PC Minutes 5/18/09

ITEM NO. 1 PRELIMINARY PLAT; FIFTH STREET BLUFF SUBDIVISION; .29 ACRES; 427 COUNTRY CLUB CT (MKM)

PP-04-01-08: Consider the Preliminary Plat for Fifth Street Bluff Subdivision, a 0.29 acre subdivision consisting of one lot, located at 427 Country Club Court. Submitted by JMC Construction, Inc., property owner of record.

STAFF PRESENTATION
Ms. Mary Miller presented the item.

Commissioner Dominguez asked if the City Engineer gave any indication that safety would improve for all the properties located within the curve.

Ms. Miller said the City Engineer reviewed the applicant's consultant study by Taylor Design Group and determined that a driveway could be safely located but recommended the vegetation be removed.

Commissioner Finkeldei inquired about the 40' frontage that was mentioned in a few letters.

Ms. Miller said originally the applicant asked for a waiver for the 40' frontage. When staff reviewed the plat, the additional 5' of ROW that is required to be dedicated showed the arc farther back which gave more than 40' of frontage so the waiver was not necessary.

APPLICANT PRESENTATION
Mr. John Chaney was present for questioning.

PUBLIC COMMENTS TAKEN *(the item was not a public hearing item)*
Mr. Chris Caldwell, said the City has no additional plans for the ROW and there was no foreseeable use for the ROW. He felt the shape of the arc was problematic. He wondered about the policy and practice of acceptance of additional ROW. He inquired about the definition of frontage. He appreciated the courtesy of the public comments.

Mr. McCullough said the Code requires an exaction of ROW when property is platted and sometimes that is not always square lines but it is important for future road projects. In terms of the frontage staff are complying with the Subdivision Regulation definition on how frontage is measured.

COMMISSION DISCUSSION
Commissioner Dominguez inquired about the site study.

Mr. Shoeb Uddin, City Engineer, said the removal of the vegetation within the site triangle was his recommendation because it would obstruct the view.

Commissioner Dominguez asked if the speed limit is 10 mph.

Mr. Uddin said that was correct, posted speed limit is 10 mph for both directions. The study showed the sight distance is adequate for 15 mph. Generally speaking the posted speed is 5 miles below the design speed, so in this case it is in compliance.

Commissioner Dominguez inquired if the removal of the vegetation increased the safety of the street.

Mr. Uddin said he could not state that it improved the overall safety of the whole segment but by removing the vegetation it improved the safety of the driveway in question.

Commissioner Dominguez asked about accidents or injuries.

Mr. Uddin said staff did not look into the accident report but the city recently did a citywide study of high accident prone locations and compiled a list of top 20 and this site is not within that top 20.

APPLICANT CLOSING COMMENTS
None.

Commissioner Harris inquired if they could require adding speed humps to the development plan.

Mr. McCullough said not in a specific property request, but could within a bigger development plan with higher traffic impacts.

Mr. Uddin said typically, with the procedure in place today, the neighborhood would make a request and then it would go to the Traffic Safety Commission and City Commission. He stated that 70% of the residents would have to sign off on the measure.

Commissioner Dominguez inquired about lighting on the corner.

Mr. Uddin said that lighting was not addressed. He said typically it would be requested by the residents and the request would go to Westar through the City.

Commissioner Finkeldei said he drove the site and did not see any lights.

Mr. Tom Boxberger said that the street may not fall into the top 20 sites of accidents that Mr. Uddin referred to, but neighbors are constantly helping people out of the ditch and these accidents never get reported. He asked if removal of vegetation meant that it could be removed as far back as possible to allow safer side lines even on private property. He said he thought there was one street light.

Mr. Uddin said the City has no way of keeping track of unreported accidents. He stated the site distance study done by Taylor Design Group shows that most of the vegetation within the site triangle are within the city ROW. He said his recommendation would be that if there is vegetation or other obstructions within the site triangle but not in the city ROW he would still recommend to remove them.

Commissioner Finkeldei asked if some of the vegetation is in the City ROW but in front of someone else's property.

Mr. Uddin said the City has the right to remove the vegetation within the ROW.

Commissioner Finkeldei asked if discussions would take place with the neighbors before vegetation is cut.

Mr. McCullough said there is no ability for the applicant to remove vegetation from neighboring property. The applicant will have to satisfy any site distance issues from their property and public ROW.

Mr. Uddin said the City has a procedure in place where the applicant can obtain a permit to remove trees from the City ROW. He said the neighbors could talk to the City first if they are concerned about certain

trees being removed. They can stake the ROW in the field by hiring a land surveyor to verify if a certain tree is in the public ROW.

Commissioner Dominguez inquired about the amount of traffic on this road.

Mr. Uddin said it is a local road so traffic volume data was not collected.

Commissioner Hird said it seems like the street is a lightly traveled street and he did not think the addition of one driveway which goes to a single family residence would increase traffic substantially. He felt that Mr. Caldwell's questions about the use of ROW and frontage definition were well taken. He understood the confusion about someone using a dictionary definition. The definitions in the Code are very specific and have specific meanings. He said he hoped Mr. Boxberger's questions about vegetation were answered. He said he would support the Preliminary Plat.

Commissioner Blaser said speed bumps might be more dangerous than good because someone would come over the hill and hit a speed bump. He inquired about drainage issues.

Mr. McCullough said the permitting of a single family home will be taken up at the building permit stage. There is no trigger such as size and use for a stormwater drainage study to be done for this particular subdivision.

Mr. Uddin said a certain level of development triggers a traffic impact study and this development does not meet the criteria for a traffic impact study to be required.

Commissioner Harris asked if it was possible to get to the site planning stage and find that they cannot build a structure because of drainage.

Mr. McCullough said the ability to construct a single family home and any accessory structures is the same process, so it would be reviewed similar to a 2-3 car garage on an existing lot would be reviewed. It is incumbent upon the owner to make sure that the drainage substantially leaves the site before it did before the construction of the structure. He said there is nothing unique about this plat that would make staff look at it differently than any other neighboring property.

Commissioner Harris asked if it was possible for the applicant find out they cannot build there because of drainage issues. She asked if there were ways to make it happen that will protect the property and the properties around it from drainage issues.

Mr. Uddin said he has not looked at the drainage pattern of this site in great detail, but generally speaking, measures could be taken to address the drainage issues to not increase the runoff that is happening today.

ACTION TAKEN
Motioned by Commissioner Hird, seconded by Commissioner Blaser, to approve the Preliminary Plat of the Fifth Street Bluff Subdivision and referring it to the City Commission for consideration of dedication of easements and rights-of-way subject to the following conditions of approval:

1) The preliminary plat shall be revised with the following changes:
    a. The following note shall be added to the preliminary plat and included on the final plat: "The driveway shall be located as far to the northeast as possible and the property owner shall remove all obstructions within the sight triangle of the driveway."
    b. The plat shall be revised to show the sight distance triangle for the driveway.

Commissioner Harris said she would vote in favor of the motion but felt the neighbors brought up good concerns. She believed the traffic issues could be addressed by vegetation clearing and perhaps traffic calming if necessary. She said the regulations allow this development and there is not a reason to say no.

Motion carried 7-0-1, with Commissioner Chaney abstaining.

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)**

Conduct a public hearing on a request by Steve Mason for a waiver of the restriction of the sale and serving of alcoholic liquor within 400 feet of a school or church, pursuant to Section 4-113(a) of the Code of the City of Lawrence, Kansas regarding the temporary sale of alcoholic beverages at the Americana Music Festival at South Park on Saturday, July 18, 2009 from Noon – 10 p.m.; and consider the adoption on first reading Ordinance No. 8410, authorizing the temporary sale, possession and consumption of alcoholic beverages at South Park related to the event.

Jonathan Douglass, Assistant to the City Manager, presented the staff report. He said the Americana Music Festival would take place at South Park on July 18th and were proposing to sell beer and wine from noon to 10 p.m. as part of the festival in the park. City Code prohibited the sale and serving of alcoholic beverages within 400 feet of a church of school, but provided the City Commission with authority to approve an exemption to that distance restriction, provided that a public hearing was held and the Commission found the proximity of the temporary sale, possession and consumption was not adverse to the public welfare or safety.

He said staff notified the pastor of Trinity Lutheran Church of this hearing, which was the church within that distance restriction. The pastor indicated that the church did not object to the sale and consumption of alcohol at the event and no other public comment had been received. Staff recommended that the City Commission hold the public hearing, find the proximity of the

ITEM NO. 7 PRELIMINARY PLAT FOR FIFTH STREET BLUFF SUBDIVISION (MKM)

PP-04-01-08: Consider the Preliminary Plat and variances related to dedication of rights-of-way and frontage for Fifth Street Bluff Subdivision, 0.29-acre subdivision consisting of one lot, located at 427 Country Club Court (W. 5th St east of Iowa St.). Submitted by JMC Construction, Inc., property owner of record. *City Commission referred back to the Planning Commission on 6/23/09 for consideration of variances to dedication and frontage requirements.*

STAFF PRESENTATION

Ms. Mary Miller presented the item.

Commissioner Harris inquired about the compatibility of the neighborhood. She asked about one of the neighbors saying the house would have to be built closer to the road due to the configuration of the lot.

Ms. Miller said the applicant could probably speak more about that. She said it could be built farther back on the lot but then more trees would have to be removed. She stated the lot has the setback requirement.

APPLICANT PRESENTATION

Mr. Paul Werner, Paul Werner Architects, said the property owner has the right to build a house on the property. He stated the owner is more than willing to give the 5' R-O-W. He said a one lot plat is usually off the radar and does not typically stir concerns but he would like to solve any concerns the neighbors have. He stated the only reason for the variances is because the City Commission requested that path for this property. He said they were willing to meet with neighbors about drainage concerns. He stated the house has not been designed yet. He said the lot fits in with the neighborhood. He asked for support on both variances.

Commissioner Carter asked if the applicant plans to reside at the house.

Mr. Werner said no, the applicant is the home builder, the house is being built for someone else.

PUBLIC HEARING ON VARIANCE

Mr. Jerry Wells, attorney representing a number of home owners/property owners adjacent to the property. He felt this was not good planning with this piece of property and that access could have easily been from Country Club Court. He stated the proposed driveway puts the neighbors in some danger. He said there is a history of accidents in the area and history of the road being difficult during icy conditions. He stated that the waiver must meet the criteria that it will create an unnecessary hardship. He felt the hardship was self inflicted and that it was more of an issue of money for the developer. He said the developer offered to sell the property to the adjoining property owners. He said he has heard nothing about the safety concerns expressed by neighbors.

Commissioner Hird asked for an example of a hardship.

Mr. Wells said an example of a hardship would be if a family could not move into a house because it could not comply and the family would be out of a place to live. He felt that if it is about money or lost profits then it is not a hardship.

Commissioner Hird asked if Mr. Wells was saying that it should be owner occupied.

Mr. Wells replied, no.

Commissioner Hird said he could not think of an example where it did not come down to money and that he was struggling with the concept.

Mr. Wells said he was struggling with it too but he did not write the regulations and that it is a difficult concept.

Commissioner Finkeldei asked if the two safety concerns that Mr. Wells had were steepness and icy conditions and if he had looked at the site study.

Mr. Wells said he does not feel any of the safety concerns were met. He said he did not look at the details of the site study but that accidents happen on the street frequently.

Mr. Tom Boxberger, 2002 W 5th, said the applicant stated they were willing to work with the neighbors but he has never been contacted about the development of the property. He expressed concerns about trees being removed and stated the applicant has clearcut many trees. He said that in order to get the site distance necessary the plan is to remove an enormous amount of trees on his property.

Commissioner Finkeldei asked if trees were being removed from his property or from the R-O-W adjacent to the property.

Mr. Boxberger said the R-O-W in front of his property.

Commissioner Finkeldei inquired about the safety of the street, regardless if the house is built.

Mr. Boxberger said there is already a 10 mile speed limit but nobody abides by it.

Commissioner Carter asked Mr. Boxberger if he attempted to contact the applicant.

Mr. Boxberger replied no, not me personally but neighbors have attempted to contact Mr. Chaney.

Mr. Chris Caldwell, said the street is dangerous. He stated that he repeatedly attempted to speak with Mr. Chaney last year about purchasing the property and he never returned the calls. He said it is a dangerous street, especially during icy conditions. He did not agree with the applicants hardship and said the applicant did not answer the criteria requirements for a variance. He said that infill development suggests something is missing and nothing is missing from the neighborhood. He stated the trees protect Mr. Boxberger house. He stated 'where the frontage does not fit the platting must quit.'

Ms. Jackie Schaefer, 1930 W 5th Street, said the site distance study that was conducted had a recommendation of placing the driveway as close to her lot as possible. Anybody backing out of either driveway would not be able to see a car coming. She felt the solution was to enforce the Subdivision Regulations and deny the variance. She felt the criteria for granting the variance have not been met and that denying the variance is the only legal action. She stated city staff is responsible for creating this situation by asking the developer to ask for a variance. She suggested the city buy the lot and make it an unbuildable lot, comparable to West Hills Parkway.

Commissioner Finkeldei inquired about a possible shared driveway.

Ms. Schaefer said she did not want to share a driveway and that it would create safety issues.

Mr. Lance Antle, 1908 W 5th Street, inquired how 40' road frontage was figured.

Mr. Scott McCullough said the former Development Code stated 35' road frontage requirement. The road frontage has to do with the development pattern in Lawrence and how cul-de-sac access is derived and what is reasonable for a lot to have on a curve on a cul-de-sac. The community has settled on 40' as being a reasonable amount of frontage to provide access to the road and variances are considered for different aspects of unique properties.

Mr. Antle asked if there is an error rate.

Mr. McCullough said a site study was required of the site distance to know that there will be an acceptable measure of safety. There is some objectivity to it where you look at existing development pattern.

Commissioner Moore said he lives on a cul-de-sac on a 40' lot and his thought process was that you get 20' of driveway and 20' of green space.

Mr. Shoeb Uddin said if it is less than 40' then how much less is too less. Would another variance be supported if it is 5' off. He stated it is a hypothetical case because 2 1/2' short is not the only thing taken into consideration. The overall scenario is taken into consideration such as site distance, proximity to the next driveway, the safety record of the road, slope of road, type of surface. There are numerous other factors that come into play. It is difficult to compare those two different cases because each comes with their unique characteristics and circumstances.

Mr. Antle asked if 18' would be allowed.

Mr. McCullough said that no other scenario has been analyzed than what is in front of us. 40' is what is required.

APPLICANT CLOSING COMMENTS

Mr. Werner said the 40' used to be measured at the building line but this lot is unique and the width at the building line is much greater than required, whereas on some cul-de-sacs builders were going too narrow and their solution was to push the house way back. He said that scenario is not here which is an important factor. The big underlying theme is that the Subdivision Regulations can be met. The question is if someone dedicates the R-O-W as required by the Subdivision Regulations would they have the frontage and our answer is yes. He said he could not go to the Board of Zoning Appeals and say that they do not want to put in curbs or gutters in. He said that is a question about money, but that he did get a variance for a church in North Lawrence for no curb and gutters. It was in the floodplain and rarely used and all the curb and guttering did was concentrate the water. That was about a better plan, not money. He said it is one house going on the street but that maybe it needs a curb or gutter to stop a car from going into the ditch. He said he talked to the mayor who recommended the neighbors go before the Traffic Safety Commission to discuss their concerns. This house is not going to make the safety worse on the street. He suggested the option of a hammerhead driveway so that cars could pull out forward instead of backing out. He did not call the neighbors but did contact their attorney. He said the house has not been designed yet so he did not want to put the cart in front of the horse. He did not see the concept of coming off of Country Club Court as an answer and that it would add more pavement and remove more trees.

Commissioner Hird inquired about the dedicated R-O-W. He asked if the Development Code requires 60', the neighbors all have 50', and the applicant agreed to do 50' which now requires a variance.

Mr. Werner said that was correct.

Commissioner Carter asked Mr. Werner to discuss drainage concerns.

Mr. Werner said the applicant has not gotten far enough along in the process to look at drainage yet but they are willing to do what they can.

Commissioner Hird asked if the City Commission required the R-O-W dedication be 50' instead of 60'.

Mr. McCullough said the Subdivision Regulations required an additional 5' of R-O-W for this plat, 60' total, there is 50' there now so that is 10' additional feet that is typically split on each side, that gave 5' additional feet that is basically an exaction of when a plat comes in that is required by the Code to be dedicated. The original plat showed 5' dedicated to the City. The City Commission has to accept the dedication. When Planning Commission approved the Preliminary Plat in May, at that time staff's position was that the plat fully complied with the Code. After public comment and consideration, the City Commission made a motion not to accept the dedication of 5'. That left the applicant with the option to request a variance because the City Commission did not accept the 5'. The consequences of not dedicating 5' means that the frontage remains at it's current 37.35' which is under 3' of variance of the 40'. It is staffs position that the original proposal after dedication of 5' that the 40' frontage was met. The consequence of meeting the Code with dedicating the 5' placed the lot in a situation where the other Code requirement of 40' frontage was met so there was no need for a variance. When the governing body did not accept the additional 5' it placed the property in a predicament where the 40' road frontage cannot be met.

Commissioner Carter inquired about the tress and asked if at least 75% of the tress on the lot would be saved.

Mr. Werner said that was correct.

COMMISSION DISCUSSION

Commissioner Harris asked if the public would have the opportunity to have input during the development stage.

Mr. McCullough said there would not be a site plan, only a building permit. That is not to say that staff does not get involved with issues during construction. He gave the example of a rezoning on Illinois Street where there was testimony regarding building issues. Staff met onsite with both parties and mitigated and discussed some issues.

Commissioner Carter inquired about the impact of one additional driveway.

Mr. Uddin said that when an additional driveway is added an additional conflict point is added. Conflict points always have the potential for accidents. He stated the site distance study that was submitted appears based on the posted speed limit has adequate safety.

Commissioner Carter asked if a hammerhead driveway would help.

Mr. Uddin replied, yes. He said City Commission directed staff to look at the safety and potential safety measures for the overall neighborhood. He said he initiated getting it on the Traffic Safety Commission agenda.

Commissioner Finkeldei asked if the Traffic Safety Commission looks at the steepness and condition of the road.

Mr. Uddin said those are collected in the data collection stage and presented in a staff report to the Traffic Safety Commission, but in a general manner it does not come into play.

Commissioner Finkeldei said his parents live in Arkansas on a steep road and they have grooves in the pavement. He asked if Lawrence ever did the same thing.

Mr. Uddin said not that he was aware of. He said there are no records of any reported accidents in the past 5 years on that road.

Commissioner Carter said that the project has brought to light the safety concerns of the neighbors and hoped they could be addressed by the Traffic Safety Commission.

Commissioner Dominguez said he understood the neighbors concerns but that he did not see how one driveway would make such a big difference in safety. He said he would vote in favor of the variances. He felt that all the issues have been looked at that the neighbors just do not want another house on the street. He said it is the property owners right to build a house.

Commissioner Carter said he would also vote in favor of the variance. Said the neighbors testimony regarding safety concerns on the street will bring to light issues that need to be looked at. He stated the developer sounds willing to put in a hammerhead driveway and the City Engineer is looking into the safety issues due to the neighbors input. He stated Planning Commission relies on the City Engineer survey and he says the drainage is fine. As bad as the drainage is there it could potentially improve the drainage. The owner ought to be able to put a single family home on the lot.

Commissioner Harris said she would also vote in favor. She suggested making a change to the condition about the driveway and say something like 'the driveway shall allow for headfirst egress and/or be located as far to the northeast.'

Commissioner Finkeldei asked if the hammerhead driveway could be moved slightly away from Ms. Schaefer's driveway.

Mr. Uddin said that would be fine. He suggested to move the driveway a little closer to the northeast because the available site distance was more to the east side than the west side. He stated that was just a suggestion, not a requirement.

Mr. Werner said he did not have a problem with the condition but he would rather have the condition say that the driveway configuration be subject to the City Engineer approval.

Commissioner Finkeldei said Planning Commission saw this item last month and did not have to grant a variance because they have significant R-O-W and road frontage. City Commission chose not to accept the R-O-W because they did not expect to use it because there were no plans to expand the street. He felt the strict application of the regulations would create an unnecessary hardship because the City put the applicant in the situation by not accepting the 60' of R-O-W that they normally would. He stated that Horizon 2020 suggests infill development and creating an infill lot that is not developable over 3' of frontage goes to the public health safety and welfare. In his opinion the intended purpose of the frontage is to protect the character of the neighborhood. He felt that by granting 2.65' variance it is in harmony with the intended purpose of the regulations. Said he felt the applicant met the three criteria set forth so he will support the variance request. As for the plat itself he believed the major issue is safety and it is clear this is an unsafe road for the people that live there. The City Commission initiated it to have it looked at. He felt it was not an argument that adding one more house would make an unsafe street more unsafe. If it is unsafe it needs to be fixed.

Commissioner Harris restated her previous condition suggestion 'the driveway shall allow for headfirst egress and/or be located as far to the northeast as possible and the property owner shall remove all obstructions within the site triangle of the driveway.' She asked if slightly different wording was wanted after Mr. Werner spoke.

Commissioner Finkeldei suggested something worded like 'should have head first access and the driveway location determined by the City Engineer or the driveway shall be located as far northeast as possible on the property.'

Mr. McCullough expanded on the suggested condition saying 'the driveway shall be designed with sufficient turnaround to allow for head first egress.'

Commissioner Harris stated the condition as 'the driveway shall be designed with sufficient turnaround to allow for headfirst egress and be located in consultation with the City Engineer or be located as far northeast as possible and the property owner shall remove all obstructions within the site triangle of the driveway.'

ACTION TAKEN
Motioned by Commissioner Finkeldei, seconded by Commissioner Carter, to approve the following variances:

1) *From Section 20-810(d)(4)(i) which requires 60 ft of right-of-way for local streets to permit the right-of-way to remain at 50 ft in this location.*
2) *From Section 20-810(a)(2)(i) which requires that lots be designed to comply with all applicable zoning district regulations to permit the creation of a lot with 37.35 ft of frontage in the RS10 Zoning District.*

Unanimously approved 7-0.

Motioned by Commissioner Finkeldei, seconded by Commissioner Carter, to approve the Preliminary Plat of the Fifth Street Bluff Subdivision and returning it to the City Commission for consideration of dedication of easements ~~and right-of-way~~ subject to the following conditions of approval:

1) The preliminary plat shall be revised with the following changes:
   a. The following note shall be added to the preliminary plat and included on the final plat: "The driveway shall be ~~located~~ *designed with sufficient turnaround to allow for headfirst egress and be located in consultation with the City Engineer or to be located* as far to the northeast as possible and the property owner shall remove all obstructions within the sight triangle of the driveway."
   b. The plat shall be revised to show the sight distance triangle for the driveway.

Unanimously approved 7-0.

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

Vice Mayor Amyx said due to potential conflicts of interest regarding this Preliminary Plat, he needed to be excused.

Mary Miller, Planner, presented the staff report. She presented the Preliminary Plat for Fifth Street Bluff Subdivisions as well as an appeal from the Planning Commission's decision. The one lot subdivision was a little less than 13,000 square feet, located on West 5th Street, east of Iowa.

She said the plat was originally considered by the Planning Commission at their May meeting, with a 7-0 vote to approve the Plat and forwarded the plat to the City Commission for acceptance and dedications.

An appeal from the Planning Commission's decision was filed and the City Commission considered the appeal and dedication of easements and rights-of-way their June 23rd meeting. At that meeting, the City Commission voted to not accept the dedication of right-of-way and returned the plat to the Planning Commission.

Based on the City Commission's decision to not accept the dedication of right-of-way, the proposed lot did not have the required frontage for the RS-10 zoning district. The applicant requested a variance from the requirement to dedicate right-of-way and requested a variance to permit a lot to be created with fewer frontages than required in the zoning district. The lot had 37.35 feet of frontage, which was 2.65 feet less than the 40 feet required by the code

The Planning Commission considered the variance requests at their July meeting and determined the necessary criteria had been met and voted 7-0 to grant the variances and approve the plat and forward it to the City Commission for acceptance of dedication of easement. An appeal was filed from the Planning Commission's actions on the variances and

plat based on the opinion that the criteria for variance were not met and the plat and the appeal were before the Commission tonight.

In Section 20-813(g)(2) of the subdivisions regulations contained the necessary three criteria which must be met for a variance to be granted. T

The first criteria stated that strict application of those regulations created an unnecessary hardship upon the subdivider.

The lot frontage was limited by the Grandview Heights Subdivision built in the 1950's. The plat omitted the subject property. Current practice was to plat only contiguous properties so those types of situation were not created. The amount of lot frontage available was caused by the platting of Grandview Heights Subdivision.

Alternate ingress/egress was suggested from other lots, from Country Club Court through the platted lot to the north, which was owned by the applicant at the time the plat was submitted or from Iowa Street through the unplatted properties to the west. Section 20-810(b)(2) prohibited joint use driveways for residential uses. Joint use approach areas (area within the right-of-way, or behind the sidewalk) might be used, but "individual driveways which were separately maintained were required beyond the street right-of-way line." In order to utilize the alternate ingress/egress it would be necessary to obtain a variance from this standard. It was important to note that even with alternate ingress/egress, the amount of frontage would not be adequate and a variance would be necessary.

The hardship was not a 'mere financial' hardship, in that it would not simply cost more to provide the additional frontage, but it was not possible to provide the additional 2.65 feet of frontage and the lot was undeveloped without the variance.

The second criteria stated that the proposed variance was in harmony with the intended purpose of those regulations.

The granting of the variance of the right-of-way requirements met the purpose of the regulations as the City Engineer indicated that it was unlikely that this portion of West 6th Street would be widened.

The granting of a variance from the frontage requirement to permit a frontage of 36.35 feet rather than 40 feet met the criteria, in that the reduced frontage would not negatively impact the area.

The appeal stated the criteria was not met because of the safety issues that would be caused with the platting of this lot and the resulting driveway onto West 6th Street and because the aesthetics were being damaged, due to the trees which were being removed with this development.

The safety of the driveway had been evaluated to the sight distance study which indicated there was adequate sight distance for a driveway in this location. The Planning Commission placed a condition on the plat that the driveway be designed to permit head first egress. The Traffic Safety Commission reviewed the safety of this section of West 6th Street and felt that traffic calming or other measures were warranted. There was no evidence presented which showed this driveway had a negative impact on the safety of the street.

She said regarding the aesthetics of this area, there was a lot of tree cover in the area. The plat showed the area where trees were proposed to be removed.

The third criteria were the public health, safety and welfare would be protected. As mentioned earlier, there was no evidence received which indicated that the driveway would have a negative impact on the safety of the area. The site distance study indicated there was adequate sight distance for this driveway and the head-first egress would increase the safety of this driveway. The City Stormwater Engineer would review the drainage issues when a building permit was applied for.

Staff recommended the City Commission uphold the Planning Commission's decision and accept the dedication of easements based on the findings in the staff report, or Planning

Commission meeting minutes of July 22, 2009. If the City Commission would vote to not uphold the Planning Commission's decision and not accept the dedications of easements, staff recommended the City Commission develop a set of findings for the record.

Mayor Chestnut called for public comment.

Paul Werner, Paul Werner Architects, representing the owner of the property, said it was good the preliminary plat did go back to the Planning Commission. The head first egress out of the driveway was a good point because they could design a house and the footprint showed a hammerhead to turn the car around so the cars left head first on that street.

He said they agreed to submit a grading plan to the Stormwater Engineer when the building permit went forward which was not normally required.

Some neighbors asked when the variance was too much and how it was decided. He said the client could dedicate the five foot of right-of-way that was required by the subdivision regulations and then had the 40 feet mark. The only reason the variance was needed because they were not allowed to meet the subdivision regulations.

Jerry Wells, Attorney, representing a group of adjacent property owners to the lot in question, said his clients wanted to speak about the various aspects of this application and concentrate on the definition of "unnecessary hardship" as defined in section 20-815 of the Subdivisions Regulations. It was important because when analyzing and deciphering regulations, every word had a meaning. With that in mind, there were two important parts in the definition of "unnecessary hardship." The applicant had to show that he was a victim of "unnecessary hardship", in order to be granted a variance to the regulations. The first sentence stated that the applicant had the burden to prove the application of those regulations were so unreasonable that they become "arbitrary and capricious" interference with his right to do whatever he wanted to with that property.

He said Section 20-815 also stated that, "mere financial loss or the loss of potential financial advantage does not constitute unnecessary hardship". He said in the language

"arbitrary and capricious" was not defined in the regulations and therefore, needed to use the ordinary dictionary meaning of those two words. The last sentence stated that "mere financial loss or the loss of a potential financial advantage was not sufficient. In effect there had to be more than that financial loss in order to succeed. He said there was a piece of property that was going to be developed by the applicant to build a house to sell for profit and potential financial advantage, in that profit which met the definition. He said this was about the applicant who came forward, wanted a variance from the regulations to build a house on this lot for profit which was prohibited under this regulation unless the applicant could show more than potential financial advantage.

Wells said the definition of arbitrary was "selected at random and without reason." There was nothing to indicate in the progress of this application that anything was done unreasonably or at random when the regulations were applied. The applicant knew or should have known what was required. The applicant knew there was a certain amount of frontage feet that was required and there was nothing hidden. He was not misled by the planning staff, he did not misunderstand the regulation or that a new regulation was brought up by Planning Staff and it was not a surprise. He said it was his clients positions the applicant had not met the explicit definition in order to meet the requirements of that particular section because clearly the applicant was in this for profit. If it was just financial gain, a person would not meet the requirements of this regulation.

The unnecessary hardship criteria, as defined in the zoning regulations, stated, "The variance request arises from such conditions which are unique to the property in question and not ordinarily found in the same zoning district and are not created by actions of the property owner or applicant." In other words, in the zoning definition, it underscored what their position. The applicant knew what regulations he was facing by the regulations and there was nothing hidden. Yet, the applicant bought the property for the purpose of development. He said there was nothing wrong with buying the property, but the applicant had to adhere to the rules and

regulations. He said if this matter ended up in the district court and a judge took a look at the regulations and definitions, the judge would take a look at those facts and apply the law of strict construction to those regulations and determine that the applicant did not meet the definition.

Jacqueline Schafer, Lawrence, said the 5th Street Bluffs Subdivision was in her side yard. First of all, she said trying to participate as an informed citizen was a full time job. In order to understand the planning staff's position on this issue, she had tried to read the City's subdivision regulations, land use code and Horizon 2020. Together, those documents comprised more than 725 single spaced pages and their language was very complex. The idea of reading and understanding those documents was a mind numbing proposition for people that had jobs and families.

Second, she said she learned that, in order to be taken seriously by the Government, the average citizen must hire an attorney. A person did not stand a chance of being taken seriously without an attorney. You will be listened to, patted on your head and sent on your way while the people you spoke to do exactly what they wanted in the first place. In their case, she found this especially appalling because they were just asking that the City enforced the regulation they had written.

Third, it appeared that unless a person agreed with the position advocated by the powers in charge, that person's input into an issue was not welcomed. She said she understood the expediency behind that position, but found it insulting and contrary to democratic principles.

Four, she had learned the Planning Staff existed for the sole purpose of facilitating the desires of the town's developers. If the written regulations were contrary to the developer's desires than the planning staff would find a way around those regulations. She said as a tax payer, she found this as criminal. If the planning staff was going to exist for the benefit of special interest group then that group should pay their salaries.

Finally, she had learned that one could not trust all of the written records produced by City Hall. Specifically, the written transcript of the July meeting of the Traffic and Safety

Commission contained a major error. Traffic Safety Commissioner Ziegelmeyer did not say that a traffic calming device made no sense. He said that putting a drive way at this location made absolutely no sense. Three members of the neighborhood heard him say this and others could hear him say it too if the meeting was audio taped.

She said that she grew up believing that the government worked for the people it served. However, the experience she had over the past few months had shattered this belief. It appeared to her that rules existed for some groups of people, but not for others. The neighborhood believed that a rule was a rule and should be enforced in an unbiased manner. She said they were hopeful that the City Commission believed that too and would act accordingly.

Chris Caldwell said that he has had many good experiences with City employees over the years. He said that was why his experience in this matter was so disconcerting. It stood in such stark contrast. Bluntly, the process reeked of due process denial, tax payers concerns trivialized to the vanishing point, and blatant disregard of repeated pleas for simple enforcement of the City's own rules. Tonight the process also reeked of something more ominous. The information given internally that was inaccurate, incomplete and often completely one sided. The City's internal reporting to the Commission had strayed widely from key facts essential to decision making. For a snap shot example, consider just a few facts arising from the July Traffic Safety Commission meeting. As Schafer mentioned, one Traffic Safety Commissioner stated that putting a driveway at the proposed death trap location made no sense at all. He said tonight's packets material misquoted and misrepresented the statements entire meaning. Further, the Traffic Safety Commission minutes failed to mention that his request to put the Commissioners sincere "made no sense" in writing was immediately squelched by another Commissioner's follow up remarks. The Commissioner shushed the other Commissioner that had the audacity to make an honest, independent and objective opinion on a matter of traffic safety. Presumably, the death trap driveway matter was steered to the TSC out of the City

Commission's concern for safety. Presumably, the City Commission would have valued an honest, open, and meaningful opinion from the TSC meeting. He said they were denied this input and given an erroneous report and a slanted public record.

The capable City engineer already stated that the proposed driveway introduced new conflict points on West 5th Street. He said how additional opportunities for crashes could not reduce the safety of the street. He said how could a staff letter be trusted that contradicted engineering expertise three times in bold face inaccurate assertions.

Elsewhere, the City engineer reported the speed data, collected by City staff on the subject hill showed that 85th percentile speed was much higher than the recommended speed limit of 10 miles per hour. However, staff failed to connect the dots clearly for the City Commission and include that the earlier site distance study was originally based on the posted 10 miles per hour speed limit. He said if the studies calculations could be relied on for accuracy at 20 miles per hour, 25 or 30.

He asked the Commissioners to not approve the flawed bluff proposal, to become an approved hoax. He asked the Commissioner to restore some public trust in the City's government and planning process. He said to put an end to City's resources to oppose and thwart tax payer's legitimate request for code compliance. He said to continue to lead, not submit.

Werner said their hope would be to make the impact on the neighbors as minimal as possible. He said hopefully there were no negative impacts however his client had the right to build on the property. He struggled with the ideas that they did not meet the regulations. He said the applicant could dedicate the right-of-way and have the frontage to meet the subdivisions regulations.

If, by chance, this owner had been the person who had done those previous plats, then the owner would have created this problem. He said the plats were built in 1955 so the owner did not create this problem. He said some of the information the City Commission received did

not apply but he thought they could work through this issue and make it as little impact on the neighbors as possible.

Commissioner Dever said he would like clarification about the hardship. He said if someone willingly and knowingly bought a parcel that did not conform to the subdivision regulations, tried to give the City right-of-way which the City did not accept, and asked for a variance to the Subdivision Regulations, the argument was whether or not there was a hardship and financial was enough. He said he needed clarification on the term "hardship" and the strict legal definition and where the City stood with that interpretation.

Scott McCullough, Planning and Development Services Director, said hardship could mean various things depending on the site specific circumstances. It could be a topographic hardship that prevented one from accessing or dedicated right-of-way. It was also a decision that was ultimately made by the Planning Commission, or if appealed, the City Commission. In this set of circumstances, it was the action of not accepting the dedication for the right-of-way that created the need for the variances which the applicant pursued and there was a decision by the Planning Commission that it was a unique situation capable of meeting the definition of hardship. However, the definition could take various forms.

Commissioner Dever said there was some question as to whether or not it was legal and/or if the decision would stand based on this plat. He said he had a concern about how often the City did not accept right-of-way. It did not make sense, but it was one way to get around the subdivision regulation which was to give the City five feet and then the owner would be compliant. He did not know where the City stood on this issue.

McCullough said it was important to review that coming into compliance with the code sometimes placed a person out of compliance with sections of the code. Therefore, there was a need for variances. Fulfilling the code requirements, which in this case was dedicating the right-of-way, actually brought the property into compliance with the frontage requirement. It was not about loopholes or getting around certain sections of the codes, but from staff's prospective, it

was about consequences of meeting codes and what impact it had on other section of the code from their perspective. He said he agreed the code was complex, but in platting, it was fairly straight forward. There was an action, but there might be a reaction or a consequence of meeting certain sections of the code that place the plat outside of the code. In those instances, staff saw variances.

Staff tried to provide findings to the Planning Commission and the Planning Commission accepted those findings. It was now before the City Commission to look at those findings and agree whether there was an unnecessary hardship in this instance.

Mayor Chestnut said if the property was recently acquired or was the property owned for a while.

Werner said it was acquired in 2008.

Mayor Chestnut said in talking about compliance with the entire development code, there was public comment about Horizon 2020 and this area was RS-10 zoning and the structure that was proposed would be in compliance with RS-10 regulations. He said that area was planned for low density housing. Therefore, the residential use was not an issue. As far as the dedication of right-of-way, he remembered the discussion the City was violating State law by dedicating the right-of-way. However, the conclusion which seemed reasonable, that everyone agreed, based on the street, that there was not going to be need for that right-of-way because a sidewalk would not be practical.

He said that there were two variances. The question was the frontage and was the only thing in this particular plan that would be considered a variance.

McCullough said technically there were two variances because not accepting the dedication of the right-of-way was a variance. He said development of the lot was hinged upon whether or not the plat was approved.

John Miller, Staff Attorney, said the request was an appeal from the Planning Commission which was coming before the City Commission. He said the City Commission, on

the record, needed to find those three elements of the variance had been met if that was the direction of the City Commission in going forward. He said the City needed to be clear under the 20-813(g)(2), that the Commission made findings on the record for all three of those items.

Mayor Chestnut said if anyone else attended the Planning Commission meeting from staff. He said he read the Planning Commission minutes, but wanted to note that the Planning Commission made a 5-0 vote. He said he was not sure about the Traffic Safety Commission minutes, but Commissioner Zigglemeier did vote. The issue at hand was the traffic calming device so he wanted to go back and look at the minutes if those minute were in error.

Commissioner Johnson said he would stand behind the Planning Commission unanimous recommendation. As far as process, for one lot, he did not know how much more process the City Commission could go through.

He said he was trying to be respectful of the comments, but this proposal was addressed and Staff did a good job. Again, he said he would uphold the Planning Commission decision and wanted to move this proposal forward.

Commissioner Cromwell said public input was valued and important. This was the second City Commission meeting held concerning this proposal and which had taken up a good majority of the of this City Commission meeting.

The mistake in the minutes of the TSC needed to be taken up with that Commission. However, there was no dispute of the 5-0 vote. The discussion led to the decision that the traffic calming device was unnecessary so it upheld the public health, safety and welfare clause.

He said he was not an attorney and could not clarify “unnecessary hardship.” All of the Commissions, including Planning, Traffic, and the City, had examined the plat. He said he upheld the Planning Commission’s decision.

Commissioner Dever said it was important to consider everyone’s interests in this matter, but this was a legal use. Although it seemed like a loophole, by denying the acceptance

of the five foot right-of-way, it was not. It was difficult to know how it would impact the neighborhood.

He said he was concerned about people's opinion of the process and the City. A number of committees and commissions gave their time freely to the City and were not paid by the City. He said he would like to move forward and was important to know the City Commission was complying with the rules.

Mayor Chestnut said that he appreciated the comments. He said when talking about the strict application of regulation creating an unnecessary hardship, there had not been one in-fill development project that had not had some degree of variances. That was part of the issue with trying to create density in the community or the City would continue to expand their footprint because green-field development was easier than in-fill development. He said the majority of time lots were a non-conforming use. He said if the use was different from the intent, he would have a lot more concern, but for RS10 zoning, the house was a conforming use and when talking about that one variance, it did not seem to be a significant issue. He said to hold the line he believed that strict application was an unnecessary hardship. It was important to have clearance but did not know if the distance of two and a half feet would make that much difference in the development. He said he was most concerned if the extra driveway created a significant issue with public health, safety and welfare. He said there was a significant issue, regardless of the driveway because of the topography.

He said regardless of the ruling, he wanted to continue to pursue traffic safety to look at that area again because they were chartered with very narrow criteria. He said he upheld the Planning Commission's recommendation, but wanted the City Staff and the Traffic Safety Commission to look at that area.

Relative to the public comments, he was sorry some of the citizens felt that way. He said he intervened in half a dozen issues every week and about 1% of those involved an attorney. He said he received a constant stream of emails about curbs and gutters and he tried

address every email, as well as getting staff engaged. He said he agreed with Commissioner Dever that there were a lot of people that work on a volunteer basis to serve the community. He said City Staff did not exist for the developers and developers would not agree with that assessment. The whole safety issue needed to be studied further, regardless of the driveway and the Traffic Safety Commission and Public Works needed to be involved in looking at the design and suggested digging into the street maintenance budget, next year, to try and mitigate the issue. He said he wanted to get the vote right from a legal standpoint.

David Corliss, City Manager, said the Planning Commission made a determination that was based on the Staff report. He said the Staff Attorney was emphasizing wanting it to be based on certain criteria.

Miller said that he believed the City Commission could uphold the Planning Commission's decision. However, this was an appeal to the City Commission of the variance.

Mayor Chestnut asked what the statute was specifically.

Miller said it was section 20-813(g)(2) in the subdivision regulations of the Code of the City of Lawrence. He said he also felt it was important the City Commission made a determination in upholding the Planning Commission's recommendation and a determination on the variance based on those three criteria. It was not only the approval of the variance, but also the dedication of the easements for the plat.

Moved by Johnson, seconded by Dever, to grant variances related to dedication of rights-of-way and frontage, making a finding pursuant to Section 20-813(g)(2) that strict application of these regulations will create an unnecessary hardship upon the subdivider; that the proposed variance is in harmony with the intended purpose of these regulations; and that the public health, safety and welfare will be protected; and to accept dedication of easements. Aye: Chestnut, Cromwell, Dever and Johnson. Nay: None. Abstain: Amyx. Motion carried.

Moved by Cromwell, seconded by Johnson, to uphold the Planning Commission's approval of 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. Aye: Chestnut, Cromwell, Dever and Johnson. Nay: None. Abstain: Amyx. Motion carried. **(18)**

Review staff report concerning City policies for the selection of professional service contracts for the City.

Diane Stoddard, Assistant City Manager, presented the staff report. She said the report was a follow-up to a study session held in May regarding the selection of professional services. The discussion particularly focused on the selection of architectural or engineering types of services. The City Commission, at that meeting, had requested some staff follow-up related to some specific procedures of various cities as well as some follow up to Federal regulatory requirements that dealt with Federal funds that were utilized in design contracts.

She said the City had purchasing procedures that were outlined for the contracting of professional services. It was important to note the procedures related broadly to professional services. It included a variety of professional services in addition to engineering and architectural services, including financial and banking services.

The policy indicated that award would be made to the vendor that was best qualified based on demonstrated competence and qualification for the type of service required and at fair and reasonable prices. The policy called for a request for a breakdown of estimated project costs. However, costs were not routinely provided, related to the acquisition of engineering services. Typically, Staff requested a summary of estimated required effort related to a project and standard billing rates. The primary reason the total cost was not provided by vendors was because, in most cases, the specifics of the scope of work had not yet been defined. In the City's process, negotiation of scope and fees occurred once the best qualified vendor was selected and the City entered into negotiations phase where the scope was discussed in more detail and a fee negotiated related that scope. The idea was that it allowed the selected consultant the opportunity to help shape the scope and bring their specific ideas related to the project.