

CORRECTED

MEMORANDUM

TO: Michael G. Herring, City Administrator

FROM: Teresa J. Price, Director of Planning

DATE: November 22, 2004

SUBJECT: Planning & Zoning Committee Meeting Summary – **November 18, 2004**

A meeting of the Planning and Zoning Committee of the Chesterfield City Council was held at 5:30 p.m., on Thursday, November 18, 2004 in Council Chambers.

In attendance were: **Chair Bruce Geiger** (Ward II); **Councilmember Jane Durrell** (Ward I); **Councilmember Connie Fults** (Ward IV) and **Councilmember Dan Hurt** (Ward III). Also in attendance were Councilmember Mary Brown (Ward IV); Councilmember Mike Casey (Ward III); Planning Commission Vice-Chair Maurice Hirsch; City Attorney Doug Beach; Director of Planning Teresa Price; Senior Planner Annissa McCaskill-Clay; Project Planner Christine Smith Ross; and Mary Ann Madden, Planning Assistant.

Chair Geiger called the meeting to order at 5:33 p.m.

I. APPROVAL OF MEETING SUMMARY

Councilmember Durrell made a motion to approve the Meeting Summary of October 21, 2004. The motion was seconded by Councilmember Fults and **passed by a voice vote of 4 to 0.**

- II. **P.Z. 10-2004 Barry Simon Development (Fox Hill Farms):** A request for rezoning from “NU” Non-Urban to “E-Half-Acre” Estate district for a 40.1-acre parcel located on Griffith Lane, south of the terminus of Eagle Bluff Court, approximately 1500 feet from Wild Horse Creek Road. Locator Numbers (18U32-0015, 19U64-0028, 19U64-0017)

Project Planner Christine Smith Ross stated that the proposal includes 34 single-family detached homes. The Planning Commission has recommended approval by a vote of 8 of 1 with an amendment to correct a typographical error in the Attachment A, page 4.

A hand-out was then distributed to the Committee members from the petitioner and will be made a part of the public record.

Mr. Michael Doster addressed the Committee and stated that the one remaining issue between the residents and the petitioner concerns the access to the proposed property. Mr. Doster stated that the City's Ordinance #1315 rezoned the property for Eagle Crest. In this ordinance there is a specific provision that requires a 50 ft. access easement. Mr. Doster presented a slide that showed a portion of the approved and recorded plat for Plat 2 of Eagle Crest. This plat shows the 50 ft-wide easement intended as the access to the proposed development to the south. He stated that the platted easement is on the title of every lot in Plat 2 of Eagle Crest. Mr. Doster further stated that the intent as expressed in the *Whereas* clause of the ordinance says, *it concerns the possible future extension of the street*.

Mr. Barry Simon gave a slide presentation showing views of the proposed access area of Eagle Crest in its present state and how it would look if the development is approved. It was noted that the retaining walls on Lots 30 and 31 would remain undisturbed. The proposed development would retain existing trees, would have a 3:1 slope, and would include additional landscaping and a waterfall on each side of the street.

A hand-out was distributed to the Committee members entitled *Presentation from Residents of Eagle Crest Estates, November 18, 2004* and will be made a part of the public record.

Mr. Steve Kling, attorney for Eagle Crest residents, referred to the handout and stated the following:

- Eagle Bluff Court was constructed as a permanent cul-de-sac, complete with a concrete island.
- The Court was represented, named, built, supervised, policed and sold as a private cul-de-sac with no warning signs as would be required for a typical stub street. The developer layout plans and advertising did not disclose the potential roadway.
- Ordinance 1315 provided that Eagle Bluff Court "would terminate in a permanent cul-de-sac on the site".
- His clients collectively paid millions in premiums for private cul-de-sac homes and stand to incur substantial losses as confirmed by their appraiser if the purported easement road is developed.
- Griffith Lane is currently the primary access to the proposed property and it is not landlocked. This has recently been confirmed by a recorded document by the Griffith Lane residents. Griffith Lane can be improved for the development as previously addressed by his clients' engineers.
- He and his clients think the access easement is invalid because:
 1. Common ground is for the exclusive use and benefit of residents and cannot be conveyed or used by third parties without resident approval. Once designated as common property, such property is established in trust for all future lot owners.
 2. Even if common ground property could be so used, the easement was never established because no authorized party signed any document, let alone any document properly granting rights to do so.

3. Even if the easement was properly established, the residents disallowed it pursuant to the express rights of the subdivision indentures allowing a majority of the residents at any time to disallow use of common property by non-residents. A notice to such effect has been recorded against the subdivision common property.
- His clients will take whatever rights they need to protect their investments.

Mr. Kling stated that a meeting was held where 24 of the 37 homeowners attended. At that meeting all 24 homeowners voted to disallow the use of the access easement. Notice of this provision has been recorded against the common property.

City Attorney Beach stated that it is his opinion that the City had intended to put an access to the proposed property to the south. This intent is shown in the *Whereas* clause regarding the 50 ft. access easement and on the plat, which shows construction easements on either side.

Mr. Beach noted the following issues:

- Inconsistencies within the language of the ordinance regarding the access easement.
- Mr. Kling's statement that the homeowners have the ability, through their indentures, to abrogate the requirements of the City.
- Proper ownership – who owned the land and gave the conveyance.
- Griffith Lane being used as an access to the property.

Mr. Beach stated that the issues are not clear-cut. It is his opinion that the issues raised are civil issues between the homeowners and the developer – and not between the City. He advised the Committee members to review the proposed project and to make a determination based on good planning principles. The legal issues should be determined by a court of law.

Councilmember Durrell made a motion to forward **P.Z. 10-2004 Barry Simon Development (Fox Hill Farms)** to Council with a recommendation to approve. The motion was seconded by Councilmember Hurt.

Chair Geiger made a motion to amend Section V.A.3.c of the Attachment A as follows:

*A left turn lane shall be constructed on Route CC at ~~Eagle Bluff Court~~
Riverdale Drive as directed by MoDot and the City of Chesterfield.*

The motion was seconded by Councilmember Durrell and **passed** by a voice vote of **4 to 0**.

Chair Geiger made a motion to amend Section V.A.4.a of the Attachment A as follows:

All streets within this development shall be private and remain private forever. Streets within or in conjunction with the development shall be constructed in accordance with Section 1005.180 of the Subdivision Ordinance of the City of Chesterfield. ~~If the streets are to be public, the turn-arounds may be required to accommodate school buses, as directed by the City of Chesterfield Department of Public Works.~~

The motion was seconded by Councilmember Durrell.

Councilmember Hurt stated that the City requires all streets to be constructed to public standards, whether they are private or not and felt that the paragraph was redundant. Director of Planning Teresa Price stated that this language was requested by the Department of Public Works.

Discussion was held regarding the possibility of the residents requesting that the streets become public at some future date. Mr. Beach said that the statement “*All streets within this development shall be private and remain private forever*” has been used by the City in the past so no one is misled to believe that there will be someone taking over the streets in the future. It was determined that if the proposed statement is included in the Attachment A, it would not preclude the residents from petitioning the City at a future date to make the streets public.

The motion to amend Section V.A.4.a of the Attachment A **had a voice vote of 2 to 2**. (Councilmember Hurt and Councilmember Fults voted no.) Chair Geiger noted that the motion would be forwarded to Council with no recommendation.

Councilmember Hurt made a motion to amend Section V.A.4.a of the Attachment A as follows:

Streets within or in conjunction with the development shall be constructed in accordance with Section 1005.180 of the Subdivision Ordinance of the City of Chesterfield. ~~If the streets are to be public, the turn-arounds may be required to accommodate school buses, as directed by the City of Chesterfield Department of Public Works.~~ The streets are intended to be private at this time but will be built to all public standards to accommodate all future vehicles, as directed by the City of Chesterfield Department of Public Works.

The motion was seconded by Chair Geiger and **passed** by a voice vote of 3 to 1. (Councilmember Fults voted no.)

Councilmember Fults expressed concern in voting on the proposed petition before the legal issues have been resolved. Mr. Beach advised that the Committee should act within the authority of the State statutes and vote on good planning principles. The legal issues will have to be resolved in court.

The original motion to forward **P.Z. 10-2004 Barry Simon Development (Fox Hill Farms)** to Council with a recommendation to approve was amended to include the proposed amendments to the Attachment A. The motion **passed** by a voice vote of 3 to 1. (Councilmember Fults voted no.)

**Note: One bill, as recommended by the Planning Commission,
will be needed for the December 6, 2004 City Council Meeting.
See Bill #**

(Councilmember Brown and Councilmember Casey left the meeting at this point.)

III. P.Z. 02-2004 Summit Development (Valley Gates Buildings): A request for a change in zoning from an “NU” Non-Urban District to “PC” Planned Commercial District for an approximately 7.698-acre tract of land located on North Outer Forty Road east of Boone’s Crossing. The petitioner proposes two mixed commercial buildings.

Project Planner Annissa McCaskill-Clay stated that this parcel is immediately adjacent to the Ice Sports complex. The Planning Commission voted 9 to 0 to recommend approval of the proposal subject to several conditions – Permitted Uses; Floor Area, Height, Building and Parking Structure Requirements; and Specific Criteria were amended as outlined in the Staff Report.

Ms. McCaskill-Clay referred to the issue of open space and stated that the Comprehensive Plan has 4 sub-areas in the Valley. The proposed project is in Sub-Area 4, which has a requirement of 50% open space, which the site is not currently showing. Planning Commission did allow for reduction ~~up~~ to 40%. ~~If the 40% was not met, Planning Commission required hardscape features and a reflecting pool.~~ In lieu of reduction to 40% open space, Planning Commission required hardscape features and reflecting pool at the entrance to the site.

The petitioner has raised the issue that Sub-Area 4 has much higher open space criteria than any other area in the Valley. Ms. McCaskill-Clay pointed out that the highest open space in Sub-Area 4 is 66% and the lowest open space of developed area is 27.6%. Staff has researched as to why Sub-Area 4 has different criteria as far as the open space percentage. They have found that the Comprehensive Plan Committee made note of the fact that several of the parcels in this area were limited to very narrow space. Although they may go beyond the levee, that area is not developable. At that time, there was a discussion regarding maintaining open space and trying to have as much green space as

possible in this particular area. One of the things that was done to encourage open space was to allow no height limitation in this area.

Planning Commissioner Hirsch reported on the Planning Commission's discussion relative to the open space. He stated that part of the discussion pertained to the levee and the narrowness of some of the sites. It was felt that as you move eastward, taller buildings would be appropriate. The Planning Commission determined that by reducing the square footage of the proposed building from 90,000 to 82,000, the open space would be increased to 40%. The Commission also felt it was appropriate to require hardscaping and water features as a substitution for a decrease in open space.

Discussion was held regarding the cross access easements. Councilmember Hurt questioned why cross access is limited on the western side and not left open. Mr. Stock replied that Summit Development owns the property immediately to the west, which is Summit Center. The petitioner had requested a fixed location for the cross access easement with the parking lot that exists on Summit Center. At this time, the cross access remains open on the east because the property is undeveloped.

Councilmember Hurt stated that he would like to see the eastern access moved further east near the property line; the first building moved to the west and the parking lot moved to the east. This would spread the accesses further apart. He asked if there would be any technical reason why this couldn't be done. Mr. Scott Reese, Summit Development Group, replied that the building is set as it is because, from a visibility standpoint, this is the most prominent location for traffic coming down Highway 40. Mr. Reese then stated that he is willing to review it.

Discussion was held regarding the 50% requirement of open space in this area. It was noted that the 50% requirement has not been met by any of the developments to date. Councilmember Fults stated that she could accept 40% open space but would not want to see it go any lower for this area.

Councilmember Hurt made a motion to amend Section VIII.A.4.c. of the Attachment A as follows:

*Provide cross access easements or other appropriate legal instruments guaranteeing permanent access to adjacent properties to the east and to the west, approved by the City of Chesterfield. ~~Cross access shall be provided to the parcel to the west at two locations, one at the south end of the site and one at the north end of the site.~~ Cross access shall be provided to **both eastern and western parcels** ~~the parcel to the east~~ along the entire ~~eastern~~ boundary of the site.*

The motion was seconded by Councilmember Durrell and **passed by a voice vote of 4 to 0.**

Mr. George Stock, Stock & Associates, addressed the Committee regarding the issues recommended by the Planning Commission. He stated that the Commission reduced the proposed building by 8,000 sq. ft in order to reach a 40% open space. Mr. Stock felt that the 40% open space could be achieved by reducing the retail use and increasing the office use, which would require less parking. Mr. Stock then requested that the square footage of the building be re-instated to 90,000 sq. ft. as opposed to 82,000 sq. ft.

Mr. Stock referred to the permitted uses that were eliminated by the Planning Commission and stated that he does not know why “drive-thru fast food restaurants” was struck. Regarding the elimination of “automotive sales and vehicle repair”, Mr. Stock requested that this use be re-instated with storage in the back, but no storage in the front.

Planning Commissioner Hirsch stated that the reduction in square footage was proposed in a motion made by Commissioner Macaluso. Regarding the Sub-Area 4, the Planning Commission discussed this topic thoroughly, as well as the rationale for the 50% open space.

Discussion was held relative to how the square footage could be re-instated to 90,000, and still achieve 40% open space. Mr. Stock stated that by reducing the retail use, parking would be reduced also. Another way to achieve the 40% would be to construct one of the buildings as a three-story structure. Chair Geiger pointed out that there is a limitation of two, two-story buildings. Councilmembers Fults and Hurt expressed concern about allowing a three-story building on this site. Councilmember Durrell stated she could accept a three-story building in order to achieve the 40% open space.

Councilmember Hurt made a motion to amend the Attachment A to include the following:

To locate the access to the parcel as close to the eastern boundary as possible, as approved by the Missouri Department of Transportation and the City of Chesterfield.

Discussion followed wherein Mr. Stock expressed concern about the entrance location proposed by Councilmember Hurt. Councilmember Durrell noted that since the property to the east is undeveloped, she felt that a specific location should not be specified at this time. Mr. Reese pointed out that if the proposed building becomes a single-entity building, moving the entrance further to the east would not be feasible. Councilmember Fults suggested that the petitioner be allowed to review the proposed amendment before it goes to Council.

The above motion **died** due to the lack of a second.

Chair Geiger then summarized the issues expressed earlier:

- If the square footage is re-instated to 90,000, how would the open space of 40% be achieved with the limitation of two, two-story buildings?
- Positioning of the building in the front – should it be moved to the west?

- Relocating the access as close to the eastern boundary as possible.
- Reviewing the possibility of having one of the buildings constructed as a three-story structure.

Councilmember Fults made a motion to hold **P.Z. 02-2004 Summit Development (Valley Gates Buildings)** until the December 9th Planning & Zoning Committee Meeting. The motion was seconded by Councilmember Durrell and **passed** by a voice vote of 4 to 0.

IV. **P.Z. 20-2004 McCarthy L.L.C. (Farmers Valley Market)**: A request for a change of zoning from an “NU” Non-Urban District to a “PC” Planned Commercial District for a .45 acre tract of land located east of Long Road and south of Chesterfield Airport Road (Locator Number: 17V 14 0043).

Project Planner McCaskill-Clay stated that the Planning Commission, by a vote of 8 to 0, recommended approval of the proposal with two amendments to the Attachment A. The amendments included the elimination of the “dry cleaning drop-off and pick-up stations” as a permitted use and language related to the Specific Criteria, Architectural Elevations.

Councilmember Hurt made a motion to amend Section VII.D.2 of the Attachment A as follows:

*Provide cross access easement and temporary slope construction license or other appropriate legal instrument or agreement guaranteeing permanent access between this site and **all** adjacent properties as directed by the Director of Highways and Traffic.*

The motion was seconded by Councilmember Fults and **passed** by a voice vote of 4 to 0.

Councilmember Fults asked if the produce would be left in the stalls overnight. Ms. Mary McCarthy, the petitioner, responded that refrigeration would be provided for the produce.

Ms. McCarthy stated that she is concerned about the widening of Long Road as it relates to her signage. She is considering signage on the roof of her building for better visibility. After discussion, staff was directed to work with Ms. McCarthy concerning her signage since signs are not allowed on the roof.

Commissioner Hirsch commended Ms. McCarthy for her work on this project.

Councilmember Fults made a motion to accept **P.Z. 20-2004 McCarthy L.L.C. (Farmers Valley Market)**, as amended, with the direction to Staff to work on language regarding signage, and to forward it to Council with a recommendation for approval. The motion was seconded by Councilmember Hurt and **passed** by a voice vote of 4 to 0.

Note: One bill, as recommended by the Planning Commission,

**will be needed for the December 6, 2004 City Council Meeting.
See Bill #**

- V. **Stoneridge Office Building (Tristar)**: An amendment to City of Chesterfield Ordinance 1943, allowing 250 surface parking spaces in lieu of twenty (20) for the Stoneridge Office Building a “PC” Planned Commercial located on the south side of South Outer Forty Road, northeast of Yarmouth Point Drive and Candish Lane - Review of Proposed Amendments to Bill #2314

Chair Geiger stated that the petitioner, Larry Chapman, has proposed language to the Attachment A, which was distributed to the Council members at their meeting of November 15th. Mr. Chapman stated that the proposed language was discussed with one of the property owners and copies were sent to the Trustees.

It was noted that the residents are in favor of how the detention area will be addressed.

Councilmember Hurt made a motion to approve the language to the Attachment A as proposed by the petitioner, Larry Chapman, with amendments to Section V to state:

The only things allowed in the detention area are utility easements, a detention structure as shown in Exhibit B, and fire access or turn-around as dictated by the Fire Department. The detention area will be laid out as shown in Exhibit B.

The motion was seconded by Councilmember Durrell and **passed by a voice vote of 4 to 0.**

Councilmember Hurt made a motion to accept **Stoneridge Office Building (Tristar)**, as amended, and to forward it to Council with a recommendation for approval. The motion was seconded by Commissioner Fults and **passed by a voice vote of 4 to 0.**

**Note: One bill, as recommended by the Planning Commission,
will be needed for the December 6, 2004 City Council Meeting.
See Bill #**

VI. Pending Projects/Departmental Update – None

VII. Adjournment

The meeting adjourned at 7:20 p.m.