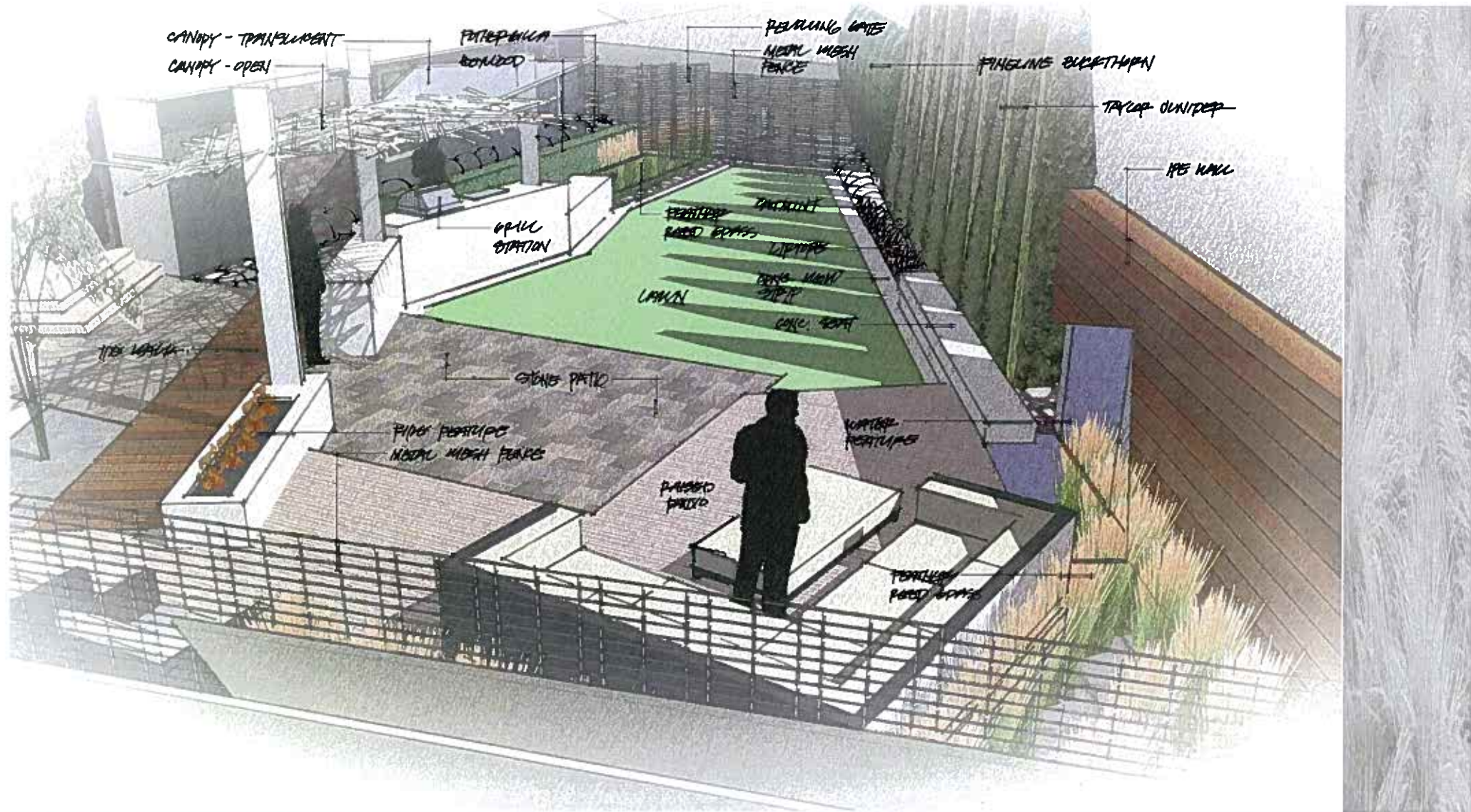
PLANT SCHEDULE		CONT	SIZE	QTY
DECIDUOUS TREES	COMMON NAME / BOTANICAL NAME			
	BW Gray Birch / <i>Betula populifolia</i> 'Whitespire Sr.'	B & B	8-12' HT., VAR.	6
EVERGREEN TREES	COMMON NAME / BOTANICAL NAME			
	JT Taylor Eastern Redcedar / <i>Juniperus virginiana</i> 'Taylor'	B & B	8-10' HT.	11
DECIDUOUS SHRUBS	COMMON NAME / BOTANICAL NAME			
	FG Dwarf Fothergilla / <i>Fothergilla gardenii</i>	5 gal		9
RR Fine Line Buchhorn / <i>Rhamnus frangula</i> 'Fine Line'	B & B		19	
EVERGREEN SHRUBS	COMMON NAME / BOTANICAL NAME			
	BG2 Boxwood / <i>Buxus</i> x 'Green Velvet'	5 gal		19
GRASSES	COMMON NAME / BOTANICAL NAME			
	CK Feather Reed Grass / <i>Calamagrostis x acutiflora</i> 'Karl Foerster'	1 gal @ 18" oc		57
	PS2 Burgundy Switch Grass / <i>Panicum virgatum</i> 'Shenandoah'	1 gal @ 24" oc		10
	SP Little Bluestem Grass / <i>Schizachyrium scoparium</i> 'Prairie Blues'	1 gal @ 18" oc		19
GROUNDCOVER	COMMON NAME / BOTANICAL NAME			
	EC Purple-leaf Winter Creeper / <i>Euonymus fortunei</i> 'Colorata'	1 gal @ 18" oc		187
LB Creeping Lily Turf / <i>Liriope spicata</i> 'Big Blue'	1 gal @ 12" oc		25	
PERENNIALS	COMMON NAME / BOTANICAL NAME			
	LT Tiger Lily / <i>Lilium tigrinum</i>	1 gal @ 18" oc		42

LANDSCAPE NOTES

- AND ALL OBSTRUCTIONS REMOVED THE LANDSCAPE PLAN AND SPECIFICATIONS SHALL BE DIRECTED TO THE LANDSCAPE ARCHITECT, LORAX DESIGN GROUP, INC., 1-917-224-2244
- THE LANDSCAPE CONTRACTOR SHALL NOTIFY THE LOCATION OF ALL UNDERGROUND UTILITIES INCLUDING THOSE INDICATED ON THE PLANS PRIOR TO INSTALLATION OF PLANT MATERIAL.
- ALL PLANT MATERIAL SPECIFIED THESE NOTES IS SPECIFIED AT MATTER SIZE OF PLANT MATERIAL. SHADE TREES ARE DELIVERED AT 75% OF ACTUAL MATTER SIZE.
- ALL PERENNIALS SHALL BE PLANTED WITH THE SAME CARE AS STAKED FOR MATURE PLANTS AND SHALL BE PLANTED IN THE SAME MANNER AS SPECIFIED ON THE PLANS. THE CONTRACTOR SHALL NOT BE RESPONSIBLE FOR THE PROTECTION OF EXISTING UTILITIES OR OTHER PLANT MATERIALS.
- THE LANDSCAPE CONTRACTOR SHALL COORDINATE THE LOCATION OF PLANTING WITH THE LOCATION OF ALL EXISTING UTILITIES AND THE LOCATION OF PLANT MATERIALS SHALL BE SPECIFIED ON THE PLANS.
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HILLS RESIDENCE
8912 ROSEWOOD DRIVE
PRAIRIE VILLAGE, KANSAS



HILLS RESIDENCE - Prairie Village, Kansas

concept view - 2

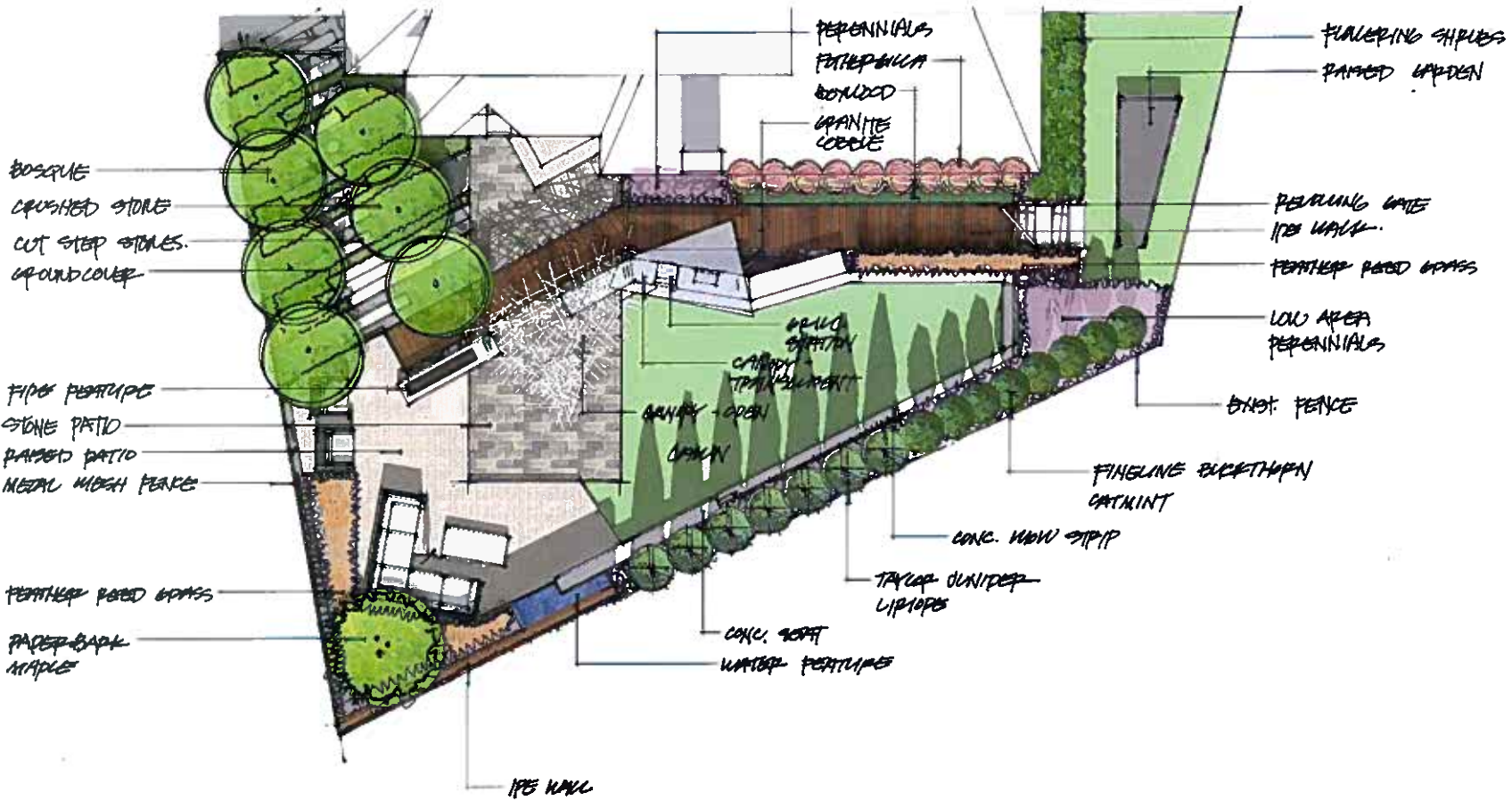
10.10.11





HILLS RESIDENCE - Prairie Village, Kansas concept view - 1 10.10.11 **DC** **LOREN**





10 scale

HILLS RESIDENCE - Prairie Village, Kansas concept plan 10.10.11



LOCHNER

MEMORANDUM

TO: Prairie Village Planning Commission
FROM: Ron Williamson, Lochner, Planning Consultant
SUBJECT: Sign Ordinance Revisions
DATE: July 10, 2012

Project # 000005977

COMMENTS:

The sign ordinance in Prairie Village has a very significant legal history. In 1996, ACLU became involved in the sign ordinance on basically two issues: duration limitation and square footage for primarily political/temporary signs. After several iterations and input from ACLU attorneys, the sign ordinance was amended in 1998.

In 2005, temporary signs came to the forefront again and involved several issues. Even though ACLU attorneys were intimately involved in the 1998 amendment they challenged the ordinance and pointed out that times had changed and a new review was needed.

The primary issue at this time was that the provisions in the newly amended ordinance was unconstitutional because the provisions were "content based." An ordinance is considered to be content based when the content of the sign must be looked at to determine whether certain regulations apply. In other words, political signs, "for sale" signs, other temporary signs must all follow the same regulations. From a regulatory perspective there should be no difference between a "for sale" sign and a sign that opposes the war in Afghanistan. A memorandum from the City Attorney, dated September 28, 2006, (Attachment A) explains the Judge's ruling in more detail and the negotiations with ACLU attorneys in developing the proposed language for the amendment. The sign ordinance was amended in December 2006.

The City has been operating under the amended sign regulations for six years and there is a need for clarification, as well as, addressing some new issues that have occurred.

Temporary Signs:

The ordinance needs to clarify that temporary signs do not include business signs. Many signs are placed in the right-of-way and on poles and trees that advertise painting, roofing, lawn mowing, etc. and the ordinance is not clear that these are prohibited. On the other hand should signs be permitted on a property while work is being done; such as roofing and remodeling contractors. Another proliferation of signs occurs by lawn maintenance companies that put a small sign in the yard every time they perform a treatment. Some direction from the Commission is desired prior to writing the details of the amendment.

Another concern is placing temporary signs in public right-of-way. This was discussed at length when the ordinance was amended and signs were allowed if agreed to by the adjacent property owner. There is a safety issue of blocking the view of drivers backing out of their driveways as well as a potential liability to the City. Monument signs must be placed on private property and be at least 12 feet back from the curb. Staff would like temporary signs to be treated the same way.

Window Graphics:

Window graphics is a recent item that should be addressed. The thought is that they not include any form of advertising and be subject to staff review and approval. The ordinance needs to include a definition and some guidelines for Staff in reviewing and approving window graphics.

Business and Monument Sign Policy:

In April 2008 the Planning Commission adopted a policy on facade signs and text on monument signs and this should be incorporated into the sign ordinance at this time.

Other Items:

Please review the sign ordinance and identify any other concerns or clarifications that you would like addressed as a part of this update.

RECOMMENDATION:

Staff would like direction from the Planning Commission on the issues it would like to have addressed prior to preparing the amendment in detail. The procedure will be to prepare a detailed proposal for the amendments to be presented to the Commission at its next meeting and then the Commission would announce a public hearing.

ATTACHMENT "A"

MEMO

To: Ron Williamson
From: Charles E. Wetzler
Date: September 28, 2006
Subject: **Proposed Amendments to Sign Ordinance**

This memo will set forth the provisions of the sign ordinance currently in effect that should be amended as a result of opinion issued by the Honorable John W. Lungstrum.

I. BACKGROUND

A. The Court's Opinion

Judge Lungstrum issued a Memorandum and Order ruling on plaintiff John Quinly's Motion for Preliminary Injunction. The Court granted Mr. Quinly's motion, finding that certain provisions of the sign ordinance were unconstitutional.

In essence, the Court found that several of the provisions contained in the newly amended Informational Sign ordinance were unconstitutional because those provisions were "content-based." An ordinance is considered content-based when the City must look to the content of the sign to determine whether the regulation applies. When an ordinance is considered content-based, the Court applies "strict scrutiny," which requires the ordinance to employ "the least restrictive means of advancing a compelling government interest." Unfortunately, ordinances rarely pass the strict scrutiny test, especially sign ordinances, because courts find that traffic hazards and aesthetics are not "compelling interests."

The Court first looked to the individual and aggregate size limitation set forth in Section 19.48.015 L.2(a). The crux of the matter is whether all temporary signs are treated equally, thereby rendering the ordinance content-neutral. The Court pointed out that other temporary signs, such as signs at a church or a "for sale" sign were subject to differing restrictions. As such, the Court concluded that the City would have to look to the content of the sign to determine whether the size restrictions of Informational Signs apply. Having found the size restrictions content-based, the Court held that the purpose of the provision, protecting its citizens from traffic hazards, was not "compelling." Accordingly, the Court found the size restrictions to be unconstitutional.

The Court proceeded to review Section 19.48.01 L.2(b), which prohibits "obscene, indecent, and profane material." The Court held that, because the ordinance does not define those terms, the restriction is unconstitutionally vague.

The Court next looked to Section 19.48.015 L.2(i), which imposes durational limits on Informational Signs. This regards the “remove or replace” within 90-day provision. Again, the Court looked to whether other temporary signs were subject to the same restriction. As an example, the Court pointed to “for sale” signs, noting that such signs could be posted for as long as the property remains for sale, which could be longer than 90 days. The court held that the 90-day remove or replace restriction was therefore content-based, because the City would have to look to the content of the sign to determine whether the restriction applied. The Court then found that the City’s interest in promoting aesthetics, while a substantial government interest, is not compelling. As such, the Court found the durational provisions were unconstitutional.

Importantly, the Court addressed the remainder of that section, which requires immediate removal of signs “tied to an election.” The Court took issue with this language, in that determining whether the sign is “tied to an election” requires the City to look to the content of the sign. Moreover, the Court was troubled with the vagueness of the phrase, in that it would be difficult to ascertain whether a particular sign was tied to an election. The Court encouraged the city “to consider an alternative phrase.”

The Court then turned to Section 19.48.015 L.2(f), requiring Informational Signs to be designed to be stable under all weather conditions. The Court again looked to other temporary signs restrictions, such as church signs and “for sale” signs, which do not contain such a provision. The Court accordingly determined that the City would have to look to the content of a sign to determine whether the restriction applied and that, as such, the restriction was content-based. The Court went on to find that the City’s interest was not compelling.

Finally, the Court considered whether it could sever the unconstitutional portions of the Ordinance, meaning that it could uphold those provisions that do not violate the constitution. The Court concluded that it could indeed sever those provisions, and held the remaining portion of the ordinance to be enforceable.

B. Meeting With Attorney Steve Bonney

Steve Bonney represents John Quinly. While he was not the primary attorney involved from the ACLU during briefing and oral argument, he now is the primary contact person.

Amii Castle of Lathrop & Gage met with Mr. Bonney on September 19, 2006. The purpose of the meeting was to brainstorm to determine what provisions of the sign ordinance needed to be amended based upon Judge Lungstrum’s opinion and to discuss ending the litigation between the City and Quinly. The meeting was extremely productive, as the two shared their views on the constitutionality of the sign ordinance provisions and effectively came to an agreement that further litigation against the City was not going to be pursued.

Ms. Castle and Mr. Bonney have had several subsequent conferences, wherein the two have discussed the ongoing work product regarding the proposed amendments. At this juncture, with the proposed amendments set forth below, Mr. Bonney has agreed to dismiss the lawsuit filed by Mr. Quinly.

C. Summary of Proposed Amendments

In a nutshell, Judge Lungstrum indicated that the only sign ordinance that would not violate the First Amendment was one in which *all* temporary signs are treated the same. This places municipalities in a frustrating position, but the court has made very clear what it will consider a constitutional sign ordinance.

There are several other provisions I am suggesting be revised that were not specifically addressed in Judge Lungstrum's opinion (because they were not challenged by Quinly in this lawsuit). However, if later challenged, a court may find some to be unconstitutional.

II. PROPOSED AMENDMENTS

1. 19.48.011 Definitions

(a) Delete subsections A (Advertising Signs) and E (Construction Signs) and N (Commercial Sign) and replace with the following definitions:

“Off-Site Sign. A sign which displays any message directing attention to a business, product, service, profession, commodity, activity, event, person, institution or any other commercial message, which is generally conducted, sold, manufactured, produced, offered or occurs elsewhere than on the premises where such sign is located.”

“On-Site Sign. A sign that is other than an off-site sign.”

Explanation: This best serves the purpose of prohibiting advertising signs off-site. The off-site/on-site distinction has been uniformly upheld to allow cities to prohibit advertising signs that are not on the site of the business or enterprise.

(b) Add to definition of Monument Signs: “and constructed with permanent building materials”

Explanation: The current definition may be too broad and be found to apply to all signs, including temporary signs. The definition should be squared with the further definition contained in 19.048.15(M).

(c) Revise 19.48.011 O to the following: “**Temporary Sign.** A sign that is intended for a temporary period of posting on public or private property and is typically constructed from nondurable materials, including paper, cardboard, cloth, plastic, and/or wallboard, and does not constitute a structure subject to the City's Building Code and Zoning provisions.”

Explanation: Including within the definition the types of speech (e.g. promotes expression of free speech, a personal belief, or a political party, candidate, or issue) is problematic because it bases the definition on the content of the speech. With regard to adding the "stable" clauses in the definition section, this still proposes a vagueness problem. How would the city define stable? For example, we would have to define by measurements how much the sign moved to be considered unstable.

2. **19.48.012 Prohibited Signs**

(a) Delete subsection (A) (advertising signs) and replace with (A) "Off-Site Signs"

Explanation: City is entitled to regulate off-site commercial signs, and the courts are more likely to uphold if couched in the definition of "off-site."

3. **19.48.015 Regulations Applicable to All Districts**

(a) Add to subsection A.1 (Sign Permit) "Neither a permit nor a fee is required to post temporary signs."

Explanation: Courts have held unconstitutional permit and fee requirements for temporary signs.

(b) Delete subsection (B)(2)-(B)(6). The remaining subsection (B) will contain only (1) and (7).

Explanation: These subsections apply to the previous ordinance which refer to provisions we are deleting. In addition, subsection (B)(3) is problematic, given that a court would find the allowance of "signs of community interest" as vague.

(c) Revise F (Certain Devices and Displays) as follows:

F. Certain devices and Displays

1. "Movement or the illusion of movement, flashing of lights or reflectors, likeness of human or animal forms, or searchlights are prohibited.

2. "Permanent banners may be allowed as an architectural or decorative accessory in shopping centers and other developments provided they are generally uniform throughout the project, and are in harmony with the architectural theme of the development. No such banners shall be installed unless their location and design have first been approved by the Planning Commission. (Ord. 2004, Sec. II, 2001)."

The remaining subsections should be deleted

Explanation: I believe we can keep the provision regarding permanent banners. Also, the prohibition of "obscene" should be its own subsection."

(d) 19.048.015(I) (For Sale Signs) should be revised as follows:

19.048.015(I) (Non-Residential Property for Sale). “Only one sign shall be permitted for each project that is being offered for sale in a non-residential area.” The remaining text is fine except that the provision should allow for only 16 square feet rather than 20 square feet. Finally, the sentence “‘For Sale’ signs shall be removed within ten days after the close of the sale” should be replaced with “Such a sign may be posted for a period of up to ninety (90) days, at which time the sign shall be removed or replaced, but in no event shall such a sign remain after ten days after the close of the sale.”

Explanation: Pursuant to recent case law, allowing “For Sale” signs is content based, since the city is restricting the content of the sign. Rather, the restriction should be couched in terms of the land use. Moreover, allowing for these temporary signs in nonresidential areas to be 20 square feet is content based because “temporary signs” displayed anywhere in the city can be no more than 16 square feet. Finally, the removal or replacement should apply as it does to any other temporary sign.

(e) Add the following provision as a separate subsection:

Obscene Materials. Obscene signs, flags, banners, or any sign of any type are prohibited. “Obscene” is defined as any material that (a) whether the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Explanation: This should be its own subsection under Regulations Applicable to All Districts, rather than under Certain Devices or Displays. Also, the definition contained herein is the standard definition whose language comes directly from the Supreme Court.

(f) Add the following provision as a separate subsection:

“Substitution of messages. Subject to the land owner’s consent, a noncommercial message of any type may be substituted for any duly permitted or allowed commercial message or any duly permitted or allowed noncommercial message, provided that the Sign or Sign Structure is legal without consideration of message content. This substitution of message may be made without any additional approval or permitting. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over noncommercial speech, or favoring of any particular noncommercial message over any other noncommercial message. This provision does not create a right to increase the total amount of signage on a parcel or land use, nor does it affect the requirement that a sign structure or mounting device be properly permitted. This provision does not allow for the substitution of an offsite commercial message in place of an onsite commercial message.

Explanation: This provision is necessary, as the courts have held that a city cannot favor commercial speech over noncommercial speech. In other words, this provision permits any otherwise properly erected sign to contain noncommercial messages in lieu of any other message. The ordinance must guarantee that political and other noncommercial messages are not limited to one type of sign structure.

4. 19.48.020 Regulations Applicable to Districts R-1a through R-4 Inclusive

(a) Delete subsection A.2 (Temporary Church Signs) in its entirety. Reference to subsection 2 in subsection 3 therefore should be deleted

Explanation: This is one of the specific provisions referenced by Judge Lungstrum as being problematic when read in conjunction with the restrictions placed on other temporary signs. Bottom line is that all temporary signs must be treated the same.

(b) Delete subsections B (Garage Sales), C (For Sale, For rent, or For Lease) and D (Townhouse or Apartment)

Explanation: For sale and for rent signs are not considered commercial speech. These are specific provisions referenced by Judge Lungstrum as being problematic when read in conjunction with the restrictions placed on other temporary signs. They are content based and have differing restrictions than other temporary signs.

5. 19.48.025 Regulations Applicable to Districts C-0, C-1, C-2, and C-3

(a) Delete the word “temporary” in subsections E (Buildings Under Construction) and F (New Subdivisions or developments). In addition, delete in subsection E ((Buildings Under Construction) “showing the names of architects, lenders, engineers, builders, or contractors and owner

Explanation: Judge Lungstrum questioned whether Quinly would have standing to challenge the regulation of signs in a commercial district. However, if challenged, removal of the word “temporary” renders these provisions safer. With the time limitations put on each already contained therein (removal upon completion of building and permit not issued for more than one year), there is no reason to name them as temporary. Finally, a clause restricting the content of signs for buildings under construction is clearly content-based, in that content other than contractor and architect names on other temporary signs is limited to 16 square feet.

6. 19.48.015 L Informational Signs

(a) Revise caption to “19.48.015 Temporary Signs”

All remaining references in this subsection should be changed from “informational” to “temporary.”

(b) Delete “The City finds that Informational signs provide an important medium through which individuals may convey a variety of noncommercial messages.” The provision should merely say: “Temporary signs, left completely unregulated, can become a threat to public safety as a traffic hazard and detriment to property values and the City’s overall public welfare as an aesthetic nuisance.”

Explanation: The provision is unnecessary and may be problematic considering that it is unconstitutional to favor commercial speech over noncommercial speech. Thus, reference to noncommercial speech should be deleted.

(c) Subsection 2(a): Revise the total square footage in the aggregate to not exceed forty-eight (48) square feet

Explanation: It is questionable whether thirty-two square feet would be upheld as constitutional. Eighty square feet is constitutional, but that seems a bit excessive. Forty-eight square feet appears to be an appropriate middle-ground that likely would be found constitutional.

(d) Delete subsection 2(b) in its entirety

Explanation: The prohibition of obscene signs applies to all signs as amended. Accordingly, it is not necessary to put in temporary sign subsection.

(e) Subsection 2(f): This subsection should be deleted in its entirety

Explanation: This provision was struck down by Judge Lungstrum as being content based. Moreover, requiring signs “to be stable under all weather conditions, including high winds” is extremely vague. The term “stable” would need to be specifically defined, which would be very difficult to do. Thus, deletion of the subsection is appropriate.

(f) Subsection 2(i): Delete “except those signs tied to an election shall be removed immediately after the date of the election.”

Explanation: Judge Lungstrum took issue with this provision, finding that “tied to an election” could be not defined and also finding that removal (and not removal or replacement) of election signs was content based. Judge Lungstrum explicitly suggested in his written opinion that the City find other language. To that end, deletion of this clause would alleviate any constitutional concerns.

It is fairly certain that “removal or replacement” of temporary signs is constitutional.

(g) Subsection 2(j): The current language in this subsection should be deleted in its entirety

Explanation: The provision is problematic considering that it is unconstitutional to favor commercial speech over noncommercial speech. One issue is that temporary signs are allowed in commercial districts, so we cannot prohibit temporary signs that advertise or

promote any commercial enterprise or event. The “off-site” and “on-site” is as far as we can go to regulate – meaning that the “advertisement” must be advertisement related to the site. In fact, to ensure that the ordinance is constitutional, a “substitution clause” will be included in a separate section of the ordinance allowing for the substitution of commercial and noncommercial messages.

(h) Subsection 3(c): The current language should be revised as follows: “If the Building Official finds that any sign is posted in violation of these regulations on public property, the Building Official is authorized to remove any such signs. If the Building Official finds that any sign posted in violation of these regulations on private property, (s)he shall give written notice to the person who has posted or directed the posting of the sign. If that person fails to remove or replace the sign so as to comply with the standards herein set forth within seventy-two (72) hours after such notice, such sign may be removed by the Building Official.”

Explanation: Foremost, without amendment, this provision could be found to violate the Due Process clause of the Constitution, in that removal of a sign without prior notice may violate a citizen’s due process rights. Thus, a notice requirement should be included. Also, distinguishing between private and public property should alleviate concerns about city’s ability to remove nonconforming signs on public property.

NOTE: The Mr. Bonney still believes that removal of nonconforming signs on private property violates due process, even with the ample notice provision we have included. However, revision of this provision is not necessary to settle the litigation with Quinly. In any event, Mr. Bonney does not “bless” this provision. Mr. Bonney suggests citing or fining a residential owner for nonconforming temporary signs. There is a good chance the amendment as proposed would be upheld, but the city may want to consider a citation or fine structure rather than removal.