

**MINUTES  
CITY OF OLATHE  
STAFF REPORT**

**CASE # RZ-11-013**

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**Case Planner:** Sean Pendley                      **Planning Commission Meeting Date:** November 14, 2011

**Request:** Rezoning from County RUR (Rural Residential) district to RP-1 (Planned Single-Family Residential) district and preliminary plat for Cedar Creek Highlands of Southglen Cottages.

**Location:** Vicinity of 113<sup>th</sup> Terrace and Cedar Creek Parkway (future).

**Owner:** CCV, Ronald Mather

**Applicant/  
Engineer:** Schlagel & Associates, Dan Foster

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1.    **Comments:**

The applicant has requested a continuance for this rezoning to allow time to work with staff on revisions to the preliminary plans. This continuation would also allow for the project to follow completion of the UDO amendment for the Cedar Creek Overlay District.

2.    **Recommendation:**

Staff recommends continuation of RZ-11-013 to the February 13, 2012 Planning Commission meeting.

Motion by Commissioner Ling, seconded by Commissioner Locke, to continue item RZ-11-013 to the February 13, 2012, Planning Commission meeting.

Motion passes 8-0



This is a request for approval of a special use permit for a motor vehicle sales operation, specifically being a used car sales facility for Robert Tabone Quality Motors. The subject property is an existing building located at 205 N. Rawhide Drive. The existing 3300 square foot building was previously occupied by a restaurant.

Per the requirements of the Unified Development Ordinance (UDO), the applicant is required to notify all property owners of the public hearing within two hundred (200) feet of this property via certified mail. The applicant has provided staff with the required certified mail receipts. Because the surrounding properties are used for non-residential purposes, staff did not require a neighborhood meeting to be held for the special use permit.

## **II. EXISTING CONDITIONS**

### **A. Utilities:**

This property is located within the City of Olathe water and sanitary sewer service areas, and utilities currently exist to the site.

### **B. Site Access:**

This property has driveway access from Rawhide Drive. Rawhide is within the 300' right-of-way of I-35, and no additional right-of-way is necessary with this request.

### **C. Parking:**

The UDO requires 27 parking spaces for a motor vehicle sales facility of this size. There are 51 parking spaces available. Approximately 15 spaces near the driveway entrance will be used for customer parking. The remaining 36 spaces will be used for used car inventory/display.

### **D. Landscaping:**

The site is landscaped, but the plant material needs to be maintained and pruned. Landscaping needs to be added to the base of the existing sign pole, and foundation plantings should be added along the south line of the building near the front entrance.

### **E. Building Conditions:**

The building has been vacant for several years and suffers from lack of maintenance. The structure is beginning to have a blighted influence on surrounding properties. The applicant will paint and repair the building as necessary to remedy these existing conditions.

## **III. ANALYSIS**

Staff's analysis of this application is based in part on the criteria established in *Golden v. Overland Park*, which determined factors a Planning Commission and City Council should consider in making decisions on rezoning and special use

applications. The following are the criteria for considering applications as listed in *Unified Development Ordinance (UDO) Section 18.12.140* and staff findings for each item:

**A. *The conformance of the proposed use to the Comprehensive Plan and other adopted planning policies.***

The future land use map for the Comprehensive Plan identifies the subject property as commercial corridor. The property is currently zoned C-3 and the proposed special use would be a commercial use consistent with the comprehensive plan.

**B. *The character of the neighborhood including but not limited to: land use, zoning, density (residential), architectural style, building materials, height, structural mass, siting, open space and floor-to-area ratio (commercial and industrial).***

The area surrounding this site is all commercial including other motor vehicle sales and leasing facilities and a motel. East of the property is Interstate 35 right-of-way.

**C. *The zoning and uses of nearby properties, and the extent to which the proposed use would be in harmony with such zoning and uses.***

A motor vehicle sales facility would be in harmony and consistent with nearby properties as proposed based on current zoning and the Comprehensive Plan Future Land Use Map.

**D. *The suitability of the property for the uses to which it has been restricted under the applicable zoning district regulations.***

The property is suited for occupancy by a variety of C-3 uses. The building was constructed for a restaurant use and several restaurant operations have occupied the building. The C-3 district permits a broad range of commercial retail, office, and other uses. Commercial uses other than a motor vehicle sales are feasible for this site, but have not had long term success.

**E. *The length of time the property has remained vacant as zoned.***

The building has been vacant for four years with the existing C-3 zoning. It may not be suited for further restaurant use, and is not deemed a good location for a general retail business. The proposed special use is considered a reasonable use for the building considering its vacancy history and current physical condition.

**F. *The extent to which approval of the application would detrimentally affect nearby properties.***

The proposed development will not have a significant impact on noise, aesthetics, traffic, lighting, or other characteristics of the surrounding area. The neighborhood contains non-residential uses and no exterior changes have been proposed to the building or parking area.

**G. *The extent to which the proposed use would substantially harm the values of nearby properties.***

Approval of the special use permit should not have a negative effect on surrounding property values. There are additional motor vehicle sales operations along Rawhide Drive, and these existing uses have not had an adverse impact on surrounding properties.

**H. *The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the use, or present parking problems in the vicinity of the property.***

The engineering and traffic staff have reviewed the site plan for this property and has determined no additional street improvements are necessary to serve this development.

**I. *The extent to which the proposed use would create air pollution, water pollution, noise pollution or other environmental harm.***

Staff is not aware of any potential for unlawful levels of air, water or noise pollution with the proposed development. The proposed development shall be subject to all local, state, and federal environmental regulations.

**J. *The economic impact of the proposed use on the community.***

The proposed development may provide employment opportunities and additional sales tax revenue. The applicant has prepared a business plan that describes a marketing strategy and analysis, sales forecast and revenue projections. The business plan indicates that the proposed special use would provide a positive economic impact on the community.

**K. *The gain, if any, to the public health, safety, and welfare due to denial of the application as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application.***

Staff is not aware of any potential threat to the public health, safety and welfare as a result of the special use permit.

**IV. Staff Recommendation:**

- (1) Staff recommends approval of SU-11-009 for the following reasons:
  - a. The proposed use is in conformance with the Comprehensive Plan.
  - b. The proposed use, as stipulated, is in conformance with the Unified Development Ordinance.
- (2) Staff recommends approval of SU-11-009 subject to the following stipulations:
  - a. The special use permit shall be approved for a one (1) year period and shall expire on December 15, 2012.

- b. The special use permit shall be limited to motor vehicle sales for the building and site at 417 N. Rawhide Drive.
- c. No motor vehicle repair or detailing shall be permitted at the property.
- d. No display of motor vehicles shall be permitted in the lawn area in front of the existing building.
- e. Landscaping shall be added to the sign base area, and foundation landscaping shall be added to the south elevation near the front door of the building.
- f. Existing site landscaping shall be trimmed and maintained on a on-going basis.
- g. Patch and repair the existing parking areas and restripe all parking spaces in the first year of the special use approval.
- h. Paint all four sides of the building, repair and paint the shingled rooftop screen.
- i. Repair and repaint the existing trash enclosure.
- j. Repaint the handicapped parking spaces and provide required signage for handicapped spaces.

*Following staff presentation, the Chairman opened the meeting up to questions from commissioners:*

Chairman Campbell: This is a used car lot, or proposed to be. No parking lot lighting mentioned. Normally we see a lot of lighting issues with car lots. Will there be any improvement to that? If so, do we need a stipulation?

Mr. Clements: There is existing lighting. I don't know if it meets the current light standards. Perhaps we could pass that question along to the petitioner.

Chairman Campbell: Thank you. This is a public hearing. Is the applicant here? Please come forward.

*Robert Tabone, 7608 Goddard Street, #2, Shawnee, Kansas, appeared before the Planning Commission and made the following comments:*

Mr. Tabone: I am the owner of this particular property and proposed use. This is my general manager, Ron Huddleston. I believe he has a presentation.

*Ron W. Huddleston, General Manager, \_\_\_\_\_ 138th Street, Olathe, Kansas, appeared before the Planning Commission and made the following comments:*

Mr. Huddleston: I have an outline here of what we propose to do, that we'd like to submit to you.

Chairman Campbell: Let Mr. Clements have the packet. You're going to do a used car lot. Any issues with the lighting that you have now?

Mr. Huddleston: Not that I'm aware of, sir. It's pretty well lit. It used to be a Denny's restaurant.

Chairman Campbell: Any improvements beyond what's there would need to come back.

Mr. Huddleston: Well, we plan to modify the interior at a cost of roughly \$20,000. The paint on the outside, including the fence, and what I call the dumpster area there, would be taken care of at a cost of \$3,000. And our sign, Robert Tabone Quality Motors, is \$1,500. Plus, we plan to do the landscaping and maintenance on the property. The front area, as was stated earlier, will be for customer parking. We plan to have a dealership that sells a little bit differently, with integrity. I just don't want that circus atmosphere at my dealership, if that makes any sense. There are a lot of benefits to the community. We plan to employ seven people, including ourselves. We find that the area is very, very advantageous for used cars because that's what is sold on the block. It starts out with Robert Brogden and ends up with Bud Brown Volkswagen at the end. Of course, McCarthy's organization is there. I believe the precedent has been set because Crossroads, which is a used car facility, was Gates Barbecue at one time. It's doing pretty well there, I believe.

Chairman Campbell: Do you have any questions about the stipulations, or are you in agreement with them?

Mr. Huddleston: In agreement with them. For instance, we do plan to, within the first year, to repair and re-stripe the lot. So, there won't be any problems with that.

Chairman Campbell: Any questions of the applicant at this time?

Comm. Rinke: With regard to the repairs, can you specify what repairs will be done to the building itself?

Mr. Huddleston: It has been pointed out that the roof line needs some repairs. We'll have to get someone in there to make sure the shingles are complete. Painting, we just want to get a thorough painting job on the outside. The inside will have to be modified for offices, etc. At least 50 percent of it will be for storage. The front end will be four offices, myself and Mr. Tabone's office. It's going to really look nice when we're done.

Comm. Rinke: I drove by the property yesterday and I noticed the shingled area that covers the equipment on the roof. There were shingles missing, and on the back side, it

looked like an entire section was replaced with just a sheet of plywood rather than using shingles.

Mr. Huddleston: We will be taking care of that.

Comm. Rinke: And on the front of the building, near the front door, it looked like maybe it had originally been a pane of glass. I'm not sure what they were using to cover that, but that appears to need to be replaced.

Mr. Huddleston: Yes.

Comm. Rinke: I actually had a question about, there must have been a dozen vehicles parked in the lot there. In fact, it looked about like it does in this picture here, and a couple of them were Enterprise vans.

Mr. Huddleston: To our best belief and knowledge, all are Enterprise. They are using that for overflow.

Comm. Rinke: I'm assuming once you're moved in, that will no longer be allowed. Is that correct?

Mr. Huddleston: Yes.

Comm. Rinke: I just wanted to make sure, if that was factored into your vehicle counts.

Mr. Huddleston: Yes, sir.

Comm. Rinke: Okay, that's all I've got.

Chairman Campbell: Any other questions? This is a public hearing. Is there anyone else wishing to speak in favor of this item? Is there anyone who would like to speak in opposition to this item? Any other comments?

Mr. Huddleston: I'd just like to point out that the tax revenue, we can and will sell at least 24 units per month. I think the latest tax, if I remember correctly, is .625, so it's going to generate a profit for the city, I believe. Our goal is to sell at least 60 units per month when we're up and running. So, just to give you an idea. Plus, the people that we will employ.

Chairman Campbell: Thank you.

Motion by Commissioner Ling, seconded by Commissioner Fry, to close the public hearing.

*Motion carries 8-0.*

Motion by Commissioner Ling, seconded by Commissioner Locke, to recommend approval of SU-11-009, for the following reasons:

- a. The proposed use is in conformance with the Comprehensive Plan.
- b. The proposed use, as stipulated, is in conformance with the Unified Development Ordinance.

Commissioner Ling's motion included recommending approval with the following stipulations:

- a. The special use permit shall be approved for a one (1) year period and shall expire on December 15, 2012.
- b. The special use permit shall be limited to motor vehicle sales for the building and site at 417 N. Rawhide Drive.
- c. No motor vehicle repair or detailing shall be permitted at the property.
- d. No display of motor vehicles shall be permitted in the lawn area in front of the existing building.
- e. Landscaping shall be added to the sign base area, and foundation landscaping shall be added to the south elevation near the front door of the building.
- f. Existing site landscaping shall be trimmed and maintained on a on-going basis.
- g. Patch and repair the existing parking areas and restripe all parking spaces in the first year of the special use approval.
- h. Paint all four sides of the building, repair and paint the shingled rooftop screen.
- i. Repair and repaint the existing trash enclosure.
- j. Repaint the handicapped parking spaces and provide required signage for handicapped spaces.

*Motion carries 8-0.*

**MINUTES  
CITY OF OLATHE  
STAFF REPORT  
CASE # RZ-11-012**

**Dan Fernandez, Planner II, made the following staff presentation:**

**Case Planner:** Dan Fernandez                      **Planning Commission:** November 14, 2011

**Request:** Approval of a zoning change from M-2 (General Industrial District) to M-1 (Restricted Industrial District)

**Location:** 875 N. Jan-Mar Court

**Owner:** Jean and Bill Basore

**Applicant:** Rose Design Build, Inc.

**Architect:** Christopher Herre, AIA

<b>Acres:</b>	<u>3.22±</u>	<b>Proposed Use:</b>	<u>Shooting Range/Sales</u>
<b>Current Zoning:</b>	<u>M-2</u>	<b>Building Area:</b>	
		Warehouse:	<u>24,700 sq. ft. (existing)</u>
		Shooting Range:	<u>11,000 sq. ft. (proposed)</u>
<b>Parking Spaces:</b>	<b>Required:</b> <u>N/A</u>	<b>Proposed:</b>	<u>38</u>

	<b>Land Use</b>	<b>Zoning</b>	<b>Comprehensive Plan Designation</b>
<b>Site</b>	<u>Warehouse/Office</u>	<u>M-2</u>	<u>Neighborhood Commercial/Industrial</u>
<b>North</b>	<u>Warehouse/Office</u>	<u>M-2</u>	<u>Neighborhood Commercial</u>
<b>East</b>	<u>Warehouse/Office</u>	<u>M-2</u>	<u>Neighborhood Commercial</u>
<b>South</b>	<u>Commercial</u>	<u>C-3</u>	<u>Industrial Area</u>
<b>West</b>	<u>Commercial</u>	<u>CP-2</u>	<u>Neighborhood Commercial</u>

**Platted:** All of Lot 16, Rosehill Business Park

**I. COMMENTS**

The following is a request for approval of a rezoning from M-2 (General Industrial District) to M-1 (Restricted Industrial District). The applicant is proposing an 11,000 square foot shooting range/retail space within an existing 24,700 square foot warehouse building.

A Special Use application for the site is on the November 14, 2011 agenda.

Per the requirements of the Unified Development Ordinance (UDO), the applicant notified all property owners within two hundred (200) feet of this property via certified mail. The applicant has provided staff with certified mail receipts and staff has verified all property owners have been properly notified.

## **II. HISTORY**

The Governing Body approved a final plat for Rosehill Business Park, 2nd Plat (P-23-87) on May 19, 1987. A final site development plan (PR-22-87) for the 24,700 square foot industrial building was approved by the Planning Commission on May 11, 1987. W.C. Wiedenmann & Son, Inc., a sheet metal business, has been in business in the Kansas City area of 124 years and has operated at this location since 1989. However, the owners have indicated that the business will cease operation by the end of November, 2011 and the applicant's proposed special use is their planned re-use of the building.

## **III. PROJECT SUMMARY**

The Centerfire Shooting Sports project is an indoor shooting range serving the public and governmental agencies. The business will offer sixteen indoor shooting lanes that will feature an automatic target retrieval system. In addition to the shooting lanes, the building will have a classroom to cover topics from youth gun safety to general education classes as well as vaults for customer gun storage and a retail area. The facility will initially employ 3-4 employees.

Hours of operation could change but preliminarily the hours of operation will be Monday-Saturday from 9:00 a.m. – 9:00 p.m. and Sunday from 10:00 a.m. – 6:00 p.m.

Fire ranges such as these must dispose of lead rounds and must comply with the Environmental Protection Agency and Occupational Safety and Health Association standards. The National Institute of Occupational Safety and Health standards will be used in the design of the range ventilation system.

The shooting range will contain a rubber trap bullet containment system that reduces the noise and contaminate dispersion of the bullets and the air filtration system will exceed the industry and government standards. (see attached project summary)

## **IV. NOISE**

The shooting ranges will be constructed of solid concrete including the floors, walls and ceiling. The applicant will use materials from Troy Acoustic Corporation which are designed to reduce the reverberation of gunfire. The shooting range must meet the noise requirements of the City's Municipal Code. According the Municipal Code, Section 6.18.060, "No person shall operate or cause to be operated on private property any source of sound in such a manner as to create a sound level which exceeds the limits set forth

for the receiving land use category shown following when measured at or within the property boundary of the receiving land use.”

**Sound Levels by Receiving Land Use**

Receiving Land-Use Category	Time	Sound Level Limit, dba
R-A, R-A-1, R-1, R-2, R-3, R-4, R-5, PUD, A (Residential, public space, open space or agricultural or institutional)	7:00 a.m. – 11:00 p.m. 11:00 p.m. – 7:00 a.m.	55 50
C-O, C-1, C-2, C-3 (Commercial or business)	At all times	65
M-1, M-2, M-3 (Industrial)	At all times	70

**V. NEIGHBORHOOD MEETING**

The applicant held a neighborhood meeting (see attached minutes) on October 20, 2011. No neighbors attended.

**VI. EXISTING CONDITIONS**

**A. Public Utilities:**

The property is located in Johnson County Water District No. 1 and City of Olathe sewer service area. Utilities are currently available to the site.

**B. Access/Streets:**

The property is accessed from North Jan-Mar Court.

**C. Drainage:**

The site has adequate existing drainage that meets City standards. There is a detention basin located to the south of the building.

**D. Parking:**

There is no specific parking requirement for amusement and recreation establishments. The proposed shooting range will include 38 parking spaces for the sixteen shooting lanes, classroom and retail shop. The applicant’s business plan indicates that maximum occupancy will be 30 people including employees.

**E. Landscaping:**

The current site has existing landscaping and the applicant will be adding additional trees along the east and north boundaries.

#### **F. Architecture/Design:**

The proposed building is a straightforward design. The north elevation is made of metal siding and face brick and contains several windows. The public will access the building through a door along this elevation. The south, west and east elevations are prefinished metal siding with some windows on the east building elevation.

The interior range design is state-of-the-art for ballistic control. The construction of the range is of ideal materials for containing sound transmission through the building of solid concrete walls. A rubber trap bullet containment system will be utilized to reduce noise and contaminate dispersion.

The ventilation system used to exhaust the air will also be state of the art and will be used to remove contaminants created during the firing of the weapons. (see attached project summary)

Surrounding buildings in the industrial park are metal structures and the Centerfire building matches the character of the neighborhood.

#### **VII. ANALYSIS**

The following are the criteria for considering applications as listed in *Unified Development Ordinance (UDO) Section 18.12.140* and staff findings for each item:

##### **A. *The conformance of the proposed use to the Comprehensive Plan and other adopted planning policies.***

The future land use map of the *Comprehensive Plan* identifies this area as within the Neighborhood Commercial and Industrial Districts, making this a transitional area. Industrial areas are designated for more intensive industrial uses, including manufacturing, assembly and distribution. Research, warehousing and other light industrial uses are also appropriate in industrial areas.

The proposed development for the shooting range and classroom is consistent with the future land use map of the *Comprehensive Plan*.

The proposed development complies with the following principles of the *Comprehensive Plan*:

- **Principle CF-3:** *“Promote the health and safety of the community.”*

The associated **Policy CF-3.1: Adequate Police Force** states: *“Remain committed to maintaining the police force level of service to ensure the safety of the community.”*

Centerfire Shooting Sports will provide a location for police officers to practice fire-arm safety which is an added benefit of police in the area.

- **Principle LUCC-6:** *“Discourage “leap-frog” or sprawling land use patterns by encouraging growth in serviceable areas. Promote the infill of vacant parcels and reinvestment in buildable areas.”*

The associated **Policy LUCC – 6.1: Targeted Development** states: *“With the guidance of the Comprehensive Plan’s Future Land Use Map, encourage targeted development, redevelopment and infill so as to channel growth where it will contribute to the long-term community vision and improve access to jobs, housing and services.”*

The proposed shooting range and classroom promotes infill development and reinvestment in Olathe.

***B. The character of the neighborhood including but not limited to: land use, zoning, density (residential), architectural style, building materials, height, structural mass, siting, open space and floor-to-area ratio (commercial and industrial).***

The surrounding area consists of industrial land uses and some commercial. The proposed shooting range and classroom is compatible with existing industrial development and the uses are appropriate for the industrial area.

***C. The zoning and uses of nearby properties, and the extent to which the proposed use would be in harmony with such zoning and uses.***

The surrounding properties are zoned M-2 (General Industrial District), C-3 (Community Business District and CP-2 (Planned General Business District). The surrounding sites consist of industrial uses, commercial uses and vacant land. The proposed rezoning is compatible with surrounding properties.

***D. The suitability of the property for the uses to which it has been restricted under the applicable zoning district regulations.***

The subject property is a suitable location for a shooting range and classroom and the land uses are permitted in an M-1 district.

***E. The length of time the property has remained vacant as zoned.***

A sheet metal business currently occupies the building, however, the owner has stated that operations will cease by the end of November, 2011.

***F. The extent to which approval of the application would detrimentally affect nearby properties.***

The proposed development should not be a detriment to surrounding properties for the following reasons:

- Maintains general access to the site.
- Consists of similar uses as existing and surrounding buildings.
- Quality development that meets the surrounding architectural style and building materials.

**G. *The extent to which the proposed use would substantially harm the values of nearby properties.***

The proposed development should have no negative impacts on surrounding property values because the uses are permitted in M-1 districts and comply with current zoning requirements.

**H. *The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the use, or present parking problems in the vicinity of the property.***

The proposed development of a shooting range and classroom is not expected to adversely affect the surrounding streets. The proposed development includes an adequate number of parking spaces for the use.

**I. *The extent to which the proposed use would create air pollution, water pollution, noise pollution or other environmental harm.***

Staff is not aware of any potential air or water pollution. Any noise must comply with the requirements of the City's Municipal Code. The site includes proper stormwater drainage and will comply with City stormwater requirements. Also, the special use must comply with the Environmental Protection Agency and Occupational Safety and Health Association standards

**J. *The economic impact of the proposed use on the community.***

The proposed development follows revitalization goals of the *Comprehensive Plan*. Construction of a shooting range and classroom at this site promotes infill and reinvestment in a buildable area of Olathe.

**K. *The gain, if any, to the public health, safety, and welfare due to denial of the application as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application.***

The revised development plan does not pose a threat to the public health, safety and welfare. The use promotes police presence in the industrial area.

**IV. STAFF RECOMMENDATIONS**

- A. Staff recommends approval of RZ-11-012 for the following reasons:

- (1) The proposed development complies with the Principles and Policies of the *Comprehensive Plan*, including *Principle LUCC-6: “Discourage “leap-frog” or sprawling land use patterns by encouraging growth in serviceable areas. Promote the infill of vacant parcels and reinvestment in buildable areas.”*
  - (2) The rezoning to an M-1 district meets the *Unified Development Ordinance (UDO)* criteria for considering zoning applications.
- B. Staff recommends approval of RZ-11-012 with the following stipulations to be included in the ordinance:
- (1) Prior to publishing the zoning ordinance and within thirty (30) days following approval by the Governing Body, a statement that a preliminary development plan has been approved for the subject property shall be filed in accordance with the requirements of Section 18.12.230 of the *Unified Development Ordinance (UDO)*.
  - (2) The project must be in compliance with the requirements of the Municipal Code, Chapter 6.18, Noise.
  - (3) The shooting range shall comply with all federal, state and local safety and health regulations.

*Following staff presentation, the Chairman opened the meeting up to questions from commissioners:*

Comm. Ling: Mr. Fernandez, the rezoning before the change to the special use, is the purpose of the rezoning to try to better transition that area for future? Or what is the purpose of the rezoning?

Mr. Fernandez: No, amusement and recreation establishments are only allowed in M-1 as a special use.

Chairman Campbell: Anyone else? Thank you. We'll hear from the applicant now, please.

*Christopher Herre, Rose Design Build, 863 North Martway, Olathe, appeared before the Planning Commission and made the following comments:*

Mr. Herre: We are the architects and contractors for the original building, and we are the same for the renovation of the building. The applicants are here and they can certainly answer questions. I do not have a presentation but I am happy to answer any questions that pertain to the design of the structure. They can specifically talk about their business model, if need be.

Comm. Fry: I have a question about the retail shop. What are the nature of the products sold at the retail shop? Is there an intent to sell firearms at this location?

Mr. Herre: I'm going to have the applicant address that.

Chairman Campbell: I do have an architectural question. In the shooting ranges, you're putting this inside an existing building. So is the rest just going to remain empty space for now?

Mr. Herre: There is an additional area to the west that could be additional shooting ranges, depending on how the business develops over time.

Chairman Campbell: And then, the shooting ranges, the doors open into the range?

Mr. Herre: The doors are only there for maintenance. They actually serve to clean out the shooting range. At the very end of the range there is a large, at about a 30 degree angle, for lack of a better term, it's rubber, where the bullets actually lodge into. Over time, they have to go in and clean that out and they are accessed from those doors. Those doors will have steel plates over there so there will be no hard surface that would deflect a bullet.

Comm. Fry: My question was about the retail store and the future plans of this facility. Do you ever plan to sell retail firearms?

*William Basore, 875 North Jan-Mar Court, Olathe, appeared before the Planning Commission and made the following comments:*

Mr. Basore: Yes, sir, we would. We also would care sites for rifles, holsters for guns, ammunitions, safety glasses, hearing protection, things of that nature.

Comm. Fry: What certifications are required to become a retail sales facility of firearms?

Mr. Basore: To sell firearms, you are required to carry a federal firearms license.

Chairman Campbell: Any other questions? Hearing none, this is a public hearing. Is there anyone here wishing to speak in favor of this item? Is there anyone wishing to speak in opposition? Seeing or hearing none, anything else from the applicant?

Mr. Basore: Nothing, other than my wife and I, we have run a business here in Olathe since 1989. I won't bore you with a business summary, you all have a copy of that, but we're really excited about bringing a state-of-the-art shooting sports facility to the city of Olathe. In fact, I just found out this weekend that currently, there are only three shooting ranges in the entire United States that are fully heated and air conditioned, which we plan to do. There are very few state-of-the-art shooting sport facilities in the United States, and we're proud to build one here in the city of Olathe.

Motion by Commissioner Ling, seconded by Commissioner Rinke, to close the public hearing.

*Motion carries 8-0.*

Motion by Commissioner Ling, seconded by Commissioner Rinke, to recommend approval of RZ-11-012, for the following reasons:

- (1) The proposed development complies with the Principles and Policies of the *Comprehensive Plan*, including *Principle LUCC-6: “Discourage “leap-frog” or sprawling land use patterns by encouraging growth in serviceable areas. Promote the infill of vacant parcels and reinvestment in buildable areas.”*
- (2) The rezoning to an M-1 district meets the *Unified Development Ordinance (UDO)* criteria for considering zoning applications.

Commissioner Ling’s motion included recommending approval with the following stipulations to be included in the ordinance:

- (1) Prior to publishing the zoning ordinance and within thirty (30) days following approval by the Governing Body, a statement that a preliminary development plan has been approved for the subject property shall be filed in accordance with the requirements of Section 18.12.230 of the *Unified Development Ordinance (UDO)*.
- (2) The project must be in compliance with the requirements of the Municipal Code, Chapter 6.18, Noise.
- (3) The shooting range shall comply with all federal, state and local safety and health regulations.

*Motion carries 8-0.*

**MINUTES  
CITY OF OLATHE  
PLANNING SERVICES  
STAFF REPORT  
CASE # SU-11-010**

**Planner:** Dan Fernandez      **Planning Commission Meeting Date:** November 14, 2011

**Request:** Application for a Special Use Permit for an amusement and recreation establishment specifically being a shooting range, Centerfire Shooting Sports.

**Location:** 875 N. Jan-Mar Court

**Owner:** Jean and Bill Basore

**Applicant:** Rose Design Build, Inc.

**Engineer:** Christopher Herre, AIA

<b>Acres:</b>	<u>3.22±</u>	<b>Proposed Use:</b>	<u>Shooting range/sales</u>
<b>Building Lease Area:</b>	<u>24,700 square foot</u>		
<b>Number of Lots:</b>	1	<b>Zoning:</b>	M-2

	<b>Land Use</b>	<b>Zoning</b>	<b>Comprehensive Plan Designation</b>
<b>Site</b>	<u>Warehouse/Office</u>	<u>M-2</u>	<u>Neighborhood Commercial/Industrial</u>
<b>North</b>	<u>Warehouse/Office</u>	<u>M-2</u>	<u>Neighborhood Commercial</u>
<b>East</b>	<u>Warehouse/Office</u>	<u>M-2</u>	<u>Neighborhood Commercial</u>
<b>South</b>	<u>Commercial</u>	<u>C-3</u>	<u>Industrial</u>
<b>West</b>	<u>Commercial</u>	<u>CP-2</u>	<u>Neighborhood Commercial</u>

**Platted:** All of Lot 16, Rosehill Business Park

**I. HISTORY AND COMMENTS**

This is a request for approval of a Special Use Permit to allow an amusement and recreation establishment, specifically an indoor shooting range. W.C. Wiedenmann & Son, Inc., a sheet metal business, has operated out of this site since 1989. The sheet metal business is a permitted use in the M-2 District but is in the process of closing.

The owners own the existing building which is approximately 24,700 square feet with about 20,000 square feet being used for work area and the remaining

square footage for office/retail space. After closing the sheet metal business, the proposed special use is their planned re-use of the building.

## **II. DETAILS OF OPERATION**

Centerfire Indoor Shooting Sports is an indoor shooting range that will provide sixteen indoor shooting lanes, classrooms, a retail pro-shop as well as other services. Please see the attached mission statement and project narrative provided by the applicant.

The shooting range initially plans to employ 3-4 employees and have hours of operation from 9:00 a.m. – 9:00 p.m. Monday through Saturday and 10:00 a.m. – 6:00 p.m. on Sundays.

## **III. PARKING**

The Unified Development Ordinance (UDO) does not provide a specific parking requirement for an amusement and recreation establishment.

The shooting range will occupy 11,000 square feet of the building with the rest of the structure remaining vacant. The applicant's business plan estimates that the maximum occupancy will be about 30 people including employees. The site has 38 parking spaces, which is sufficient for the proposed use.

## **IV. NEIGHBORHOOD MEETING**

The applicant held a neighborhood meeting on October 20, 2011. No neighbors attended.

## **V. LANDSCAPING**

The existing building is complete and landscaping is in place, however, the applicant will be adding trees on the east and north boundaries.

## **VI. TIME LIMIT**

Staff would suggest the Planning Commission consider the special use permit for a five-year period expiring approximately December 6, 2016.

## **VII. ANALYSIS**

Staff's analysis of this application is based in part on the criteria established in *Golden v. City of Overland Park*, which determined factors a Planning Commission and City Council should consider in making decisions on special use applications. The following are the criteria for considering applications as listed in *Unified Development Ordinance (UDO) Section 18.12.140* and staff findings for each item:

***A. The conformance of the proposed use to the Comprehensive Plan and other adopted planning policies.***

The future land use map for the *Comprehensive Plan* identifies the subject property as Neighborhood Commercial with the southern tip being Industrial making this a transitional area of the *Comprehensive Plan*. The existing industrial building adheres to the future land use map, and the special use permit for the amusement establishment would not deter from the objectives of the plan.

***B. The character of the neighborhood including but not limited to: land use, zoning, density (residential), architectural style, building materials, height, structural mass, siting, open space and floor-to-area ratio (commercial and industrial).***

The proposed use is in an existing building, and is in harmony with the surrounding area. Surrounding the site are industrial buildings to the north and east, commercial buildings to the west and railroad tracks and a vacant lot to the south.

This Special Use in an existing building will have no detrimental impact on the character of the neighborhood.

***C. The zoning and uses of nearby properties and the extent to which the proposed use would be in harmony with such zoning and uses.***

The proposed use and zoning is in harmony with the surrounding area. Surrounding the site are industrial and commercial development and vacant land.

***D. The suitability of the property for the uses to which it has been restricted under the applicable zoning district regulations.***

The existing building is suitable for occupancy with a permitted use in the existing M-2 zoning classification. The sheet metal business currently located in the building is finishing up a few projects before ceasing operation and afterwards only the office will be in use. This Special Use application is deemed appropriate considering current market conditions.

An application has been submitted to rezone the property from M-2 to M-1. The existing building can be occupied by any other M-1 use in the future should the shooting range cease operation.

***E. The length of time the property has remained vacant as zoned.***

The tenant space is currently still in use as noted above, however, the owner has stated that the business will be finished with its projects by the end of November. Inasmuch as the building will be vacant, the proposed special use presents a reasonable occupancy for the building.

***F. The extent to which approval of the application would detrimentally affect nearby properties.***

The proposed special use would not be a detriment to surrounding properties. The location is surrounded by existing industrial and commercial development and open space. The site offers a good location for the proposed use.

**G. *The economic impact of the proposed use on the community.***

The proposed use estimates \$1,000,000 in first year revenues. Also, users of the facility come from a broad geographic area, and may utilize nearby retailers and services.

**H. *The gain, if any, to the public health, safety, and welfare due to denial of the application as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application.***

Staff does not believe that there is any threat to the public health, safety and welfare with the Special Use.

**VIII. STAFF RECOMMENDATION**

- a. Staff recommends approval of SU-11-010, for the following reasons:
  - (1) The proposal conforms to the Goals, Objectives and Policies of the *Comprehensive Plan*.
  - (2) The proposal complies with the *Unified Development Ordinance (UDO)* criteria for considering special use permit requests.
- b. Staff recommends approval of SU-11-010 subject to the following stipulations:
  - (1) The Special Use Permit is valid for a period of five years following Governing Body approval, with a tentative expiration date of December 6, 2016.
  - (2) The existing fan equipment located at the northwest corner of the building shall be removed before occupation.

*Refer to RZ-10-012 for discussion regarding this item.*

Motion by Commissioner Ling, seconded by Commissioner Locke, to close the public hearing.

*Motion carries 8-0.*

Motion by Commissioner Ling, seconded by Commissioner Locke, to recommend approval of SU-11-010, for the following reasons:

- (1) The proposal conforms to the Goals, Objectives and Policies of the *Comprehensive Plan*.

- (2) The proposal complies with the *Unified Development Ordinance (UDO)* criteria for considering special use permit requests.

Commissioner Ling's motion included recommending approval of the following stipulations:

- (1) The Special Use Permit is valid for a period of five years following Governing Body approval, with a tentative expiration date of December 6, 2016.
- (2) The existing fan equipment located at the northwest corner of the building shall be removed before occupation.

*Motion carries 8-0.*

**MINUTES  
CITY OF OLATHE  
PUBLIC WORKS DEPARTMENT  
CITY PLANNING DIVISION**

**David Clements, Planning Manager, made the following staff presentation:**

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**Case No:** UDO-11-003

**Date:** November 14, 2011

**Request:** Amendments to the *Unified Development Ordinance (UDO)* to create the Cedar Creek Overlay District, Chapter 18.51

**Applicant:** City of Olathe

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**1. Summary:**

The City of Olathe, Cedar Creek Development Group, and the Cedar Creek Homes Association, jointly commissioned a planning study led by the Cedar Creek Advisory Committee (CCAC). The committee examined ways to ensure that Cedar Creek continues to develop in a manner that serves the needs of existing residents and the Cedar Creek Development Group. The study is intended to build on the recommendations and vision contained in the original Cedar Creek development master plan document, known as the "Green Book".

The Cedar Creek Advisory Committee considered a number of different methods to accomplish this, including the possibility of updating the "Green Book", creation of restrictive covenants, and the implementation of an overlay district. After careful analysis during the planning process, the scope of work was refined to create an overlay district and a new zoning district for use in guiding future growth and development within the Cedar Creek area.

**2. Overlay District Goals:**

- A. Preserve the quality and unique character of Cedar Creek
- B. Create a *flexible plan* that results in a sustainable community
- C. Establish an *efficient process* that ensures a high quality community.

Regulations are designed to provide a level of quality in Cedar Creek based on the development history of the area. The plan outlines important quality and character elements that need to be maintained in the area.

The regulations provide alternatives that allow developers to deliver products to a changing marketplace in a timely manner, and provide an expedited and predictable approval process. The standards place value on resource conservation and protection and meet the expectations of area residents as to providing quality development.

### **3. Public Review and Process:**

Numerous public meetings were held with Cedar Creek residents and representatives of Homeowners Associations to discuss the draft plan and obtain buy-in from residents on the concept and intent of the proposal. Residents indicated that development proposals meeting the requirements of the overlay district should be rewarded with a more efficient City approval process.

### **4. Application of Regulations:**

The overlay district makes it easier to rezone property to the Cedar Creek District. Rezoning is optional, and the traditional Planned District process remains available for use if preferred, but the Planned District process would not have the built-in advantages of the Cedar Creek District

*Residential areas allow*-single family attached and detached homes, zero lot line homes, village homes and multifamily units (regulations apply). No existing Olathe zoning district allows this mix of residential uses.

*Mixed uses areas allow*-4 types of commercial or mixed use development (regulations apply). No existing Olathe zoning district allows this mix of non-residential uses.

### **5. Recommendation:**

Staff recommends approval of an amendment to the *Unified Development Ordinance (UDO)* to create the Cedar Creek Overlay District, Chapter 18.51.

*Following Mr. Clements presentation and comments, he introduced Mr. Chris Cline of Confluence, who made the following overview and presentation:*

Mr. Cline: This has been a very interesting project and a very worthwhile project. The Cedar Creek area is such a wonderful place in Olathe, and when it was envisioned over 20 years ago, it was kind of out on the leading edge of the metropolitan growth area and really created a magnet for development around it. The forward thinking and the vision that went in to creating this living resort on the scale that Cedar Creek is, compared to anything else in the city, it's pretty remarkable. And it's such a beautiful piece of property in the way that it's been developed and preserved. The natural features, the trees, and all of those areas that have been preserved through the development of this area have really been quite remarkable. Our goal has been to try to understand what went into the vision of this project, how it came to be preserved with development, and had nature integrated into it. It's not something that the existing zoning ordinances allow or encourage to happen.

So, what we found in the history of Cedar Creek and how it's been developed is that there are always been a number of hoops and hurdles that the development team has had to jump through to get various variances and things to allow them to develop the property in the manner that it has been developed. So, understanding the scope of our project has kind of evolved to help clarify all those hoops and hurdles that the develop team has typically had to go through, and try to infuse that into a set of rules and regulations that can provide a more predictable outcome. If you follow these rules, then the type of place that will result is consistent with the way that Cedar Creek has already been developed.

With that, there was a phrase in the original Green Book that really spoke to us, the quote that is on the screen right now: "Every realistic planning tool should be used to save and perpetuate the strong physical features of the site." This site has quite a varied topography. There's probably 250 feet of grade difference from the highest point to the lowest point. That's pretty substantial when you're talking about applying development to that varied range of topography. So, you can see that the development plans have evolved over time. On the left is one of the original sketches for the Cedar Creek area. It has always called for a mixture of uses. You can see the diagram on the right is one of the more recent marketing tools that speak to the mixed use nature of the total vision for the project.

The planning process that we went through, we had a number of key stakeholder meetings with various property owners and neighborhood groups throughout the Cedar Creek area. We worked extensively with the Cedar Creek Advisory Committee, as well as we had a series of community meetings at Cedar Creek and involved a number of citizens that participated in the planning process, helping them to understand all the issues that needed to be incorporated into this plan. The three goals that were created were to preserve the quality and unique character of Cedar Creek; create a flexible plan that results in a sustainable community; and establish an efficient process that ensures a high-quality community.

In the implementation regulations and in trying to preserve the quality and character, a lot of concerns came up about the zoning designations and the fact that they had to go through a planned district and try to negotiate all of the variances it would take to try to create Cedar Creek the way it is today. So, we've infused those into the rules, as I mentioned. Creating a flexible plan – The regulations should provide alternatives that allow developers to deliver products to a changing marketplace. The original Green Book called for a wide variety of land uses, some of which haven't been fully developed in Cedar Creek yet, but we're still adhering to that vision and incorporating that into the master plan.

Establishing efficient process: Any time you go through a planning process like this, we're creating some rules that would be put in place to guide future development. One of the things that we found that has been more successful is, if we're going to put new rules in place, then we want to make sure that those that follow those rules should be able to bring the projects to the market quicker. So if, through this process, we've asked the community, we've asked stakeholders, what's important in the development of Cedar Creek, what's

important in helping to refine the vision for Cedar Creek? We've received that input, we've incorporated those into this new Green Book and these regulations. If a developer comes in and follows these regulations, they should be able to get those products approved quicker. If they're wanting to vary from those standards, then they might need to go through a more negotiated or more typical type of process. But if they are going to follow all those rules, they should be able to achieve more efficient approvals.

We also did extensive community surveys throughout this process. Not everybody can attend the meeting. We did host most of our meetings in the evenings. Throughout the planning process, we did post information on the Cedar Creek Homes Association website. Information was distributed throughout the entire community about our meetings, as well as provided access to all of our surveys. So, we did surveys on line. We allowed people to provide their input a number of different ways. Someone could get into the homes association website, pull up their survey, enter their information, and submit it right from their home. So, all of our presentation materials were there and really served kind of as an on-line meeting forum. We did get quite a few members to participate in that manner.

This is just an example of one of the responses that we got through that process. We asked the question: Do you agree or disagree that development proposals that meet or exceed this new overlay district should follow a more efficient city approval process? And this is from the homeowners that participated in that survey. The average response was about an 8.5 out of 10 that said they agree. If we put these rules in place and development proposals follow them, then they should be able to receive a more efficient approval process. And that's one of the things that helped to lead us to the creation of a new zoning district a part of this overlay district. Instead of continuing to go down the path of going for an RP-1 or an RP-2, and then going through a protracted process on the planning side, if we put those rules in here, they wouldn't have to come back for all those variances that they typically would have to go through, as long as they are following the character of Cedar Creek. So, this overlay district makes it easier to rezone to this new zoning district that would be put in place, should you choose to adopt it. The rezoning is at the developer's option, so if anyone has a project already approved in Cedar Creek and they want to continue to develop that already-approved plan, this does not change that. They can continue to develop what they already have approved. If someone wants to come in and rezone to Cedar Creek, then the rules are in here, and if they follow them, they should be able to rezone pretty easily. It provides simplified procedures, clear standards, and flexibility.

You can see the map behind me. It reflects that mixed use character. We have two different land uses depicted on this map. One is a mixed-use category, which is shown in red, and one is a residential category that is shown in yellow. There is a lot of open space preserved, primarily floodplain running through the center of the project area. And then, a couple different town center locations that were shown as part of the original Green Book, and were also in response to

some of the input that we got from residents through the planning process in those locations.

The structure of these regulations, the Cedar Creek overlay district encourages but it does not require landowners in Cedar Creek to rezone to the Cedar Creek district. It creates a presumption that the application of the Cedar Creek district within this area is consistent with the comprehensive plan. It provides standards and expedited approvals. Again, those two sub districts, residential and mixed use. Many different housing types are allowed as of right. Some are subject to additional standards in the document, everything from single-family detached to multi-family, zero lot line, live/work units, are all included, consistent with the original vision. There are four development patterns that we call sub-districts, which are included here – suburban centers, which are more like what you find in conventional development, surface parking lots; town centers, where it could be higher density, buildings built closer to the street, more pedestrian-friendly, urban type of development that's allowed; office campuses; and flex-space parks. Some of these already occur out in Cedar Creek. There are some flex-space parks and some office developments out here today.

The residential sub district allows up to six units per acre of density. And then, when you look back at the map, anywhere you see the red mixed use sub-districts, we do allow some transitional density around those. So, up to 12 units per acre within 800 feet of any of those mixed use areas. And then, within the mixed use sub-districts, those red areas, that allows residential density up to about 29 units per acre. And then, density in the town centers is limited by the size of the building.

From a design standpoint, all the single-family residential homes would be certified by the new construction committee within Cedar Creek. That is built into the document and similar to the way it functions today. Other development is subject to basic standards in the Cedar Creek district and administered by the planning/zoning commission. And then, the new construction committee administers the design standards in conjunction with the covenants and restrictions that currently go with residential development.

So, all of these regulations are incorporated into a new Green Book. The way the Green Book is structured, it talks a little bit about the planning context, about what defines development and character in Cedar Creek, what makes it special and unique, how the plan gets implemented. It culls out the overlay district, as well as the appendices. It includes the Cedar Creek Corporate Park design guidelines, as well as the residential architectural review manual that would be used to help administer all of the regulations that are found here.

So, that is a brief summary of the document. I am happy to answer any questions you may have at this time. It's been a pleasure and an honor to work on this project. It's such a special place and we hope to maintain that over the long term, and eventually achieve the vision that was put forth in the original concept of this project.

Chairman Campbell: Any questions at this point?

Comm. Ling: Mr. Cline, how would you describe the existing Green Book and how it is used now and what controls it has currently for development in Cedar Creek?

Mr. Cline: The existing Green Book, I would try to characterize it as more of a vision document. It speaks to the type of place that they want it to become, but in my opinion, when you look into some of the details of how to achieve some of the descriptions of what this plan calls for, there's not a lot of detail in this book that describes how to achieve that vision. So, what we've tried to do is understand what was called for in the original vision and description for this place, and then we've gone out and looked at what's actually been developed and how those two match up with each other, and then try to create a set of details and guidelines that help to quantify how to continue to create a place like Cedar Creek, to put the details in place that achieve that vision.

Comm. Ling: And that's what you did in the new Green Book.

Mr. Cline: Yes.

Comm. Ling: Okay. Maybe Mr. Clements would have to explain this one – Any of the past recent rezonings in Cedar Creek, was there any reference to the Green Book?

Mr. Clements: In recent rezonings, staff does not make reference to the Green Book. This is an existing document that is used by Cedar Creek Development and their new construction committee. Applications come forward and we use the RP-1 or the RP-2 restrictions of the development code to assure that lot sizes and setbacks and such meet our code. But the Green Book still provides the guidance in terms of architecture and design.

Comm. Ling: But it's used by the developer versus the City using it for enforcement purposes.

Mr. Clements: Exactly.

Comm. Ling: At the beginning of your presentation, you described two other overlay districts in Olathe – the Old Town and the North Ridgeview. I don't think you were here for either of those overlay districts, but correct me if I'm wrong, but North Ridgeview is probably more recent. I guess the question is, how did that process come about, and was there support by all the landowners that would be encumbered by the overlay district? Was there support by all of those, in those circumstances?

Mr. Clements: The Ridgeview corridor does pre-date me. I could not speak to that process. What brought about the need for the North Ridgeview corridor was, that was a developing area and there was a concern about development quality,

about architecture, about peak roof lines, materials – a lot of the same things we're talking about with Cedar Creek in terms of material. So, the North Ridgeview Corridor Plan was put into place to kind of speak to those things on a site-by-site basis.

Comm. Ling: There's a lot of open land when that overlay district was put in place, I would assume. Undeveloped land, let's put it that way. You don't recall any feedback or recollection from others on how the direction from those large landowners was included in the overlay district?

Mr. Clements: No, I'm sorry, I don't have that information.

Comm. Kohler: If adopted tonight – or whenever – how many developers/landowners will this specific thing that we're acting on now, how many will that have an impact on?

Mr. Clements: The overlay district primarily pertains to land that's currently owned by Cedar Creek Development and it pertains to, for the most part, vacant land that they own in the College Boulevard corridor, and also property on the west side of Cedar Creek that is presently owned by Ash Grove Cement. About 1,500 acres on the west side of the creek.

Comm. Kohler: This is a question about the survey. There was only one question cited in the presentation and it had to do with, do you think this would be fair or better for developers. I'm just curious how many residents were "quite a few who participated," and what some of the other types of questions were, what some of the major response areas might have been. Not that they weren't interested in looking out for the interest of the developer, but I'm sure there was other stuff.

Mr. Cline: It covered a wide variety of topics. We talked about the types of open space that is available within the community right now, and were there needs for other types of recreational amenities within the neighborhood; were there areas already being served for younger kids, for teenagers, older active adults? We wanted to get a sense for how people were using the open space that was currently being provided, and would it give us any insight into thinking about future open space considerations. Were there some needs not being met within the community? So, we asked those types of questions. I would say on the survey efforts, my best recollection is, I think we received, on one survey, somewhere in the neighborhood of 60 to 70 surveys on line and faxed into us. People mailed them, faxed them in, or submitted them on line. We also distributed them at meetings, so some participants who came to a meeting would actually fill it out and leave it with us. So, it was a pretty broad range of input that we received throughout the planning process. Cedar Creek is a large community. The meetings were not overflowing, by any stretch. There were no large public outcries or anything like that. I will say that by the time we finish the project – and this doesn't happen very often, this is one of the few times it's ever happened to

me in my 20-year career – when we made the final presentation for the plan and the regulations at the final homes association meeting, there was applause at the end of the meeting. That doesn't happen. I mention that because I thought it was significant. That typically does not happen in a public planning process, for something like that to happen. It was a very open process. We put all of the results up there on the website throughout the entire process. It was open and transparent. We asked questions openly and we responded to everything that we heard. So, what you saw there was just one question of probably 90 to 100 questions throughout the entire course of the planning process that we put out there, either in individual stakeholders meetings or at public presentations. And when we ask a question like that, we always brought the results back at the next meeting and told people what everybody else said. And some of those answers surprised us as well, frankly. We took that as guidance and direction and made sure the plan reflected that.

Comm. Harrelson: I have a question for Mr. Cline. As I read through some of the criteria and categories, I'm concerned about application. We haven't tested it yet. So, the difficulty for me is, how do we look at some of the criteria that you have incorporated and predict whether it will successfully encourage or discourage development. So, naturally, being a planning commissioner, I'm interested in encouraging development. Can you tell us to what extent you've looked at the existing development there and applied this to see if it passes the test?

Mr. Cline: Your first question was in regards to setting new criteria or guidelines, and at what point do we set the point too high that the market can't bring projects to meet those expectations. That was something that we were very aware of and wanted to pay particularly close attention to, that we didn't raise the bar on what the expectations were for implementing the vision of Cedar Creek. So, while the vision for Cedar Creek aspires to create a type of community that might be a little different than what the typical zoning ordinance calls for, we needed to pay attention to that because that's what the original vision of Cedar Creek was. It did set the bar a little higher than your typical zoning designations call for. In my mind, that's what makes Cedar Creek special, the fact that that vision as created, the care was created in the way that that place was crafted, to preserve the natural features, preserve the trees, preserve those rock outcroppings, work through all of the hoops and hurdles that the development team has had to jump through, not once, not twice, but probably hundreds of times, to implement all the various phases of the project that they've gone through. And they've continued to meticulously go through that process, time and again, to try to continue to aspire to create that vision, which is a little bit higher level of expectation. I think when you say the words "Cedar Creek" anywhere in the metro area, people equate that with quality. It does set a standard and an expectation when someone hears "Cedar Creek." So, to that, we wanted to make sure that the regulations were in alignment with those aspirations. Not setting the bar so high that you couldn't bring development here, but making sure that we achieve that vision.

With the specific areas of Cedar Creek, how we've looked at each parcel, each land area, we have worked with staff and the development team and their engineer to review these standards back and forth, and there have been a number of things that we've done to continue to calibrate all of the expectations that are in there. So, the rules and all the setbacks and all of the technical criteria that prescribe the type of place that's being created, there has been quite a vetting process throughout the creation of these guidelines. We feel like we've gone through that pretty meticulously, such that those types of development approvals, similar to what's been approved here recently, would still achieve what's infused into these regulations.

Comm. Harrelson: One of my questions is, the development that is there now, you feel confident that the development that is there now, if it was subjected to this plan, that development would still meet the regulations of this plan.

Mr. Cline: I believe so. There are probably parts of it that may not exactly fall within the way that these are crafted, but there's probably always going to be little nuances of things that are a little bit different. We have tried to fully capture everything that we could. I feel like what we've come up with is consistent with the pattern and style and character of development that has occurred out here today.

Comm. Fry: You made a comment earlier that a lot of the existing development opportunities really hadn't been taken advantage of up to this point. I was wondering why that is.

Mr. Cline: I think when the original vision for Cedar Creek was put forth over 20 years ago, there wasn't a lot of development around it. It was kind of out on an island. And really, the vision is quite bold for this community. I mean, it calls for apartments, a hotel, a conference center. There's quite a wide variety of uses and some pretty intense land uses that could happen over time. I think it just takes a while, in some instances, for the market to mature and to allow some of those types of opportunities to happen. One of the benefits out here is that there is a lot of land left to be developed and development has kind of come up and is working its way around the Cedar Creek area. So, in some ways, this property is now positioned to help take advantage of some of the other densities that are occurring all around it that might allow some of those other more intense land uses to come to market sometime in the near future.

Comm. Fry: Historically, have there been any development projects that have been squashed because the Cedar Creek community wasn't in favor of them? Have there been issues in the past of things not going through because of specific issues?

Mr. Cline: I probably don't have the history of other development proposals that have come through the process. I'm not aware of any that were denied. The one

that I can think of is the Brotherhood Bank proposal that came forward, and as we looked through the files, it looked like there was quite a bit of input from some homeowners, and those things were reflected in the revised plans that were submitted, and eventually approved.

Chairman Campbell: Any other questions of the Commission at this point? Thank you. This is an open public hearing and we have a lot of people here that I assume want to speak.

*[The Chairman outlined the process for the public hearing.]*

*Joe Forlenza, 10750 South Oak Crest Lane, Olathe, appeared before the Planning Commission and made the following comments:*

Mr. Forlenza: I have been a resident of Cedar Creek for 16, going on 17 years. I'm here to speak on behalf of the Cedar Creek residents and the Cedar Creek Homeowners Association. So, all these people who are sitting here tonight will not be coming forward to speak; I will speak for them.

First, as a group, we represent about 1,100 rooftops, which in terms of development over a 20-year period, when you think of that in terms of projects throughout the community and through the metropolitan area, it's been quite a successful project up to this point, and we want it to continue to be that way. Of those 1,100 owners who live out there, we have an over \$600 million investment in Cedar Creek as individual landowners. We want to keep that community growing in the same way it has over the past several years as far as the Green Book and as far as what we have come to know as the new Cedar Creek area plan and the overlay district.

Now, we appreciate the efforts over the last four years, because that's how long this process took place, on the part of Cedar Creek Homeowners Association, the developer, the City, and the City's planning department. As a group, we appreciate the fact that there was a tremendous pooling of resources – time, talent and treasure – on the part of all of these individuals. This document, as it is being presented tonight, is a result of all of those cooperative efforts. As members of the Homeowners Association, a letter was sent to the Planning Commission, to the mayor, to City Council, and to the city manager, indicating the position that the Cedar Creek Homeowners Association has taken in this matter. I'd like to submit that document. It's dated October 10th, and rather than read it, I'll just make it available. That document basically supports the entire presentation that you saw here this evening, and we are imploring you, as a group, to approve this process and move it forward so we can bring this thing to a successful conclusion.

There is one other matter pointed out in that letter that is not covered in the plan, but it is clearly something we would like you and the City to consider. That is, we would like to keep the emphasis of a quality project in terms of the surrounding and adjacent properties to Cedar Creek. In the letter that was submitted on the 11th – which is today – what we would like the City to commit to

is establishing a Cedar Creek adjacent land transition policy, which basically would provide for any development out at Cedar Creek to have a quality equal to Cedar Creek, and that there be the proper zoning set up where we would have proper setbacks, potentially looking at landscaping and berms, and have clear separation as you move from one development to the other. That's all I have.

Chairman Campbell: Thank you. Are there questions? Is there anyone else wishing to speak in favor of this item? Is there anyone wishing to speak in opposition? Come forward.

*Jams R. Hubbard, 130 N. Cherry, Olathe, appeared before the Planning Commission and made the following comments:*

Mr. Hubbard: I'm an attorney here in Olathe. With me this evening is Maureen Coulter with Ash Grove. Her address is 11011 Cody, Overland Park, Kansas. Mr. Sunderland, who is the president of Ash Grove, wanted to be here this evening, but he was unable to attend. I want to indicate to you that we are not here in total opposition to the overlay plan, only part of it. I'd like to hand out a packet for each one of you this evening, in respect of your time. I think it will cut down the amount of time that I need to spend with you.

*[Passing out packet...]*

Mr. Hubbard: Just so you understand a little bit of the history, when I refer to Ash Grove, it was really Cedar Creek Properties that developed Cedar Creek. We have a lot of different names tonight - Cedar Creek Development is the new owners, so I'm going to refer to Cedar Creek Properties as Ash Grove, so we can keep our parties straight.

Just to give you a little history, when Ash Grove first heard about the possibility of an overlay back in 2006 - you'll see a timeline in your packet - I met with Tom Glinstra, the city attorney, along with Jack Ross, head legal counsel for Ash Grove, expressing at that time our opposition to any type of overlay over Cedar Creek. We felt like it was very arbitrary to pick one subdivision in the city of Olathe and decide to put an overlay district over only that subdivision. Further, as you can see from this document, Clay Blair's development wasn't included; the Kroh development wasn't included; Clay Blair's ground down here was not included, even though there are streets from Southglen and Woods of Southglen that go right into that property. We felt it was very arbitrary. If you're going to do an overlay district, why aren't you doing it on all the property that would really be affected by an overlay district? And you can see from our timeline that consistently, ever since 2006, we have appeared and worked with the City and expressed our concerns about any type of overlay district. But we sold the property to the new developers in 2006, and at that point, we felt we were out of the development business. At that point, it was up to the new development group to work with the City and decide whether they wanted an overlay district or not. We were unaware, had no notice, were not included in any meetings that were

expressed this evening by the consultant. The only way that we found out that there were meetings going on was Ron Mather, one of the new developers, called us and advised us that there meetings going on unbeknownst to Ash Grove, which was the biggest stakeholder involved in the overlay district. We own all of the remaining 1,600 acres west of Cedar Creek. The new development group decided not to purchase that property and walked away from their obligation to purchase it. That's why we are here this evening. Ash Grove still owns that 1,600 acres, and we do not take a position as to the overlay district on the rest of Cedar Creek. If that's what the new developers want, if that's what the homeowners want, that's fine with us. But we have consistently opposed the 1,600 acres west of Cedar Creek be involved in this overlay district.

We have a couple things we want to point out to you this evening. I hope you can see these. This is the comprehensive plan of the City of Olathe. You have a copy of this in your packet. The red lines outline the Cedar Creek 1,600 acres that we're referring to. The master plan that was developed in 2010 by the City of Olathe basically shows most of our 1,600 acres as greenway. The other exhibit we have shows the topography of the tract. All the blue is floodplain, so you can see the lower area of our 1,600 acres is in the floodplain, and the red lines represent the 120 feet from Cedar Creek, which is under the City's new stormwater management plan. The only area that is left is the area that is shown in green, which is a part of the greenway that the City has in its comprehensive plan. And you can see how difficult this terrain is. The areas that are in color represent close to 20-30 degree incline. So it's going to be very difficult to develop this property in the wooded areas with steep inclines. This is the ground that we are asking not to be a part of the overlay. That's been our position consistently since we found out that the developers were not going to buy the other 1,600 acres along with the other tract.

I think one of the main points that needs to be understood tonight, especially for the homeowners here tonight, the only property that is affected by this overlay district, everything else is grandfathered. That's already platted and zoned. It would only be if they rezoned that they would come under these new overlay district provisions. There's no reason to rezone everything that is already developed. The only property that is affected by this overlay district are these commercial areas in this area, and our 1,600 acres. The rest of Cedar Creek has no affect with this overlay district. That's why it's so arbitrary for us to be affected by the overlay district and no one else really has any other affect by implementing this overlay district. We have these other areas that aren't even included in the overlay district. If anybody is going to be affected, it's going to be these folks in this area and these areas. Where these streets currently dead end will go on into those divisions, but they're not even included.

So, where are the folks who are really being affected by this overlay district? This area is going to be very difficult to develop. The plan calls for at least two accesses – 119th, College or Valley Way. The last estimate I heard, it would be at least \$30 million to build a bridge across Cedar Creek. You're talking about two bridges, maybe three. So, there's no way this is going to develop. To get to it, you have to go to the Kill Creek exit, come back, and then come up

Moonlight or come up 107th Street to try to get to the property. So, until somebody builds a \$30 million bridge across there, nothing is going to happen here. Furthermore, even if there was a \$30 million bridge, because of the topography, it's going to be very difficult to make a viable development. So, I don't know what we're looking at. I do a lot of development work and even good, developable ground, we're looking at five to ten years before it gets regenerated and starts developing on any kind of basis. And for difficult ground like this, you may be looking at 20 years. I know the City is not ready to spend \$30 million to get across Cedar Creek, and certainly no developer buying this ground is going to be able to spend that kind of money. So, Valley Parkway ends right up here –

Chairman Campbell: Mr. Hubbard, can you wrap it up? Your time is way over.

Mr. Hubbard: I apologize. But I think you understand, we're the ones who are really affected by this thing. That's why I needed some extra time. Maureen went through this whole development and she knows all the details. We can answer any questions you have.

Comm. Ling: What do you want us to do? From Ash Grove's perspective, what would you like us to do?

Mr. Hubbard: Exclude the 1,600 acres from the overlay. We don't care what you do anywhere else.

Chairman Campbell: Any other questions?

Comm. Harrelson: Can you please clarify for me your comment about not being invited to participate in the overlay district?

*Maureen Coulter, 11011 Cody, Overland Park, appeared before the Planning Commission and made the following comments:*

Ms. Coulter: When we sold the property in September 2006, it was the whole property. One of the reasons we went with the buyer we did was because they were taking on the whole property. At the tenth hour, they were not able to get all the financing, so they extended the closing to September 2009. In the summer of 2009, they came to Ash Grove and said they were unable to close on the property. So, we got it back. At that time, they also said, hey, you might want to be aware of what's going on over there, and they informed us of the overlay district. I believe my boss, who is no longer with Ash Grove, Eileen Flink, sent a letter to Dave, and you've got it in your timeline. But we knew nothing. I mean, people had meetings, and trips, and interviews, and questionnaires, but we were never told of what was going on, of the overlay district. I don't know whether Planning was unaware that we owned all that ground – I don't know. We just were never notified of this process.

Comm. Harrelson: You were never notified, is what you're saying.

Ms. Coulter: Yes, that is what I'm saying. I mean, it was rumored before we even closed on the property with CCD, that there was talk about creating an overlay district because some of the residents were fearful of what was going to happen. Chris Kline talked about the vision and setting the bar high. That was all Ash Grove. A community like Cedar Creek would never have been developed without the deep pockets of Ash Grove Cement. I've worked for developers my whole life and I never worked for one that cared so deeply about how things were done. And the reason they could care was because they did have deep pockets. They weren't your run-of-the-mill developer. I have the actual Green Book in my hand. They created this. And like Mr. Hubbard said, we're not against the concept of an overlay district. We just don't believe it should be on our property. We set the bar, and we're not going to drop the bar on the west side of the property. But, one of the points was that we were not notified that this was going on.

Chairman Campbell: But, to be fair and reasonable, it's November of 2011, and in your timeline, you're talking July of 2009, you've been involved in the process since at least that time. I mean, it's over two years. Is that not enough time to be involved?

Ms. Coulter: We weren't asked for input.

Mr. Hubbard: But when this consultant was involved in all of these meetings with the residents, we had no idea they were going on and we were not involved.

Ms. Coulter: That Cedar Creek area plan, that book was created. We did not have any input in that book. And we were not asked for input in the book. They asked us to review it and approve it, but we – And there was some input, I guess, that I gave Dave, especially if I sold my property to XYZ Developer and he built a house over there, he has to go to the Homeowners Association next door to get his plans approved, which, call me crazy, but I think that's kind of crazy.

Comm. Rinke: Just a follow-up on that point. I understand that it's voluntary to have this rezoning, but are you saying that even if you opted not to go for this zoning classification, you would still have to have approval by their construction committee?

Mr. Hubbard: The ground right now, the 1,600 acres, is zoned agricultural, so any developer would have to come in and rezone it and plat it, and they would have to go across the creek to a competing developer to get approval of anything they did.

Comm. Rinke: Even if they opted out of the Cedar Creek zoning.

Mr. Hubbard: Well, you can't opt out if the overlay district is over our 1,600 acres. It's mandatory.

Chairman Campbell: That's not accurate.

Mr. Hubbard: Explain to me why that wouldn't be the case.

Chairman Campbell: That's not what the plan said. That's not what our consultant just told us. He said that if you choose to use the CC zoning –

Mr. Hubbard: He's talking about if somebody in the existing area rezoned. We're not zoned –

Chairman Campbell: No, he's not. He's talking about the whole thing. And we have to have clarification, and we'll get that. But my understanding is that you can rezone to the current RP-1, RP-2, meet all those. You don't have to do the CC zoning. If you use the CC zoning, then you have an expedited process.

Mr. Hubbard: That's not accurate.

Chairman Campbell: Mr. Cline, can you address that for us, please? There's a big discrepancy there from the way I read I this document.

Mr. Hubbard: If it were voluntary, we wouldn't be here tonight. It's mandatory. That's why we're here.

Mr. Cline: [*Addressing Ms. Coulter*] We did meet during the planning process, and I know that Ron introduced us at one point during the planning process. And at some point in time, I think the development team chose not to purchase your property. We've met with you a few times since then, in a last couple of years.

Ms. Coulter: The first time was in August 2009.

Mr. Cline: I know it was one time, right before one of the public meetings, we met and shared with you what we were doing and where we were in the process. The question about whether or not the regulations are optional are not, they are optional. So, any property that's not currently zoned and wants to come in and develop, if they don't want to follow the Cedar Creek standards, they could come through with the typical RP-3 or RP-4 or RP-1, come forward and make their case to the governing body and talk about the type of development they want to create and why it made sense, and offer it for your consideration. But it's not a requirement that every property within this overlay district use the Cedar Creek standards. The purpose of them are to speak to the type of quality and character that was originally envisioned for the area, and should somebody want to rezone to the Cedar Creek district, they could do so and receive a lot quicker approvals, a lot less red tape to go through, and they wouldn't have to come before you and

work with staff on lots of variances and all the other red tape that they would have to go through to try to create a development like Cedar Creek So, it is optional.

Chairman Campbell: Thank you. Does that help? Mr. Kohler?

Comm. Kohler: That answers that question.

Comm. Ling: Let me touch on that one more time. My understanding is that it's optional, but the presumption is that the proposed overlay district is consistent with the comprehensive plan, such that burden would be on the applicant to come back and show that what he may want to propose in the future is also consistent or better than the comprehensive plan. So, I hear your flexibility, but I also hear Ash Grove's concern that the burden won't be on them to show some reason why it isn't, or some other reasons why they couldn't address the consistency of the comprehensive plan. Is that true, Mr. Clements?

Mr. Clements: The use of the Cedar Creek zoning classification is optional. If the developer chose not to do so, they could come forward and rezone to RP-1 or RP-2. They would have to demonstrate to the Planning Commission why they chose not to use the CC district. But, the overlay district does not provide those standards, so that would be reviewed by the Planning Commission on a case-by-case basis. We don't have criteria in the plan to not use the plan.

Mr. Hubbard: Well, that sounds great, but in our opinion, this will be recorded on a cloud on the title over the 1,600 acres. It's our opinion that – It wouldn't be us, it would probably be some other developer trying to come in here. And if he came in here and said, "I want to disregard the overlay district and do it like we used to do it," it's not my experience that he'd get very far with that application.

Mr. Clements: Let's be clear, too, that this overlay district does not zone anybody's property. This is a public hearing to create a new chapter in the UDO for overlay districts, and the use of the overlay district depends on the circumstances of the given development. So, there would be nothing recorded on the title because no properties are being zoned. It's just a district that hangs over the property and it's there to be used under proper circumstances.

Chairman Campbell: Mr. Price, any comments for us?

*Tom Price, City Attorney, appeared before the Planning Commission and made the following comments:*

Mr. Price: There will be no recording since you're not, like Mr. Clements said, it's not a zoning classification.

Chairman Campbell: What I've understood from reading the document and in our previous workshops and what we've talked about, that all avenues of rezoning or development are still open. This allows for basically an expedited review.

Ms. Coulter: But did Mr. Clements not say that if, in fact, someone decided not to use the CC zoning, they would have to explain why they were not? I mean, you'd have to prove yourself from the get-go, why you were not using that zoning. I find it as an extra hoop for a developer to jump through if they did not want to use the zoning.

Chairman Campbell: Actually, the way I read the document, you actually cut steps out. That's what I've seen. If you're going to develop to the level that you've developed across the creek, you're going to shortcut some of the processes that are already in place.

Ms. Coulter: Well, our overall stance is that – And as soon as we found out about in August 2009, we've been very clear to staff, I've talked in front of City Council at one point, that we were against it, and for the reasons that I put in your handout. That being said, there is no access to this property. You can't see the property, I mean, you can see it from some areas within Cedar Creek. And we did know from August 2009 on, but the book that Confluence put together was pretty much set by then. I mean, we were given it to look at, but we didn't have any input. At the very least, we should be separated from the rest of the property if, down the road, we work on something different. I don't believe we should be grouped in with this.

Comm. Kohler: I have a question for Mr. Clements. I want to be sensitive to the concerns that Ash Grove has, but for my clarity, if nothing was done, if this was not enacted, then the existing requirements that they have for developing that property that are in place now, those same procedures, that same approach, can be used if the overlay district is adopted. Is that a correct understanding?

Mr. Clements: Yes, it is. Ash Grove or a prospective purchaser of the Ash Grove property could come in and negotiate a planned district with the staff and come to the Planning Commission with planned district approvals for townhomes, another planned district approval for condominiums, or another planned district approval for estate homes, another planned district approval for multifamily. They can come in and negotiate and proceed with those, all on a case-by-case basis.

Comm. Kohler: It doesn't dissolve or take away what's in place now.

Mr. Clements: It doesn't. The advantage of the overlay district is they can come in and get all those things approved at once – estate homes, single-family homes, cottage homes, multifamily – It could all be approved with one CC zoning and that development would then proceed, with a knowledge and understanding that it would meet the design criteria of the plan and it's okay at that point.

Comm. Kohler: I have another question for the Ash Grove folks. In your presentation, you referred to your large area a couple times as a very large green space. You went on to indicate that it's unlikely that anybody is going to be able to develop it. What is a good use of the space? What do you have in mind for the long term?

Mr. Hubbard: As you can see, this is the comprehensive plan that was just adopted. It shows it primarily all greenway. And if you read the greenway standards in the city, it talks about Cedar Creek being one of the primary greenways. It will be very difficult to do anything with this property. The only reason we ended up with this property is because it was a package. It was put together by Bill Child, so it came with the ground over here. So, we bought it, never having any idea of what we were ever going to do with it. And obviously, the new developers didn't want it either because they declined to close on it. So, there are ongoing discussions with parties that would maybe purchase the property and not develop it in a way of residential or commercial. It would aid us in those discussions if there were no overlay district. I think it would be very difficult for someone to come in and get out from under that overlay requirement.

Chairman Campbell: Any other questions at this point? Is there anyone else wishing to speak in opposition? Come forward, please.

*John Duggan, 11040 Oakmont, Overland Park, appeared before the Planning Commission and made the following comments:*

Mr. Duggan: I'm here on behalf of the current developer Cedar Creek Development Company. I think it's important at the outside to clarify a few things that were stated on the record previously. First of all, the current developer did not have any obligations to buy that 1,600 acres. It was an option contract with Ash Grove –

Chairman Campbell: That really is not germane to this.

Mr. Duggan: We just want to make sure it's clear that we chose not to buy it. I think what's germane to your decision is the reason we chose not to buy it, was it's probably 20 or 30 years away from being developed. Currently, Cedar Creek Development Company owns about 1,000 acres of raw land on the east side of Cedar Creek that is yet to be developed, that is probably going to take the lifetime of everybody who is currently on the development team to get through the 1,000 acres that's on the east side of the creek. So, from that perspective, I think the plan is far-reaching. The plan, which we have a diagram to show you, has really morphed over the last five years. [*Putting up diagram.*] If you look at this map, you can see that the original size of the overlay district included the entire green space, what's been left and what's been presented as the final conclusion is the dark green space. The red area was originally preliminary

platted as part of Cedar Creek, and that's also been excluded. So, the point that was made by Mr. Hubbard is even driven further home by the fact that the green area that is now part of the overlay district simply comprises one subdivision and one development group, which now includes Ash Grove because we did not exercise the option to purchase the property on the west side of the creek.

Originally, the overlay district was much broader in scope and it was brought about primarily by concerns that Ash Grove was going to get out of the development business and it was going to be sold. As a result of that, there were a number of concerns, and this was something that started in 2006. It's now five years later and we have something that has finally been presented to the Planning Commission. The fact of the matter is that you were asked to take into consideration developing some criteria for transitions between what's actually included in the dark green area and the surrounding areas. We thought perhaps that five years would have been a sufficient amount of time to develop all of those contingencies, including transition areas, which were some of the objections by the surrounding property owners.

We don't really come here tonight with disdain for the plan. We've worked diligently with City staff. Our own consultants have worked with City staff. But I think it's important for you to know as you consider this overlay district that the two other overlay districts that were mentioned essentially are three to five pages in length. The overlay district that you're being asked to approve tonight I think is in excess of 200 pages in length. The 200-page overlay district that is being requested for approval tonight I think is essentially one-third the length of the Uniform Development Ordinance for the City of Olathe. This is one of the greatest examples of overkill. With all the overkill that's been accomplished in this particular effort over the last five years, we actually are down to four points with the city staff. We think that the four points that we're still negotiating with the City are incomplete. They include access to multifamily; a 200-foot buffer for multifamily residential; the logistics of the architectural review requirements, which I think will get worked out with staff; and the fourth point is the mixed use areas and whether or not alley access would be required in mixed use areas. We don't think that will be necessary. Those are four things that are still in the works with staff. We've met with them, our consultants have met with them. If we can get those things worked out, then we really only have one point of contention that the staff and our consultants and our development team disagree with. It's contained on page 4.8 of the ordinance, Table 18.51.100.E. This is the one dispute if we can get the other four items worked out with staff. It requires us to have a 30-foot setback for office buildings and a 20-foot setback for flex office space. The current UDO only requires a ten-foot setback.

We have heard statements earlier tonight about the fact that we didn't want to make the bar higher than it exists today. Campus J, in the entire development today, has already been developed using the existing UDO requirements of a 10-foot setback for these properties. We don't think we should be subjected to further setback requirements under the new plan of 30 feet for office buildings and 20 feet for flex park. Obviously, we would like you to change that, and we would ask someone to take that up by motion and say, why is not

the current UDO in the current plan consistent with Campus J good enough for proceeding forward?

Lastly, if our development team then could get these final four things that we're optimistic we can conclude with the staff prior to City Council approval, then I think we have gone a long way over the last five years to try to get something done in a working document.

I would echo the comments of Mr. Hubbard, in that I think that anybody that comes along and wants to actually change their zoning requirement, whether it's explicit or implicit in the document, they're going to have the burden of proving to the Planning Commission that their change of using the UDO and not this overlay district requirement is a burden put upon the applicant to show why their plan meets or exceeds the requirements of the overlay district. So, in effect, the overlay district becomes the standard for any new development, which is a detailed, extreme version of what the Green Book originally planned to do. It took 200 pages, and I'm sure in application there are going to be some headaches that have to be worked out. As I've said, we're not here to fight with the City or fight with the residents over the approval of this. We're down to the last four issues. We're optimistic those can be worked out. We think probably it's appropriate for you to perhaps close the hearing tonight, maybe continue and vote on this decision at another date, to see if we can get those four items worked out with staff. Also, knowing staff has rejected our proposal on the setbacks for the 30 feet on the office and 20 feet for the flex space, would ask you to at least consider our request to leave the bar where it is tonight and not raise it to a higher standard than it has been for the last 20 years. I'd be happy to answer any questions.

Chairman Campbell: Thank you. Any questions?

Comm. Harrelson: I have a question for you, Mr. Chairman. A comment was made about a continuance. I assume one of us would have to move to continue.

Chairman Campbell: Okay. Any other questions or comments? Thank you very much. Is there anyone else wishing to speak in favor or opposition? Before we close the public hearing, I want to bring it back and see if there is anyone else who has questions or comments. Staff or anyone else.

Comm. Ling: I have comments. This isn't ready to approve tonight, in my opinion, although staff, Cedar Creek Development and residents have put a lot of effort into it, certainly. That is all appreciated. The new Green Book has a potential purpose and use, and in my mind, that's the property that's not the Ash Grove property and the property that's not east of the Cedar Creek property. For the Ash Grove property, I think it's a timing issue. We've had former Cedar Creek Development – Ash Grove – state that it won't be developed for many, many years. We have the new developers indicating it won't be developed for 20 or 30 years. We've got plenty of time to do this in potentially a phased approach, if we need to. In the future, Ash Grove may be ready to accept the proposed Green

Book, all the effort that was put into it. When that time comes, I think we can phase that in and bring that area in. There isn't the need to do that now.

The property to the east of Southglen and the Woods of Southglen, there needs to be more discussion with that property owner to see if that is reasonable. I think the residents have a point. I think Ash Grove, I'm not sure they're interested in it, but I think they have a point when they brought that up, and also the current developers bring that up. I haven't heard staff's thoughts on that, but obviously it isn't part of the plan and that should be reviewed. Now, maybe that's another phase of this potential plan, would be to allow that area to come in under the plan when they are ready to. Development in that area, I would assume, is much closer than the development of the Ash Grove property.

For those reasons, I would prefer to have those areas excluded from the Green Book. I am concerned, as both developers have indicated, about the presumption and the burden that it would put on the developers to place this overlay district on them. I've been through many commission meetings when we've looked for consistency with the comprehensive plan, and we want consistency with the comprehensive plan. It is a burden on a developer to come in and have to show why what he or she is proposing is better than what the comprehensive plan shows. If we were to include these other areas, I think we would have to address that burden, how that's structured. I hear staff when you say it's optional, but it's an option with an "if" and a causation clause that you have to address. I think that needs to be addressed also.

I appreciate that the new Cedar Creek Development is down to four items. The residents are supporting this. I think it seems reasonable at this point. If it's only four items, it's a lot of pages. Seems like hundreds of pages. If we're down to just four items with the Cedar Creek development, my recommendation would be to move forward with the overlay district for the Cedar Creek property area, but exclude out, for a subsequent phase, the Ash Grove property, and exclude out for another subsequent phase the property to the east of the Southglen and Woods of Southglen. Those are my thoughts, Mr. Chairman.

Comm. Kohler: I have a question for Mr. Ling. You said exclude the property to the east, but that's not covered - ?

Comm. Ling: It's currently not part of that overlay district.

Comm. Kohler: It's not part of the overlay district, okay. I just wanted to make sure I heard you correctly.

Comm. Ling: "Don't add" is probably a better way to put it. At this time. Another phase, when that developer is ready to develop, we look at that as a phased-in approach. So, it does make sense because I think both developers have brought up that they are intertwined, to some extent. If there are roads going between Southglen over to the east, it does make sense to incorporate them in. I think if they wanted it incorporated, I think that developer would be here right now, and I

am assuming he or she is not here right now is because they don't want to be incorporated at this time.

Comm. Kohler: So, you think it would be appropriate for us as a commission to, reacting to what you commented, that we should indicate, on the record, as part of the vote we take, that we would like to see that phase, that we would like to pursue that action – That is, the buffer zone to the east. That we would commit to that as was requested.

Comm. Ling: I wouldn't take it as strong as that. I'd say that, in a subsequent phase, staff should work with Ash Grove to phase in that area, and staff should work with the landowner east of Southglen and The Woods to bring that into an overlay district in the future.

Comm. Harrelson: I feel similarly, I guess. I think it would be preferable to continue. We have a fairly comprehensive plan, and it was mentioned, of course, the detail contained in the plan, the many pages that it has, we've talked some about those contents, but I'm sure there are several items that are very, very specific that we haven't addressed that would be very difficult for current or future development. Specifically future, and I think that's our hang-up. I'm just generally in opposition to the plan because we have a sizeable property owner who does not want to be encumbered by the plan. I would like to see us continue to discuss what options are available to that person, whether that be some phased bringing in of the plan, or some other means to at least somewhat satisfy that landowner. So, in general, I'm not in favor of throwing a blanket over the whole thing at this point and calling it do.

So, I don't know what that solution is. I have no idea. I'm sure it will be too complicated for us to negotiate here tonight. But I think in general what we might do this evening is to hear the comments of commissioners and understand that we have appreciation for Cedar Creek. I think we've expressed that even in some of the surrounding development that is not in Cedar Creek, nor affected by the ordinances there, and specific to the existing Green Book. I think it's been our feeling that we as planning commissioners want to have Cedar Creek maintain its character, and I think we want to see that. We want all development styles in Olathe, and obviously Cedar Creek is very unique, not only to Olathe, but to our metro area. So, I want to see that maintained, but I also want to see us be fair to others.

Comm. Rinke: I would be in favor of continuing this if we think there's a reasonable change that we could have a meeting of the minds from the various parties.

Chairman Campbell: I'm going to jump in before we go any further. I am not in favor of continuing tonight. There are multiple reasons for that. It comes back to what our function is as a body, and we are a recommending body to the city council. The question before us is: Do we have a document that, in general, is

good planning? Orders, who's involved, who's not involved, ultimately, it's up to the city council. And, as such, this has been around for a long time. If we continue tonight, how do we get it back to us again? So, I think we need some direction from the governing body as to which direction to go. In the past, we have moved something on, they've discussed it, sent it back to us, we re-do it, and off it goes again. If we had a clear, concise, there are going to be X number of meetings, there are going to be – I can't see continuing this beyond where we are tonight because of that. Are there borders drawn? Yeah, all the time. And somebody has to draw one in the sand. This literally has happened over the last several years. Do there need to be tweaks? Yeah, I think that's probably true. But do we move it on and let the city council address that and tell us the direction that they want to go? I think that's where we are tonight. I would encourage us to at least get this past a stagnation point to the council for them to do something with it, either to send it back to us, start all over again, give us some real direction as to what to do.

Mr. Clements: Mr. Chairman, I would just to add, as Mr. Duggan pointed out, there are four points that staff is working with Cedar Creek Development on. That's true. We had a one-hour conference call last Thursday on just a few points, but obviously, the packet was gone, the agenda was set. These are minor things, and we're there on those. I certainly don't think there's a need for a continuance just on those points. Ideally, I would have liked to have had the document 100 percent in front of you, but because of the size of it and some of the details of it, that just couldn't be done. So, it would be my goal to, with those few remaining points, get those put into tables as this moves on to city council, whenever that would happen.

As to the matter of Ash Grove, I think it's pretty clear that they don't want to be in the district. I don't see that there's any sense to continue the public hearing to hear that again.

Comm. Ling: Mr. Clements, on a denial of a UDO amendment, what happens to it? A recommendation of denial by the Planning Commission. What happens to the UDO amendment?

Mr. Clements: It refers on to the city council and they would need an extraordinary vote to approve it. Five votes instead of four.

Comm. Almeida: We've heard a lot of different reasons for this district. Can someone tell me what the exact purpose is? Is it to simplify the process for the planning and development? Is it simply to outline the quality expectations around the Cedar Creek development? We've heard a lot of different purposes, but can someone just clarify exactly in my mind what that is, and why we would put that on other landowners?

Chairman Campbell: We have to go back to what the plan document says. There are three different goals that were started, in the plan document. At this point,

that is what we have to work with. Which is why I, again, say it is time to move on, one way or the other. Whether it's forward with a recommendation for denial, or approval. Mr. Kohler?

Comm. Kohler: Mr. Chairman, I agree that acting on this work product is the right thing to do. I'm pretty sure that we may be almost irrelevant to the ultimate disposition of the Ash Grove property on the west side, but others may disagree with that view. I think Cedar Creek Development has made some appropriate points, and so have the residents of Cedar Creek, about the contiguous property, particularly to the east. That has me questioning, if I were to shift at all to the continuance side, it would be for that purpose. That is, trying to figure out how to address that specific concern. But, regarding the references to the number of pages and the exhausting detail, yeah, a lot of hard work has gone into it, three different parties put money into it to yield that product, and they are only a few points away from agreeing on it. I just think it's the right step, but if there was a way for us to commit to the follow-up step, then I think there's pretty much consensus about the property on the east. On the west side, it's a mystery. I think it's appropriate to move forward.

Chairman Campbell: Based on that, I'll go out on a limb. I'm going to move that we approve –

Comm. Ling: Mr. Chairman, do we need to close the public hearing?

Chairman Campbell: We do, but I want to get this out for discussion. I'm leaning towards moving for approval with our recommendation, that our recommendation would also be, at this time, to exclude the area west of Cedar Creek, and that at some point in the future, we make sure that we have a transitional plan put in place for east of the property as it stands. That way, city council can look at it, they can debate it, they can then give us direction. If it needs to come back to us, it can, and we can continue to work on it from there. That's what I'm thinking about tonight.

Now, that said, I say that hesitantly because at the end of the day, I think that the way it is written, I still think it is not a requirement to go to the CC zoning. I was in a city council hearing in an eastern state last week where, it was just embarrassing to be there. In general, we as a city do things quite well, and have done quite well, and have confidence that, in general, we are pretty reasonable in our responses. With that being said, that's why I'm leaning this way. I think at the end of the day, most commissions – and I've been here almost nine years – at the end of the day, we've been pretty reasonable. So, I would be comfortable moving this along even as it is, without that.

Comm. Fry: I have a comment on it. I think that the problem is, do we move to approve it and recommend to not have the western Ash Grove portion, or do we recommend denial with the recommendation of not having Ash Grove included. How do we –

Chairman Campbell: Or approve it as it is and just be done. That's what we're here for, to discuss that and try to determine that.

Comm. Ling: I'm not supportive of approving it even with the exemption of Ash Grove. I think there are issues, although staff has indicated they can be resolved. I'd like to see them resolved before we move that forward. I think to send something up to city council that still has work to do, I don't think we need to do that. So, my position would be to deny this. And I think we state our concerns and let city council address it.

Chairman Campbell: Any other comments?

Motion by Commissioner Ling, seconded by Commissioner Harrelson, to close the public hearing.

*Motion passes 8-0.*

Motion by Chairman Campbell, seconded by Commissioner Kohler, to recommend approval of UDO-11-003, per staff's recommendation and commissioners' comments, and with the following stipulations:

1. Exclude the property west of Cedar Creek owned by Ash Grove Cement.
2. The City prepare a transition/buffer plan for property abutting and east of Southglen.

Comm. Harrelson: A point of clarification. You are amending this plan.

Chairman Campbell: Correct. To City Council, that we are recommending as a body to exclude the Ash Grove portion at this point.

Comm. Almeida: You're not recommending based on the exclusion, just recommending that we would exclude.

Chairman Campbell: At the end of the day, that's what we do.

*Motion passes 5-3, with Commissioners Ling, Harrelson and Locke voting in opposition to the motion.*

Other Matters:

November 14, 2011

Mr. Clements: Our next meeting will be Monday, November 28th, the Monday after the long Thanksgiving weekend. We have two public hearings, but more importantly, we have the first annual update of the comprehensive plan we will be bringing forward to you that evening.

Chairman Campbell: We do have a work shop at 5:30.

*Meeting adjourned.*