

PLANNING COMMISSION MINUTES
December 2, 2014

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, December 2, 2014, in the Municipal Building Council Chambers at 7700 Mission Road. Chairman Bob Lindeblad called the meeting to order at 7:15 p.m. with the following members present: Nancy Vennard, Nancy Wallerstein, Larry Levy, James Breneman and Gregory Wolf.

The following persons were present in their advisory capacity to the Planning Commission: Ron Williamson, City Planning Consultant; Kate Gunja, Assistant City Administrator; Keith Bredehoeft, Director of Public Works and Joyce Hagen Mundy, City Clerk/Planning Commission Secretary.

APPROVAL OF MINUTES

Larry Levy moved for the approval of the minutes of November 4, 2014 as submitted. The motion was seconded by Nancy Wallerstein and passed by a vote of 4 to 0 with James Breneman and Gregory Wolf abstaining.

PUBLIC HEARINGS

**PC2014-08 Request for Amendment to Special Use Permit for Private School
 3531 Somerset Drive
 Zoning: R-1a
 Applicant: Kathy Morrison, Highlawn Montessori School**

Kathy Morrison, Director of Highlawn Montessori School at 3531 Somerset, provided a history of the school which was established in 1963 in Prairie Village and originally was located in the "Old Woolf Farmhouse" behind the library. They purchased this site from J.C. Nichols in 1969 and as a part of the purchase both parties agreed to certain restrictions. The restrictions were between J.C. Nichols and the Friends of Montessori Association. In general the restrictions limited the use of the property to a school or residential. When established in 1963, the school served 20 children ages three to six in one classroom.

The Governing Body approved the first phase of the Highlawn Montessori School as a Special Use Permit on March 7, 1977; the second phase was approved on April 16th, 1984; a third phase was approved on October 18, 1993; in June, 2009 the expansion to a lot to the east for playground and open space was approved; and on March 19, 2012 the addition of two new second floor classrooms on the east building was approved. The Highlawn Montessori School has had a long history in this neighborhood and has consistently grown and expanded to accommodate its students. Currently the Highlawn Montessori School has a capacity of approximately 168 students. There are five Primary

Classes of children ages three to six and two elementary classrooms for children from first to sixth grade. Each classroom can accommodate 24 children.

Highlawn's elementary program currently serves 46 students in grades 1 - 6 and is located in the 2 classroom, second story addition to the East Building that was completed in 2012. They are seeking permission to add a second story addition to the West building. The addition would include space for two additional elementary classrooms as well as a multi-purpose room that would be used for lunch, art, special programs or speakers and after school clubs. The addition of the two elementary classrooms would expand Highlawn's Elementary program from two multi-age classrooms serving 48 students in grades 1-6 to four classrooms with space for 48 additional students.

Mrs. Morrison stated she currently has 50 students on a waiting list for 1st grade. The expansion would bring the total student population to 216 students. During the 2012 expansion concerns were raised regarding traffic congestion. A traffic study was completed and changes were made to monitor traffic with the assistance of Sgt. Carney of the Prairie Village Police Department. At that time, changes were also made to Somerset creating an extra lane that allows vehicles to stack while waiting for students. Mrs. Morrison stated that she would continue to work with Sgt. Carney and noted the traffic study recently updated by GBA found that the small increases in the overall trip generation by the proposed expansion will not cause any particular traffic concerns during the critical weekday morning and afternoon peak traffic times when no vehicle queuing was currently observed on Somerset Drive beyond the adjacent Public Works facility driveway. It appears that the school's existing parking lots and dedicated right-turn lane are being used effectively during these times to minimize any traffic impacts on the adjacent segment of Somerset Drive. Mrs. Morrison noted that many of the families have students in both the pre-K and elementary programs with all students arriving and leaving during the elementary hours, not the peak pre-K traffic hours.

The architect for the project Craig Luebbert, with Nolte and Associates 9400 Reeds Road, Suite 200, reviewed the proposed plans for the expansion. Several meetings were held with city staff in the preparation of the plans. The plan adds 9 parking spaces to the site for a total of 22 spaces. City Code requires 20 spaces. The proposed west elevation adds the second story and creates an indentifying main entrance to the school with a tower element and curved entry. The construction materials and color will match the existing building.

Ron Williamson noted there have been several meetings on this project involving the City's Building Official, Sgt. James Carney and Fire Department representative. The primary concern has been with traffic and a condition of approval has been added to specifically address potential issues in this area.

Mr. Williamson noted additional language needed to be added to Condition 7 for clarification. The condition should read "That the Special Use Permit be approved for an indefinite period of time provided that the applicant obtains a building permit and starts construction on the building within two years after the date of approval by the Governing

Body unless the applicant shall reappear to the Planning Commission and Governing Body to receive an extension of time prior to the expiration.

Bob Lindeblad confirmed that the applicant had reviewed and accepts the recommended conditions of approval.

The applicant held a meeting on October 24th and a second meeting on November 19th in accordance with Planning Commission Citizen Participation Policy. Summaries of those meetings are attached. The issue of concern to the neighbors was parking for evening school events at the October meeting. No one appeared at the November meeting.

Chairman Bob Lindeblad opened the public hearing on this application.

Doug Lenhart, 3317 West 81st Street, stated his only concern was with overflow parking on Reinhardt and Windsor when school events occur. Vehicles park on both sides of the street creating a safety hazard in that fire and public safety vehicles are unable to access.

No one else was present to speak on this application and the public hearing was closed at 7:30 p.m.

Kathy Morrison responded that the police department has stated the streets are wide enough for access by public safety vehicles with cars parked on both sides of the street. She noted during all school events, her staff parks in the city's public works facility parking area leaving their parking lot open to parents. She also reviewed the times and number of all school events which have been significantly reduced and generally last for an hour or 90 minutes. The all-school picnic has been moved to Taliaferro Park and back to school nights have been set to only include two or three classrooms at a time.

Chairman Bob Lindeblad led the Commission in the following review of the factors for consideration for the approval of special use permits and the Golden Factors:

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

The property is zoned R-1A Single-Family Residential and has been developed for the Montessori School since 1977. The existing buildings set back approximately 32' from Somerset Drive and meet all other set back requirements. The proposed building height is 34' 11" which is within the 35' height limit of the regulations. The lot coverage is currently 10.5 percent and since the proposed expansion is on the second floor the lot coverage will not increase. The 30 percent lot coverage would allow approximately 23,138 sq. ft. The proposed expansion does comply with the intensity of use, yard and use regulations.

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

The proposal is to add two additional elementary classrooms and a multi-purpose room. Traffic is already congested in this area during drop off and more so during pick-up times. Traffic is stacked on Somerset Drive and it does present concerns for those entering and leaving the Public Works facility, as well as, those traveling through on Somerset Drive. The school has monitored the traffic and it seems to work reasonably well.

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 addition of the second floor for the west wing of the facility will not cause substantial injury to the value of the property in the area. The school actually serves as somewhat of a buffer between the homes on Somerset Drive and the Public Works yard to the south.

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 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.

This proposal is for two additional classrooms and a multi-purpose room and is not of a size that will dominate the neighborhood or hinder development or redevelopment. This neighborhood is completely developed.

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

The ordinance requires two off-street parking spaces per classroom and with 9 classrooms and a multi-purpose room that is 20 spaces. Currently there are 14 spaces on the site which includes 2 in the driveway in front of the playground. The ordinance is probably deficient in its requirement, since the parking spaces always seem to be full. The applicant has proposed 8 additional parking spaces for a total of 22 spaces, but that probably is not enough. The ordinance requires that parking must be 15 feet from the property line adjacent to a street and 8 feet from other property lines. The proposed parking meets that requirement.

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

The proposed expansion will be on the second floor and will not create additional hard surface areas; therefore, a storm drainage plan has not been required.

- 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.**

No changes are proposed for access. Access is off Somerset Drive. The property is entered at the west drive and exited at the east drive. Traffic circulates around the parking area and children are dropped off and picked up at both the west and north entrances to the building. Traffic backs up on Somerset Drive and there is congestion on the street. A Traffic Study was prepared for the last application and has been updated. The Police Department also conducted a study and both concluded that the addition of the elementary level students should not create major problems. The existing traffic problem is caused by the preschool classes which run from 8:45 am to 11:45 am. The elementary students are dropped off between 8:00 and 8:15 am and picked up from 3:00 to 3:15 pm. The preschoolers are dropped off after and picked up before the elementary students. Currently the preschool is causing traffic concerns and perhaps staggering start times could alleviate this problem. Unfortunately, this is not a traffic problem that can be simply solved through calculations. The solution will need to be determined by actual experience. This is a technical issue that needs to be resolved by the applicant's traffic engineer and the Police Department; and it may take several scenarios to resolve it. A condition needs to be added that that affect.

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

This particular use does not appear to have any hazardous or toxic materials, hazardous processes or obnoxious odors related to its use. There may be some noise generated from the outdoor play of the children, but it should be mitigated through fencing and landscape screening on the adjacent property lines.

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

The plans submitted indicate the materials will be similar to those used on the rest of the building; however, a new material, stone, has been introduced for the stair tower. The building design is still residential in character and is compatible with the neighborhood.

GOLDEN FACTORS FOR CONSIDERATION:

- 1. The character of the neighborhood;**

The neighborhood is predominately single-family residential with the exception of the Public Works Facility and the sewage pump station that are located to the southwest.

- 2. The zoning and uses of property nearby;**

North: R-1A Single-Family Residential - Single Family Dwellings

East: Leawood R-1 Single-Family Residential - Single Family Dwelling

South: R-1A Single-Family Residential - Public Works Maintenance Yard

West: RP-4 Planned Condominium District - Townhomes

3. The suitability of the property for the uses to which it has been restricted under its existing zoning;

The property has been used as a Montessori School since it occupied the site in 1977. The school has acquired additional property and has continued to expand over the years. The site is suitable for its existing use, but it is outgrowing the site.

4. The extent that a change will detrimentally affect neighboring property;

The proposal is to add two elementary school classrooms and a multi-purpose room which will increase traffic. Traffic is already a concern to the neighbors, but the addition of 48 elementary students should not cause any major traffic problems.

5. The length of time of any vacancy of the property;

The property has not been vacant since the facility was built in 1977.

6. The relative gain to public health, safety and welfare by destruction of value of the applicant's property as compared to the hardship on other individual landowners;

The proposed amendment to the Special Use Permit is to allow a more intense use of the property. This will provide a greater service to the public, but the only hardship that may affect the nearby landowners is increased traffic.

7. City staff recommendations;

Staff is concerned that this site will have reached its maximum development for a private school. The site can accommodate the buildings and the buildings are being designed in a residential flavor. The primary concern is the adequacy of the site to accommodate parking and traffic circulation.

8. Conformance with the Comprehensive Plan.

One of the primary objectives of Village Vision is to encourage reinvestment in the community to maintain the quality of life in Prairie Village. The Highlawn Montessori School is one of the amenities that set Prairie Village apart from other competing communities in the metropolitan area. This application is for the expansion of an existing use within the community and is consistent with Village Vision in encouraging reinvestment.

James Breneman noted that condition #4 references plans dated 10/3/2014; however, the site plan submitted for Planning Commission review is dated 11/19/2014. Mr. Williamson responded the dates should be corrected.

Gregory Wolf moved the Planning Commission find favorably on the factors for consideration and the Golden Factors and recommend the Governing Body approve the requested amendment to the Special Use Permit for a private school at 3531 Somerset Drive subject to the following conditions:

1. That any outdoor lighting installed shall be in accordance with the lighting ordinance.
2. That the following requirements be implemented to address traffic:
 - a. The Montessori School shall coordinate the parent and staff traffic education program with the Prairie Village Police Department Traffic Unit.

- b. If traffic is an issue for either the preschool or elementary classes, as determined by the Police Department, the applicant's traffic engineer will work with the Police Department to resolve the issue. This may result in staggering start times. This will be observed on a semester basis and adjustments will be made accordingly.
3. That the applicant use the driveway on the east lot to accommodate at least two parking spaces for staff.
4. That the materials be the same as the existing structure, with the exception of adding stone, and that the applicant construct the addition in accordance with the site plan dated 11/19/2014 and the elevation and floor plans dated 10/03/2014..
5. That the Special Use Permit be approved for a maximum of nine classrooms (5 primary and 4 elementary) and one multi-purpose room with a maximum enrollment of 24 students per classroom for a total that does not exceed 120 primary and 96 elementary students.
6. That the applicant protect existing major trees during the demolition and installation of new improvements.
7. That the Special Use Permit be approved for an indefinite period of time provided that the applicant obtains a building permit and starts construction on the building within two years after the date of approval by the Governing Body unless the applicant shall reappear to the Planning Commission and Governing Body to receive an extension of time prior to the expiration.
8. If the applicant is found to be in non-compliance with the conditions of the Special Use Permit, the permit will become null and void within 90 days of notification of non-compliance, unless the non-compliance is corrected.

The motion was seconded by Larry Levy and passed unanimously.

Chairman Bob Lindeblad led the Commission in the following review of the criteria for Site Plan for the expansion to Highlawn Montessori School at 3531 Somerset:

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

The buildings, parking and open space meet the requirements of the zoning ordinance, however, more parking than is required by the ordinance is needed to serve this facility. The stacking area for vehicles particularly during the student drop off and pick-up times is not adequate on site to handle the demand, and cars stack up on Somerset Drive waiting for a class to let out. This problem is not unique to Highlawn Montessori, but is a problem shared by all schools. The applicant is providing 22 parking spaces on site; which the requirement is 20 spaces.

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

This site is currently served by utilities and they should be adequate to serve the proposed expansion.

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

This is a second story addition and the impervious surface will be increasing very little. The removal of the house on the lot to the east reduced the land surface area for the school significantly for the total site. The existing stormwater drainage should be

adequate to handle the minimal increase and a stormwater management plan was not required.

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

This is a concern because traffic stacking up on Somerset Drive causes congestion during drop off and pick-up times. The congestion apparently causes people to drive carefully along Somerset Drive and there are few accidents. This was addressed in detail in the Special Use Permit Application.

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

When the expansion was approved in 2012 it was pointed out that this site is nearing its maximum capacity to accommodate additional development. The site is irregularly shaped and it has elevation change that makes it a difficult site for design. The proposed expansion is a second story which makes good sense considering the challenges of the site. The proposed expansion is generally consistent with good land planning and site engineering design principals with the exception that the site cannot accommodate the traffic and vehicles stacking up on Somerset Drive.

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

The proposed second floor expansion will be connected to the second floor of the east building that was just completed. The proposed materials will generally be the same as used in the east building. Stone is being added to the west elevation at the entry which is a new material and it helps break up the building façade. The calculated building height will be approximately 29 feet and the height to the top of the ridgeline will be approximately 3 feet, which is well below the maximum height for a single-family dwelling. Although the building is large, it still retains a residential character.

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

One of the primary objectives of Village Vision is to encourage reinvestment in the community to maintain the quality of life in Prairie Village. The Highlawn Montessori School is one of the amenities that sets Prairie Village apart from other competing communities in the metropolitan area. This application is for the expansion of an existing use within the community and is consistent with Village Vision in encouraging reinvestment.

Gregory Wolf moved the Planning Commission approve the proposed site plan for the expansion of the Highlawn Montessori School subject to the following conditions:

1. That any outdoor lighting installed shall be in accordance with the lighting ordinance.
2. That the proposed addition use the same materials, except for the addition of stone, and be painted the same color as the existing buildings as shown on the elevations and floor plan drawings dated 10/3//2014 and the site plan dated 11/19/2014.

3. That the applicant protect existing major trees during the demolition and installation of new improvements.

The motion was seconded by Nancy Wallerstein and passed unanimously.

PC2014-09 Request for Special Use Permit for Homestead Country Club 6510 Mission Road

Chairman Bob Lindeblad recused himself from consideration of the next two applications due to a professional conflict of interest as an employee of BHC Rhodes.

Vice Chairman Nancy Vennard moved to the Chair.

Mark Johnson, with BHC Rhodes, 7101 College Blvd., noted he would be making comments on both the application for the Special Use Permit for Homestead Country Club and the related request for preliminary plat approval for Homestead Estates as they are closely related. To ensure the financial stability of the Club, Homestead Country Club is selling off the front 5.62 acres for development of 11 single-family lots. Homestead will be reduced in size from 14.48 acres to 8.86 acres. There will be some major changes in the Site Plan as a result of the sell-off. The existing Club House and pool concession building will be demolished and the north four tennis courts will be repurposed for parking. With the Club House removed, the need for parking will be significantly reduced. The Club will include the fitness center/restaurant, four paddle courts, the swimming pool and twelve tennis courts. Four of the courts are enclosed during the winter months with an air supported structure.

Mr. Johnson stated that both applicants have reviewed the staff comments and are in agreement with them .

Ron Williamson noted that due to filing requirements condition number 2 regarding the demolition of the Club House and pool concession needs to be revised as follows:

2. That the Club House and pool concession building be demolished 90 days after the recording of the Final Plat of Homestead Estates.

Staff also recommends the addition of condition #12 to read: That the applicant work with Public Works for approval of the storm water management plan. Keith Bredehoeft stated the preliminary storm drainage plan has been submitted and the city is working with them on preparation of the final storm drainage plan.

Ron Williamson noted this application is for only that portion of the property that will remain as the Homestead Country Club. The Special Use Permit covering the area to be sold off will automatically expire six months after it is abandoned or discontinued by ordinance.

The applicant held a neighborhood meeting on November 24, 2014, in accordance with the Planning Commission Citizen Participation Policy and nine neighbors attended. The majority of the questions were about the operation of the Homestead Country Club and

very little about the specifics of the application. The neighbors asked about the public street and parking.

Larry Levy said he would like to see a six foot fence separating the club property from the residential properties particularly on the west side if not around the entire club.

Marc Abbott, attorney with Polsellini, responded there has been discussion of a green buffer zone between the properties, but not a fence. Mr. Levy stated he feels it is the club's responsibility to provide privacy for the residents on the neighboring properties. He would like to see this provide some sound mitigation as well. Mr. Abbot restated the applicant is looking at a landscape buffer on the east side.

Brian Collins, Manager of Homestead Country Club, noted the club has to have a fence around its pool and they plan to add a green buffer.

Larry Levy stated his preference is to see fence surrounding the perimeter of the club. He feels this is necessary to secure the sale of the residential lots. Mr. Collins stated the owners will be aware of the surrounding property when they purchase the lot. The club will work with the developer on this issue.

Nancy Vennard asked the Commission if they wanted added as a condition that the applicant prepare and submit to staff a landscape and screening plan for review and approval. The Commissioners added this as condition 13.

Vice Chairman Nancy Vennard opened the public hearing on the request for a special use permit for Homestead Country Club.

Tim Butt, 3909 Delmar Drive, expressed the following concerns to the Commission: First, the City does not have an Architectural Review Board and he is concerned with a possible lack of cohesiveness among the eleven homes to be built. He noted at some time there was discussion about of four foot wrought iron fence surrounding the property. He wants to see some kind of visual barrier separating the properties, preferably landscaping and a fence. Mr. Butt noted parking issues from events held at the Country Club with cars parking along both sides of Delmar and fears with reduced parking this will be a problem. He would like to see the country club notify the City of events with more than 90 persons and have the city place no parking signs on one side of the street.

Nancy Vennard replied that without a clubhouse, the club will not be catering large events. She asked if the problem was at a particular time. Mr. Butt replied it was more often in the summer. Brian Collins responded they have worked with the police department and have an arrangement for parking in the Village Church Parking lot. There were two events this past summer and no parking signs were posted.

David Heim, 4009 Delmar Drive, stated he shares Mr. Butt's concerns particularly as they relate to the maintenance of greenspace and landscaping between the properties. He also noted past problems with stormwater runoff. Mr. Heim noted this property abuts

the new homes to be constructed and will be looking directly into their backyard so he would like to see some type of privacy barrier. Mr. Heim confirmed the maximum height allowed for a house is 35 feet. He wants to be certain the setback from the back property line is maintained.

Cindy Worthy, 4306 Homestead, stated that she would like to see consistency in the screening provided and that it should be around the entire country club property, not just the new homes.

Jim Bell, 4322 Homestead Circle, stated there was a deed restriction on this property that the property remains part of the Indian Fields Homes Association or if they form their own homes association that it follow the building and lot restrictions. He wants the City to make sure these restrictions are met. Mr. Corey Childress, the builder/developer for this property noted that these are to be high end homes in the \$2M range.

Ron Williamson responded that the new area is zoned R-1a and that the only issues addressed by the plat are easements and right-of-ways. David Waters, representing the City Attorney, stated the city is not involved in private deed restrictions. They are a private contract. The city's responsibility lies with the appropriate zoning.

Mary Ann Murray Simons, 4110 Homestead, stated that she hoped the fitness center would be painted as the paint is peeling and the dead landscaping along the platform tennis courts replaced. Brian Collins stated the Club is aware of these needs, but they are not in the current plans. Nancy Vennard asked what were the plans for improvement. Mr. Collins replied, not immediately, but eventually.

Kate Gunja stated the peeling paint is a maintenance code violation and she will have it investigated by the Code Enforcement Officer who will work with the Club.

With no one else wishing to address the Commission, the Public Hearing was closed at 8:15 p.m.

Vice Chairman Nancy Vennard led the Commission in the following review of the factors for consideration of Special Use Permits and the Golden Factors relative to this application:

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

The existing facilities comply with the intensity of use regulations, yard regulations and use limitations.

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

The applicant is requesting approval to continue the use of the existing facilities except for the Club House and pool concession building which will be removed and the north

four tennis courts. The club has been in operation for over 60 years and has not had an adverse effect on 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 Homestead Country Club has operated at this location for over 60 years and has not caused any substantial injury to the value of property in the neighborhood. The proposal at this time is to reduce the size of the facility which should be a benefit to the surrounding neighborhood.

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 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 proposed Special Use Permit is a reduction in the size of the Homestead Country Club operation. The immediate surrounding neighborhood is totally developed. It should be noted that several tear down/rebuilds have occurred in the area and the east 5.62 acres will be developed for single-family lots. The proposed use will not hinder development in the area.

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

The ordinance does not have a parking standard for a Country Club and based on the recent amendment to the Off-Street Parking Requirements, the Planning Commission, with the approval of the Governing Body, determines the parking assignment for such uses.

The parking requirement will be the total of the parking for each individual use. Staff has used standards from the Prairie Village Ordinance where appropriate and standards from other ordinances when the use is not included in the City Ordinance. The proposed use includes the tennis courts, platform tennis courts, restaurant, fitness center and swimming pool. The Club House will be demolished so parking will not be required for it.

The following is a discussion of each use and a recommended parking requirement:

- a. Restaurant: The restaurant is included in the Prairie Village Ordinance and it requires one space per 2.5 seats. The restaurant has 28 seats inside, which requires 11 spaces, and 35 seats outside, which requires 14 spaces, for a total of 25 spaces. This restaurant serves only members and their guests. It is not open to the public as other restaurants are. So the restaurant itself is not really a traffic

generator. It is suggested that the parking for the restaurant be reduced to half the normal requirement and require 13 spaces rather than 25.

- b. Fitness Center: This use is also included in the Parking Ordinance which requires one space for each 250 sq. ft. of gross floor area. The floor area is 3,234 sq. ft. which requires 13 spaces.
- c. Tennis Courts: The Parking Ordinance does not have a requirement for tennis courts. The north four tennis courts will be repurposed for a parking lot and the net result will be 12 tennis courts. There are also four platform tennis courts. The range in parking space requirements is from one to four, with two to three being the most common. Platform tennis courts are not mentioned in any ordinances. Since this is a multi-use area it is recommended that two spaces per court be required which would result in 24 spaces for the regular tennis courts and 8 spaces for the platform tennis courts. The platform tennis courts are only used from October through March, so they are seasonal. In cold weather 8 of the 12 tennis courts are not used.
- d. Swimming Pool: Very few cities have a parking requirement for private pools so the available data is very limited. Leawood is the only city in this area that has a requirement and it is 10 spaces per lifeguard. Homestead has four lifeguards and based on Leadwood's ordinance 40 spaces would be required.
- e. Parking Summary
 - Restaurant 13 spaces
 - Fitness Center 13 spaces
 - Tennis Courts 24 spaces
 - Platform Tennis Courts 8 spaces
 - Swimming Pool 40 spaces
 - 98 Total Spaces

The plan proposes 99 spaces and would meet this requirement.

This should accommodate normal use. Homestead has an agreement to use the Village Presbyterian Church parking lot for major events such as swimming meets or tennis tournaments.

The ordinance requires parking lots to be 15 feet from a public street and 8 feet from a property line. This may require some adjustment of the parking lot location.

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

The applicant submitted a Storm Drainage Master Plan that also includes the area proposed for single-family development. Detention will be required and an area is shown on the proposed plan between the two parking lots. The Storm Drainage Report needs further analysis and the applicant will need to work with Public Works to resolve questions.

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.

In the future Homestead Country Club will be served by Homestead Court which will be a public street. The street will terminate with a cul-de-sac which will provide access to Homestead. Until the street is constructed, Homestead will need an access easement so that access is provided continuously.

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

Recreational uses can generate noise because of outdoor activities; however, the noise should be no greater than the existing development has been. No hazardous or toxic manufacturing or obnoxious odors will be generated by the use.

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

No new improvements are proposed. The Country Club will have the same facilities that exist with the exception of the Club House and pool concession building which will be demolished. The existing buildings were designed in a manner that is compatible with the surrounding residences.

GOLDEN FACTORS FOR CONSIDERATION:

- 1. The character of the neighborhood;**

The neighborhood is residential in character with a church and an elementary school to the south and a middle school to the north. The Country Club itself is surrounded by single-family dwellings.

- 2. The zoning and uses of property nearby;**

North: R-1A Single-Family District - Single Family Dwellings

East: R-1A Single-Family District - Vacant

South: R-1A Single-Family District - Single Family Dwellings

West: R-1A Single-Family District - Single Family Dwellings

- 3. The suitability of the property for the uses to which it has been restricted under its existing zoning;**

The property has been used as a Country Club through approval of a Special Use Permit. The use provides private recreational facilities for its members and has been an effective use of the property.

- 4. The extent that a change will detrimentally affect neighboring property;**

The facilities that will remain are the ones that exist now. The Club House will be demolished which should reduce traffic to the site which should have a positive effect on the neighboring properties.

- 5. The length of time of any vacancy of the property;**

The property has not been vacant for over 60 years.

6. The relative gain to public health, safety and welfare by destruction of value of the applicant's property as compared to the hardship on other individual landowners;

The Country Club is already developed and is an amenity for the residents of the area. The Country Club has been in existence for over 60 years and has not caused a hardship on other individual landowners.

7. City Staff Recommendations.

The Country Club is essentially the same operation with the exception of the Club House. It has operated in the neighborhood for over 60 years with minimal disruption of the neighborhood and it is recommended that the reduced operation be approved.

8. Conformance with the Comprehensive Plan.

Homestead Country Club is an amenity that provides value to the quality of life in Prairie Village. Residents of Prairie Village highly value the quality of life in the City and maintaining that high quality is of primary importance to the residents.

Gregory Wolf moved the Planning Commission find favorably on the factors for consideration and the Golden Factors recommend the Governing Body grant a Special Use Permit for a private club at 6510 Mission subject to the following conditions:

1. That the required parking of 98 spaces be approved for the project.
2. That the Club House and pool concession building be demolished within 90 days after the recording of the Final Plat of Homestead Estates.
3. That the air supported structure be allowed to be put in place from October 1st to April 30th each year, and the hours of operation be approved from 6:00 a.m. to 10:00 p.m., Monday through Friday, and 8:00 a.m. to 10:00 p.m., Saturday and Sunday.
4. That the Special Use Permit be approved for a Country Club/Private Club which includes swimming, physical fitness, tennis, other similar recreational facilities and dining activities including the sales of beer, wine and alcoholic beverages, all of which will be available only to members and their guests.
5. That the Club shall comply with all statutes of the State of Kansas and all ordinances of the City of Prairie Village relating to alcoholic liquor and/or cereal malt beverage and the sale or dispensing thereof.
6. That the Special Use Permit shall run with the land.
7. That any significant change to the exterior of any existing buildings, the replacement of buildings, the expansion of buildings, the construction of new buildings or changes to the site such as entrances and parking and major grading changes shall be submitted to the Planning Commission for Site Plan review and approval.
8. That the Special Use Permit be approved for an indefinite period of time, if however, it is discontinued or abandoned the Special Use Permit will expire in accordance with Section 19.20.055. Expiration of Special Use Permits.
9. If the applicant is found to be in non-compliance with the conditions of the Special Use Permit, the permit will become null and void within 90 days of notification of non-compliance, unless the non-compliance is corrected.
10. That the applicant obtain an easement of access to serve this property until Homestead Court is constructed.

11. That parking lots shall be 15 feet from the street and 8 feet from other property lines.
12. That the applicant work with Public Works for approval of the Final Storm Water Management Plan.
13. That the applicant prepare and submit to staff a landscape and screening plan for review and approval by Staff

The motion was seconded by James Breneman and passed by a vote of 4 to 0 with Larry Levy abstaining.

Vice Chairman Nancy Vennard led the Commission in the following review of the criteria for site plan approval:

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

The proposed Country Club will be reduced in size from what currently exists. The Club House and pool concession building will be demolished and an existing bank of tennis courts will be converted to parking. The site is adequate to accommodate these needs and still provide open space and landscape.

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

Utilities currently serve the proposed facility and no additional utilities are anticipated.

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

A Storm Water Master Plan has been submitted and a detention pond will be provided on the site. Since this detention pond will also serve a portion of the new residential subdivision, it will need to be maintained in a fully functional condition. Details on storm drainage needs to be approved by the Public Works Department.

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

The site will be served by a public street when Homestead Estates is platted. The street is a cul-de-sac and will provide public access.

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

The development is really not changing much from what exists now. A new parking lot will be built and the Club House and pool concession building will be demolished. The remaining facilities are in keeping 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.

No new buildings or structures are proposed. The Country Club will have the same facilities that exist with the exception of the Club House and pool concession building, which will be demolished. The existing buildings were designed in a manner that is compatible with the surrounding residences.

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

One of the primary objectives of the comprehensive plan is to encourage the reinvestment in the community to maintain the quality of life in Prairie Village. The Homestead Country Club is one of the unique amenities that sets Prairie Village apart from competing areas south of I-435 and the City should support the Club in order to maintain its competitive position. This application is consistent with the comprehensive plan in encouraging reinvestment in the community.

James Breneman moved the Planning Commission approve the Site Plan for the Homestead Country Club as shown on the Homestead Country Club Special Use Permit submittal drawings dated October 27, 2014. The motion was seconded by Gregory Wolf and passed by a vote of 5 to 0.

NON-PUBLIC HEARINGS

PC2014-123 Preliminary Plat Approval - Homestead Estates 6510 Mission Road

Mark Johnson, with BHC Rhodes, stated that Evan Talan Homes has a contract to purchase the east 5.62 acres from the Homestead Country Club to develop 11 single-family lots. The 11 single-family lots vary in size from 14,500 sq. ft. to 22,560 sq. ft. in area. The minimum area in the R-1A District is 10,000 sq. ft. so the lots more than adequately meet that requirement. The lots will be served by a public street, Homestead Court. Homestead Court is a cul-de-sac that is approximately 770 ft. in length. The street will also provide access to the Homestead Country Club.

Ron Williamson noted Staff was initially concerned that the development of this portion of the tract would not preclude development of the remaining 8.86 acres in the event that should occur. The site has an unusual shape, but it appears that the remaining area could be reasonably developed for single-family dwellings and this proposed plat would not preclude that from happening.

There are two tracts of land at the intersection of Homestead Court and Mission Road.. These need to be identified and, if they are common space, covenants are needed to guarantee maintenance.

Mark Johnson responded that the area on the north side is for the placement of an identification monument sign for both the subdivision and country club. The area on the other side is open green space.

James Breneman noted the grading plans designate this area as a detention pond with an outlet.

Mr. Johnson stated this area was initially thought to be needed for drainage retention. Based on the preliminary stormwater management plan this is not needed so the area will stay as open green space. Keith Bredehoeft responded that if necessary, any detention basin will be located as shown.

Mr. Breneman questioned the retaining wall shown on the back of lot 11 and along the parking areas on Sheet 2. Mr. Johnson stated he will need to clarify this.

Mr. Breneman also noted that the contours on the plat and the legends for the contours do not match. Mr. Johnson stated that this will be corrected.

STREETS

The proposed subdivision will be served by a public street which will also provide access to the Homestead Country Club.

The proposed street, Homestead Court, is a cul-de-sac and is approximately 770 feet in length. The subdivision regulations state that cul-de-sacs shall generally not exceed 500 feet in length. The minimum diameter of the cul-de-sac paving is 80 feet back of curb to back of curb. The right-of-way diameter of the cul-de-sac appears to be 100 feet which should be adequate to meet the paving requirement.

Mr. Williamson noted that in order to approve the 770-foot cul-de-sac length, the Planning Commission will need to authorize a variation. The subdivision regulations provide for variations whenever it is found that the land included in a subdivision plat, presented for approval, is of such size or shape or is subject to, or is to be devoted to such usage that full conformity to the provisions of this title is impossible or impractical. In authorizing such variations or conditional exceptions, the Commission shall find the following:

1. That there are special circumstances or conditions affecting the property;
2. That the variation of exception is necessary for reasonable and acceptable development of the property in question;
3. That the granting of the variation or conditional exception will not be detrimental to the public welfare or injurious to other property in the vicinity in which the particular property is situated.

This is an irregular shaped property which would not allow for a looped street to be built. It is narrow at the entrance from Mission Road and the proposed layout is a practical solution. The proposed residential development is being planned around existing Homestead Country Club facilities and the proposed layout is reasonable and acceptable. The developer will be required to install fire hydrants as required by the Fire District for safety purposes. The proposed length of the cul-de-sac will not be detrimental to the public welfare or injurious to other property in the area.

SIDEWALKS

The subdivision regulations require sidewalks on both sides of the street; however, the City Policy is sidewalks on one side of residential streets and both sides of major streets. The applicant has proposed a sidewalk on the south side of Homestead Court which should serve the development and provide good pedestrian access to Homestead Country Club. Staff recommends approval of the sidewalk as proposed.

UTILITIES

Utilities already serve the site and the applicant is working with the various utility companies and agencies to provide necessary utilities; water, sewer, power, communications, gas, etc. to each lot. The applicant will need to work with the Fire District to determine the location of the fire hydrants. There is a water line easement along the south property line which is also in Lot 3. This easement will need to be vacated and the line relocated.

STORM DRAINAGE

The applicant has submitted a Storm Drainage Master Plan; however, it appears that additional analysis will be needed. The applicant needs to work with the Public Works Department to develop an acceptable solution for storm drainage. There are two parcels at the intersection of Mission Road and Homestead Court that are not identified on the plat. They need to be identified and if common areas, covenants need to be prepared to guarantee their maintenance.

BUILDING SETBACK LINES

Thirty-foot setback lines are platted on all the residential lots which is the minimum requirement of the R-1A Zoning District.

TREES

There are many mature trees on the site. Unfortunately, many of these will be lost due to the development. KCP&L is rebuilding its power lines on the north and south boundaries of the property and is removing many mature trees as a part of the project. The rebuilding of the power lines is not related to this project. The area has experienced numerous outages and the system needed to be upgraded. The applicant needs to preserve as many of the mature trees as possible.

EXISTING IMPROVEMENTS

The Homestead Club House, the pool concession building, and other improvements that are located on this property will need to be removed prior to the recording of the Final Plat. When the Final Plat is recorded the lots must be available for development and have no contingencies.

The applicant held a neighborhood meeting on November 13, 2014 and approximately 28 people were in attendance. The questions were related to how drainage would be handled, the new street, the proposed homes and construction while the homes were being built. The new street will be public and the storm drainage will be addressed with Public Works.

Vice Chairman Nancy Vennard led the Commission in the following review of the conditions for approval of the preliminary plat for Homestead Estates:

1. The size of the lots which currently abut the proposed subdivision:

There are six lots abutting the north side of the proposed subdivision and they range in area from 13,996 sq. ft. to 19,604 sq. ft., with the average being 15,745 sq. ft. There are

five lots abutting the south side and they range in size from 15,157 sq. ft. to 16,307 sq. ft., with the average being 15,668 sq. ft. The average for the 11 lots is 15,710 sq. ft.

2. The average size of lots which are within 300 feet of the proposed subdivision:

There are 24 lots within 300 feet in Prairie Village, and the average is 15,445 sq. ft. There are 7 lots in Mission Hills that are less than 25,000 sq. ft., and within 300 feet of the proposed subdivision. The average of these lots is 21,865 sq. ft. The proposed lots in the subdivision range in size from 14,500 sq. ft. to 22,560 sq. ft., with an average of 16,377 sq. ft. per lot.

3. The fact that the width of the lot is more perceptible and impacts privacy more than the depth or the area of the lot:

The R-1A Single-Family District requires a minimum lot width of 80 feet and a minimum lot depth of 125 feet. All the lots have a lot width in excess of 110 feet. It should be noted that the east lot line for Lot 1 is only 90 feet, but the average for the lot is 125 feet. The lot area is large and will provide an adequate building envelope.

4. The likelihood that the style and cost of homes to be built today may be quite different from those which prevailed when nearby development took place:

The trend in Prairie Village, as well as the metro area, is to build larger homes on infill lots. It therefore can be assumed that the new homes will be larger and higher priced than other existing homes in the area on similar sized lots. Most of the original homes in this area were built in the 50's, so the design and amenities will be significantly different. Also people want larger homes and less yard maintenance. It should be noted that several tear down rebuilds have occurred in the neighborhood which attests to the fact that it is a quality neighborhood.

5. The general character of the neighborhood relative to house sizes, aging condition of structures, street and traffic conditions, terrain, and quality of necessary utilities:

The general quality of the neighborhood is high quality single family dwellings, with an elementary school a short distance to the south and a middle school to the north. The area is ideal for families with children. Housing has been well maintained, new houses have been built and the area is very stable. Traffic is not a concern because there is immediate access to Mission Road and utilities are adequate.

6. The zoning and uses of nearby property:

North: R-1A Single-Family District - Single Family Dwellings
East: Residential Mission Hills - Single Family Dwellings
South: R-1A Single-Family District - Single Family Dwellings
West: R-1A Single-Family District - Homestead Country Club

7. The extent to which the proposed subdivision will, when fully developed, adversely or favorably affect nearby property:

The development of the proposed subdivision will provide 11 new lots to build new residences which should be a further stabilizing factor for the neighborhood. Unfortunately, the immediate neighbors will lose the green space they have enjoyed for over 50 years and there will be a loss of mature trees.

8. The relative gain to the public health, safety, and general welfare if the subdivision is denied as compared to the hardship imposed on the applicant:

There will be no relative gain to the general public if the subdivision is denied. This is a step forward to ensure the financial stability of Homestead Country Club so that it can provide a unique amenity to the area residents in the future.

9. Recommendations of the City's professional staff:

After performing a detailed review, it is the opinion of Staff that the proposed subdivision is a good proposed use of this area and the lot sizes are compatible with the surrounding neighborhood. Staff recommends that it be approved subject to a number of conditions.

10. The conformance of the proposed subdivision to the policies and other findings and recommendation of the City's Comprehensive Plan:

The proposed subdivision falls into two primary goals of the plan. Since Prairie Village is fully developed, growth can only occur through internal redevelopment and this subdivision provides an opportunity for growth. Also this subdivision is located in close proximity to schools, churches and shopping areas, and provides the opportunity to develop an area with a high quality of life, which is much desired by the residents of Prairie Village.

In accordance with Section 18.04.090.B., the Planning Commission determined that the following minimum standards for Homestead Estates were met:

1. No single-family lot shall have less width, depth, or area than is set out in appropriate lot size regulations for District R-1A:

The proposed subdivision complies with these requirements. The minimum lot width in R-1A is 80 feet; minimum lot depth is 125 feet, and the minimum lot area is 10,000 sq. ft.; compared to the minimum lot width of 114 feet and the minimum lot area of 14,500 sq. ft. in Homestead Estates Subdivision. The proposed subdivision meets these minimum requirements.

2. Lot width and area shall generally be equal to or greater than the average of the width or area of the existing lots within 300' of the proposed subdivision provided lots or tracts of greater than 25,000 sq. ft. may, if deemed reasonable by the Planning Commission, be excluded from such average:

The average lot width of the lots within 300 feet and located in Prairie Village is 108 feet. All the lots in the proposed subdivision are at least 110 feet in width.

3. The Planning Commission may require the submittal and subsequent recording of covenants to run with the land, such covenants to include such protective restrictions as minimum house floor area, general style and height of house, maintenance of any private streets, screening, preservation of existing vegetation, time allowed for completing construction or other reasonable requirements that will tend to blend the new construction into the existing neighborhood in the shortest possible time:

The applicant will need to submit covenants to guarantee the maintenance of the detention ponds and drainage, if needed.

Ron Williamson noted approval of the monument identification sign will need to come back to the Planning Commission for approval. Based on the discussion, Mr. Williamson suggested the addition of the following two conditions: #12. That the applicant resubmit three copies of the updated and revised Preliminary Plat for Homestead Estates and #13. That the proposed street trees be approved by the Tree Board.

Gregory Wolf moved the Planning Commission approve the Preliminary Plat of Homestead Estates and authorize the filing of the Final Plat subject to the following conditions:

1. That the applicant provide a sidewalk on the south side of Homestead Court.
2. That the final design of Homestead Court be subject to the approval of Public Works.
3. That the applicant pay for the construction of Homestead Court and the sidewalk.
4. That the applicant work with Public Works on the final design of the storm drainage system and that it be approved by Public Works prior to filing the Final Plat.
5. That the applicant prepare covenants to guarantee the maintenance of the storm drainage improvements and common areas, if any.
6. That the applicant protect and preserve as much existing vegetation as possible on the site during construction.
7. That the Club House and pool concession buildings be demolished within 90 days following the recording of the Final Plat of Homestead Estates.
8. That preliminary engineering plans, specifications, and an estimate of cost for the public improvements be prepared for streets, sidewalk and storm drainage, and be submitted with the Final Plat.
9. That the applicant provide fire hydrants as required by the Fire District.
10. That the applicant identify the two parcels on each side of Homestead Court at the intersection of Mission Road.
11. That the applicant vacate the water easement along the south property line and in Lot 3, and relocate the water line.
12. That the applicant resubmit three copies of the updated and revised Preliminary Plat for Homestead Estates
13. That the proposed street trees be approved by the Tree Board.

The motion was seconded by Nancy Wallerstein and passed 5 to 0.

Chairman Bob Lindeblad returned to chair the remainder of the meeting. He called for a ten minute recess. The meeting was reconvened at 8:45.

**PC2014-122 Final Plat Approval - Mission Chateau
8500 Mission Road**

Sterling Cramer, with Olsson Associates, stated the final plat has addressed the 14 conditions for approval of the preliminary plat by the Planning Commission on February

10, 2014. They have reviewed the staff comments and recommended conditions for approval for the final plat and accept them.

Ron Williamson noted Conditions 1, 2, 3 and 5 of the preliminary plat will be addressed as a part of Condition 13. Conditions 6, 8 and 11 are shown on the Final Plat. The applicant has submitted covenants as required in Condition 7. Conditions 9, 10 and 12 will be attached to the Final Plat.

The Subdivision Regulations require the following additional information to be submitted with the Final Plat:

- A. Covenants - submitted condition 7, some minor revisions are needed.
- B. Proof of Ownership - submitted
- C. Review by County Surveyor - submitted for information (The County Engineer will not review the Final Plat until it is approved by the City.)
- D. A Certificate showing all taxes and assessments have been paid - submitted
- E. Construction Documents for streets, sidewalks and storm drainage - submitted

The Final Plat has the Certificate of Property Owner, Certification of Surveyor, Planning Commission approval and Governing Body acceptance of easements and rights-of-way.

Mr. Williamson stated the City does not want the liability or responsibility for maintaining the storm drains within pipes, the detention pond and the Dykes Branch drainage way across the north end of Lot 10. However, it is critical that this storm drainage system not be impaired. Therefore, the following text needs to be added to the Final Plat:

Property Owner Maintenance of Drainage Easements and Improvements

The Owner of Lot 10 shall construct, install and maintain all drainage improvements (pipes, conduit, open drainage and detention areas) located in easements on Lot 10 and shall keep said improvements in good repair and fully functional.

If the City reasonably determines that the drainage improvements require repair or maintenance, including the removal of debris, the City shall provide written notice to such owner indicating the repair or maintenance needed. If said owner does not repair or perform such maintenance within a reasonable period of time, the City may perform the required maintenance or repair and said owner shall reimburse the City for the cost of such work. In undertaking any such repairs or maintenance, the City shall not disturb any improvements or Lot 10 unless necessary to perform such work.

The City shall have no liability associated with the repair and maintenance.

Mr. Williamson responded to several questions called in by a resident. The curb radius and the length of the cul-de-sac have been reviewed and approved by the Fire District. The width of the proposed road meets city criteria and is adequate to accommodate emergency vehicles. The cul-de-sac is approximately 1025 feet long and was approved because the loop driveway from Mission Chateau Senior Homes provides an alternate access.

Andrew Spitsnogle, attorney speaking on behalf of the Mission Valley Neighborhood Association, stated that they felt the final plat should not be approved until the city receives assurances that the applicant will complete the entire project. Mr. Spitsnogle

noted that if only the nine single family homes were constructed with only the road and cul-de-sac and not the loop road it would create a fire and safety risk as without the loop fire and emergency vehicles would not be able to turn around.

They do not feel the plat should be approved until the applicant has provided sufficient sureties that they are ready to go forth with the construction of the entire 18.4 acres. In addition urge the city to require the entire loop road to be publicly dedicated as it is essential for the safety of the entire development.

MVNA would like at a minimum that the city condition approval of the final plat on the applicant providing a sufficient surety to assure that the entire project will be constructed.

David Waters responded he is not aware of any requirement in the code that a surety be provided.

Ron Williamson suggested rewording item 3 adding that the loop drive to Mission Road be constructed at the same time as 85th Circle. He noted that was the intent, but the rewording would clarify it. Ron Williamson stated the drive has to be built to city standards to accommodate fire and safety vehicles.

Sterling Cramer responded that they understand the intent of the condition that the construction of the loop road and the driveway be completed together. There is no intention to build the nine single family homes without the rest of the development at this time.

Chairman Bob Lindeblad confirmed that condition #3 would read: That the west driveway connection and the loop drive to Mission Road from the Senior Housing Community to 85th Circle be constructed at the same time as 85th Circle.

Larry Levy questioned the maintenance of the street. Ron Williamson responded that 85th Circle is a public street that will be maintained by the City, the loop road. The islands and sidewalk will be maintained by the Homes Association and the drainage improvements maintained by the owners of Lot 10. This wording will be added to the final plat.

Larry Levy moved the Planning Commission approve the Final Plat for Mission Chateau subject to the following conditions:

1. That the applicant protect and preserve as much existing vegetation as possible along the property lines.
2. That all existing improvements be removed from the 85th Circle right-of-way and the nine single-family lots prior to recording the Final Plat.
3. That the west driveway connection and the loop drive to Mission Road from the Senior Housing Community to 85th Circle be constructed at the same time as 85th Circle.
4. That the applicant submit the Final Plat to the County Engineer after approval by the City.

5. Add Property Owner Maintenance of Drainage Easements and Improvements to text of Plat prior to submission to the Governing Body.
6. That the applicant make revisions to the proposed covenants as requested by Staff prior to submitting the Final Plat to the Governing Body.

The motion was seconded by Nancy Vennard and passed unanimously.

**PC2013-11 Request for extension to SUP for Mission Chateau
8500 Mission Road**

David Waters, representing the City Attorney, stated on January 6, 2014 the City granted a Special Use Permit for Mission Chateau subject to 14 conditions. Condition #4 provides that “if construction has not begun within twenty-four (24) months of the approval of the Special Use Permit by the Governing Body, the permit shall expire unless the applicant shall reappear to the Planning Commission and Governing Body to receive an extension of time prior to expiration.” This is the request before the Planning Commission.

Mr. Waters reviewed the following history of litigation that has taken place on this project:

- December 11, 2013 - neighboring property owners filed an action in the District Court of Johnson County against the City seeking to enjoin the City from considering the Mission Chateau SUP at the January 6, 2014 meeting. The plaintiffs did not pursue the temporary injunction and the application was considered.
- February 3, 2014 - neighboring property owners filed a First Amended Verified Petition against the City challenging the lawfulness of the adopting Ordinance on a number of issues.
- On September 12, 2014, the District Court issued an order finding that the Governing Body acted lawfully in passing Ordinance #2301 fully satisfying and fully complying with all aspects of Kansas law in its actions leading up to and throughout the passage of Ordinance 2301.
- On October 20, 2014 - MVS filed a motion to stay the expiration of the Mission Chateau SUP during the dependency of the lawsuit and any appeal therefrom.
- On October 30, 2014, the District Court denied MVS’s motion, while simultaneously denying the plaintiffs’ request to alter or amend its original order regarding the cross-motions for summary judgment.
- On October 30, 2014 - the plaintiffs filed an appeal of the District Court’s summary judgment rulings in the Kansas Court of Appeals, which is presently pending and in its early stages.
- On November 6, 2014 - MVS filed a cross-appeal, seeking review of the District Court’s decision which overruled MVS’s motion for a stay of the expiration during the pendency of action.
- On November 26, 2014 - MVS filed a motion with the Kansas Court of Appeals to transfer the appeal to the Supreme Court for review.

Mr. Waters noted the potential timeframe for these actions to move through the court system causing the applicant to be concerned that final action will not be taken until

after the expiration of the SUP per condition #4. Therefore, they are requesting an extension.

In the applicant's request to the City they contend that as a matter of law the City should rule that the 24 month period of construction be stayed pending the resolution of the appeals. However, they have formally requested an extension of the 24 month time period listed in condition four from the date that all appeals are final. In support of the request several case law references were presented.

The City Attorney has advised that there are no Kansas cases which have considered whether equity requires that conditions similar to condition #4 are automatically tolled or stayed if opponents to a special use permit appeal to the District Court. Kansas courts are not bound by case law from other states, and in any event the determination of whether such an equitable remedy should apply depends on the facts and circumstances of each case.

There are no Kansas statutes or provisions in the Prairie Village City Code which impose an automatic stay when zoning matters are appealed, by either automatically staying the right of the successful applicant to build, or automatically staying any time period in which the successful applicant is required to build.

Mr. Waters noted there is case law from other jurisdictions ruling in support of stays during litigation as well as some opposing it. It is not the Planning Commission decision to determine what the case law should be, but simply to consider a request for an extension.

In her memo to the Planning Commission the City Attorney stated that she believed it would not be unreasonable for the Planning Commission or Governing Body to deny an extension based on the following circumstances:

- MVS accepted the conditions of approval for the SUP including condition #4
- MVS opposed the injunction request in the District Court stating it should be up to MVS to take the risk that such structures must be removed if the case is ultimately decided in favor of the Marsh plaintiffs.
- Stays in zoning appeals in Kansas are not automatic, but may be requested by a party.
- The applicant could prevent the expiration of the SUP by beginning construction
- MVS is not without a remedy. The zoning regulations do not prohibit a reapplication for a special use permit should the permit expire.

Mr. Waters noted this is not a public hearing, although the Commission can chose to take comment, there are no criteria, standards or Golden Factors that must be met. The Commission should make a good faith consideration of the request. The Commission serves as a recommending body. The final decision will be made by the Governing Body. There is no protest petition or required vote to override the Commission's recommendation. The Planning Commission may recommend granting the request, recommend denying the request, recommend granting the request for a shorter time frame or send it forward with no recommendation.

Gregory Wolf asked if the requested extension was for the a specific period of time. Mr. Waters stated the request was for a 24 month period beginning after the final judgment of any appeals.

Bob Lindeblad asked what would constitute commencement of construction. Mr. Waters stated there is no definition for “commencement of construction” in the SUP. He feels it would be a determination of the Governing Body.

Timothy Sear, with Polsinelli representing MVS, LLC, reviewed again with the Commission the series of legal challenges that have been filed against this SUP noting the amount of time it has taken for resolution, although positive, of these challenges. Now an appeal of the ruling has been filed which will further delay final judgment until quite possibly beyond the established termination or expiration of the time period given in the Special Use Permit for Mission Chateau approved by the City on January 6, 2014 for the commencement of construction of the project. Mr. Sear reviewed the possible timetable for possible court appeals that will take well beyond the January 6, 2016 deadline.

MVS filed a motion to stay the expiration of the Mission Chateau SUP during the dependency of the lawsuit and any appeal therefrom to prevent the MVNA appeal of the court’s judgment in support of the SUP from essentially keeping the SUP in pending litigation until the expiration of the SUP per condition #4. On October 30, 2014, the District Court did deny MVS’s motion; however, not because there was no merit to the motion, but because there had not been an application made to the City for an extension and the judge felt he did not have jurisdiction to decide.

MVS is committed to this project and it is their sincere intention to proceed with it; however, as pointed out if the Courts determine there was a mistake made in the granting of the SUP any improvements made pursuant to the SUP would have to be removed and destroyed.

Mr. Sear stated that land use appeals in the state of Kansas are relatively rare, resulting in not a lot of case law rulings. However, numerous state courts have unanimously held that where the validity of a permit for construction was the subject of pending litigation, the local ordinance providing for the expiration of such permit was stayed or tolled by operation of law until the pending litigation had been fully and finally resolved.

They have found that courts that have dealt with this issue when there is not a statute that deals with this situation, with neither Kansas nor Prairie Village has, they have determined that it would be unreasonable to allow a permit to be lost simply by the delay of litigation as to the legality of the permit. No one has cited any contrary case law. Although it is all from outside Kansas, all courts that they have found that have dealt with this issue have determined that if there is not a statute dealing with the issue already to provide for a tolling of the expiration during the pendency of the legal challenge to the permit that equitably the expiration of the permit is to be tolled during the pendency of it.

Mr. Sear noted the memo from your city attorney regarding a case in Maine that opposed the extension, the judge's ruling found that because there was already a Maine statute that provided for the permit to be saved that tolling was not necessary.

All of the cases cited in their request unanimously stated that the mere specter of litigation regarding the legality of the permit makes it unreasonable to proceed with construction, especially when the stance of the City is that any improvements made would be required to be removed and destroyed if the legality of the permit was upheld. Mr. Sear asked if it would be responsible for the City would undertake a \$55M project under such terms.

Mr. Sear stated that MVS is doing everything possible to expedite this appeal process requesting the Kansas Supreme Court take an immediate transfer of this case from the Appeals Court to shorten the timetable for this process. However, he noted those motions are very seldom granted.

Mr. Sear stated in reference to the City Attorney's memo to the Planning Commission stating reasons why she feels it would not be unreasonable to deny this extension, they believe under the facts of this situation it would be unreasonable for the city to require what all these other states have refused to require - that is to go forward and expend this kind of money while there is litigation pending. The City Attorney points out in opposing the MVNA attempt to enjoin this project in the past that MVS has opposed those requests for injunction. He does not feel that should weigh against MVS getting the full right to exercise it right under the SUP permit. When the lawsuit was first filed and the plaintiff asked that the City and MVS be enjoined by the court from any activities related to the entire 18 acre tract, both the City and MVS opposed that injunction. No one contended that if the injunction was granted that additional time would be given to MVS at the tail end to cover the period of time for the injunction. The mere fact that MVS like the city opposed this effort to shut down this project through an injunction that that we told the court that risk if we started construction was on MVS is not an unusual position to take and should not weigh against the approval of an extension of time relative to the SUP permit.

They contend that although there is no Kansas case law on the tolling argument that if the Kansas Court were given this issue, that the Kansas court would likely follow these other states. However, that would only be determined if MVS is denied an extension and has to file a declaratory judgment against the City. They are not interested in more litigation and more delays, although they feel the Kansas Court would find the permit should be tolled, that is why they are requesting grant an extension beyond the date when all of the appeals end. There would be no harm to anyone in extending this permit for a period of time beyond the time period appeals process ends. The City has already determined that this project should be built in the City of Prairie Village. He stated the SUP should not be defeated by the mere filing of continuous legal appeals regardless of the outcome of the appeal. The SUP should only be defeated by the Court deciding the legality of the SUP based on the process followed by the City which has already been found to be valid.

In summing up the City Attorney presents in her memo of last week three statements a) In opposing the injunctive relief in the *Marsh* case, MVS willingly assumed the risks that an extension may not be granted.; b) MVS can prevent the SUP from expiring by beginning construction before January 6, 2016 and c) if the Mission Chateau SUP expires because MVS elects not to begin construction, then it may reapply for a special use permit.

Mr. Sear responded to (a) that MVS is at risk to construct before the appeal is over; however, that does not weigh against the City granting the extension. In fact it weighs in favor of the extension as it would be unreasonable to put at risk that kind of money when the City is saying if you build it and the City loses, as it is the City that is being challenged on the legality of the SUP, that it must be removed.

Mr. Sear responded to (b) it is the same argument worded differently. If the City would require us to remove improvements, if the City loses the appeal, it is unreasonable to require MVS to expend that kind of money during dependency of the appeal.

Finally (c) seems nonsensical in that this process has already gone on for two years. Why would anyone want to let the SUP expire due to pending litigation and require a new application to be filed to begin the entire process again.

MVS wants to proceed, they want the litigation to end; however, there is only so much they can do under the situation where the city is going to insist that improvements be torn out if the City loses the appeal by the MVNA.

Gregory Wolf asked if all the appeals were to end tomorrow, how long would it take to commence construction. Mr. Sear replied 10 to 14 months to get the contracts let and the demolition done, noting the abatement work that has been completed at the school. He noted it is in their benefit to begin as quickly as possible. Current interest rates are at their lowest and in financing \$40M even a change of 1% in the interest rate impacts the financing by \$400,000 per year. It is in their best interest to proceed as quickly as possible after appeals are completed.

Mr. Wolf asked for clarification on what is being requested. Mr. Sear responded they are seeking an extension in time. He noted "tolling" is court language. They are asking that pursuant to condition #4 of the SUP that it be extended for a period of two years beyond the end of the appeal process. He noted that is beyond the time that is needed. Mr. Wolf asked why they were then asking for two years. Mr. Sear replied the court decisions on tolling have determined in those states that if you have 24 months in the permit that you get 24 months after the legal challenge is over. So they are simply mirroring what has been done. He is quite certain that 12 or 14 months beyond the end of the appeals process would be acceptable to them.

Mr. Wolf asked why the issue was not addressed when the initial litigation was filed. Mr. Sear noted that any SUP application can result in litigation, however they rarely do and with filed rarely goes on the extent that the litigation has in this case.

He does not feel it was the City's intent by Condition #4 which is standard language in Special Use Permits issued by the City was meant to kill a project just by legal delay and not by delay of the developer. That is what the cases that they have cited stand for - developers are not going to forward in all likelihood in this situation and that is why even in the absence of a regulation or statute or a condition, the state courts that have heard this issue have said that it must be "tolled" otherwise the permit becomes meaningless even by a losing lawsuit being filed.

Mr. Wolf stated he is trying to understand why 24 months. Mr. Sear responded that as soon as the appeal was filed it became clear that the request for extension would need to be filed as the process would not end prior to January 6, 2016. Mr. Sear noted the similar situation faced by the City of Prairie Village in the length of time taken for the appeal of Councilman David Morrison and now subsequent appeal by the County to the Kansas Supreme Court.

Nancy Vennard stated the City has had to spend an enormous amount of money with meetings at offsite locations and now ongoing legal fees. She would not want to see the City go through this process again if the extension is not granted.

Gregory Wolf does not see the need for a 24 month extension. He feels they should be ready to begin once the litigation ends. Based on their comments, he could support a 14 month extension. Nancy Vennard noted she understand the rationale behind the 24 month request. Bob Lindeblad reminded the Commission that their action is only a recommendation to the Governing Body.

Nancy Wallerstein asked if the extension was not granted by the Governing Body, they could still start construction under the current SUP. What would constitute commencement of construction. Mr. Lindeblad responded that would be the decision of the Governing Body.

Nancy Wallerstein noted there is not a precedence either for or against extending an SUP. She stated they owned the land regardless of the outcome of the litigation.

Nancy Vennard acknowledged the extensive and costly preparation work that needed to be done prior to commencing construction in design, construction documents, etc. She also added that if they had to refile for the SUP there is no guarantee the current plans would be accepted by the Planning Commission and/or Governing Body at that time, noting the several changes that have taken place for the Mission Mall property.

Gregory Wolf stated in reality, if the extension is not granted, a lawsuit will be filed against the City for declarative judgment on the failure to grant the extension.

Mike Flanagan, General Counsel for the Tutera Group, stated that last week they met with Prairie Village staff to discuss the issue of what is "commencement of construction" which staff believed would be a decision of the Governing Body, but were checking with the City Attorney. The building permit process was discussed and expectations for and timetable for plan reviews. The possibility of a phased building permit was discussed.

They would need to seek a full building permit. He would expect the cost of full construction documents to be as Mrs. Vennard indicated several thousands of dollars. The lead time needed by public works, the building official and fire department for review of plans of this size is significant. He does believe the 14 month period of time would work for MVS to get the building permit approved. If the definition of commencement of construction was less, they could begin sooner. This needs to be determined. Mr. Flanagan noted that in regard to "tolling" you generally are either granted 24 months or nothing.

They feel it is appropriate to grant the extension as it is of no harm to anyone, it does not cost anything of the city and it allows the court, who is the appropriate party, to make its determination on whether the Special Use Permit is valid or if it should be revoked.

Chairman Bob Lindeblad opened the floor for comments from the public.

Andrew Spitsnogle, attorney speaking on behalf of the Mission Valley Neighborhood Association, noted that Mr. Sear made several comments regarding legal interpretations; however, Mr. Waters direction to the Commission was that it was not your job to make a legal determination. It is the job of your city attorney and her analysis is clear. "MVS wants the right, but not the obligation, to build within the 24 month period. This is contrary to what was approved in Ordinance 2301 and that she feels it would not be unreasonable for the Governing Body to deny an extension under the circumstances". They concur with her assessment.

Mr. Spitsnogle made the following additional comments:

- MVS request for an extension is premature - noting that the deadline does not expire until January 6, 2016 and that this was one of the reasons for the denial of their motion on October 30th.
- If the Governing Body intended for the SUP to be "stayed or tolled" it is their view that they would have included that language in the SUP
- The Ordinance was approved with full knowledge that a lawsuit would be filed challenging the validity of the Special Use Permit
- Concur that it would not be unreasonable to deny the two year extension as factors for approval change over time.

They do not feel the applicant should have another two years after the final judgment in which to begin construction on one of the most valuable pieces of land in the City.

Gregory Wolf asked Mr. Spitsnogle that their position was that it was reasonable to force the applicant to spend hundreds if not millions of dollars to begin construction that if you win will have to be removed and destroyed. This is what he is struggling with.

Mr. Spitsnogle responded that that point has not been reached yet and this request is premature. Mr. Wolf asked when would it be appropriate. Mr. Spitsnogle responded it is currently in the court of appeals and MVS has filed for an immediate transfer to the Supreme Court and they do not intend to oppose that filing. It is their intention to get

this resolved as quickly as possible. It is more than a year to the deadline and things change. He cannot say when it would be appropriate to make the request.

Nancy Wallerstein asked Mr. Sear to confirm that he stated it would be 12 months before the case was even heard before the Supreme Court. Mr. Sear replied there is no timetable and the motions are rarely granted. For example in the Morrison case, there was a motion to transfer that case to the Supreme Court and it was denied. If denied, then the Kansas Court of Appeals will continue to proceed until the Kansas Supreme Court says it is not theirs to decide. They believe they are looking at a period of time of at least a year to get a decision on whether to even hear the case.

Mr. Wolf asked Mr. Spitsnogle for his prediction as to how it will take for the appeal. He responded that he has no idea, but doesn't feel that is the issue before the Commission. The issue is whether it would be unreasonable to deny the request.

Mr. Wolf noted the legal costs the city has already incurred thousands of dollars of legal expense on this application and asked Mr. Spitsnogle if he felt that was in the best interest of the city to put itself in the position for yet another lawsuit with the filing a declaratory judgment if the extension is denied.

Mr. Spitsnogle stated he does not feel zoning decisions should be made on the basis of fear of legal costs and secondly he does not know that a separate law suit would be filed.

Bob Lindeblad closed the public comment at 10:00 p.m.

James Breneman believes the request for the extension is justified. He would not want to commit the amount of money that will need to be committed to commence construction with the potential that it may need to be eventually torn down. January 6, 2016 is 13 months away, they would have to begin preparation of construction documents now to meet that deadline. It would be unreasonable for the city not to approve the extension.

Larry Levy stated more harm is being done to the landowners in going through the court system to determine the validity prior to construction in the increased costs that they will occur. He does not see the request for the extension as unreasonable.

Greg Wolf moved the Planning Commission recommend that the 24 month deadline in the SUP shall be extended to 14 months after the termination of the pending litigation involving Mission Valley Chateau project. Termination means dismissal with prejudice or the issuance of a final judgment and all appeal and/or motion to reconsider deadlines/rights expire. Applicant shall notify the City of PV within three business days of the termination as defined herein that the termination has occurred and the 14 months have commenced. The motion was seconded by Larry Levy.

Nancy Wallerstein questioned if 14 months was sufficient time when under normal conditions they would have been given 24 months.

Bob Lindeblad stated he would support 14 months as the applicant has stated they can work within that timeframe. He feels it would be reasonable to grant the extension.

Larry Levy noted this could take 3 years. Mr. Wolf states the applicant knows the risk.

The motion was voted on and passed unanimously.

Next Meeting

At this time the Planning Commission has two Special Use Permit applications filed for the service stations at Mission Road and Tomahawk. The filing deadline is this Friday, so more items could be submitted.

ADJOURNMENT

With no further business to come before the Commission, Chairman Bob Lindeblad adjourned the meeting at 10:10 p.m.

Bob Lindeblad
Chairman

Nancy Vennard
Vice Chairman