**SPECIAL MEETING**

**PRAIRIE VILLAGE PLANNING COMMISSION**

**NOVEMBER 30, 2016**

ROLL CALL

The Planning Commission of the City of Prairie Village met in Special Session on Wednesday, November 30, 2016, in the Municipal Building Council Chambers. . Chairman Nancy Wallerstein called the meeting to order at 7:00 p.m. with the following members present: Jonathan Birkel, Melissa Brown, James Breneman, Gregory Wolf and Jeffrey Valentino

The following persons were present in their advisory capacity to the Planning Commission: Chris Brewster, City Planning Consultant; Wes Jordan, Assistant City Administrator; Mitch Dringman, City Building Official; Serena Schermoly, Council Liaison; Keith Bredehoeft, Public Works Director; and Joyce Hagen Mundy, City Clerk/Planning Commission Secretary.

**PUBLIC HEARING**

**PC2016-06- Request for Rezoning from R-1a (Single Family Residential District) to RP-1a (Planned Single Family Residential District)**

Chairman Nancy Wallerstein stated this is a continuation application PC2016-06 from the November 1st meeting of the Planning Commission and called upon the applicant to present an update. She noted that the Commission had received new information only five hours earlier and that they had not had time to review it thoroughly and asked for Mr. Childers to present it in detail.

Cory Childers, 1920 W 143rd St #150, Leawood, KS 66224 ~~Leawood~~, stated that after meeting with the neighbors and city staff a new grading and drainage plan was developed to address elevation and drainage concerns expressed by the adjacent property owners at a meeting held on November 16. Mrs. Wallerstein asked who called that meeting. Mr. Childers replied it was initiated by city staff Wes Jordan and Melissa Prenger.

Mr. Childers stated the following four issues were raised at the meeting:

* Address the grading plan to attempt to reduce the elevation on lots 9, 10 and 11
* Address the need for a berm at the rear of where lots 6 and 7 meet to prevent water from flowing over the north property line
* Address the need to divert water flow from lots 1, 2 and 3 flowing directly east and channel some of that water towards Homestead Court
* Address the concern of obstruction of water flow in the berm/swale on the rear of lots 9, 10 and 11 by future homeowners to ensure that they don’t change the berm/swale in a way that could negatively affect its performance.

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Cory Childers stated his engineer with BHC Rhodes has developed a new grading plan that addresses the following issues: The plan lowers the grade on lots 9, 10 and 11 by approximately 12’. This also removes the berm and creates a swale which should work better and be more aesthetically pleasing. The plan removes approximately 2,3000 (this number is not correct) square yards of soil. A berm will be created to address the concerns on lots 6 and 7 as well as on lots 1, 2 and 3. An amendment has been made to the Homestead Estates Declaration of Restrictions to address the maintenance of the approved drainage plan elements.

Melissa Brown noted that two grading plans were distributed to the Commission and asked for clarification on which plan was the most recent. Mr. Childers replied the plan showing the cross sections of the swales in the upper right hand corner is the final plan.

Nancy Wallerstein asked if the plans had been reviewed by Public Works. Public Works Director Keith Bredehoeft replied that they had reviewed the plans and discussed the proposed changes with the Commission. Their biggest concern is the how to guarantee long-term that the plan remains in place as designed, but noted that the amendment to the declaration of restrictions for the development addresses this.

James Breneman noted that the original plan had a detention basin on site and the final plan shows only berms. Mr. Bredehoeft responded that the detention basin was not required based on their analysis. The detention basin on the north was removed when the applicant added larger pipes to handle greater water flow. Mr. Childers added that the new pipes, even at one-half their capacity, can handle a 100-year event.

Nancy Wallerstein asked how these drainage issues impacted the requested rezoning of the property, which was the action for consideration before the Planning Commission.

Chris Brewster replied that the drainage issues are the most critical for the neighbors as noted in the November 16th meeting. ,. As part of all previous city approvals (preliminary and final plat), the ultimate grading and drainage plans are to be noted on the final plat and reflected in the private covenants as an on-going responsibility of the Homestead Estates lot owners. Ultimately, the City’s requirements are that the grading and drainage be approved by Public Works that each subsequent building permit complies with the grading and drainage plan, that responsibility for maintenance and continuation of all drainage improvements be placed collectively on the owners of lots 1 – 11 and Tract A. This is an ongoing obligation of the applicant regardless of a decision on the proposed rezoning and side setback issues. The filing of the rezoning applicationbrought these issues to the forefront although they are not directly related to the requested rezoning.

Regarding the specific rezoning request, the applicant has submitted a plan generally showing how the proposed dwellings and typical house plans will be located on the previously approved lots. The purpose of this plan is to implement a flat 7’ side lot setback, rather than the sliding scale associated with the width of the lot. Many of the planned homes have a wider but narrower configuration. While each lot and home may have different types of plans eventually based on a more custom design approach to the development, the plan does demonstrate the extent of the relationships to adjacent structures. Of particular note is the following:

* All buildings by default will maintain at least a 14’ separation as required by both the previous and existing R-1A standards.
* All structures and building impacted by the changes proposed by the planned zoning will be part of this plan (i.e. it does not impact any differently the relationship to existing homes in the surrounding areas.)
* The rear setbacks (relation to existing homes) is not changed – from either the previous R-1A to the existing R-1A, and from the applicable R-1A to the proposed planned RP-1A standards.
* All other applicable R-1A standards – in particular heights (as amended in June 2016) and the overall lot coverage (30% of lot) will remain in place.

Gregory Wolf asked if public notice had been given on the drainage issues. Mr. Brewster replied public notice is not required for review of drainage plans, only for rezoning and special use permit applications. Nancy Wallerstein confirmed that the approval of drainage plans was the responsibility of the Director of Public Works and not the Planning Commission. Mr. Wolf confirmed that the grading and drainage do not affect the Commission’s actions on the requested rezoning.

Mrs. Wallerstein why then was the Commission talking about drainage issue when it should be discussing the proposed rezoning and asked Mr. Childers to address his rezoning request.

Cory Childers said that this meeting is to address the rezoning, but noted the need to be sensitive to the neighbors concerns with drainage. Mrs. Wallerstein noted in the three weeks since the meeting with the neighbors she is not sure that these issues have been resolved.

Corey stated that stated this property was originally platted with a 30’ front setback, 25’ rear setback, and 7’ building lines on the side lot lines of all proposed lots. These setbacks complied with the R-1A zoning in place at the time, as well as additional zoning standards regarding the overall percentage of lot coverage and other building placement standards. The R-1A side setback in place at this time was a minimum of 5’, but also required a minimum 14’ separation between buildings. Thus by platting 7’ building lines they exceeded the required setbacks and ensured that the 14’ building separation would be met.

Mr. Childers noted that several of the lots were pre-sold and homes designed for construction based on the platted lots. However, in June the city revised its zoning side yard setbacks to require a 7 foot minimum setback with 14 feet between structures and 20% of lot width between both side yards. Two homes, as designed, meet the platted setbacks, but not the new side yard setback regulations. In discussion with staff two options were presented to address this problem. They were advised that a variance could be requested for the specific homes or the development could seek a change in zoning of the development to a planned zoning district allowing for the side yard setbacks to be governed under the previous regulations. Mr. Childers noted that some of their lots are wider and not as deep and the change to the side yard setbacks give them greater flexibility in design to meet the needs of buyers.

Mrs. Wallerstein noted that there was a four month period during which the proposed zoning revisions were discussed in public meetings. Mrs. Wallerstein asked if Mr. Childers was invited to any of these meetings. Mr. Jordan replied that he was not specifically invited.

Mrs. Wallerstein verified that the rezoning request is to accommodate one property. Mr. Childers noted that they have three other purchase contracts pending that have specific language that they will be able to build under the platted setbacks or be released from the contract to purchase. Jeffrey Valentino asked when the homes were sold.

Andy Bash, 4545 West 74th Street, replied that the first home was sold prior to his becoming the selling agent in October of 2015 Mr. Bash reviewed the sales history since he came on board noting the difficulties that he is encountering under the new side setback regulations. He stated that three of the lots with pending contracts to purchase have added language to the agreements that if they are not allowed to build based on the seven foot side yard setbacks, they would be able to cancel the contract. Mr. Bash stated the only exception from the current city regulations is to allow for the side yard setbacks as platted. The new side yard setback is limiting the flexibility to accommodate potential buyer’s home designs. All of the other city regulations would be met.

Nancy Wallerstein asked how many of the lots were sold prior to the adoption of the new city code in July. Mr. Bash replied that lots 8, 4 and 11 were sold prior to that date and noted that 1 & 3 were under contract, but they pulled out during the process.

Nancy Wallerstein stated that since the new regulations did not go into effect until July15, why can’t the preapproved lots be built according the plat.

Mr. Brewster replied that plats do not reflect the extent of all zoning standards that are applicable to a property. Nor does what is shown on the plats prevent any zoning standards from changing at some future time. Ultimately, the stricter building lines reflected on a plat or by the applicable zoning setbacks will apply. Zoning and platting/subdivision regulations are two different planning tools intended to address separate items. For example, many lots in Prairie Village have building lines platted separately from applicable zoning – particularly corner lots in larger lot subdivisions where the relationship of buildings to one another or to specific streets are planned with a more intentional neighborhood design in mind.

In this case, the R-1A zoning standards were amended in June 2016, after the above plats were created. The relevant change to this application is that the side setbacks changed from:

* 5’ minimum; 14’ minimum building separation;

To:

* 7’ minimum; 14’ minimum building separation; and 20% of lot width between both side yards.

The intent of this change was to scale the building footprint and placement to the size of the lot, better manage the relation of new buildings to existing homes on infill projects, but also to allow flexibility for the placement of buildings. For example, a 100’ wide lot would have the following side setbacks:

* At least 20’ between both sides combined (20% of 100’)
* At least 14’ between buildings (any existing building on adjacent lot located closer than 7’ would require greater setback on subject lot)
* At least 7’ on each side, meaning that if it was 7’ on one side, it would need to be at least 13’ on the other sides.

The above referenced plats for Homestead included many wider lots. Although there are a few irregular lots, most lots have widths between 115’ and 120’, which would trigger a zoning setback wider than the 7’ building lines shown on the plats.

During the time that these zoning changes were being discussed and approved, and subsequent to this time, the applicant had advanced sales on several home plans. The applicant is proposing custom home designs and some of these home plans provided a shallow but wide building footprint. The zoning regulations in place at the time of submittal for a building permit apply.

Mr. Dringman stated that it was during the building permit review process for the three homes submitted that it was determined that two of the home were not in compliance with the new side yard setback regulations requiring a 20% setback.

Mr. Bash stated that it is difficult for buyers to perceive a 20% setback, whereas they can clearly view a 7’ setback. This unknown or unspecific requirement makes potential buyers hesitant to move forward. Gregory Wolf asked what the difference was between 14’ feet between structures and the 20% requirement. Jim Breneman responded that on Lot 8 which is 116’ wide a proposed house 102’ wide provides for the 7 foot setback on each side. The 20% regulation would require total side yard setbacks of 22.3 feet reducing the buildable area by 9 feet. .

Cory Childers stated that the drainage concern of the neighbors has shifted the focus from the issues creating the rezoning request. He stated that he was unaware of the pending zoning regulation changes being considered.

Nancy Wallerstein confirmed that only lot 8 is currently nonconforming. She asked Mr. Childers if he understood that the rezoning request could be impacted by a protest petition and explained the process for filing a protest petition and that if accepted it would required the Governing Body to have a super majority,( 9 votes out of 13) to approve the rezoning.

Mrs. Wallerstein stated the drainage issues need to be worked out with Public Works and suggested that the rezoning application be tabled until that time. She noted that the Commission called a special meeting to consider this application and it would do so tonight giving the residents an opportunity to speak, however, no action on the rezoning would be taken with the meeting continued to a later date allowing time for issues to be resolved. No new notification would be required.

Jeffrey Valentino noted since the next meeting of the Commission is in 6 days, the probable meeting for this to be continued to would be the January Commission meeting.

Chairman Nancy Wallerstein opened the public hearing on PC2016-06 request for rezoning from R-1a to RP-1a.

Greg Shondell, 3905 Delmar Drive, stated that most of the neighboring residents are opposed to the rezoning and they have the support of the Indian Fields Homes Association Board. Mr. Shondell acknowledged that their main concerns, drainage, footprint of homes and the unsatisfactory communication with the developer, are outside of the rezoning request.. He expressed appreciation to city staff for their efforts in addressing their concerns and the recent actions of the developer.

Mr. Shondell quoted the staff report stating “the intent of this change is to scale the building footprint and placement to the size of the lot, better manage the relation of new buildings of existing homes on infill projects, but also to allow flexibility for the placement of buildings. Mr. Shondell fears this will allow a possible increase in the footprint of buildings that will impact the surrounding neighbors both aesthetically and with area drainage. He disagrees with staff comments that the proposed change will not directly impact the surrounding homes and only impact the relationship of homes proposed to be built under this plan.

Mr. Shondell referenced several of the criteria for planned zoning that he felt this application did not meet including the following:

* Deviations may be approved if it is deemed that other amenities or conditions will be grained to the extent that an equal or higher quality of development will be produced.
* The developer will be given latitude in using innovative techniques in the development of land not feasible under application of the standard zoning requirements.
* Deviations may be granted only when compensating open space is provided elsewhere in the project, where there is ample evidence that said deviation will not adversely affect neighboring property nor constitute the mere granting of a privilege.

Mr. Shondell questioned why a total zoning change was being requested rather than a request for a variance on the non-conforming lot. He is concerned with potential other changes that may occur throughout the development under the new zoning, especially with the changes that have already occurred in the development from what they were originally told by the developer.

Mr. Shondell stated the surrounding property owners need assurances that the restrictive covenants that have been proposed concerning the modified drainage plan go into effect regardless of the outcome of this zoning request. He asked what input the neighbors would have on the approval of the final drainage plan by Public Works.

Nancy Wallerstein asked if Mr. Shondell was the spokesman for the neighbors. He responded that they have met several times and he was addressing the primary issues; however, other residents would also be speaking at the public hearing.

Margaret Cummins, 4001 Delmar Drive, distributed a diagram reflecting the increased elevation of the proposed homes above their property. The home adjacent to hers has is three to four feet higher that her property at her fence line. She does not approve of 40’ homes being constructed on elevations that are already four feet above her property. The street is too high and needs to be lowered along with the lot elevations. Mrs. Cummins also expressed concern with the impact of the proposed swales and berms on accessible back yards.

Becca Williams resides on Homestead Drive and is not impacted by this project; however, when Homestead constructed their parking lot, they constantly fought water run-off for 15 years draining from the courts and damaging her property. The property adjacent to hers was torn down and rebuilt with water flowing from their downspouts onto her property creating foundation issues. She urged the Commission when they consider this matter to look at how it will impact residents already at this location. Having experienced this, she feels their pain and frustration.

Sue Ann Heim, 4009 Delmar, acknowledged staff efforts in setting up a meeting with staff, the developer and neighbors to discuss this project. She stated it was not a friendly meeting and that at the end staff advised Mr. Childers to get together with the neighbors. Mrs. Heim noted the first phone call she received from him was earlier in the day. She feels that their concerns are not being heard and the process is being pushed ahead without their notification and input under ostracizes of “go ahead and ask forgiveness afterward”. She is disappointed that the development is not adhering to the Indian Fields Homes Association guidelines of one and a half story homes.

Mrs. Heim referenced a staff report from the Planning Commission meeting on October 2, 2014 and the recommendations that were made by City Planning Consultant that were not followed. A recommendation referenced covenants, the protection and preservation of as much vegetation/trees as possible and on-site storm water detention.

Mrs. Heim distributed pictures of water damage to adjacent properties from water coming off the development earlier this year. Mrs. Wallerstein asked if the Commission packet had included the staff report/minutes from the October, 2014 meeting. Staff replied they were not included in the packet.

Chris Brewster replied the recommended requirements for approval of the plat in 2014 in regard to the storm drainage and the covenants have been met. He does not know why all of the existing vegetation and trees were removed. Mrs. Heim asked about the storm water concept plan. Keith Bredehoeft replied it was submitted, reviewed and approved by the City Engineer and Public Works.

Mrs. Heim expressed concern with the stormwater runoff being sent downhill to their properties instead of being retained. The 5” pipe will simply take the water across the street and into the creek flooding Mission Hills residents. She noted the pictures from neighbors water damage was from two separate events.

Mrs. Heim stated the zoning regulations are in place for a reason and should be adhered to. She asked for the Commission to support its residents and deny the request, noting that several residents in opposition to the rezoning were not able to be in attendance. Mrs. Wallerstein stated that residents can access Commission members by phone or e-mail with their concerns.

Richard Weast, 3833 West 65th Terrace, Mission Hills, stated the plan presented at the initial neighborhood meeting was not the same as the plans presented to the City and expressed concern with the impact this project is having on properties to the south. He would like to see the retention basin put back into the plans. .

No one else was present to address the Commission; however, Chairman Nancy Wallerstein did not officially close the public hearing so that comments could be taken if this application were continued. Cory Childers stated he would like to request a continuance of the application.

Jonathan Birkel confirmed that the rear yard setback did not change and remains at 25 feet. Wes Jordan stated under the proposed rezoning requesting that applicant still cannot construct homes in excess of 30% of the lot, exceed the front or back setbacks.. In meeting with the applicant, it was the staff’s recommendation that they proceed with the requested rezoning rather than potentially appearing before the Board of Zoning Appeals 10 times for variances.

Gregory Wolf confirmed the only change being requested and allowed by the new zoning is to the side yard setback. The planned zoning is based on what is being requested in this application.

Nancy Wallerstein noted that if the applicant requested a variance for lot 11 it would only impact lots 9 and 7. Mr. Jordan replied that it is anticipated that other property owners will want to design their homes based on the platted setbacks and additional variance requests will be forthcoming creating multiple additional meetings for the Commission as opposed to addressing this issue with one action. Mrs. Wallerstein asked if lots 9 and 7 were still available. Mr. Bash responded they were but questioned what would happen if the purchaser of lot 9 wanted a variance. Mrs. Wallerstein replied lots of paperwork and expense would be incurred in filing for the variance. She noted she is trying to find an option that would maintain the R-la zoning and allow for the one lot in noncompliance to be handled. Mr. Bash replied that he is certain that four other potential property owners would be requesting the same variance for a 7’ side yard setback.

Mrs. Wallerstein asked Mr. Childers if he want to pursue the zoning change or request a variance on the one property. He responded that he would need to discuss that with others involved. Chris Brewster noted that the variance request is a separate process with different criteria including the finding that a hardship would result from the denial of the variance. Mrs. Wallerstein stated she can see the hardship apply for the current property.

Greg Shondell expressed that the change to RP-1a zoning would allow for additional variance or exceptions to code. Wes Jordan stated it would not.

Gregory Wolf moved the Planning Commission continue PC2016-06 request for rezoning from R-1a to RP-1a to the January 10, 2017 meeting of the Planning Commission. The motion was seconded by James Breneman and passed unanimously.

**ADJOURNMENT**

With no further business on the agenda for the Special Meeting of the Planning Commission, the meeting was adjourned at 10:48 p.m.

Nancy Wallerstein

Chairman