

**PLANNING COMMISSION
OF THE CITY OF CHESTERFIELD
AT CHESTERFIELD CITY HALL
September 27, 2004**

The meeting was called to order at 7:00 p.m.

I. PRESENT

ABSENT

Mr. David G. Asmus
Mr. David Banks
Mr. Fred Broemmer
Dr. Maurice L. Hirsch, Jr.
Ms. Stephanie Macaluso
Dr. Lynn O'Connor
Ms. Lu Perantoni
Mr. Thomas Sandifer
Chairman Victoria Sherman
City Attorney Doug Beach
Ms. Connie Fults, Council Liaison
Ms. Teresa Price, Director of Planning
Mr. David Bookless, Project Planner
Mr. Michael Hurlbert, Project Planner
Ms. Aimee Nassif, Project Planner
Ms. Christine Smith Ross, Project Planner
Ms. Mary Ann Madden, Planning Assistant

II. INVOCATION: Commissioner Sandifer

III. PLEDGE OF ALLEGIANCE

Chairman Sherman acknowledged the attendance of Councilmember Connie Fults (Ward IV).

Commissioner Hirsch read the "Opening Comments" for Public Hearings.

- A. **P.Z. 07-2004 Jack E. Wolf**: A request for a change of zoning from an “M-3” Planned Industrial District to a “PI” Planned Industrial District for a .41 acre tract of land located west of Long Road and south of Chesterfield Airport Road (Locator Number: 17U 12 0045).

The request contains the following permitted uses:

- (gg) Medical and dental offices.
- (ii) Offices or office buildings.

Project Planner Michael Hurlbert gave a power point presentation showing an aerial view of the site and surrounding area, along with photographs of the site.

1. Mr. Jack Wolf, Petitioner, 109 Long Road, Chesterfield, MO 63005 showed renderings of the proposed project and stated the following:

- He is a dentist practicing at 109 Long Road in the plaza known as Gator Flats.
- He is the owner of the subject property.
- A driveway entrance is proposed onto the site almost directly across from the Pullman Company.
- Approximately 43-44% of the property is an open area, which will be landscaped.
- The property is being requested for medical/dental-type office space, as well as business office space.
- Proposal has about 2/5 of the building as rental office space use.
- His dental practice would occupy about 3/5 of the building.

Commissioner Macaluso noted that the site has 20 parking spaces and asked how many dentists are expected to practice at the site. Mr. Wolf replied that at the present time, he is a solo practitioner – at most, he expects only one other dentist possibly joining him in the future.

Commissioner Hirsch stated that the zoning ordinance would allow the building to be used as 100% medical/dental use or 100% office use or any mix thereof. If in the future, the entire building were used as medical, it would affect the parking.

City Attorney Doug Beach asked whether the parking is sufficient for 100% medical use. Mr. Wolf responded that the parking calculations do meet the City’s zoning ordinance.

Commissioner Perantoni asked how the handicap would enter the building. Chairman Sherman stated that this question would become part of the Issues Report.

Commissioner Perantoni requested finished floor elevations, which would show how much one needs to come up to get into the building.

Commissioner O’Connor asked how materials are brought into the building from the loading zone and how hazardous waste is removed. Mr. Wolf replied that either the front or the back door could be used. Commissioner O’Connor asked if there is a sidewalk or

ramp leading to the back door. Mr. Wolf replied that there is no sidewalk or ramp shown on the drawing.

Question was raised as to the location of the trash enclosure.

SPEAKERS IN FAVOR: None

SPEAKERS IN OPPOSITION: None

SPEAKERS – NEUTRAL: None

REBUTTAL: None

ISSUES:

- The number of dentists
- The percentage of the use – office vs. medical/dental
- The number of parking spaces
- Is parking adequate if it is all to be dental?
- Handicap access to the building
- Provide finished floor elevations
- Loading zone – access into the building
- Access into rear of building
- Location of trash enclosure
- How pedestrian access would be in relationship to adjacent properties – is it appropriate/necessary?
- Regarding the parking lot, would the amount of space meet the standards for backing up and turning around?
- Traffic circulation issues – i.e. trash truck
- How does landscaping work with the sidewalks?

Commissioner Hirsch read the closing comments for Public Hearing P.Z. 07-2004 Jack E. Wolf.

V. APPROVAL OF MEETING MINUTES

Commissioner Hirsch made a motion to approve the minutes of the September 13, 2004 Meeting. The motion was seconded by Commissioner Broemmer **and passes by a voice vote of 9 to 0.**

VI. PUBLIC COMMENT

1. Mr. George Stock, 257 Chesterfield Business Parkway, Chesterfield, MO 63005, speaking in favor of **P.Z. 02-2004 Summit Development (Valley Gates Buildings)**, stated the following:
 - Since the Public Hearing, they have reviewed the Attachment A regarding the open issues.
 - The plan, as submitted, is 36% green space and 38% open space. The Comprehensive Plan for Area 4 speaks to 50%. They have not been able to find any documentation behind the 50% and request that it be amended from 50% to 38% open space.
 - The condition on the floor area ratio of 25% is in conflict with the amount of square footage shown on this development. The proposal has 90,000 sq. ft. in two buildings. One of the conditions in Attachment A allows 90,000 sq. ft. but the 25% floor area ratio would be in conflict – it would only allow 83,000 sq. ft. It is requested that the 25% floor area ratio be amended to 27%.
 - Regarding building height, two-story buildings are shown. The condition in Attachment A speaks to a maximum height of 40 ft. exclusive of mechanical equipment. It is requested that the maximum height be amended to 45 ft. exclusive of mechanical equipment.

Commissioner Macaluso asked why there is a request to increase the maximum height to 45 ft. Mr. Stock replied that since the building is not yet designed, there could be a feature to the building that would require an additional 5 ft.

Commissioner Macaluso asked if the Petitioner had reviewed the permitted uses. Mr. Stock replied that the list of uses has been reduced two to three times.

2. Mr. Scott Reese, Vice President of Development, Summit Development Group, 10 South Brentwood, Suite 100, St. Louis, MO 63105, speaking in favor of **P.Z. 02-2004 Summit Development (Valley Gates Buildings)**, stated the following:
 - Regarding the request for a maximum height of 45 ft., the market conditions are currently showing office space with higher ceilings. If there are 15' ceilings, then 4' is needed for the structure, another 3' for the plenum – so 45' for two stories is now common.
 - Regarding permitted uses, they have been amended several times.

Chairman Sherman asked how the petitioner felt about excluding “drive-thru” for all restaurants. Mr. Reese replied that the majority of fast food restaurants presently have drive-thru but they would review it.

Commissioner Perantoni asked if they were standing pat on the cross access. Mr. Reese responded that when they submit the Conceptual Site Plan, they will meet with Staff and discuss cross access at that time.

Commissioner Perantoni asked for clarification on the 45' height requirement. Mr. Reese responded that this allows for 15' from floor-to-ceiling, 4' for the structure, 2-3' for mechanical system, fire protection. It is anticipated that only 42-43' will be needed; the 45' request is for a contingency since the building has not yet been designed.

3. Ms. Tracie Schneider, 18019 Tara Oaks Court, Chesterfield, MO 63005, speaking in favor of **P.Z. 10-2004 Barry Simon Development (Fox Hill Farms)** stated the following:
 - She and her husband have reviewed the preliminary plan of Fox Hill Farms and currently have a line deposit, subject to the rezoning of the property.
 - They believe the site offers a large amount of wooded lots and they expect to build a home in excess of \$1 million.
 - They ask that the Commission vote in favor of Fox Hills Farms as presented by Simon Homes.
4. Mr. Ed Taaffe, 17914 White Robin Court, Chesterfield, MO 63005, speaking in favor of **P.Z. 10-2004 Barry Simon Development (Fox Hill Farms)** stated the following:
 - He is a long-time resident of Chesterfield and has seven children.
 - He and his wife have been looking for a larger home and they believe the Barry Simon Development will provide them with a larger lot with trees, along with a larger home.
 - They looked at Eagle Crest while it was being built.
 - When they went to look at the Wings at Eagle, they saw the easement and asked the sales agent at the time why there were only two homes on the cul-de-sac and not three.
 - They were told at that time that the easement was for an access road for possible future development. They, therefore, decided not to build there but chose to wait until the new development was opened.
 - He asked that the Commission support Mr. Simon's project.
5. Mr. Barry Simon, President of Simon Homes, 632A Trade Center Blvd., Chesterfield, MO 63005, speaking in favor of **P.Z. 10-2004 Barry Simon Development (Fox Hill Farms)** stated the following:
 - Per the issues request, they have prepared accurate three-dimensional illustrations of the grading, the retained vegetation and the possible entrance monument of Fox Hill Farms using the existing 50' recorded access easement at Eagle Bluff Court.
 - The visuals are based on actual topo information, which was compiled on the site by Sterling Engineering Company.

A power point presentation was given showing the three-dimensional illustrations and hand-outs of the illustrations were given to the Commission, which will become part of the public record. The power point presentation showed the following illustrations:

- The existing view standing on Eagle Bluff Court looking south, showing the existing trees and existing two houses.

- A view of the same site showing how it will look if the proposed street is built. Mr. Simon stated that the two retaining walls on Lots 30 and 31 will remain. The grading would be at a 3:1 slope down to the sidewalks.
- A view of the proposed water features at the entrance, along with additional trees that would be planted.
- A view from Lots 30 and 31 of the 50' roadway access easement.
- A view of the same sites showing how it would appear after the trees have been cleared for the proposed road and showing which trees would remain, along with the proposed water feature.
- A view of how the site would look from Fox Hill Farms looking to the north showing how the 3:1 slope would appear, sidewalks on both sides of the street and the existing trees that would remain.

Commissioner Macaluso asked if an entrance monument would be installed. Mr. Simon stated that the water features would be at the entrance. At this time, a monument has not been designed but they do intend to have one.

6. Mr. Richard Halsey, Landscape Architect and Land Planner for the project, 424 South Clay Street, Kirkwood, MO 63122, speaking in favor of **P.Z. 10-2004 Barry Simon Development (Fox Hill Farms)** stated that he would address the primary plan changes that have been made since the last presentation:

- The number of lots has been reduced from 36 to 34. Because of this reduction, the lots at the entrance have been made much larger – they are all at least an acre in size. The lots are much wider. The narrowest lot is 155' wide; the lots in the Wings at Eagle Crest are about 120' wide. The remaining lots in the development are larger.
- There is a strip of common ground in Eagle Crest that is 25' wide. They have matched that with another 25' common ground strip and have added another 25' no-grade strip to increase the distance between the existing homes and the proposed homes.

Mr. Halsey showed a table comparing minimum lot criterion between Fox Hills Farms and Wings at Eagle Crest and stated the following:

- The sizes, the widths, and the front building lines are nearly identical.
- The minimums of side yards and the distances between the houses at Fox Hill Farms are about twice as large as the minimums at the Wings at Eagle Crest.
- The rear yard minimum of Fox Hill Farms is larger than the Wings at Eagle Crest.
- The average lot size of Fox Hill Farms is slightly larger than the average lot size at the Wings at Eagle Crest.
- The smallest lot at Fox Hill Farms is about 1800 sq. ft. smaller than the smallest lot at the Wings at Eagle Crest.
- The largest lot at Fox Hill Farms is almost $\frac{3}{4}$ of an acre larger than the largest lot at the Wings at Eagle Crest.

Commissioner Macaluso stated that the new plan is getting very close to what she would like to see. She would like to see the project come in at E-1 acre and asked if the developer would consider adding some of the wooded areas to Lots 20, 21, and 22 to increase the average lot size, which would allow the project to come forward as an E-1 acre zoning. Mr. Halsey responded that the common ground behind those lots does not belong to the Fox Hill Farms development. Commissioner Macaluso asked that the project be reviewed to perhaps add some common ground to a lot size. Mr. Halsey stated that they have already added a lot of the common ground into the lot sizes without removing any trees.

Commissioner Macaluso expressed concern that some of the lots would have no natural growth on them and asked if some of the natural trees could be left on these lots. She also requested that the lot size be increased to bring the project forward as an E-1 acre.

7. Mr. Mike Doster, 17107 Chesterfield Airport Road, Suite 300, Chesterfield, MO 63005, speaking in favor of **P.Z. 10-2004 Barry Simon Development (Fox Hill Farms)**, stated the following:

- They have increased the average lot size, with the objective being that it be the same average as The Wings at Eagle Crest. He will review the plan again but he does not think the lots can be increased another 9/10's.
- They do meet the Comprehensive Plan requirement in terms of density and with reducing the number of lots, the requirement is exceeded.
- The entrance to the proposed development has been re-designed to insure that an attractive transition exists between the two developments.
- The proposed entrance will not disturb the existing trees on either side of Lots 30 and 31.
- The proposed entrance will not disturb the retaining walls that are in the construction license area on Lots 30 and 31.
- The Petitioner has addressed the issues of home size and pricing.
- Mr. Simon will deliver a quality product.
- The only issue remaining is the access issue. They think it is clear that the access was platted and is of record. Under the law, purchasers of property in the Wings at Eagle Crest are deemed to know that it exists because it is a platted easement. They think the intent and purpose behind the easement is clear from the zoning ordinance that was adopted to establish Eagle Crest. There is a reference in the ordinance to the possible extension of Eagle Bluff Court.
- The Public Works Department has indicated that it has seen no information to date that makes the Griffith Lane access a viable access.

Commissioner Broemmer suggested one lot size be reduced and spread the others out to make the houses a bit larger and come out even. Mr. Doster stated that it would be reviewed again but he does not think it is possible.

Commissioner Macaluso stated that Ordinance 1315, governing Eagle Crest, refers to “a permanent cul-de-sac” and asked how the developer could open up the cul-de-sac and still abide by Ordinance 1315. Mr. Doster replied that the cul-de-sac would not be removed and could serve as a round-about. It is his opinion that one cannot avoid the language also in Ordinance 1315 that requires the 50’ access easement be established for access to the property to the south.

Commissioner Macaluso asked Mr. Doster to respond to language in Ordinance 1315, which states “as directed by the City of Chesterfield” for the easement. Mr. Doster replied that the easement had been recorded on the plat by the developer of Eagle Crest as directed and the City approved the plat. Commissioner Macaluso asked how “as directed by the City of Chesterfield” should be interpreted - does it mean the easement will be given to use as directed by the City of Chesterfield or some other interpretation? Mr. Doster replied that his interpretation is that it refers to the establishment of the easement as directed by the City of Chesterfield. The easement was established when the plat was approved by the City and it was recorded.

Commissioner Macaluso stated that the definition of a “cul-de-sac” only has it being opened in one area. If it is opened up, the definition of a cul-de-sac doesn’t apply. Mr. Doster replied that one cannot look at the language of “cul-de-sac” and ignore the language that requires the establishment of the 50’ access easement. Mr. Doster further stated that one of the “Whereas” clauses in the Ordinance clearly refers to the possible extension of Eagle Bluff Court.

Commissioner O’Connor expressed concern about the length of the street because it encourages speeding and asked if the developer would be willing to build up the cul-de-sac as a mean of slowing the traffic. Mr. Doster stated that this, along with other options, could be reviewed at the Site Plan approval stage to address her concern.

8. Mr. Mike Boerding, Sterling Company, 5055 New Baumgartner Road, St. Louis, MO 63129, in favor of **P.Z. 10-2004 Barry Simon Development (Fox Hill Farms)** stated that he was available for any questions regarding the engineering on the site.

Materials entitled, “Presentation from Residents of Eagle Crest Estates, September 27, 2004” were distributed to the Planning Commission and will be made a part of the public record.

9. Ms. Dana Fields, 16861 Eagle Bluff Court, Chesterfield, MO, speaking in opposition to **P.Z. 10-2004 Barry Simon Development (Fox Hill Farms)** stated she was speaking on behalf of the Eagle Crest subdivision and would be addressing “development access summary”. Ms. Fields stated the following:
 - Primary access through Eagle Bluff Court would violate ordinance. Ordinance 1315 states that “Eagle Bluff Court shall be terminated as a permanent cul-de-sac”. No notification was provided otherwise. Access easement does not specify use. It is not a right of way – it was contemplated in the minutes but was not part

- of the final ordinance. Eagle Bluff Court already exceeds the maximum length for a cul-de-sac and the Department of Public Works is against further extension.
- Griffith Lane is a doable project. Address of property is Griffith Lane, and is a single family residence. It is not landlocked. Griffith Lane is expandable. It must be expanded to 20' per the Fire Department. Primary access requires expansion to 26'. Land grant for either expansion is required from Eagle Crest, not Griffith Lane residents. Griffith Lane currently has a prescriptive, not exclusive, easement, which means that Simon already has the right to use the property for access. Permission from Griffith Lane residents is not required for primary access. Simon's engineering firm has concluded that it is an issue of construction extent and not physical constraints.
 - She would like to focus on getting the engineers together to work on making Griffith Lane an access and not Eagle Bluff Court.
10. Mr. Art Handman, 16842 Eagle Bluff Court, Chesterfield, MO, speaking in opposition to **P.Z. 10-2004 Barry Simon Development (Fox Hill Farms)** said he would be addressing "development content" and stated the following:
- Zoning this development as E-1 acre is the only way the Commission has to insure compatibility with the existing neighborhood. The data shows there is a 30% disparity between the proposed development pricing and the actual pricing in The Wings. On an unadjusted basis, the pricing is starting 6% below the starting price in The Wings 2-1/2 years ago. Waterfalls and 5 larger lots will not insure compatibility. Nothing in the approving ordinance will require Simon Homes to sell homes at – or above – their current minimum price. Fewer homes to sell is the only guarantee of compatibility driven by economics. Simon Development is taking lot deposits now and telling prospective buyers that they will write contracts within 90 days. They have presented the access as going through Eagle Bluff Court, a decision that is the Commission's purview.
 - There are 14 home sites currently purchased in The Wings at Eagle Bluffs and each of those homeowners paid a \$200,000 premium to live there – for a total of \$2.8 million. The homeowners paid the premium to insure a safer place for their children to play with no thru traffic and minimum vehicle traffic due to a limited number of homes. Each homeowner has made significant permanent improvements ranging from \$20,000 to \$500,000. The value of these improvements widens the comparability gap further. If the Simon development is allowed, the diminution appraisal indicates that there will be a loss of \$2 million in value to the current residents of The Wings at Eagle Crest.
11. Ms. Kerry Feld, attorney at Jenkins & Kling, 10 South Brentwood, Clayton, MO 63105, speaking on behalf of the Eagle Bluff Court residents and in opposition to **P.Z. 10-2004 Barry Simon Development (Fox Hill Farms)** said she would be reviewing certain legal issues concerning the proposed development of the use of Eagle Bluff Court and of Griffith Lane and stated the following:
- The property, as it is currently used, is not landlocked.
 - Griffith Lane is and has been the primary access to the proposed parcel for years.

- Under the proposed development, Griffith Lane must be widened to 20' for emergency use as opposed to 26' for primary use. This will require the right-of-way with an Eagle Crest common ground, which Eagle Crest subdivision is unwilling to give for emergency access.
- With respect to the creation of Eagle Bluff Court, Ordinance 1315 states that *"Eagle Bluff Court shall be terminated as a permanent cul-de-sac."*
- The same ordinance, as well as the City's general Ordinance 1005.180, requires that warning signs be posted at the beginning of Eagle Bluff Court and at the point of beginning for the access easement, none of which were ever posted.
- Eagle Bluff Court was deceptively designed and built as a cul-de-sac with a landscaped island in the center and the word "court" at the end of the street name. The street design is a proprietary function of the City and it is their belief that the City's governmental immunity will not apply under these circumstances.
- Only the plat, and no separate document, created the access easement. Since the grant is ambiguous, Missouri law states that any ambiguities shall be construed against the platting party.
- It is their belief that the factual background of the entire development could form the basis to equitably estop the City and the developer from using the access easement as proposed.

12. Ms. Belinda Boyer, 16944 Riverdale Drive, Chesterfield, MO, speaking in opposition to **P.Z. 10-2004 Barry Simon Development (Fox Hill Farms)** stated the following:

- In June, 2004, she and her husband purchased the Flower Home display in Eagle Crest, which is at the base of The Wings, at the corner of Riverdale Drive and Eagle Bluff Court.
- At no time were they ever advised, either by the City or Flower Homes, that there existed a possibility that Eagle Bluff Court would be opened as a roadway. Had they been aware of this, they would not have purchased their home.
- They were advised, only after they closed on the home, that this existed as a very real possibility.
- Among the considerations that they took into account when purchasing their home included:
 - The fact that since Eagle Bluff Court did terminate, there were only 14 home sites. If the proposed road is built, there is concern that an additional 68 vehicles will be going through her back yard.
 - The safety of her children – she has concern that the proposed road will affect their safety.
 - Quality of life – which she feels will be damaged if the proposed road is built.
- The name of the street is Eagle Bluff Court. "Court" denotes a terminating roadway – not a thoroughfare.

13. Ms. Chandra Eyunni, 16835 Eagle Bluff Court, Chesterfield, MO, speaking in opposition to **P.Z. 10-2004 Barry Simon Development (Fox Hill Farms)** stated the following:
- She and her husband purchased their property one year ago and at the time, they were not made aware of the fact that the access easement could be used as a public road.
 - In purchasing the property, they paid an extra \$200,000 for the following reasons:
 - To live on a cul-de-sac for the safety of their children and her elderly parents, who need medical attention.
 - It is their cultural belief to live next to a hill on the southwest direction of their home.
 - It is important to her to provide a secure and responsible environment for her children and her elderly parents. For this reason, her prior residence was also on a cul-de-sac. When she purchased this residence, she was led to believe it would be the same.
 - She does not oppose the proposed development of the property on the other side of the hill, but just the use of the access easement as a public road.
14. Ms. Pam Handman, 16842 Eagle Bluff Court, Chesterfield, MO, speaking in opposition to **P.Z. 10-2004 Barry Simon Development (Fox Hill Farms)** stated the following:
- Her home is Lot 33, a resale, which she and her husband purchased in April, 2004.
 - The purchase data for their home is not reflected in the data presented by Mr. Simon.
 - Nothing was disclosed about the cul-de-sac, from the seller or the real estate agent.
 - The home was chosen specifically because it is located on a cul-de-sac – there are usually between 6-12 children playing on this street.
 - She is opposed to using Eagle Bluff Court as access for the proposed development and wants to retain the cul-de-sac for the safety of the children.
15. Mr. Mark Hale, 16848 Eagle Bluff Court, Chesterfield, MO, speaking in opposition to **P.Z. 10-2004 Barry Simon Development (Fox Hill Farms)** stated the following:
- He and his wife purchased their home thinking they were going to be on a private cul-de-sac.
 - They cannot receive mail or bus service in The Wings at this point. Mr. Simon's development - in opening up the easement - would also prevent that from happening for years to come.
 - He is not opposed to Mr. Simon's development as long as another access point can be found.

16. Mr. Jim Whalen, 16861 Eagle Bluff Court, Chesterfield, MO, speaking in opposition to **P.Z. 10-2004 Barry Simon Development (Fox Hill Farms)** stated the following:
- He and his wife purchased their home in December, 2003 and paid a \$200,000 premium for their lot.
 - They chose this location for the reasons of privacy, safety, limited traffic and it not being a thru-street.
 - They have invested over \$50,000 in permanent improvements to their home, which he thinks should be taken into consideration when looking at the valuation of their house vs. the proposal by Mr. Simon.
 - There was no notice, no signage, no policing of the requirements by the City with respect to the property and the easement.
 - They do not have the use of City services right now and that will continue for a number of years.
 - If directly connected, he believes they will be damaged directly on the basis of pricing, overall property values and the average lot size.
17. Mr. Nabeel Gareeb, Eagle Bluff Court, Chesterfield, MO, speaking in opposition to **P.Z. 10-2004 Barry Simon Development (Fox Hill Farms)** stated the following:
- The ordinance, which is law, established by the City of Chesterfield, states that *“Eagle Bluff Court shall be terminated as a permanent cul-de-sac.”*
 - The access easement is not a right-of-way – the use of the access easement was never specified.
 - Griffith Lane is not landlocked today. It has to be expanded for emergency access up to 20’ and therefore can be expanded to primary access, as well, up to 26’.
 - Their recommendation is that if Simon cannot find a way to modify Griffith Lane, then either downsize the scope of the project to fit within Griffith Lane or find an alternate access path.
 - MoDot is not opposed to Griffith Lane as primary access.
 - Fox Hill Farms is not compatible with Eagle Crest if directly connected thru Eagle Bluff Court.
 - Protracted and expensive litigation - because of no signs, no policing, and potential violation of ordinance - is not beneficial to anyone.
 - The residents request that the Planning Commission “do the right thing for the current residents” by:
 - o Letting Eagle Bluff Court stay terminated as a permanent cul-de-sac by not allowing primary access through it.
 - o Legally recording the specific use of the easement in a document so that it cannot be misinterpreted in the future to be in conflict with the cul-de-sac statement or be interpreted as a right-of-way.
 - o If the proposed development is built, requiring that a buffer be maintained between the two developments.

18. Mr. Steve Kling, attorney speaking on behalf of the Eagle Bluff residents and speaking in opposition to **P.Z. 10-2004 Barry Simon Development (Fox Hill Farms)** stated the following:

- He had supplied the Planning Staff with several definitional sources for “cul-de-sac” and “court” through *Black’s Law Dictionary*, *Webster*, and *Lawyer’s Title Real Estate Dictionary*.
- Griffith Lane is a prescriptive easement – it is not an exclusive easement. There are not exclusive rights that go along with that. The law is clear that any of the properties served by an easement can be sub-divided.
- His clients have no intention of allowing Eagle Crest common property to be widened to allow for a widening of Griffith Lane for emergency purposes. The majority of it goes through Eagle Crest common ground. As a prescriptive easement of 10’, they need to get the permission for the additional footage.
- The current situation involves a very substantial issue for his clients if the roadway goes through as proposed.
- Eagle Bluff Court was deceptively designed in their opinion – it looks like a court, it was designed as a court – the residents were told it was to be a private cul-de-sac.
- The City has some complicity in how things transpired.
- His clients will suffer substantial damages in connection with the proposed roadway.
- He believes his clients have strong legal grounds to seek legal redress and they ask that a comparable development be approved - but that the access road not be approved.

Commissioner Macaluso asked Mr. Kling how he would address the issue of Ordinance 1315’s wording of the cul-de-sac as being a “*permanent*” cul-de-sac. Mr. Kling stated that the key word in the Ordinance is “*terminated*” – “*terminated in a permanent cul-de-sac*”. His opinion is that the intent is obvious. The script on the plat indicates that the easement was granted to the City and the City can do what it wants – the Ordinance talks in terms of a possible extension. Mr. Kling further stated that the Ordinance contains conflicting language and it is his opinion that the language should not be construed against the current residents of Eagle Bluff Court.

Commissioner Macaluso stated that Ordinance 1315 talks about the easement to be used “*as directed by the City of Chesterfield*” and asked Mr. Kling how he would address that language. Mr. Kling replied that the plat is the only document that can be referred to – there is no written easement document, which spells out all the uses. Mr. Kling further stated that when he reviews the script, he sees that the easement is granted to the City, and it is his opinion that it is the City’s choice.

Commissioner Macaluso asked Mr. Kling to submit definitions for “*prescriptive easement*” and “*exclusive easement*” in layman’s terms.

Commissioner Macaluso referred to Mr. Kling's statement that the common ground in Eagle Crest would not be granted to Mr. Simon for emergency access and asked if the common ground would be granted if Griffith Lane was the primary access. Mr. Kling stated that if Griffith Lane was the primary access, the residents would consent to granting Eagle Crest common ground to allow for the widening of Griffith Lane.

Commissioner Perantoni asked Mr. Kling for his opinion on a hypothetical question – If the Ordinance's language is considered to be equally fair for both the Petitioner and the homeowners, how is placement considered – as far as when something is mentioned first – does that give it more importance than what follows? Mr. Kling replied that normally, with respect to legal construction, the document would be reviewed to see if the intent can be determined. When there are conflicting statements, one would see if there are other documents that can help explain the intent.

19. Ms. Mary McCarthy, Valley Farmers Market, 18308 Wildhorse Creek Road, Chesterfield, MO, speaking in favor of **PZ. 20-2004 Valley Farmers Market** stated the following:

- The project was incorrectly referred to at the September 13, 2004 Public Hearing - the correct name of the project is **Valley Farmers Market**.
- The Market will only be having one produce provider, which will keep all the parking open to customers.
- All deliveries will be made prior to opening each day.
- The pavilion will be moved closer to the home to allow for more parking spaces.
- Only the main level of the home will be used for retail; the upper level of the building will be used for offices.
- The retail area of the house is 1200 sq. ft. and the pavilion is 1400 sq. ft., which indicates the need for 17 parking spaces. There are presently 13 spaces shown on the Preliminary Plan; 5-7 more spaces will be added when the pavilion is moved.
- All the trees that are presently on the property will remain.
- The list of permitted uses will be downsized by 13 or more, which will include "no drive-thru for fast-food restaurants".
- The rezoning request complies with the Comprehensive Plan.

Chairman Sherman called a recess at 8:30 p.m. – the meeting reconvened at 8:40 p.m.

(Councilmember Fults left the meeting at 8:35 p.m.)

(City Attorney Doug Beach left the meeting at 8:40 p.m.)

VII. SITE PLANS, BUILDING ELEVATIONS AND SIGNS

- A. **Dierberg's The Market Place (Hollywood Video)**: Amended Architectural Elevations for one retail building on an 11.35-acre tract of land, zoned "C-2" Planned Commercial District, located Northeast corner of Baxter and Clarkson Roads.

Commissioner Hirsch, representing the Site Plan Committee, made a motion that the Amended Architectural Elevations, including the change in awning, be held until signs on the building are submitted to the Department so the Commission can see the awning and the signs together as a whole package and that no lettering be allowed on the awning. Commissioner Macaluso seconded the motion.

Commissioner Hirsch stated that the Site Plan Committee wants to make sure the awning fits in with the architecture of the center and the building, in particular. There was also a question to Staff to see whether or not the graphics would make the awning a sign, which would have a whole different meaning than just changing the awning.

Commissioner Perantoni stated she objects to the graphics on the awning, along with lettering.

The motion to hold passes by a voice vote of 9 to 0.

- B. **Chesterfield Montessori School**: Revised Architectural Elevations for a building addition, located on a 5-acre tract on the south side of Ladue Road, east of Saylesville Drive.

Commissioner Hirsch, representing the Site Plan Committee, made a motion to deny the use of *Trespa Meteon* materials and that the Chesterfield Montessori School should construct the building as originally approved. Commissioner Broemmer seconded the motion and **the denial passes by a voice vote of 9 to 0.**

VIII. OLD BUSINESS

- A. **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 copies of the Special Disclosures from Lawless Homes, which were signed by the residents of Eagle Bluff Court, were received after the deadline. They will be included in the next Staff Report, along with the definitions referred to by Mr. Kling.

Project Planner Christine Smith pointed out that the list of documents Mr. Doster considered when preparing his response to the request for a legal opinion was not included in Staff’s report, but was attached.

Project Planner Smith Ross stated the following two items discussed at the last meeting are included in the current packet:

- Mr. Kling’s letter of June 22, 2004.
- The copy of the Permit by Usage Agreement

ISSUES:

- Dates of when the various residents were told - or not told - of the easement.
- Is it physically possible for this project to be E-1 acre without having a flat piece of land?

(City Attorney Beach returned to the meeting at 8:47 p.m.)

- Ask the Petitioner if he is willing to follow the guidelines of the new Tree Manual for this project. *(City Attorney Beach stated the project would come under the Tree Manual that was in effect at the time the petition was started but the Petitioner can be asked if he would be willing to follow the new guidelines.)*
- Is it possible for the plan to be redesigned so that all lots maintain some existing vegetation?
- How does the Petitioner plan to address the issue of the proposed emergency access road with the common ground not being granted by Eagle Crest?

- B. P.Z. 18-2004 City of Chesterfield (Tree Manual):** A request to codify the City of Chesterfield's guidelines/regulations relative to landscaping and trees into the City of Chesterfield Zoning Ordinance and to establish new regulations in regards to tree preservation, tree removal, and landscaping.

Project Planner Aimee Nassif stated that an Issues Meeting was held on September 13, 2004. At that time, Staff was asked to address several issues which are noted in the Staff Report.

Commissioner Macaluso asked if the term "open space" should be included in the Tree Manual. Project Planner Nassif replied that the "open space" definition will be included in the unified development code. The terms in the Tree Manual are used throughout the Manual. "Open space" is currently not used in the Tree Manual as it concerns the pavement, pathways, water features, and sidewalks.

Commissioner Macaluso felt the language was not clear with respect to page 8, Section VI, Item E of the Manual which states:

For projects where more than fifty (50) trees will be installed, a variety of tree species must be utilized so that one species does NOT provide more than twenty (20%) of the large deciduous trees, not more than twenty percent (20%) of the ornamental trees, not more than twenty percent (20%) of the evergreen trees.

After general discussion concerning the language, it was agreed that Section VI, Item E would be changed to read:

For projects where more than fifty (50) trees will be installed, a variety of tree species must be utilized. One species shall NOT provide more than twenty percent (20%) of the large deciduous trees or more than twenty percent (20%) of the ornamental trees or more than twenty percent (20%) of the evergreen trees.

Commissioner Macaluso referred to page 15, Section XII, Item 3 concerning "Special Conditions" which states:

Property for which a tree specialist determines that the applicant is unable to provide tree preservation in accordance with this ordinance due to highly unique and severe circumstances such as extremely poor quality of trees, extreme topography, unusual lot shape, or other similar condition.

Commissioner Macaluso suggested that this section be re-worded to require the City's tree specialist to concur with the developer's tree specialist. She expressed concern that a

developer's tree specialist could make the determination that the developer was unable to provide tree preservation, which could lead to all trees being removed without the City's concurrence.

City Attorney Beach noted that Commissioner Macaluso's concern is addressed in the wording in the first paragraph of this Section, which states:

Special conditions may be granted in whole, or in modified form with conditions or denied by the Department of Planning, after consideration of the requisites presented.

Commissioner Hirsch suggested that the language in Section II. B. of the Tree Manual be modified for clarification purposes. After general discussion, Project Planner Nassif proposed the following re-wording:

B: Exemptions for Single Residential Lots of Less than One Acre:

- 1. Do not require a tree removal permit.***
- 2. That will be removing less than 10,000 square footage of tree canopy coverage will not be required to provide a tree stand delineation, tree preservation plan, or landscape plan when submitting for a building permit.***

The Committee agreed on the above re-wording.

Commissioner Hirsch made a motion to approve the Tree Manual, as amended in this meeting's discussion. The motion was seconded by Commissioner Macaluso.

Upon roll call, the vote was as follows:

Aye: Commissioner Broemmer, Commissioner Hirsch,
Commissioner Macaluso, Commissioner O'Connor,
Commissioner Perantoni, Commissioner Sandifer,
Commissioner Asmus, Commissioner Banks,
Chairman Sherman

Nay: None

The motion passes by a vote of 9 to 0.

- C. **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 David Bookless referred to his Staff Report and stated that it includes information additional background information concerning where the 50% open space requirement came from, as well as a graphic showing the parcel size and the amount of green and open space in all of the parcels within Sub-Area 4.

(City Attorney Beach left the meeting at 9:18 p.m.)

Commissioner Macaluso referred to Item 6 of the Staff Report pertaining to how much of a reduction in allowable gross floor area would result in an open space calculation of 38%. Commissioner Macaluso pointed out that the Petitioner had indicated in his presentation that the open space is now at 38%. Project Planner Bookless stated that the calculations he was provided show 36% open space.

Commissioner Hirsch referred to the Sub-Area 4 map provided in the Staff Report and asked what the property is, identified as Parcel G, showing only 31% green space. Project Planner Bookless replied that Parcel G is the Larry Enterprise parcel and 31% green space is what was approved.

Regarding Parcel I, showing 27.6% green space, Project Planner Bookless noted that the ordinance for this parcel allowed the inclusion of the right-of-way in the green space calculations. The 27.6% does not include the right-of-way; when the right-of-way is included, the percentage of green space is nearly 46%.

Commissioner Macaluso made a motion to approve **P.Z. 02-2004 Summit Development (Valley Gates Buildings)**, with the Attachment A, as provided, with the following changes:

Section I. Permitted Uses:

- Remove** the entirety of **Item (f)**
- Add** to **Item (hh)** – “**No drive-thru**”
- Remove** the entirety of **Item (kk)**
- Remove** the entirety of **Item (ll)**
- Remove** the entirety of **Item (vv)**

Section II. Floor Area, Height, Building and Parking Structure Requirements

- Section A 1) a) **Change** the total square footage to “**82,000 sq. ft.**” for total gross floor area
- Section A. 3) a) **Change** the minimum of open space to “**40%**”

Section VIII. Specific Criteria

Section A. 7) **Add:**

- c) “**In lieu of reduction to 40% open space, additional hardscape features and reflecting pool at the entrance to the site will be required.**”

The motion was seconded by Commissioner Banks with a request that the motion be amended to leave the total square footage at **90,000 sq. ft.** in Section A 1) a). Commissioner Macaluso agreed to the amendment.

Commissioner Hirsch referred to the earlier discussion of a maximum height of 45 ft. vs. 40 ft. and stated that the minutes of the May 30, 2001 Planning Commission Meeting, included in the Staff Report, indicate that there is no height limit for this area so a height of 45 ft. would be allowable. Project Planner Bookless concurred that for the Comprehensive Plan, there is no height restriction within Sub-Area 4. The 40 ft. figure came from the standard number used for a two-story building, which the developer is proposing. The 40 ft. maximum is the design guideline in other areas but for this specific area, there is no height limit.

Commissioner O'Connor asked if it was the intent of the Comprehensive Plan to allow for more than two stories in order to allow for more open space, in which case, Attachment A should not indicate a restriction of two stories. Project Planner Bookless replied that the intent of the Comprehensive Plan was to accommodate the 50% open space for that area, encouraging developers to build “up” as opposed to building “out”. The restriction of two stories was included in Attachment A because the developer is proposing two stories.

General discussion was held about the uses eliminated in the motion. Commissioner Hirsch asked Commissioner Macaluso if she would be willing to amend her motion to re-instate Item (f) under Permitted Uses. Commissioner Macaluso replied that she is willing to **restore Item (f)** under Permitted Uses but would also like to change the total square footage in Section A. 1) a) back to her original motion of **82,000 sq. ft.** for total gross floor area. Commissioner Banks agreed to the amended motion.

For clarification, Project Planner Bookless asked if the Attachment A should include both the 40 ft. limit for height and two stories, or just the two-story limit. It was agreed that the Attachment A should only include the two-story limit.

Upon roll call, the vote was as follows:

Aye: **Commissioner Hirsch, Commissioner Macaluso,
Commissioner O'Connor, Commissioner Perantoni,
Commissioner Sandifer, Commissioner Asmus,
Commissioner Banks, Commissioner Broemmer,
Chairman Sherman**

Nay: **None**

The motion passes by a vote of 9 to 0.

IX. NEW BUSINESS

Commissioner O'Connor requested that letters, submitted for review, be kept separate in the Staff Reports to make for easier reading. Chairman Sherman stated that this would be reviewed with the Department.

X. COMMITTEE REPORTS:

- A. Committee of the Whole – No report**
- B. Ordinance Review Committee**

Commissioner Banks indicated that the Ordinance Review Committee will be meeting soon. He would like the Committee to review the issue of E-districts and why there has to be an average density. He also feels that the issue of “large additions to homes” needs to be addressed.

Director of Planning Teresa Price stated the Committee also needs to review the overlay in connection with the Airport noise study. Commissioner Broemmer asked who would be reviewing the overlay. Director of Planning Price replied that with the new noise study, there have been some new land use recommendations, which had been forwarded to the City. The Planning & Zoning Committee has forwarded some of the

recommendations back to the Planning Commission and has asked the Commission to review them. This will be discussed at the next Ordinance Review Committee.

Commissioner Broemmer stated that this may also include the Comprehensive Plan because it is a land use situation.

- C. Architectural Review Committee** – No report
- D. Landscape Committee** – No report
- E. Comprehensive Plan Committee** – No report
- F. Procedures and Planning Committee** – No report
- G. Landmarks Preservation Commission**

Commissioner Perantoni reported that she has been tasked to work with the Ordinance Review Committee to explore ways of writing in allowances for variances to benefit building preservation/restoration – some zoning incentives – to encourage people to preserve. Chairman Sherman indicated that this would be added to the Ordinance Review Committee's agenda.

XI. ADJOURNMENT

The meeting was adjourned at 9:45 p.m.

Lynn O'Connor, Secretary