Consider an appeal of the Planning Commission's approval of a Preliminary Plat for Fifth Street Bluff Subdivision, a 0.29 acre subdivision consisting of one lot, located at 427 Country Club Court and accept dedication of easements and rights-of-way for PP-04-01-08.

Vice Mayor Amyx said that he would be abstaining from discussion and vote on this item because it involved his mother-in-law and acquisition of her property from the buyer, to avoid any type of potential conflict of interest issues.

Mary Miller, Planner, presented the staff report. She said this item was a preliminary plat for a one lot subdivision of approximately .29 acres located on 5th Street, just east of Iowa Street and in an area zoned RS10. With the plat, five feet of right-of-way was being dedicated as required by Section 20-810(d)(4)(i) to provide one-half of the necessary required 60 feet of right-of-way as the development code required for local streets.

Early in the review process, a neighbor called with the concerns about the safety of adding additional access in this area and the City engineer required the applicant to provide a sight distance study so staff could determine if it would be safe. The City engineer indicated that based on the result of the study, a driveway could be safely located on this property, subject to the two conditions that were listed in the staff report, which were 1) all vegetation in the sight distance triangle, which was in the right-of-way, be removed and; 2) the driveway be located as far to the northeast as possible. Those notes would be required to be added to the plat.

The Planning Department received several comments from the general public and arranged a meeting to discuss those concerns. The City engineer and City traffic engineer attended the meeting as well. The primary concern was safety of the driveway and there were suggested options of improving safety in that area. The principle suggestion was the installation of speed humps on West 5th Street to ensure the current posted speed limit of 10 mph was observed. The neighbors also suggested a guard rail in certain areas to prevent cars from

driving off of the street and the traffic engineer encouraged the neighbors to make their requests to the Traffic Safety Commission.

She said another issue of concern that was raised was the plat document itself. An error was identified on the legal description and a surveyor of the plat confirmed the error and correction were made. As the plat complied with the subdivision regulations and with the density and dimensional requirements of the development code, staff recommended approval of the preliminary plat and the Planning Commission voted 7-0 at their May 18th meeting to approve the plat and forward it to the City commission for acceptance of dedications of easements and rights-of-way.

She said per the provisions in Section 20-813(f)(3), an appeal from the Planning Commission's approval of the plat had been filed by Jerry Wells, Attorney, representing the property owners in the area. She said she summarized the points in the appeal, which included the exact specifications of the existing right-of-way could not be verified at this time because of unresolved physical data discrepancies. Another was that BG Consultants, who prepared the plat, reviewed the survey and found that an incorrect PIN had been used, the plat had been revised, and hand written in the correct figures. The appeal indicated that the dedication of right-of-way was a fix intended to resolve the inadequate frontage. When the applicant came in and provided their plat application, the applicant also submitted a request for variance for required frontage, which was a result of a pre application meeting with Planning Staff, as staff used their GIS information and on the GIS, the existing frontage was inadequate. Through a review of the plat, it was determined that with the additional right-of-way that was required the additional frontage would be provided and therefore the variance was not necessary.

She said the appeal brought up several definitions. The definition of frontage was defined in the subdivision regulations as a boundary of a lot or residential development parcel that abutted a street or a road. Street was defined as any vehicular way or ways which 1) was an existing state, county or municipal roadway; or 2) shown up on a plat pursuant to law or; 3)

was approved by other official action. The street right-of-way was all land located between the street lines, whether improved or unimproved, and street width was defined as the amount of street right-of-way abutting a lot's property lines. As pointed out in the appeal letter, the word "abut" was not defined, and staff used the standard definition meaning to touch upon.

In summary, the dedication of right-of-way was required by code and the result of that dedication that adequate frontage, the portion of the lot which abuts the street, which was described as land within the street right-of-way, was provided. The appeal indicated that selecting a single property for dedication of additional right-of-way thwarts the purpose of a right-of-way. Dedication of right-of-way was required by code and in order to not dedicate right-of-way, it was necessary for the applicant to request a variance from that requirement.

Another item brought up was that the destruction of trees on the property conflicted with the purpose and intent of the subdivision regulations, which were to contribute to the safety and aesthetics and to conserve and protect natural resources. The appeal letter mentioned that trees were required to be placed on abutting street right-of-way. Those were street trees and the subdivision regulations required street trees, however, the sight study indicated the landscaping would not be permitted in the right-of-way sight distance study triangle area. The City horticultural manager had no objections to having no landscaping in that area. Street trees would still be required, but they would not be located in the right-of-way. The Master Street Tree Plan was provided along with the final plat. The subject property had quite a bit of tree cover and the applicant intended to maintain most of that area.

Safety was raised in the appeal letter. There was a 0 point set slope on one property and low or fairly level sloped adjacent to that property. Two properties had about 10% slope. The property adjacent on both sides had a little over 11% slopes. There was a 12% slope on the far east and a small area of about 18% slope.

She said through the review of the plat, it was determined the driveway could be safely accommodated on this property. The proposed development was conserving many trees on

site, more than what remained on the other developed sites in the area. The proposed lot conformed to the density and dimensionally requirements of the development code, including the minimum amount of frontage required. Based on those facts, Planning staff would recommend the City Commission uphold the Planning Commission's approval and accept the dedications of easements and rights-of-way.

Commissioner Dever said the notes indicated the City engineer dictated 5 foot right-of-way added.

Miller said whenever a new lot was dedicated, one half of whatever deficiency of right-of-way was required by code and it needed 60 feet, but 50 feet was available so ½ of the required 10 feet would be the 5 feet.

Commissioner Dever said he additional right-of-way being taken over, moved into the property, thus creating a larger arch of the frontage.

Shoeb Uddin, City Engineer, said that was correct. The additional right-of-way was not a requirement he requested, but was a requirement by the code. The classification of the road was a local street and the current right-of-way was 50 feet. The current code required 60 feet of right-of-way for a road of this classification, so the normal City practice was when this kind of situation or case came to the City, if the right-of-way was not adequate based on the current classification of the road, the City would require additional right-of-way. This was a fairly typical and standard practice that he had seen in the last two years.

Commission Dever said by adhering to that new code, the benefit to the property owner was an increase frontage on the road which allowed the use of this property for what was being requested.

Uddin said it made the property satisfy the frontage requirement to have a driveway. If the additional right-of-way was not required, then the available frontage was just a little bit short. An alternate route would be for the applicant to apply for a variance from the Board of Zoning

Appeal and based on its closeness to the required frontage, it seemed like it would not be a difficult situation for a variance to be granted.

Commissioner Cromwell said he had a question about water drainage and single family homes. He asked if the City had any retention/detention requirements.

Uddin said any issues related to stormwater drainage were typically handled through a site plan or if it was a large subdivision, a drainage study was required. This was a small lot of 12,000 square feet and there was no requirement for a drainage study to be submitted in terms of the retention or how additional run off would be handled. In discussion with the residents, he had expressed the willingness that if that was required to make people feel safe or more comfortable about the drainage situation, City staff would be available to take on that task and make sure the drainage would be handled appropriately.

Mayor Chestnut called for public comment.

Jerry Wells, Attorney, representing a group of area homeowners, said he was going to speak to the legalities of this issue. He said in the winter time, 5th Street could be a dangerous street since it came off of a hill and curved. There were some safety concerns about this street and an ingress/egress. It was important to note that at this point, the area was triangulated. The definition of frontage in the code was that it must abut a street or touch this street. What staff was recommending was removing the frontage by back this up through the triangle to meet the 40 foot requirement.

He said the developer, when this property was acquired, had ingress and egress on County Club Court and it would have been wiser to construct a joint use driveway facilitated up to this point and, with some good planning, locate one or two residences on that large piece of property. They were with a less than 40 foot required frontage as set out in the code. The code was strictly construed and directly said it was 40 feet. It was their position that going back up the triangulated piece of property, to acquire enough space, by the use of right-of-way as frontage, went against the purpose and meaning of frontage in the code.

He said their concerns from a legal standpoint were two fold. One he already elaborated upon, which was the frontage. To raise that frontage by 5 feet or so by use of right-of-way in their view, did not meet the standards of the code.

Secondly, they had great concern about whether a right-of-way could be used in a fashion in which it was used here. He had done some research subsequent to submitting his letter of appeal. He was interesting in the definition of right-of-way as it related to land use, which he thought was important in this issue. He came across an attorney general's opinion numbered 2003-28, which meant it was written in 2003. Interestingly enough, it involved the City of Lawrence and in this particular opinion, Senator Brownlee from Kansas City wrote the attorney general and wanted a question answered. The question was if a utility easement that had been dedicated to a City was not a public right-of-way as it was defined in statutes and in the case law. The facts did not equate to the particular issue on land use, but the interesting part of that opinion was they took great pains to define what a right-of-way was. The second interesting thing was that the code did not define right-of-way. It defined almost every term, but not right-of-way, which he did not understand.

He said in addition to Senator Brownlee inquiring about what the meaning of right-of-way was, the League of Municipalities also weighed into this and had their own agenda, but they were interested in a definition of right-of-way. In the opinion written by the Attorney General as to the issue of the definition of right-of-way, the League of Municipalities maintained that the right-of-way was the term of art that meant public thoroughfare. This interpretation was born out by the second sentence of the definition of one of the statutes that referred to streets, alleys, avenues, roads, highways, parkways and boulevards. There were also Kansas appellate decisions that use the term right-of-way to refer to property that was used for public travel. In the end of their opinion they referred to a specific statute that Senator Brownlee wanted incorporated into the opinion. It was a definition as used in that particular statute, but provided the summation, in light of the legislative history of KSA 2002-17-1902 and the fact that the

definition of public right-of-way appeared to be limited to public thoroughfares. That was the conclusion of the Attorney General. He urged the City Commission to find that this right-of-way that was placed in here in a very artificial way so the developer could meet the code requirements was not a public thoroughfare. It was an isolated attempt of dedication of right-of-way to make up for the inconsistencies and inadequacies of his frontage, which required 40 feet and it was not 40 feet. He said not only was a misuse of right-of-way, but it might be illegal to use a right-of-way in this particular way.

One of the cases cited in the attorney general's opinion was State V. Dines, which was a case that came out of the Supreme Court of the State of Kansas. One interesting observation in that particular opinion they quoted with approval a case called Stauber V. City of Elwood, Kansas. They quoted the Stauber case this way, "The Stauber court observed that before city may authorize the use of a public right-of-way for private purposes, there must be a clear showing that the primary use of the right-of-way would benefit the public and any private use must be incidental to the public purpose."

In summary, it was their position that this was not an appropriate use of right-of-way. It was not a right-of-way that was condemned up and down 5th Street and dedicated. It was an isolated piece of property to allow this developer to overcome the lack of planning because if he had investigated anything at all, he had to know the frontage was less than 40 feet.

Jacqueline Shafer, property owner adjacent to the proposed plat, said she was opposed to this plat for a number of reasons. First, there was inadequate frontage. The plat of the Grandview Heights Neighborhood showed actual frontage at 36 or 37 feet, depending if measuring as a straight line or a curve. Frontage, as Wells and Miller explained, was defined in the City Codes as the boundary of a lot of residential development parcel that abuts a street or road. She said she wanted to emphasize the right-of-way for all of Grandview Heights was 50 feet, not 60 feet. To increase right-of-way at this one spot was absurd and had no other use than providing adequate frontage and as such, was a misuse of the purpose of right-of-way.

Secondly, allowing a driveway at this location would create a collision course with her driveway. Given the slope of the two properties, the curve of the street at the location of where the new driveway would be placed, and the mature trees that were a part of the existing landscape, anyone backing out of either driveway would not be able to see another driver until reaching the street, at which time it would be too late. The sight distance study, which was paid for by the developer, totally ignored that fact. The study suggested that the driveway be placed as close to her property as possible, thereby increasing the probability of collision in her opinion.

Thirdly, this plat flew in the face of the policies laid out in Horizon 2020, most specifically maintaining the physical form and patterns of existing neighborhoods. She said regarding encouraging compatible infill development, Horizon 2020 stated that open space patterns and front side and rear yard characteristic of the neighborhood should be maintained. This would not be the case if a house were allowed on this parcel. All of the houses in Grandview Heights had broad frontage that abuts the street. Frontage for the existing homes ranged from 60 feet to 160 feet with average frontage falling at almost 109 feet. If a house were allowed on this property, its street frontage would still be 36 feet, which was not in character with the rest of the neighborhood.

She said regarding land fill development, Horizon 2020 encouraged the participation and organized involvement of neighborhoods in the planning and development process of their neighborhoods. She did not mean to be rude, but found this policy almost laughable given the experience their neighborhood had with the Planning staff. Their participation had been given lip service only. All of the concerns they had raised from safety to drainage to discrepancies in plat numbers were swept under the carpet. Residents on Iowa and Country Club Court have relayed major problems with drainage from this location and those problems were simply being ignored. Such behavior did not encourage participation, nor did it address the problems that remained.

She said Horizon 2020 also stipulated that the natural environmental features within residential areas should be preserved and protected. Natural vegetation and large mature trees in residential areas added greatly to the appearance of the community as a whole and should be maintained. Changes to the natural topography should be minimal. The property in question had been a heavily wooded lot for many years. A great many, large, mature trees have already been cut down in anticipation of this plat. She imagined a great many more would need to be removed before construction could take place. The change to the topography was already massive. In addition, she feared that the change in topography would only exacerbate the drainage problems for their neighbors on Iowa and Country Club Court.

She said she wanted to quote Scott McCullough, the Planning Director. In an article that ran in the Lawrence Journal World last week, McCullough was quoted in saying that the City tried to, "ask for enough information to ensure that a project was not going to have an adverse impact on an area." In addition, he said, "Our code does recognize that not all development was good development. You need enough time and information to study the project to know it was good for the community." She submitted that this was a bad project for the community because the plat had been pushed through and important concerns brushed aside. She asked the City Commission reject the additional right-of-way that was being requested.

Lance Antle, resident in the neighborhood, said there were nine homes represented around this particular property. Meetings were held about why they did not want the home to be constructed at that location and one issue was aesthetics. People liked living at that location because of the country feel, the distance between neighbors, and the well established landscaping and neighborhood.

He said he understood there had not been any proof of automobile accidents, but he had seen the remnants of two car accidents in his driveway and in the street in front of his driveway in the 10 years he lived at that location. Both accidents occurred at night because in the

morning he could find automobile parts in the driveway and in front of his driveway. There were also skid marks in his grass where a car had avoided something.

He said another issue he had concern for was drainage. It was his understanding that a drainage study was only needed for a certain square footage of the property, but made sense if there was a certain slope and how much water that particular geography would absorb was another issue and if the City would want to conduct such a study.

He said the last issue was the legal issues concerning frontage which others would discuss.

Chris Caldwell, Lawrence, said he had served from time to time as Jackie Schaffer's agent as she was his fiancée. He said this entire bluff proposal was improper evasion of minimum frontage requirements and death trap driveway were no laughing matters.

Instead of acting in response to the numerous safety issues cited in materials presented to the planning staff and Planning Commission, the City handed the neighbors a form of attempted appeasement in the form of the sight distance study. Not only was the study an insult to the neighbors, but it would reduce the existing safety for the immediate neighbors. The existing barriers of trees shielding the Boxburger residence to the left would be weakened or destroyed. The study's recommendation to shift or move the death trap driveway as far as possible to the northeast would not only place it dangerously close to Schaffer's driveway, it would move the point of impact further uphill for any sliding driver, reducing his time to react, brake, escape or stand a prayer of getting out of an accident.

The City Engineer did state at the Planning Commission meeting that the study recommendations would only improve the possible safety for the proposed driveway, not for the remaining segment of the street which the City Engineer specifically excluded in his remarks. As stated in earlier submissions, children were unacquainted with sight distance triangles. Children were expected to roam without regard to sight distance triangles. Sight distance triangles did not provide quick reaction times or increase sobriety for someone coming over the

hill from the many apartment complexes on the other side. It was a shortcut to the Turnpike from dense housing. He went over that road from both sides several times a day every season. In severe winter conditions, the steep hill street section became snow packed, ice covered, and acutely treacherous. Cars sliding off the road and retreating backwards downhill were a common occurrence.

He said the City could not restore the destruction that had already been done as a consequence to this project with respect to trees that had been removed and were only cut down to waste level which was an unappealing sight. The Commission could call the bluff and put to rest the taunting insult of this subdivisions name by letting it die by not letting this item go forward.

Richard Hernandez, neighbor of the proposed platted property, said everyone had times when they had to comply with the strict interpretation of the City Code. He said this particular lot should stand on its own when it was considered for this offer. It was only fair to everyone that it be considered in the same manner the others had been considered. Because of that, they thought it should meet the same strict standard that was applied elsewhere and to that end the use of right-of-way to gain this frontage was a misuse of right-of-way.

He said he had the privilege of working around the State of Kansas and meeting with many county and city commissions discussing all types of issues. For the most part, he had come to understand right-of-way to be something to provide benefit to a jurisdiction because of some outstanding purpose or need, like a street. In this particular case, they already had a street. He did not see in the foreseeable future that their street would become a large street. He saw this as a singular event with no foreseeable future need which would require the acquisition of the remaining right-of-way to do anything with the offer being made to the City Commission tonight. If there was no need, he asked if there would be any benefit to the jurisdiction overall. There was none the neighbors could see. The only thing that could be seen was the City was being offered a pie shape piece of property that was pinched off by the

adjacent lots which were pretty much unusable. It appeared that the only reason for the offer of dedication was to gain frontage in order to avoid application for variance. Gaining frontage was clearly not the intent for use of right-of-way and was clearly not intended for this type of use. Consequently, he had to come before the City Commission and ask them to consider all the facts that were presented, and as a result of that asked the City Commission to decline the offer of right-of-way because it was a misuse and misapplication of right-of-way.

John Chaney, JMC Construction and developer, said the right-of-way was a requirement by the City and it was not to gain the footage because he was originally going to apply for a variance. Right-of-way could be used for future sidewalks or any public improvement. He said it was always required to give the maximum right-of-way.

Also, those trees were cut at 4 feet high for the bulldozer to pick those trees up instead of needing to dig deep. He said with the rest of the lot, those trees would remain and there were no plans to take out any more trees other than what was required in the sight distance study.

He said there was no grass in that area because of the trees and any rain that fell on that lot would go downhill and with the lot being partially cleared and sodded, it would probably reduce the amount of flow off that lot.

Mayor Chestnut said staff to go through how right-of-way was dedicated and how it would process on every plat.

Scott McCullough, Planning/Development Services Director, said the exaction of right-of-way as Uddin explained, was consistent with code standard for any plat that came into the City. The typical process they had seen were waivers not to have to dedicate the right-of-way. The applicant for this property requested a waiver from the code provision to the lot frontage. It was only after the requirement to get another 5 feet that they realized as a consequence of that, that standard was met. Sometimes they had one code standard that either satisfied or put in jeopardy another code standard. That was part of their analysis and review. One of the

purposes for getting those plats as they came in was building the proper amount of right-of-way for future improvements and helped in cost of the City to acquire land, which was one of the hindrances to the improvements of streets, was land cost. As properties redeveloped or replatted, often times the code required exaction. This would likely be a candidate to receive a waiver to 5 foot of additional right-of-way because of the development on the road, but it was not asked for. The applicant provided that code standard.

Commissioner Dever said the applicant would have received a waiver for the length of the frontage.

McCullough said what was more typical in a scenario like this where there was a developed road and there was one lot left to develop on a certain corridor, staff had seen in the past the request to waive the standard to dedication the additional right-of-way. Staff had accepted those waivers because there were no imminent improvements in the planning. Because the road functioned appropriately, there was no recognized need for sidewalks, improvements, or drainage. It was less typical to receive a waiver that would ask the City to not dedicate the land. There was another waiver for the frontage requirement. If going with the 37.35 feet without dedicating the right-of-way and a wavier would have been requested, he could not say what the Planning Commission would have done, but in his opinion it was not an extraordinary waiver to ask for, in a situation where there was an infill property that otherwise met the code and a study had been accepted for the driveway access and fully complied with the code. He said he could envision staff supporting that waiver to the Planning Commission.

Commissioner Dever said why the additional 5 feet of right-of-way was asked for if everywhere else was narrower and were unlikely to request or purchase the additional right-of-way to make the improvements that might be necessary to take advantage of the additional five foot of right-of-way.

McCullough said staff never analyzed that because staff never received a request to not dedicate the right-of-way. There was an argument that there would not be a lot of replatting in

the area so they would not receive five feet from everyone along the road. It might sit as a notch of 5 feet of right-of-way for some time before beginning to complete the right-of-way of this road to get a whole 60 feet of right-of-way. Staff had not analyzed that issue to determine whether or not it would be of value to the City or not.

Uddin said the important point was that the additional right-of-way was asked for as part of the process, not to acquire additional frontage. Without the additional right-of-way, the frontage was 37.35 feet, so it had to go through the waiver, but agreed with McCullough in saying it was not an extraordinary waiver because those were not exact decisions. They were numbers to stick to, but if there were circumstances where it was a little short, you look into the overall scenario and situation. Based on that situation, it was a property and a sight distance study had been prepared. There were posted speed limit signs of 10 mph and had adequate sight distance for the speed limit. A driveway was feasible and would disagree that the additional right-of-way was asked for so that they would satisfy the department.

Mayor Chestnut said there were a number of other items brought up. One was drainage and he thought also the driveway. He drove the street several times and noticed there was a driveway on the Schaffer property that was pretty close and adjacent to that. If this moved forward going through a process of development, he was assuming that there would not be a drainage study per se, but a lot of those considerations were looked at in submission of a plan and secondly, what where the requirements for distance between driveways. He assumed it would be based on zoning and was sure they had other regulation there.

McCullough said the next step in processing this as a single lot subdivision, based on the size and did not require a study, based on the area. The next step was a building permit. It was not site planned in the sense that a commercial property was site planned, so the applicant would come in with their building permit application, provide a plot plan of where the home was to make sure that it met setbacks, there might be engineering studies to analyze soil and those sorts of things for the structure itself. Part of the building permit and plot plan to look at the

building would include the driveway location at the site. Staff's expectation was that the driveway conformed to the analysis with the plat in terms of the location, which was included and issued with the building permit, inspections were made, and the construction commenced.

Mayor Chestnut said with the building permit were there any requirements on the distance between the driveway and property line.

Uddin said the code had minimum spacing between driveways along different streets, so it would meet that criteria. One thing he suggested was to move the driveway a little bit further to the north because there was a little bit of discrepancy in the available sight distance. There was more sight distance to the east than to the west, so if the moving the driveway further to the east, it would be somewhat balanced out. If there was objection from the neighbor, that did not need to be done because there was still adequate sight distance to the west, but there was just more sight distance to the east.

Commissioner Johnson said staff was willing to look at the drainage. On a 12,000 square foot lot, there was probably some drainage in relation to the lot, but did not see how this size of lot would cause a drainage problem for the entire neighborhood and there might be bigger issues happening. He asked if there had been any preliminary investigation.

Uddin said no, but if directed by the City Commission, staff could investigate that area.

Commissioner Cromwell asked if this lot was a platted lot that was unbuildable because it did not have the minimum frontage required.

McCullough said no, this was unplatted property where the code required that property to be platted to gain the building permit to develop the home. The properties surround this parcel were part of a plat, but this was one of the unplatted parcels of property within this area and the code required it to be platted to be eligible to receive building permits. Their contention was that the lot complied with all applicable standards of the subdivision and zoning codes.

Commissioner Dever said the arguments he heard from the neighbors revolved around the questionable process that City staff arrived at this lack of a need for a waiver for the actual

building. Some of the arguments put forth were questionable and the definition of right-of-way was questionable. There were no near plans and it was not common for them to use this extra right-of-way. It would be better from a process standpoint to listen to that feedback and then ask for the variance they were planning to ask for all along and go through that process. It seemed to be the major concern other than the run off. There was severe slope in the neighborhood and was more concerned about the appearance. He said the Commission needed to make sure they were good with the process issue.

Commissioner Johnson said the City Commission was getting caught up in a technicality with the right-of-way question. He said the 2.5 feet was not the issue and it was the City's practice, in the past, for right-of-way on new projects. He said the questions about drainage, safety, and sight distance were valid questions. At the end of the day 2.5 feet would not be noticed, but the sight distance type things would be noticed. He said he thought the process was followed and the sight distance, at that location, was good and confirmed by a third party and City staff. The plat complied with the code and the Planning Commission and City staff recommended it. He said he did not see how a 12,000 square foot lot could cause a drainage problem for an entire neighborhood. There might be other issues going on and commended staff for stepping up and offering to look at it because it was not required. He said the sight distance with the removal of those trees might help the situation. He said he fully supported staff and the recommendation of moving forward.

Commissioner Cromwell said he had an issue with process and wanted to keep things in their proper places. He said he was glad staff was willing to take a look at the drainage and other issues that were important. The character of the neighborhood was always important and it was critical to maintain because of the uniqueness of the neighborhood in Lawrence. He said he had an issue with the appearance of trying to scoot the easement back somewhat on this lot which would enable things to move forward.

Commissioner Dever said if there was a more obvious process to try and make the neighbors more comfortable, the process more clear, and evaluate whether or not the Commission wanted to discuss taking 5 foot sections of right-of-way.

Mayor Chestnut said the committed policy was to continue to acquire right-of-way at its maximum size in order to accomplish some things over time as a community, like sidewalk grids and other such things. Whether or not that would be applicable in the situation, the policy in general was completely in compliance with state statute. The idea was that transportation included roads, sidewalks, bicycle paths, and other transportation needs. One of the things the community suffered from was stretches, especially in places like 19th Street and neighborhood streets, where there was no room to do what they wanted to do. That was the intent and he thought it was appropriate. A lot of residential people had been established at that location for a long time and it was a unique area.

He said if the Commission were to send this item back to the Planning Commission, they could have the option to send it back to through the process of the Board of Zoning Appeals.

McCullough said what they were waiving would dictate the process the City took whether it was a waiver that required a hearing at the Planning Commission or a meeting of the Board of Zoning Appeals to look at a lot standard. The City Commission's role was to uphold or not uphold the Planning Commission's approval of this plat and either accept or not accept the dedications of the right-of-way easement. If they did not accept the dedications of easements and rights-of-way then it would fall to the owner of the property to determine what type of decision or request to be made on this property with some direction from the Commission.

Commissioner Dever asked if the process for the BZA difficult to explain to the City Commission on the length of time it would take and/or what type of effort needed to be put forth by the property owner so the Commission could evaluate whether that might be the most suitable alternative, given some of the questions and the current landowner indicated that was his plan all along.

John Miller, Staff Attorney, said the subdivision regulations indicated that if the governing body rejected part or all of the proposed dedication, the developer (subdivider), in this case could amend the preliminary plat and resubmit the plat for consideration by the Planning Commission without the rejected dedication. If the subdivider took no action within 60 days of the rejection of the proposed dedication, it should constitute a failure of material condition of the approval of the preliminary plat and a preliminary plat should be deemed to be rejected. The plat could not be filed with the Register of Deeds if rejected. The code and the statute required that if the governing body rejected the dedications, to advise the Planning Commission for the reason of that rejection and the developer (subdivider) gave that individual or property owner the ability to resubmit to the Planning Commission for their consideration a revised plan. If the Commission rejected it, they could not file a preliminary plat and needed to go back to the Planning Commission for reconsideration without the rejected dedication.

Commissioner Dever said there was no BZA involvement.

Miller said he was not sure what body would hear that appeal process. He said this indicated it had to go to the Planning Commission, but had to confirm with staff on how the variance was addressed by either the Planning Commission or Board of Zoning Appeals.

McCullough said staff was drafting legal ads for the July Planning Commission tomorrow and were talking about a July or August timeframe to bring the plat back for acceptance and dedications to the City Commission.

Mayor Chestnut said if the Commission chose not to uphold, they needed to provide discussion on why they were not accepting those dedication of easements according to council.

Commissioner Dever said if the diagram presented by Wells was inferring the right-of-way drawn would also impact the neighboring properties.

Hernandez said it would potentially impact the neighboring properties. A lot of times under normal circumstances in dealing with right-of-way in other places, right-of-way was taken

at a right angle and in this case, it was not. So if they were going to use this for any reason, they would have to take from the others.

Wells said in speaking in a third party perspective, there was a case that was settled between the City and Vangard. He said there were stipulations and commitments coming out of the settlement of that case and suggested that case be looked at carefully to see if any agreements coming out of that settlement would affect this because the City owned property in the neighborhood and a federal complex was in that area.

Commissioner Cromwell said if the City Commission sent this item back, they would have to have a variance for not having the 60 feet and now they would have to ask for the distance which seemed ironic.

Mayor Chestnut said given the fact the neighborhood had retained council which was very much within their rights this issue would become a contention that could possibly hold up this preliminary plat for a while.

Commissioner Dever said the justification for not taking the right-of-way was that this was an unimproved area and there were no future plans for development. The terrain, let alone the slope and nature of the road, was going to make it not be a high priority and one they would not be considering improvements on for a long time, or until there had been a redevelopment and at that point and time, they would be able to gain right-of-ways and take care of some of the problems. He understood the need to get it now, but did not know how the City would gain from that single sliver of land. He said if that was a bone of contention from a legal standpoint and there were relatively straight forward means for the developer to achieve his goal which was to develop this property in a reasonable fashion, then this was simply a matter of following a different path rather than the one was created by the desire to take the right-of-way.

Mayor Chestnut said it was a path the applicant wanted to do in the first place

Commissioner Dever said less than 3 foot seemed relatively straight forward. He said the adjacent landowners could present themselves and argue for the other reasons, infill, side

lines, and the difficult roadway, run-off and destruction of trees would impact their lifestyle and that body needed to make that decision again.

Commissioner Johnson said how the Commission would answer the question of going against City policy in acquiring right-of-way.

Mayor Chestnut said there were always exceptions. The one thing that swayed him about process was this was not an item for public hearing at the Planning Commission level, which was surprising given the amount of neighborhood dialogue.

McCullough said there was public comment asked for and received at the Planning Commission. It was not technically a hearing item, per code.

Mayor Chestnut said he wondered if some of the neighborhood dialogue was received late in the game and there was some momentum created at that point, which he had some concern. At this point, it was appropriate to entertain a motion to uphold and see where they ended up.

Mayor Chestnut said he would entertain a motion to concur with the Planning Commission's recommendations to approve the Preliminary Plat (PP-04-01-08) for Fifth Street Bluff Subdivision, a 0.29 acre subdivision consisting of one lot, located at 427 Country Club Court; and, accept the dedication of easements and rights-of-way. Moved by Johnson. Motion failed due to lack of a second.

Commissioner Dever said in deference to Commissioner Cromwell's comment about policy, he said if this item could be tabled for a week to receive information of the infill projects, how many had suitable right-of-way. He said if it was a policy the Commission would be changing by this measure then he wanted to be considering whether that was a major shift in policy that they were affecting. He said he did not want create a precedent that would put the Commission in a legal bind in the future.

Mayor Chestnut said he recommended Uddin get the City's Traffic Engineer involved and initiate from this body an item for the Traffic Safety Commission to look at traffic control

going west bound on 5th Street from the density of that neighborhood going up that hill. He said the TSC should consider some recommendation on what they might be able to do for some kind of speed control.

Moved by Cromwell, seconded by Dever, to refuse the dedication of land for public purposes for Preliminary Plat (PP-04-01-08) for Fifth Street Bluff Subdivision; and to refer the item back to the Planning Commission for consideration of variances to dedication and frontage requirements. Aye: Chestnut, Cromwell, and Dever. Nay: Johnson. Abstain: Amyx. Motion carried. **(15)**