

MINUTES
PLANNING COMMISSION REGULAR MEETING
Tuesday, April 12, 2016

I. PLANNING COMMISSION PRE-MEETING (Beginning at 4:30 p.m.)

Location: NDS Conference Room, Charlottesville City Hall, 2nd Floor

Members Present: Chairman John Santoski; Commissioners Lisa Green, Kurt Keesecker, Jody Lahendro, and Corey Clayborne;

Call to Order: the meeting was called to order by Chair Santoski at 5:00 p.m.

Mr. Santoski asked if there were any questions on agenda items. He first asked for clarification on the 230 Shamrock Road application. Mr. Alfele provided a brief overview of the project.

Ms. Green noted that she was in disagreement with one item on the consent agenda but did not necessarily want to remove it from consent. She asked for procedure on how to address and that was provided.

Mr. Keesecker asked how the pending BAR related items for William Taylor Plaza related to the item before them this evening. It was noted that all site plan related issues had been addressed in these materials.

Commissioners raised concerns about the William Taylor Plaza site plan and determined they would remove from the consent agenda to allow for discussion.

Mr. Santoski asked for clarity on the questions before the Commission on the Grove Street PUD site plan. Mr. Alfele and Ms. Robertson provided an overview of the application.

The meeting adjourned at 5:27.

II. Regular Meeting (Beginning at 5:30 p.m.)

Location: City Council Chambers, Charlottesville City Hall, 2nd Floor

Members Present: Chair Santoski; Commissioners Lisa Green, Kurt Keesecker, Genevieve Keller, Jody Lahendro, and Corey Clayborne;

Call to Order: the meeting was called to order by Chair Santoski at 5:30 p.m.

A. Commissioner's Reports:

Commissioner Lahendro reported the Parks and Recreation Advisory Board met on March 16th. Staff made a presentation on the therapeutic recreation program that is jointly run with the County. It lasts all year long but there are increased activities for camps in the summer. They serve about 10,000 people a year. The Meadow Creek Valley Master Plan update: the flood study was expected 4/1/2016 for Meadow Creek which will then guide the design for the pedestrian bridges for the trail over the creek and this is the first step in hopefully in a series that result in the completion of the bridges next spring. The trail is currently being designed. Tonsler Park Master Plan Implementation update: they held the first neighborhood presentation of proposed splash pad designs on February 25th and the citizen's input overwhelmingly was for the plaza type splash pad. The next neighborhood meeting is on March 29th and the pad could be constructed by next summer. The design for a new field house will start this fall and Ragged Mountain Reservoir trails project had its second public input meeting on March 22nd with the next meeting on April 21st at Trinity church at 6:00. He attended the Tree Commission on March 23rd and staff presented its annual integrated pest management program plan and there was significant discussion on the differences on the recommended planter strips (the widths of those) between the two major studies that are out now, West Main Design and the Streets that Work. The commission is worried that if only the ideal widths are followed than we will never have any large canopy trees on the streets. The consultant report on the mall trees was discussed and recommended the removal of certain trees that are crowding certain other trees and the removal of grates and re-designs for the openings for those trees on the Mall. The Tree Commission is asking for input from Beth Meyer regarding the design changes, and forestry staff from other cities. Arbor Day is April 29th at 10:00 in McIntire Park.

Commissioner Keesecker reported he attended the Master Planning Council meeting in March. The discussion was related to Ivy Corridor planning that the University is conducting. The consultants Dumont Jenks, a planning firm from Boston, are studying the property the Cavalier Inn is on Emmet all the way back past the parking garage to where the BB&T is at the corner of Alderman; that entire block which would be fairly significant. The BAR meeting was held on March 15th and there were 4 applications of interest to the Planning Commission; 1) the final review of Market Plaza with full approval to move ahead with all of their details, 2) 550 E. Water Street, was approved with some conditions and some other things to come back. 3) William Taylor Plaza, the BAR approved a variety of conditions and a couple of things they asked to come back. 4) An addition to a home just off 14th street that was an intensive expansion almost tripling the base for the old home building behind it. The oddity of that was that they were able to achieve their density and create what the BAR considered an out of scale addition only because that particular landowner had other properties in the neighborhood and can park cars off site to allow this one particular site to have a really large addition. It was a by-right project that was going through the BAR but there were some quarks of the way the zoning was working in that relatively residential neighborhood that allowed for it by zoning and the BAR had some design questions and they actually voted against it.

Commissioner Green reported next meeting of CPAC will be Wednesday May 4th at 7:00 at TJPDC.

Commissioner Clayborne reported he has no committee assignments at the moment.

B. University Report— no report

C. Chair's Report—Chair Santoski reported that the subcommittee for the Belmont Bridge met to review the RFPs submitted.

D. NDS Department Report: Missy Creasy stated there is a work session on April 26th to discuss the Strategic Investment Plan Code recommendations and the Streets that Work Plan. The Streets that Work demonstration project will take place on Saturday April 16, 2016, between 10:00 and 2:00 on 2nd Street between City Market and the Ix building. It will demonstrate some of the Streets that Works principles and fire trucks and buses coming through to see how they function through those demonstrations. Ms. Creasy welcomed members from a high school class visiting the meeting tonight and Owen who is a Montessori student who has been doing some shadowing in the Parks and Rec department.

Mr. Santoski spoke of the loss of a past Planning Commission member, Bill Lucy who passed away and wanted to take the time to send heartfelt thoughts to his family.

F. CONSENT AGENDA

(Items removed from the consent agenda will be considered at the end of the regular agenda)

1. Minutes - March 8, 2016 – Pre meeting
2. Minutes - March 8, 2016 – Regular meeting
3. Minutes - February 23, 2016 – Work Session
4. Subdivision – 230 Shamrock Road

Motion for approval the consent agenda Mr. Keesecker, seconded by Mr. Lahendro motion passes 5-0.

III. JOINT PUBLIC HEARINGS (Beginning at 6:00 P.M.)

William Taylor Plaza, Site Plan – William Taylor Plaza PUD

Matt Alfele provided the staff report.

Mr. Lahendro asked if the arboretum site will be developed at the same time as the hotel.

Mr. Alfele said yes, it is a part of phase one.

Mr. Lahendro said the proffers on the title sheet calls for the landscaping to be maintained, and he knows the arboretum site has been inundated with bamboo for many years and has been overgrown. What is the enforcement for the owner to maintain the landscape? He doesn't want to see it filled with bamboo in two years and no one can use it again and yet it was used to enhance the acceptance of this PUD.

Mr. Alfele said it would be a zoning violation, if they are not adhering to the PUD and to the proffer requirements.

Ms. Green asked about the enforcement procedures on that.

Mr. Alfele said complaints are brought to the Zoning Administrator's attention who investigates.

Ms. Green said and then what are the steps to be taken.

Ms. Creasy said a complaint would be investigated and if a violation is found, a notice would be sent, there would be a specified period to comply and if compliance did not occur, and then there are other measures to move forward such as court.

Ms. Green asked what is in place to encourage compliance.

Ms. Creasy said she is hopeful since this is a business that they will want to be successful and maintain their property. They also have an HOA that will have declarations of responsibilities that they will not want to be in violation.

Mr. Alfele said there was a boundary line adjustment plat and easement plat that was included with this which included language for maintenance of the arboretum.

Ms. Green said what if they said they don't want to comply?

Mr. Alfele said there will be a fine. Most of the time folks work with us to take care of the matter.

Mr. Keesecker said it is fair to say that this has been high profile and they have been through many Public Hearings. They have consistently tried to say what they are going to do and respond to our concerns. He feels it is fair to say given their record but we can expect with approval that the property would be maintained. There is a HOA to maintain it.

Charlie Armstrong, Southern Development, addressed the first question about the safety of the Stormwater management facility; it is a bio-filter facility so it doesn't hold water over a long period of time. As far as maintaining landscaping, this is a 14 million dollar hotel project, and they are not going to let bamboo grow up, but just in case they do let it get overgrown, there is an agreement they have been working through with the owners of Phase One for maintenance of the arboretum area and the parking and other things the city has seen and reviewed as well that requires those areas to be maintained.

Mr. Clayborne said the bio-filter is labeled as BF and something else is labeled SWM, is that a bio-filter also.

Mr. Armstrong said he is not an engineer and can't get too deep into the mechanics of how that works but his understanding is it is an extended detention basin which means in very big storms the basin fills up and drains out over 24 hours so the bio-filter is the treatment facility and has some stormwater detention in there for 24 hours, maybe a foot. The other one is a small area that takes major surges so that the water leaving the site is slowed down.

Ms. Green said for clarification purposes, all of the amenities; sidewalks, landscaping for Phase One will be installed at that time before the C.O.

Mr. Armstrong said there may be additional amenities but everything you see on the site plan is to be installed as Phase One.

Mr. Keesecker moved for recommendation for approval with the conditions noted in the staff report (see below motion), seconded by Mr. Clayborne, motion approved 3-1-1, Ms. Green abstained, Mr. Santoski voted no.

- A final subdivision (Boundary Line Adjustment) is approved and recorded.
- A property owners' association is established in accordance with City Code §34-494. -
- Ownership of land; common areas and the recorded documents are provided to NDS.
- All bonds posted
- A recorded Stormwater Maintenance Agreement is provided to NDS.
- Remaining engineering comments are addressed.

G. JOINT PUBLIC HEARINGS

2. SP16-00002 - 750 Hinton Avenue –Hinton Avenue United Methodist Church, by Sue Woodson, its Trustee chair has submitted a special use permit (SUP) request to allow elementary education and daycare uses of its property located at 750 Hinton Avenue.

Carrie Rainey provided the staff report and the Commissioners then asked questions.

Ms. Green said with 45 to 48 students, has there been a traffic study done to accommodate this many at this point?

Ms. Rainey said no traffic number is provided at this time.

Ms. Green asked about the number of parking spaces. What is the total number of parking needed for this site?

Ms. Creasy confirmed that the higher of the two uses noted would require 5 parking spaces.

Mr. Lahendro noted that the neighborhood advises that a crosswalk be well marked at the intersection of Rialto and Monticello because the primary school is on Monticello and this use of this wing of the church would be a satellite of that school with children walking back and forth between these two building.

Mr. Keesecker said related to drop off and pick up, how that activity can be less impactful to the neighborhood?

Eric Anderson said thank you to the board for their consideration, the school is to be conducted between 8:45 to 3:15. We gather in praise and thanksgiving as God's people, we hear the word of God read and proclaimed. Approval would enable us to serve 48 more students each year. Heather Hill is the chairwoman of building committee.

Following the applicant report, the Public Hearing was opened.

Eugenio Schettini, the new President of the Belmont Carlton Neighborhood Association – said during the day this is kind of a dead area and this would enliven and engage the whole area. The sound of children playing would complement the clinking of wine glasses down the street and as we stated in our letter our concerns are traffic, congestion, and safety of the children and the location of the playground. We informed the school that we would like to be engaged with the formulation in how the playground evolves.

Julia Williams, 751 Hinton Avenue, said it is great to see the property have this opportunity. The trash is not well managed, and there will be a lot more trash. Hinton Avenue and Church Street do not have a stop sign and you cannot see cars coming up the hill. Please discourage having cars stop on Church Street. Additional concern was expressed about drop off and pick up. If the hours were different we would really have a problem so she wonders how the permit could somehow limit the use by hours. She said the play area in the front of the church, could be a benefit or it could be a detriment. She encouraged that be maintained so that it not be a hazard for the children in the area.

Amy Gardner 753 Belmont Avenue, agrees with the trash concerns, the church seems to be challenged in managing that. The Hinton Ave traffic doesn't seem to worry her, maybe because she has been dropping a kid off at school for many years and she is reassured that veteran children will be going there and that parking lot is pretty big. Look at parking on Rialto; parking on both sides of the street, it makes it narrow just for any car, so maybe illuminated parking on one side of the street would help mitigate any issues when they pull out. It is a great use of the space and really love the idea that there will be children playing in the middle of the day.

Adam Frazier 707 Graves Street is a supporter of this idea and he understands there will be a limited amount of students going there. He feels that the drop off/ pick up will be okay as it is not something that happens all at once. The parking lot is a sizeable. The SUP would not convey to the next people. The church is an old church and a lot of older members; they would like to see some new energy. It is a win win situation for the neighborhood, school and the church.

The public hearing was closed.

Ms. Green said we have to be very cautious and view the church in all conditions proposed. Keep in mind the SUP is for the church and that the international school is going to benefit from it.

Mr. Keesecker said he agrees with Ms. Green.

Lisa Robertson said in another similar application, a safety plan was required to be on file with the zoning administrator which would outline the drop off/ pick up procedure for purposes of complying with the condition. It could be noted that this needs to happen on the same side of the street where the school is.

Mr. Keesecker said that does allow the user whoever they are to change and tweak it as they move along.

Ms. Green moved to recommend approval of this application for a Special Use Permit in the R-1S zone at 750 Hinton Avenue to permit daycare and elementary school uses with the following conditions:

1. No more than forty eight (48) students may attend daycare and elementary school at the 750 Hinton Avenue location. An increase in students will require a new special use Permit (SUP).
2. The permitted hours of operation for the daycare and elementary school uses are 8:30am until 4:00pm Monday through Friday. An expansion of hours or days of operation will require a new special use permit (SUP).
3. A safety plan for the daycare and elementary school uses must be submitted annually to the Zoning Administrator for approval, and kept on file.
4. The main drop-off and pick-up activities shall occur in the parking area on the Subject Property.
5. A trash removal plan shall be submitted annually along with the safety plan to the Zoning Administrator for approval, and kept on file.
6. Playground equipment shall be installed per manufacturer specifications, and for so long as it remains on the Subject Property, shall be maintained based upon the specifications.
7. The playground equipment shall be located as shown in the location map provided by the applicant (Exhibit C1 as provided by the applicant) shown on the following page.

Mr. Keesecker seconded the motion. The Commission voted 5-0 to recommend approval of the Special Use Permit.

REGULAR MEETING (Continued)

H. Site Plan

a. 1002 Grove Street PUD

Matt Alfele provided the staff report.

Chairman Santoski said we have worked with PUDs a lot and this is about as mushy a thing as we can get these days. He said as he remembers correctly PUDs, even if written on the back of an envelope, that PUD once it is submitted and approved becomes the final document that we are supposed to work with and if there is anything that deviates from that plan, either it needs to be amended or denied because it's no longer following the original PUD plan.

Mr. Alfele said he understands where he is coming from because it is another mushy area because that is why he wanted to point out the September 9, 2009 document when they submitted for a preliminary approval and it did deviate from the plan and that deviation by virtue of the approval was deemed to not be substantial so that's where it gets a little mushy because you have this precedent set that there was some could argue a major deviation going from a triplex to a single family home and duplex. The Planning Commission viewed that as a minor deviation.

Mr. Keesecker said some of the items that are noted in our packet on page 3 and 4 and the table related to deviations. Some of the references made to where the original design intent refers to a letter dated June 27th are considered part of the PUD or the application for the PUD. His question was what is the PUD, one of those planned diagrams and the proffers we can read on that part of the letter, where are we with that?

Mr. Alfele said yes, that is also another question the applicant will have a chance to speak to, is what is the actual document that was approved in 2006?

Mr. Keesecker said we have a planned diagram that was in our packet which seemed to be a Xerox of a portion of a larger sheet of paper. Is this just an excerpt for the purpose of our booklet or is there another bigger piece of paper in NDS that we are not seeing the rest of?

Mr. Alfele said no what you are seeing came out of this material.

Mr. Keesecker said so it is obviously cut off but we don't know what else was around this excerpt.

Ms. Alfele said to the best of his knowledge correct.

Lisa Robertson said she will note and she believes Matt included this in your packet, a copy of the ordinance that City Council approved to establish the PUD and it specifically references the application materials having the date that is on the narrative that is in front of you. In her opinion, Mr. Santoski is correct that over the years what the city has accepted in the way of proposed PUD development plan includes both narrative and pictures so it may not just be a map or a narrative but whatever comes in with it, the materials that are referenced in the ordinance that approved the PUD needs to be considered as a description as what the PUD was proposed to include.

Mr. Keesecker said he read that too and that is part of the reason why he asked the first question. He saw the reference to June 27th 2006 under the heading of the final proffers statement but the letter says narrative statement for the majority of the letter until it gets down to the part that also has some bold text where it says proffers so he concentrated in his study on the part of that letter dated June 26 that was the proffer portion of it because the language in the rest of the description while interesting, is particularly with troubling because it had some references to values to what things would be sold. That information is 10 years old not which may or may not apply so it seems to him that the final proffer statement is the portion of that letter that comes after proffers; would that be a good interpretation of what we got.

Ms. Robertson said I am going to leave the interpretation part to you all as the decision makers but I will say the ordinance references to the application materials which to me includes that entire written statement that has that date and I think there that are a number of places where the person who wrote that statement uses some terms fairly loosely and I am not sure they use them as terms of art so there is a reference in the proffered conditions that are showing up on the first page of your proposed site plan to features shown on the site plan. I think that is referring to the drawings that came in with the original application, one which is on the face of the first page of the site plan. I don't think it refers to what we call a site plan. She said in going through, you have to do the best you can with what you got.

Mr. Keesecker asked where does it say that it refers to the application materials

Ms. Robertson said she thinks it is in the first paragraph of the ordinance. She said it was called a PUD development plan, she said it didn't say application materials.

Mr. Keesecker said it says preliminary proffer conditions dated June 27th.

Ms. Robertson said it says a PUD development plan dated June 27, 2006 and certain proffer development conditions set forth when in a statement of preliminary proffer conditions that had that same date. The ordinance contemplated by Council, there were two things that were related to one another. She said the materials you have in front of you have the same date.

Mr. Keesecker said by practice that plan expands to not just be a plan drawing but a plan including the narrative and everything else.

Ms. Robertson said if you look at your ordinance that is very clear, that is supposed to be the case. It is supposed to be a written narrative how you are going to address the intent of the PUD section of the code and talk about the different styles or types of housing. The land use section and some of them are called plans but you have a choose of whether you illustrate them on a map or a drawing or whether you describe it in writing and most people it seems, over the years have done some combination of those.

Chairman Santoski said these PUDs have become a real sticking point but where he has come down from looking at all of this is that whatever is submitted by the applicant at the time the PUD went in is basically what becomes the package because you are talking about a rezoning specific to that PUD, it is not rezoned R-1 or M-I or anything else. It's that PUD for that piece of property so everything that goes with it then becomes necessary materials and if they didn't want that to be then they don't submit all of those materials, or if they want to keep it as vague as it is but then when we have to review it, we should be reviewing an original document and how it has been amended.

Mr. Keesecker said he can't necessarily disagree but as he looks at what this diagram is trying to convey, I see a certain number of units and a certain number of access points off of residential streets and they are relative size and placement to each other. An idea that there would be some amount of common area in the middle and all of the pieces of what would make this an attractive

field project to the city to my reading of it seems to be consistent with the design ideas from the original PUD that for instance being able to meet. (I can't tell from this diagram that it had any hope of meeting the stormwater regulations in 2006, the truth is they changed two years ago and got tougher and so now I am not going to scale this and find out if the common garden could handle the apparent stormwater rates.) There is probably no idea that it could work but the site plan in front of him is actually an improvement to what was generated back then because it does meet given two years' worth of review has gone into this current site plan. It seems like it's an improvement to what was maybe conceptually drawn out in 2006 because it meets the current stormwater rates, where this one may not have had a chance to do so.

Mr. Alfele said what is before you tonight as far as a site plan, outside of what is listed in those tables, and could be an approvable site plan.

Mr. Keesecker said it is just the understanding of how much variance we allow from the concept/PUD development plan from 2006 to today's drawing.

Ms. Green said this is not a site plan, this is a concept. She said it is like apples and oranges.

Mr. Santoski said we have had this discussion with developers before and when they submitted the original PUD and it was approved and called for a common garden quite honestly whether or not this diagram would meet today's standards, it is almost immaterial. They called for a common garden and they are going to build it today rather than back in 2006, I am sorry guys, that is why we gave you this PUD because it was a Planned Unit Development and now just throw the rules out of the window and say hey look you gave it your best shot but you have to live up to the standards we have at the moment when you are coming before us, doesn't matter how you do it, this is what you told us you were going to build so if they don't want to build that they need to come back and get an amendment to the PUD.

Mr. Keesecker said it looks like they do, he is seeing open space, it doesn't necessarily mean it is a common flower garden.

Mr. Santoski said in general, once you start making exception to that, then the whole PUD thing goes out of the window. Unless someone formally comes in and says we want to change this diagram and this is why and we have the right to have another public hearing, denies the new PUD, we can do all sort of things at that point, but if they are coming in and asking us to modify the PUD from what was the originally approved.

Ms. Green said she thinks that the question is, does this new site plan actually modify the PUD that was approved?

Mr. Lahendro said he is studying the narrative statement from 2006, and it is a very different site plan from what is being put out today than this narrative statement describes and is that our beginning point for the PUD?

Mr. Keesecker said very different in terms of the things that are on the table that Matt allotted.

Mr. Lahendro said yes in terms of keeping the existing trees and according to this narrative and to replacing all of the trees in the current site plan, it talks about styles of building that are going to be put in. It talks about keeping the character of the neighborhood. There is a lot of detail in this narrative statement. If that is our beginning point and that is what we have to judge against what is being submitted now we need to agree upon that and he thinks we are and that is what he is hearing.

Ms. Green said that is exactly what we need to do is read this narrative and figure out if this new site plan is in compliance with that narrative PUD or the pictures and whole thing is a packet.

Ms. Robertson said everything is included in the packet so look at the narrative, look at the drawing, look at the proffer development conditions. They all have to be read together because once this was approved they all became the zoning regulations applicable to the development of this property so they all have to be read together and interpreted together.

Mr. Keesecker said so we would expect that the maximum dollar figure for sale of the unit on these properties given the third bullet on the first page units is \$350,000 dollars.

Ms. Robertson said she doesn't know if that is a site plan issue or whether it is even addressed in the site plan. The site plan is talking about the layout of the overall development site, the amenities, the buildings, the stormwater, the green roofs, all of the things that are referenced but she doesn't know that typically site plans include a sale price.

Ms. Green asked if we could hear from the applicant.

Mr. Maynard Sipe, representing the applicant, Dickerson Homes LLC, and Mr. Bo Dickerson is here with us tonight. He said the statement that all of the application package is to be considered as part of the PUD plan tonight is the first time we have heard that as an applicant.

Mr. Santoski said that is not the first time we have had PUD discussions on the commission since I have been here and we have talked about that many many many times that the application submitted to us for review includes all of the documents that we get so when people go back to look at everything and we look at it, we have been told time and time again and has everyone else. Quite honestly he gets tired of hearing that people don't know that because he knows it better than he should have to know it. He said he gets a little frustrated over the fact that people said they don't know what the PUD is all about.

Mr. Maynard Sipe said he has a thorough understanding of PUDs and he worked on them in Northern Virginia and other locations, but what he wanted to say is that is the first time he has heard that comment tonight, he is just making you aware of that. He did not add that paragraph to the letter to try to focus the argument on what's the PUD plan so much because he is confident that it does conform to the plan and to the proffers. We had strived all along to meet your process with staff to do that and our goal was to conform as close as possible to the plans and to the proffers that staff is pointing to through the process and we made that our goal and he believes they have achieve that. That is why he wants to get to those points and they have heard this one point tonight for the first time.

Mr. Santoski said whether you call them proffers or whatever you want to call them, whatever was submitted with the original PUD plan is what becomes the Plan Unit Development Plan. So it doesn't matter if they are called proffers or just part of the plan, and we could get into arguments about proffers and everything else but it is really what the applicant says in order to get this PUD this is what I am going to do for the city and in return this is what I am going to build and this why I don't want to adhere to the regular zoning that is in that area. That document becomes the new zoning for that piece of property and honestly looking through this I have to agree with Mr. Lahendro that there seems to be marked deviations from the original PUD plan that was approved. What Ms. Green is saying is why don't you walk us through the document that Matt put together for us that kind of basically says hey look that's what basically was proposed and this is where the deviation is right here.

Mr. Sipe said when you approve a re-zoning of any kind, especially a PUD, the ordinance adopted by City Council is the ordinance and that in itself should contain all of the language including a proffer statement signed by the landowner. That is a state law that the landowner sign the proffer statement. Staff has been unable to produce a proffer statement.

Mr. Santoski said this is different than a typical re-zoning when you are going into a Planned Unit Development, you are stepping outside of the typical re-zoning and you are moving into a whole new area. Whether or not you wrote it on the back of an envelope or postcard or what have you, once you have done that; we have good PUD plans and we have had very poor PUD plans and we have had PUD plans where developers who says I didn't realize when I wrote that on the back of an envelope that became the plan, yes you did know it, it's right here, they told you and it's in the ordinance, I beg the differ with you and my colleagues may not feel the same way. But quite honestly I would like for you to address why the PUD plan dated June 27, 2006 is the same for the proposed site plan that we are seeing now.

Mr. Sipe said those points in his letter were for background and context. Onto the general layout and the structures, in the staff memo they talked about the structure location and the types of structures. The drawing that is there is a concept plan showing a triplex, a three family dwelling connected by sort of one story roofs. The Planning Commission previously saw a site plan for this priority in which the applicant at that time, showed a duplex and a single family unit and no connections between them other than the duplex obviously and the Planning Commission at that time approved that site plan and that seem to indicate to us that that was an acceptable deviation as staff noted in their presentation and he said staff in their review of this expressed an opinion that the general layout and location complies with the PUD plan and that was in the letter of July 10th from staff that I provided you as attachment (C) in the package. We believe that the structure locations are really the best possible and the way that we have re-worked the plan obviously increased the open space and addressed the modern stormwater regulations which are requiring things that were not required in 2006, and we feel confident that it does match the PUD Plan and general location and layout structure. There was a lot of discussion with staff about green roofs and that is a popular item for some people. If you look at the proffer statement it does discuss green roofs, rain gardens and other elements of low impact development and the proffer states the intent is to achieve as much stormwater reduction as possible and I guess that is both quantity and quality of stormwater. We have gone through and met all of the modern regs which are

superior to the ones in 2006 when the plan was approved and we removed the one story structure because it was not an effective way to provide an effective form for the housing and by removing the one story structures we felt that the green roofs would not be necessarily required and green roofs at this point would not add to the management of the stormwater. He said he wrote a letter outlining that in detail which led to the zoning administrator's determination that we're in compliance with that proffer and in effective we have exceeded the intent of the proffer. That is provided to you on attachment E.

On housing types, for two years, we haven't had any issues raised by staff on the housing types, no questions because no one had put in front of us that they would evaluate us against the entire application filed by the applicant in 2006. However the site plan itself governs the footprints of the housing and the location of the structures, we think the scale and placement of the structures is very much in keeping with the character of the neighborhoods and these will be all two story structures. That part of Fifeville has a mix of architectural types, a lot of vernacular architecture, varying in sizes and ages, but we think the units we are developing will fit into the neighborhood fine and the information shown on the site plan provides structures that are in the proper context. The one unit facing Grove Street is in alignment with other houses facing Grove. There is a house facing the other street and then we have three houses facing the side street and they basically flush out the block in a manner in keeping with the neighborhood.

He said the next item is the preservation of trees. He said it is important to look at the proffer language itself. The proffer language is the refinement of everything in the discussion on the rezoning that usually achieves the end point of the proffer which expresses what is required. The proffer is not explicitly requiring preservation of any or all of the trees. It does ask for us to make every possible effort to save existing trees. We went through the layout and structure and tried shifting them in many ways. He said I guess if I want to refer to the plan I could point out one unit. There is a unit facing Grove Street on the West side, on the left side of the plan and it has a driveway between the unit and the neighboring property. We felt that was an important aspect of the design to provide the driveway there and more buffer distance from the neighboring property to protect that neighbor. We are dealing with zero setbacks. He believes with this PUD we did that there and we did the same thing to provide buffers to the house on the corner of King and 10th Street by locating the driveways between the houses which provides a little more distance. There were a lot of elements like that we considered and we also had to do the rain gardens as part of the low impact development for the current storm regs. We expanded that open space to accommodate that. All water on the site from the roofs of the structures and almost all of the yards is going into that open space of that rain garden and we are using rain barrels as well. The only offsite water was a minimum amount from the wheel strip driveways. The wheel strip driveways are going to be in impervious pavers. He said there are a lot of choices he had to make in the plans and he sat down with the engineer to walk through this and in doing so it really was practically impossible to preserve the existing trees even though the tree location might be in the open space on the border of it. You are always going to impact the root zone of a tree and constructing the rain gardens and for the stormwater to be able to put five units of residents on the site is very difficult. He said he did include a landscape plan with planting of trees or replacing the trees with native species and all of that was envisioned in the proffer itself, any trees removed would be replaced. He said the other two elements are pretty straight forward. The open space that staff has shown that we are providing 27.1% of the area of the site open

space as opposed to approximately 16% shown on the PUD plan. He feels that is a great improvement and it did enable them to do the rain garden which will be a nice open space for the residence. The grasscrete pavement was called out specifically, it was a brand name. He thinks it's a brand name commonly referenced at the time in 2006 but what we are using is impervious pavement which is extremely similar and we are using them in all six parking areas, instead of the three required in the proffer, so we meet those elements as well. He said if there are questions about how we are deviating, he is happy to entertain them.

Mr. Keesecker said so the letter we have dated June 27, 2006 basically walks us through the evolution of the design of the building from a submission from 2005 or so all the way to present from 2006. It contains language that goes from a 7 unit design to a 6 unit design with various different partners and architects until ultimately we settled on a description of a couple of different plans or 3 different plans that we have but this plan date May 31, 2006 that is in our packet that shows a more modern buildings by an architectural firm call Utile, as referenced in that process and background description. What are we to make of this?

Mr. Sipe said in the application materials you have a set of drawings with the name of the designer on there, Utile that is dated the 31st of May 2006, which includes all of the drawings for the housing types and the architectural drawings, those drawings were obviously prepared in advance of the application and were included in the application package to illustrate what the applicant at that time was considering. The ordinance itself always refers to the date of the narrative and the proffer statement that was included in the package, June 27, 2006.

Mr. Keesecker asked are these June 27th drawings.

Mr. Sipe said those drawings we have originally led to believe were the most recent that were made available between June 27th the application date and the date the ordinance was adopted by Council so they may be more recent than the application package.

Mr. Keesecker said there are no dates on these drawings.

Mr. Sipe said no, there are no dates on those drawings and there is no language in the ordinance to tie those drawings to it, but we have worked with those drawings all along.

Mr. Keesecker said I know it's a typo, basically this says there are 20 units on this plan, but I am sure it means 20 units per acre but it does say that it says 20 units.

Mr. Sipe said he really did not want to go into detail to comment on the quality of the original work of the application, but we just took the plan and as a concept plan it is not to scale it is sort of a sketch plan which he referred to in his letter as a sketch plan. We took that and worked with it all along. We tried to adhered to it all along and he believes they have adhered to it in terms of the layout on that plan you pointed to which is the undated one included in the packet.

Mr. Keesecker said the description of what we think is the actual approved PUD is some portion of this letter that probably falls under, the portion of the letter dated June 27th that says response to specific requirements, is that what the staff's impression is? Is it from that point down?

Mr. Sipe said he drew attention to this in his letter, but really did not intend for the Commission to be overwhelmed by quality or quantity of materials from the original approval. I felt I had to mention that, but really just wanted to focus in on how we can form with the general plan which is in the dated plan that you held up. Staff can answer that particular question better.

Mr. Sipe said proffer 2 said we are to look at environmental features included but not limited to rain gardens, rain barrels and green roofs on the one story structures sections of the buildings. We have utilized rain gardens, rain barrels and we have utilized impervious pavement and other techniques not listed there. We also just design the site to contain as much as possible of the stormwater. We went back and submitted a letter to the zoning administrator which outlined all of this in detail and we did outline an argument that all of the techniques we have used which include additional techniques to those that were in the proffer have resulted in a retention of stormwater significantly greater than what was expected to be retained in 2006. If you look at that proffer you can see that maybe at the time they were trying to get the applicant to retain more stormwater than the minimum requirement in 2006, that would have been a level like this and they wanted something more. We have now met the 2009 requirements which is even a higher mark minimally exceeding the 2006 ones, so we presented that argument and the zoning administrator agreed with it and provided that to staff and we felt that issue was resolved at that point back in February.

Mr. Santoski said but the original PUD calls for a one story section instead of two stories which you are now proposing which is why the green roofs were something not usable on the two stories but that is a marked deviation from the original PUD. Where does it allow you to put a two story home up where you said you were only going to put up a one story home?

Mr. Sipe said all of the homes on the original PUD plan were two stories I believe, but they were connected, there were some one story connected sections envisioned by the original designer or architect.

Mr. Santoski asked where are they?

Mr. Sipe said they were not provided on the preliminary plan that met the planning commission approval in 2009 and we did not find them to be workable for the housing type.

Mr. Santoski said just because they are not workable doesn't mean we allow you to get away with it. He said he has heard this argument several times, oh that was just a preliminary, that is how we were thinking, we are envisioning this, and don't you understand if you sold the property to somebody else the PUD is still the PUD. If you said you are going to do something, we expect you to do it. You can figure out how to do it, you are bright people, you have engineers, consultants, this is what you said you were going to build, this is what we expect you to build.

Mr. Sipe said his only response is that the plan Mr. Santoski just held up is a concept sketch, is not to scale and shows housing sketches of a certain nature, those housing types would not be practical on the site, they interfere with our ability to deal with the stormwater.

Mr. Santoski said it does matter; it was part of the plan that was approved.

Mr. Keesecker asked Mr. Santoski how he knows that plan is the one that was approved.

Mr. Santoski said he doesn't but he is taking this one on face value that this was the plan that was submitted for approval and the crazy part is often we are not able to find what was originally approved. We have to base it on what we have and we have the narrative and kind of talks to that and it is the same thing with the trees. There is no doubt in here that they say there are at least two trees that they wanted to have preserved and you want to take down all of the trees. One of the biggest problem we have had with PUDs is the developers taking down the trees when they are not supposed to. The reason you get the PUD is because you say you are not going to take down the trees.

Mr. Sipe said if you look at the 3rd sheet of the site plan packet, we have submitted, the 3 rain gardens there is a stormwater pipe running through the open space. We have been hard pressed by the staff to do the most absolutely possible for stormwater and the rain gardens and installing that pipe to receive the water or the overflow from the rain garden is located right through the root zone of those trees. That's an excavation that is going to affect the roots under those trees. It really wasn't necessarily the dwellings that caused that the two trees you mentioned the hollies and the hickory that are very slow to the stormwater drain on the back corner of lot #2. Those were the elements we were balancing. We have been balancing the two issues, new stormwater requirements vs. what was original envisioned maybe or at least what was the original aspiration. He said we have done a good job of balancing that. Are there any specific points I can answer.

Mr. Keesecker said different from some of the things in the staff report, the trees are addressed by a proffer statement that essentially said there is going to be an effort to save existing trees but the proffer says if it doesn't work out the trees will be replaced with native species. He looks at the proffer statement carrying more weight than anything that might have been a narrative and trying to describe what your intentions are. Is it true that your site plan now meets the proffer statement basically, the proffer is repeated on the modern site plan and are native trees being used to replace, is the trees coverage being met with native species?

Mr. Sipe said yes we are replacing all of the trees using native species. We are meeting the language of the proffer as I said earlier. Proffers are supposed to be the desolation of the requirements for zoning approval and we think we meet that.

Mr. Keesecker said if your stormwater regulations were less severe, would some portion of the existing trees have a higher chance of being able to remain?

Mr. Sipe said they might would have a likelihood to remain and in looking at the PUD original concept plans he thinks it is very important to look at the big picture of the plan for the site and most of the trees on the site were non-native evasive species like a Lantus. They were basically weak trees that had grown in an old fence row and so you may be losing a couple of good trees in someone's opinion overall you are going to get five preference types of trees species than was on the site originally. So the overall site is going to meet the requirement for tree canopy. We

are doing our best to make the site as attractive as possible; the developer wants an attractive site that serves the needs of the future home owners.

Ms. Green said you mentioned the plan that is in front of us, the plan from 2006, you meant the one roof, the green roof, met the 2006 stormwater requirements and you believe this plan went above that and then you said you have now met the 2009 requirements and 2009 is 8 years from where we are now so what is the difference from 2009.

Mr. Sipe said we are exceeding the contemporary requirements which are higher than the ones and to your questions, the plans in 2006 did not have any engineering, there was no demonstration that this plan could possibly meet stormwater or not.

Ms. Green said her question was what 2009 has to do with this.

Mr. Sipe said that was the previous site plan that the Planning Commission approved which eliminated the one story structures that had a duplex and a single family home. This had been seen by the planning commission before with the structures as we are showing them so today you are getting another bite of it. The stormwater discussion is basically what was expected in 2006 when the proffer was made and what is required today, 2009 is only relevant to the structures.

Ms. Green asked do they have to meet 2009 requirements or 2015-2016 requirements?

Ms. Green said the housing types; you believe are not practical on this site. What is practical, to whom, to why, what does that mean, in what nature?

Mr. Sipe said the concept plan we have been working with all along, showed five individual single family dwellings and these five had two story buildings. This row on the tri-plex was made a tri-plex on the concept plan. He said that is why the 2009 comes up because in 2009 there had been a preliminary site plan that the Planning Commission approved that allowed the duplex and the single family structure. When we talked to staff last summer, (Ebony Walton) because the Planning Commission had seen it and approved it the staff thought it was appropriate in keeping with the prior planning commission action.

Bo Dickinson, Manager of Dickinson development, said practical means from 2006 the stormwater from 2006 is not sufficient for today. We had to increase the middle side of the open space. We thought the dimensions would go into that open space and it was not going to fit the site so we went to a 24 x 32 box so we can have the homeowners help to design the project.

Ms. Green said he said housing types and he said on the PUD with the one story tri-plex is not practical on the site; she is trying to clarify what that means.

Mr. Sipe said what he is saying is he has footprints that he can build to the homeowners desires with that footprint and so if you look at the concept plan that you are going back to with the tri-plex and you look at our plan and the stormwater facilities we designed to address the site with the 3 rain gardens, you will see that one of the rain gardens in the center of the site is here between our duplex and single family structure and it would be where the tri-plex is over

running. The tri-plex consumes a lot of area and we have converted that area into open space lot (some of it) and we have been able to accommodate the rain gardens to address the current standards for stormwater. This tri-plex was not, that what I meant by not being a practical housing type, structure or plan, because when we went in to get today's standards for stormwater and everything else, that is not an appropriate structure and staff had concurred with that all along.

Mr. Keesecker said in the visual reference that it appears duplex and single family configuration has less roof area than the tri-plex and the triplex massing stretches from one street to the other. Is there any math to back up the visual?

Mr. Sipe said the plan is not to scale so it would be impossible for me to give you an inch or a foot. The massing is something to be considered and we felt the duplex and the single family unit would fit nicely in the character of the neighborhood. They still maintain three units in the same location while letting us have more open space and accommodate new stormwater. I don't know about the roof area really exactly but I know we have created open space so there is a net gain design.

Mr. Lahendro said he is confused to what the PUD is. He said he thought it was the 2006 documents and now he is hearing 2009 being approved. Something amended or something changed, what is the approved PUD that we are reviewing now?

Ms. Green said it sounds like we are designing a site plan right now but to part of the PUD, what is the PUD is one of those plans diagrams or where we are with that?

Mr. Alfele stated the actual document that was approved in 2006. June 27, 2006, walks us through the evolution all the way to present, containing language that goes from 7 unit to 6 unit designs, different partners and architect, a couple of different plans we have, May 31 2006, showing a modern building is reference in the process and back ground.

Lisa Robertson said if we can't identify a PUD approval then there is no site plan that can be approved. The site plan has got to match the approved PUD plan. She thinks that as a practical matter what the applicant has done is given you a site plan showing at least one of the drawings from the PUD development plan referenced with a specific date that was referenced in the City Council ordinance and also on the first page of that site plan is a list of proffered conditions. City Council ordinance specifically references a set of proffer develop conditions since that is what the applicant has given us on the first page, a minimum of those two things I think we have an agreement on. She said the only way the applicant can move forward, is for us to agree that that is an approved PUD and we look at whatever materials that are in those June 2006 materials referenced in City Council's ordinances is what we have to go on. 2009 was the first time the property owner came seeking approval for a site plan, and at the time that plan was under review it should have been doing the same thing you are trying to do now which is figure out whether the proposed site plan that has been submitted was substantially compliant with the approved PUD and so that was the issue in 2009. It was not an amendment of the PUD but whatever it was that the site plan was being compared against at 2009 that is what we are supposed to be

comparing this site plan with tonight. It should not have changed and at a least one drawing and a set of proffers that nobody is arguing, whether they comprise the PUD.

Mr. Lahendro asked what the conclusion in 2009 was.

Lisa Robertson said in her understanding in 2009 the site plan approval allowed substitution of some different types of units. The most substantial change was that what was shown on this original picture as being a series of buildings with what shows up on the drawing that is on the front page of this site plan as being labeled green roof was actually sort of a connectors or a one story connector between a bunch of buildings. You will notice that in 12345 different places something is labeled green roof. It is her understanding that that was some sort of structure that whether it was part of the porch which was one story tall or what it was original approved PUD to be a green roof. The reason this is important is because separately the proffer development condition reads, "The developer will install environmental features shown on the site plan, designed to retain as much storm water as possible, including but not limited to rain garden, barrels, green roof on the one story section of the building;" by the proffer, by the picture, what you were supposed to be getting, was some types of buildings or structures that have had sections which was one story with green roofs on it.

Mr. Lahendro asked do we have a 2009 site plan.

Ms. Robertson said yes you approved it, but NDS does not have it.

Mr. Clayborne said so is it fair to say in 2009 when you came before the commission, the dialogue that occurred was that there allowed you to switch those building types, was that due to the stormwater regulation rules?

Ms. Robertson said here is the separate issue that allowed that one, because proffers are all tied together, but in an approved proffer statement if it needs to be amended that is a separate process than amending a PUD. The Supreme Court has been very clear, when someone like a zoning administrator when performing an administrative or administration somewhat like you are trying to do tonight, is looking at the wording of the zoning regulation you have got to apply the plan language. My concern over the memo the zoning administrator did he is attempting to declare some legislative intent and trying to help create some sort of equitable resolution of the situation that is difficult because of the record keeping issues and other requirements but The Supreme Court has said a zoning administrator cannot step outside outlined parameters. He has to apply the plain language of the zoning regulations and if in trying to reach an equitable solution or whatever those needs to be changed, it has to be by a legislative amendment. The zoning administrator cannot say this stuff meets the intention of the original. You have to look at the language, you have leeway, look at the statement from 2006 and say this is how we meet the PUD requirements and look at those drawings and you yourself can read the language of the ordinance and if you decide what is in front of you is substantially in compliance with those items as you know it then approve the site plan and we can move on. My issues with the zoning administrator correspondence is that he is not reading the language of what is there so it may well be, that you think what is in front of you is substantially in accordance with the PUD development plan but whether or not someone can simply chose not to include one story

buildings and then say I can't comply with the proffers because I now not choose not to include one story sections of buildings which is the actual wording and we've got to figure that out. So that is one legal issue which is whether in looking at the actual wording of what is in front of you, and if you think that what you've got is compliance with those words and that is for you to determine.

The issue of what is required for stormwater, the state stormwater regulations outline the old ones and the new ones. That is the development law no matter what so the issue that is required by state regulations and what you were promised in a PUD are two separate things. If someone tells you I proffer that I will comply with the storm water regulations that is already a requirement, so presumably when you are reading a proffer that says I am going to install environmental features, designed to retain as much stormwater as possible including by not limited to these things. The issue is what were you getting collectively to deal with stormwater? Those things are a matter for you to interrupt. I think what I am hearing is because the storm water regulations have changed this owner has no alternative other than to comply with the present stormwater regulations so there are some adjustments that may need to be made to this original layout simply in order for them to comply with what is now the law. She said something like that has to be taken into consideration.

When you are looking at language such as whether someone proffers to make every possible effort to save existing trees and if you can save the existing trees or replace the ones lost. Does this site plan demonstrate efforts to save existing trees or can someone come in and say that because of these new stormwater regulations for other reasons we can't even bring you a plan although we didn't consider trying to do a different layout to save existing trees. That is the language you have to focus on, is what's written and you give your interpretation to it. Whatever you decide as the age of the site plan is your decision but she said put aside your general feeling about PUDs. This original thing was at least the documents that no one is disputing and try to give some interpretation to that in a way that takes into account some other requirements that may have come into being since the original approval.

Mr. Keesecker said so generally PUDs are in place to bring forward relatively creative solutions to infill issues and so the basic intention behind PUDs is to bring what would have been difficult solutions to a basis where they can have a site plan where they can be approved. PUDs are not intended to be literal translations at the time you approve the PUD because under that scenario I don't know that anybody could present a PUD as an idea through that process to bring the creativity forward.

Ms. Green said yes, but proffers are.

Mr. Keesecker said so proffers are very literal.

Ms. Green said and that is where number two comes in.

Mr. Santoski said the PUD is usually the only thing that has been required that it be a concept plan and we've have had discussions about it being more than that. The hard part is that it has been exactly that, because most PUDs have been accepted as concept plans, nobody knows if the

engineering will work, nobody knows if any of this stuff is working. The developer just comes forward and says this is my best guess that this will work with a lot of promises and the city on faith takes that and so if this is what we have we have to believe that this passes. Yes it was 2006 and now 2016, many things change but the original Planning Commission, the original Council, the original neighborhood, believe that this was basically the plan that was going to be approved. If we don't approve that, then why do we have PUDs? Let's just get rid of them and use the regular zoning we have and operate within that. All we have is concept plans for these things so when we want it to be something more than we are requiring developers to go through the regular zoning process, then we need engineering plans and everything else. Yeah it's a leap of faith on the city's part but we are also having a certain amount of faith in the developer that they are going to deliver to us as close as they can what we are looking at.

Mr. Keesecker said in good faith, when I look at this plan it seems like it's as close as you can get, given the changes to the stormwater.

Ms. Green said she disagrees.

Mr. Keesecker said his question is how as a creative solution structurally how this fits into the neighborhood, to Ms. Green you are saying this is not the PUD....

Ms. Green said this is not trying to make their site plan work because it fits in the neighborhood that is where I think we are getting confused. We have a PUD and that is what has been approved. I am not disagreeing that maybe something from this PUD shouldn't be better but the process is not bringing forth the site plan and that supersedes the PUD. The process is for them to bring the PUD back to us to make it fit what they need, to amend the PUD, not try to fit a square peg in a round hole.

Mr. Keesecker said so you think this is a square peg in a round hole.

Ms. Green said the proffer language is very clear, it says including but not limited to so at least on this plan you should have rain gardens, rain barrels, green roofs on the one story section of the building.

Mr. Keesecker said in that clarity, one could install a green roof over the one story porches of the building and meet that proffer.

Mr. Santoski said that would do it possibly.

Mr. Santoski said Lisa is right we have to look at the language of it, and it doesn't matter what we think today, we are not designing the site plan, does their plan meet the things that are explicitly required and does it meet what was presented in the approved PUD. Sometimes this is the best we have, we don't always have good records, nobody can seem to turn up some things, but if this is what we have, it still deviates from the original PUD.

Mr. Keesecker said this is a plan with a terrible record, some half scrappy Xerox's of boxes on a plan on 2006 that are not dated or scaled, but it is a terrible record and nobody can produce a signed proffer statement and he has one dated plan that shows a duplex in a single building in

2006 and he has two diagrams that don't have dates but the ones that don't have dates say 20 units. We have really bad records and poorly worded stuff. He said he wanted to pull back and say overall the intent of the PUD ordinance is for the creative design and is this basically a deviation

Ms. Green said the overall intent is to make something better than what the original zoning created and is harmonious with the neighborhood.

Mark Saunders 419 4th Street N.E. noted he is feeling a little insulted because the original intention of this project was to give a creative solution for a neighborhood where you had a giant development proposed for Roosevelt Brown Blvd and you had low density, a set of residential homes further back in the King and Grove community and the idea here was that they were dilapidated, so we brought and knocked down this property. We worked with the Charlottesville Community Design Center with Katie Swenson. We wanted to have affordable housing so that police officers and teachers could afford to buy some of these small units and the elderly people on fixed income. We wanted to give some creative designed solutions, mentally environmentally sensitive solutions. That was where the idea of green roofs came from. We found some new partners that had some capitol to bring to the project and we entered into an agreement to sell the property to them. He said what he sees on the site plan is truly a good faith effort and not this bad plan. This is a good faith effort. This is not a plan trying to kill trees, some of the trees are knocked down by storms. He said this plan will make Charlottesville better.

Mr. Clayborne asked is it accurate to say that in 2009, the planning commission said it was okay to remove the one story addition. Is that when the decision was made?

Mr. Saunders said the original concept was to run this really long building and a large house fronting on Grove Street. There was a small unit fronting King Street. Because the zoning required it to be connected, the owners or builders had to build a breezeway and that is all it was, a covered breezeway, and then they added this one-story section in the two story house fronting Grove Street and the two story house fronting King Street was to mimic what had been there and so that was the idea to remove that one story section, which was approved in 2009, in order to have fewer units. He said it is not a major deviation from the original PUD.

Mr. Lahendro said comparing the site plan to what is prepared now; he sees an attempt on Grove Avenue to align the front yard setback with the existing house next to it. Next is Unit F on the original compared to Unit 6 on the current you would enter Unit F from the west which means Unit F is further away from the side yard property line. He believes there's more space on that side and should be a minimum 5 yard setback as is required in that neighborhood. He doesn't see it being done in the current site plan, and Unit C compared to Unit 3 on the new site plan seems further away from Grove Avenue which is appropriate. He is making these suggestions because he is comparing the two site plans and thinking of the neighborhood and the kind of setbacks and side yard setbacks that exist. He said there is a wonderful holly tree that is there and would love to see them comply with the original intent to save every existing tree possible and that is one that certainly deserves to be saved. He noted the following potential conditions.

1. Submit a plan to preserve the Holly Tree or come with an arborist to inspect the tree to let him know if the tree is worth saving or not.
2. For unit F on the original compared to Unit 6 on the current, you would enter Unit F from the west which means Unit F is further away from the side yard property line. Should there be a minimum 5 yard setback as is required in that neighborhood. He doesn't see it being done in the current site plan, and Unit C compared to Unit 3 on the new site plan seems further away from Grove Avenue which is appropriate.

Ms. Robertson said so you are indicating that they would not comply with city code 34-518(b) that requires site plan to conform to the approved PUD.

Mr. Keesecker move to approve the proposed final site plan as submitted, Seconded by Mr. Clayborne. Mr. Lahendro No, Mr. Clayborne Yes, Mr. Keesecker Yes, Ms. Green No, and Mr. Santoski No, 3-2 motion failed.

Mr. Lahendro move to disapprove the proposed final site plan, for the following reasons: Per City Code §34-518(b), the plan must be modified or corrected to comply with the approved PUD Development Plan, as follows:

1. Provide 5 foot setback between Unit F/Unit 6 and the west property line.
2. To provide the same front yard setback as the existing house west of the unit.
3. Increase the side yard setback of Unit 3 on the north side against Grove Street to a minimum of 5 feet.
4. Make every effort to preserve the Holly Tree and if that cannot be done, provide an independent arborist report noting that it is not worth saving.
5. The proposed site plan does not comply with proffer #2. Delete reference to the green roof in the proffer or amend the site plan to include some sort of the green roof.
6. Provide for different housing sizes as outlined in item three of the chart on page 3 of the staff report.

Seconded by Ms. Green,

Mr. Keesecker said when we note deviations and then we ask for remedies wouldn't the evidence of the deviation have to be strong in that how does the current submitted site plan not comply with the architectural style related to the cottage, federal or Victorian? Those footprints could be designed in those styles so how would that not comply? We can't hold up a site plan based on information that they could still do that style or are we going to debate limits of what Victorian are? The second question is related to setbacks, what basis so we have for saying the existing buildings aren't closer to the setback lines than the current site plan. In looking at this diagram, which appears to have two lines one dashed and one solid running adjacent to those buildings, it also shows the property lines running through some of the new properties. That boundary will be

adjusted. These are diagrams built over the city's planometrics, they aren't surveys. One could argue that building C is as close to the corner in this diagram as it is in the current site plan. So are buildings E and F if the second line that I am looking to scale this.

Mr. Lahendro said he is looking at Unit 6 which has a 2 foot setback from the side yard. There is certainly more space between Unit F and the side yard.

Mr. Keesecker said one would assume that with the walkway it's wider than two feet.

Mr. Lahendro said he is interrupting the intent that is all he could do with the diagram. He is interrupting intent in a way that is compatible with that neighborhood.

Mr. Keesecker said the little translation of a non-scale drawing is out weighing some of the intent of the designers of the PUD itself which was affordability, stormwater management, and infield density in a small neighborhood that relatively in scale which was the intent of the PUD. The intent was not the setbacks.

Mr. Santoski said as we all look at the same pieces of information, we all have different interpretations.

Mr. Clayborne said how can we say you didn't meet a certain requirement if it is solid in the proffer.

Ms. Green said it is not only about the proffer, it is about the documentation we have on the PUD as a whole.

Mr. Clayborne also spoke of the history of this and one point we said we could take this literally but at the same time there was precedent of the 2009 commission. It is very obvious between all the testimonies we have heard here today that there has been a lot of work with city staff, a lot of time energy and money invested to this thing since 2009. He said he can't dismiss even though it is just hearsay to use judgment in making this decision, that is why I asked the question twice: was it in 2009 that the one story portions were removed and we heard the reasons why and it seemed like there was a very unmaterial reason used. Even though we don't have the 2009 documentation for whatever reason, it is almost like the starting point in a sense. You have to look back and say okay, we have the 2009 plan that provided direction and watched from 2009 until now in that direction are we going to be the public court that says no because of a 2006 diagram you must start from scratch. That is kind of where I stand from discussion purposes of just putting it out there while you guys continue to dialogue. He said he is having a hard time digesting making someone start over.

Ms. Robertson explained to Mr. Clayborne that the site plan is good for a certain length of time. She said she couldn't tell him if this site plan is even still valid because we don't have the plan.

Mr. Lahendro said there are a lot of differences between the current site plan and what we have in front of us from the 2006 PUD. He is generally in agreement that the intent of the design matches most of the PUD and he is doing his best to identify the specific areas that he thinks

don't and could stand some improvement and he not looking to start the whole program over again. He is looking to give some way that the applicant can come back to us with an acceptable project.

Mr. Santoski called for the vote.

Lahendro yes
Santoski yes
Green yes
Clayborne no
Keesecker no
Motion passes.

Mr. Keesecker asked from this position tonight, how can one initiate a zoning text amendment to eliminate PUD's from the ordinance?

Mr. Keesecker made a motion to initiate a zoning text amendment to eliminate PUD's from the ordinance; Motion was seconded by Ms. Green.

Mr. Alex Ikefuna, Director of Neighborhood Development, said he realize there are various opinions regarding the PUD, the developers may have taken advantage of the process, however he doesn't think you guys need to make a text amendment of the zoning and eliminate the PUDS, a creative way of assuring that difficult parcels are developed. He recommended that the Planning Commission re-consider the motion and find a way to improve the process or revamp the system and let's move forward from there, instead of eliminating it is not a good idea.

Ms. Creasy said the process for PUDs and what has come in for PUDs has changed quite a bit from 2006. The last one we had was Locklyn Hills, very detailed; they came back to you with specific work that needed to be corrected. You have sufficiently scared the development community into not using the tool anyway because of the difficulty of it. We are not finding that we have a lot of two acre sites that are left anyway to use this tool. We have had difficulties with this tool and other zoning tools and it could be useful and it has it merits but it is a good thing that is not the only tool we have. Staff's time is better spent evaluating that tool or if there are other priorities that make more sense to spend the time on. So that is another consideration to think about.

Ms. Green spoke that maybe the tools should be more of enforcement. How are we going to enforce this and what are we going to do if they don't do it.

Ms. Creasy said we are going to use the zoning tools that we have to address it and it is difficult to do and it is based of complaint basis and it is a difficult process, but it is the process that the state has provided us with.

Mr. Keesecker said the only way he can see to get us out of a fix like this to get us out of the loop that we are in with site plan approvals because they are always going to have to come back to us. The concept always has to turn into literal. The built and the reality changes from the site

plan and because there are stuff that happen sometimes in the field. The only way you can have a functional creative process is if you dictate the applicant defined or city defined what characteristics of the plan are significant and those are the one can't deviate and so in the case of this one we would say six units accessed from three different points from various roads and save the existing tree. Proffers get to that a little bit, but to be able to take a concept plan to a site plan to the level of, what we got into tonight to discount a decade of time multiple real estate gyrations and storm water relation changes to say that this is not a site plan we can approve just seems unfair to everybody in terms of the two years it took to get this plan in front of us tonight and the multiple good intentions that was developed in 2006 and 2009.

After many opinions on PUDs and the differences of how the process should be defined the votes were called for the motion. Mr. Santoski said as we vote on this we kind of say let's not do this right now and give everybody a chance to sit down and read the ordinance and see if we can figure out if this is completely workable and if we have to in a month or two and then we through it up, that might be better and now we have to take a vote.

Lahendro no
Santoski no
Green no
Clayborne no
Keesecker yes

Motion denied

Mr. Ikefuna suggested the Planning Commission have a meeting for further discussion on PUDs.

Motion to adjourn by Mr. Lahendro until the second Tuesday in May.