

**ANDOVER CITY PLANNING COMMISSION /
BOARD OF ZONING APPEALS
Tuesday, December 16, 2014
Minutes**

1. Call to order. 00:01:17

Chairman Quentin Coon called the meeting to order at 7:00 p.m.

2. Roll call. 00:01:22

Planning Commission members present were Chairman Coon, Ken Boone, Brian Lindebak, Lynn Heath, William Schnauber and Aaron Masterson. Lee Butler was absent. Others in attendance were Director of Public Works Les Mangus, Assistant Director of Public Works Steve Anderson, Interim City Administrator Jennifer McCausland, City Council Liaison Sheri Geisler and Administrative Assistant Kandace Hunt.

A/V: Cindy Barrett

3. Approval of the minutes of the November 18, 2014 meeting. 00:01:52

A motion was made by Brian Lindebak, seconded by William Schnauber to approve minutes of the November 18, 2014 meeting. Motion carried 5/0/1 with Chairman Coon abstaining.

4. Communications: 00:02:17

- A. City Council minutes.
- B. Committee and Staff Report.
- C. Potential Residential Development Report.

5. Z-2014-05- A public hearing on a proposed change of zoning district classification from MH-1 Manufactured Home Park District to the R-4 Multiple-Family Residential District.
00:03:24

Chairman Coon opened the public hearing at 7:02 p.m.

Les Mangus explained the applicant desires to redevelop the mobile home park as an apartment complex in response to the declining mobile home park market. The applicant plans to take a phased approach in redeveloping the entire park in the future. The applicant has been before the Site Plan Committee with a preliminary plan and received positive feedback. A preliminary plat

will be reviewed at the next Planning Commission meeting because this is an existing platted subdivision and there will be a need to cleanup existing utility easements to fit the new use.

Tony Jacobs of Studium Architecture was present to represent the application.

Mr. Jacobs explained the applicants are not requesting any changes to the basic requirements for the R-4 zoning they are simply looking to rezone and replat the area. He continued by saying there are utility easements to be cleaned up and the right-of-way along Shay Road is considerably wider than necessary because when the school was platted their 80 foot right-of-way did not take into account the existing 32 foot right-of-way on the west side of Shay. The applicants hope to vacate the 32 foot right-of-way.

Brian Lindebak asked for the findings of the traffic study done for the project. Les Mangus explained the traffic study had been done considering the entire park being converted. There was a suggestion to open Rhondda Street to create a better circulation and access to the schools. It was also recommended that if the area was developed at a higher density Rhondda Street, Andover Road and the 2nd Street exchange may need some work and possibly a traffic signal. Brian Lindebak asked if there was any mention of the alignment of the Central High School entrance and Farmer Avenue. Les Mangus said there have been discussions on trying to get the drives lined up because of the similar peak traffic times. Those areas will be looked at more closely as the project enters the platting and Site Plan processes. Mr. Jacobs stated he wanted to clarify that the traffic study only looked at phase 1 and 2, so everything north of Rhondda was part of the study. The development to the south of Rhondda is not being considered at this time. The 72 units being proposed with phase 1 will not cause enough change in traffic volumes to require a traffic light at this time.

Chairman Coon asked if there were any comments from the public. There were none. Chairman Coon closed the public hearing at 7:10 p.m.

Brian Lindebak stated he was concerned with the screening between the proposed apartments and the residential area. He suggested the use of evergreen trees for year round coverage. Les Mangus said that was not a condition that could be placed on a zoning case but the commission could make that suggestion to the Site Plan Committee.

Chairman Coon asked if any members of the commission had received any extra communications or needed to disqualify themselves. None did.

ANDOVER CITY PLANNING COMMISSION
Agenda Item No. 5

REZONING REPORT *

CASE NUMBER: Z-2014-05

APPLICANT/AGENT:

Mobile Manor, Inc./K.E. Miller Engineering

REQUEST: Proposed change of zoning district classification from the MH-1 Manufactured Home Park District to the R-4 Multiple-Family Residential District.

Legal Description: All of blocks C, D, and E, except Lots 1 and 11, Block E, Golden Spur Addition to the City of Andover, Butler County, Kansas;

AND

Lot 1, Block 1, Golden Spur Third Addition, a replat of Block A and B of Golden Spur Addition to the City of Andover, Butler County, Kansas;

AND

The south 75.00 feet of Lot 12, Thomas Acres Addition to the City of Andover, in Butler County, Kansas

CASE HISTORY: Existing manufactured home park

LOCATION: Southwest corner of East Central Avenue and Shay Road

SITE SIZE: ± 13.5 acres

PROPOSED USE: Multifamily housing project

ADJACENT ZONING AND EXISTING LAND USE:

North: R-4 Multiple Family Residential District – Nursing home

South: MH-1 Manufactured Home Park District – Manufactured Home Park owned by the applicant

East: A-1 Agricultural Transition District – USD 385 Central School Campus

West: R-1 & R-2 Single Family Residential District – Single Family residences

Background Information:

The applicant desires to redevelop the existing manufactured home park into multifamily housing.

* Note: This report is to assist the Planning Commission to determine their findings from the evidence presented at the hearing so as to base their rezoning recommendation on the required 17 factors found in Section 11-100 H of the Zoning Regulations. The responses provided need to be evaluated with the evidence and reworded as necessary to reflect the Planning Commission's considered opinion. Sample motions are provided to ensure the accuracy of the motion and

facilitate the summary of the hearing for the minutes. Conditions attached to the motion, if any, should be carefully worded to provide instructions to the applicant and facilitate enforcement by the Zoning Administrator.

(As per Article 11, Section 100 of the City of Andover Zoning Regulation – 1993)

H. Amendments to Change Zoning Districts. When a proposed amendment would result in a change of the zoning district classification of any specific property, the report of the Planning Commission, accompanied by a summary of the hearing, shall contain statements as to (1) the present and proposed district classifications, (2) the applicant’s reasons for seeking such reclassification, and (3) a statement of the factors where relevant upon which the recommendation of the Commission is based using the following factors as guidelines:

FACTORS AND FINDINGS:

YES NO 1. What are the existing uses and their character and condition on the subject property and in the surrounding neighborhood? (See Adjacent Existing Land Uses on page 1 of 4)

STAFF:
PLANNING:
COUNCIL:

YES NO 2. What is the current zoning of the subject property and that of the surrounding neighborhood in relationship to the requested change? (See Adjacent Zoning on page 1 of 4)

STAFF:
PLANNING:
COUNCIL:

YES NO 3. Is the length of time that the subject property has remained undeveloped or vacant as zoned a factor in the consideration?

X STAFF:
X PLANNING:
COUNCIL:

YES NO 4. Would the request correct an error in the application of these regulations?

X STAFF:
X PLANNING:
COUNCIL:

YES NO 5. Is the request caused by changed or changing conditions in the area of the subject property and, if so, what is the nature and significance of such changed or changing conditions?

X STAFF:
X PLANNING:
COUNCIL:

YES NO 6. Do adequate sewage disposal and water supply and all other necessary public facilities including street access exist or can they be provided to serve the uses that would be permitted on the subject property?

X STAFF: Adequate water, sewer, and streets are in place, but a substantial redevelopment of public facilities will be necessary.
X PLANNING:
COUNCIL:

YES NO 7. Would the subject property need to be platted or replatted in lieu of dedications made for rights-of-way, easements access control or building setback lines?

X STAFF: The area would need to be replatted.
X PLANNING:
COUNCIL:

YES NO 8. Would a screening plan be necessary for existing and/or potential uses of the subject property?

X STAFF: The project will need to be reviewed and approved by the Site Plan Review Committee.
X PLANNING:
COUNCIL:

YES NO 9. Are suitable vacant lands or buildings available or not available for development that currently has the same zoning as is requested?

X STAFF:
X PLANNING:
COUNCIL:

YES NO 10. If the request is for business or industrial uses, are such uses needed to provide more services or employment opportunities?

STAFF: N.A.
PLANNING:
COUNCIL:

YES NO 11. Is the subject property suitable for the current zoning to which it has been restricted?

X STAFF:
X PLANNING:
COUNCIL:

YES NO 12. To what extent would removal of the restrictions, i.e., the approval of the zoning request detrimentally affect other property in the neighborhood?

X STAFF: A slight increase in traffic and activity in the area.
X PLANNING: A slight increase in traffic and activity in the area.
COUNCIL:

YES NO 13. Would the request be consistent with the purpose of the zoning district classification and the intent and purpose of these regulations?

X STAFF: The proposed use is on an arterial street close to shopping, health care, and schools.
X PLANNING:
COUNCIL:

YES NO 14. Is the request in conformance with the Comprehensive Plan and does it further enhance the implementation of the Plan?

X STAFF: The proposed use provides an underserved housing market.
X PLANNING:
COUNCIL:

YES NO 15. What is the nature of the support or opposition to the request?

STAFF: None at this time.
PLANNING: None at this time.
COUNCIL:

YES NO 16. Are there any informational materials or recommendations available from knowledgeable persons or experts which would be helpful in its evaluation?

X STAFF: Approval contingent upon platting.
X PLANNING:
COUNCIL:

YES NO 17. By comparison, does the relative gain to the public health, safety and general welfare outweigh the loss in property value or the hardship imposed upon the applicant by not approving the request?

STAFF:

X PLANNING:
COUNCIL:

Having considered the evidence at the hearing and the factors to evaluate the rezoning application, I Lynn Heath, move that we recommend to the Governing Body that Case No. Z-2014-05 be approved to change the zoning district classification from the MH-1 Manufactured Home Park District to the R-4 Multiple Family Residential District based on the findings 5, 13, 14, and 15 of the Planning Commission as recorded in the summary of this hearing and that the following conditions be attached to this recommendation. That such property be replatted and recorded within one year from the date of Governing Body approval or the case be considered disapproved and closed, and that the Ordinance effectuating the zone change not be published by the City Clerk until the final plat has been recorded with the Register of Deeds during the period stated above. The commission would like to request the Site Plan Committee consider requesting evergreen trees around the perimeter as part of screening. Motion seconded by Aaron Masterson. Motion carried 6/0.

6. **Z-20014-06- Amendment to the Amended Preliminary and Final General Planned Unit Development Plan (P.U.D.) of the Village Crossing Addition.** 00:22:51

Chairman Coon opened the public hearing at 7:24 p.m.

Les Mangus explained the applicant desires to build a restaurant and event center on the subject property that would exceed the existing maximum height and building area limitations. In order to accomplish this, the preliminary PUD must be amended to reflect the larger limitations and the final PUD must be replatted and recorded to memorialize the changes.

Robert Kaplan was present to represent the application.

Mr. Kaplan explained the applicant is requesting this change in order to increase in the maximum allowable height limitation from 35 feet to 40 feet, increase in the maximum allowable floor space limitation of any separate business establishment from 5,000 square feet to 8,500 square feet and increase in the hours of operation limitation from the existing 7 a.m. to 11 p.m. restriction to 6 a.m. to midnight. The owner hopes to open a full service breakfast and lunch restaurant and event center. The property owner also plans to partner with the Andover School district's Special Education program to allow the kids the opportunity to work in the restaurant. Mr. Kaplan noted that the 8,500 square foot building will set on a 70,000+ square foot lot and the building height increase is to accommodate a wall sign on the single-story building.

Aaron Masterson asked if the restaurant would have a drive-thru window. Mr. Kaplan said no.

Lynn Heath asked if the height increase for the sign was allowed by regulations. Les Mangus explained the height increase is for the building to allow space for a wall sign. It is not an increase for a pole sign. Lynn Heath asked if the sign would face the street or residential area. Les Mangus said no light can be cast on the residential area.

Brian Lindebak noted the existing screening wall would be maintained but he did not believe and a screening wall currently exists in the area. Agent for the Applicant Phil Meyer said he is not 100 percent sure whether or not the wall currently extends to the proposed area but the applicant has no objections to continuing it.

Brian Lindebak stated he had some concerns with the rear setback not being large enough to accommodate a 40 foot building. Mr. Meyer explained the request for the 40 foot height is to accommodate the very peak of the dome feature that sets on top of the building. The building will not be a solid 40 foot wall. Brain Lindebak asked if there would be a rear drive built with the facility. Mr. Meyer said yes. So the building will not be built right up against the setback.

Aaron Masterson asked if there will be an extra entrance from Andover Road or will it share the strip mall. Les Mangus said the amendment to the PUD allows for one driveway access point. Mr. Meyer said they will add an opening to the north end of the parcel.

Brain Lindebak asked if the applicant would be opposed to an intense landscape screening buffer and the rear of the development such as evergreen screening. Mr. Meyer said he does not know that it will be necessary; this is a nice facility that should not have any negative impact.

Lynn Heath asked if there is enough space for the required parking. Mr. Meyer said yes.

Chairman Coon asked if there was any input from the public. There was none. Chairman Coon closed the public hearing at 7:34 p.m.

Chairman Coon asked if anyone had received any extra communications or needed to disqualify themselves. No one did.

ANDOVER CITY PLANNING COMMISSION
Agenda Item No. 6

REZONING REPORT *

CASE NUMBER: Z-2014-06

APPLICANT/AGENT:

Minor Emergency Center, P.A./Mike Page, Baughman Co. & Robert Kaplan

REQUEST: Proposed creation of a new Parcel 3 from that portion of the existing Parcel 1 described as Lot 3a., and modifications of the existing B-2 Neighborhood Business District to allow:

1. An increase in the maximum allowable height limitation from 35 feet to 40 feet.
2. An increase in the maximum allowable floor space limitation of any separate business establishment from 5,000 square feet to 8,500 square feet.

3. An increase in the hours of operation limitation from the existing 7 a.m. to 11 p.m. restriction to 6 a.m. to midnight.

Legal Description: Lot 3a, Block A, of the Amended Village Crossing Addition Final Planned Unit Development Plan, City of Andover, Butler County, Kansas.

CASE HISTORY: Existing vacant commercial land

LOCATION: The west side of Andover Road between Village Road and Lexington Street.

SITE SIZE: ± 1.7 acres

PROPOSED USE: Restaurant/event center

ADJACENT ZONING AND EXISTING LAND USE:

North: B-1 office building

South: B-2 retail strip center

East: R-1 Single Family Residential District – Single Family residences

West: R-2 Single Family Residential District – Single Family residences

Background Information:

The applicant desires to construct a restaurant/event center that exceeds the existing hours of operation, 35 ft. maximum height, and 5,000 sq. ft. floor area limitations.

* Note: This report is to assist the Planning Commission to determine their findings from the evidence presented at the hearing so as to base their rezoning recommendation on the required 17 factors found in Section 11-100 H of the Zoning Regulations. The responses provided need to be evaluated with the evidence and reworded as necessary to reflect the Planning Commission's considered opinion. Sample motions are provided to ensure the accuracy of the motion and facilitate the summary of the hearing for the minutes. Conditions attached to the motion, if any, should be carefully worded to provide instructions to the applicant and facilitate enforcement by the Zoning Administrator.

(As per Article 11, Section 100 of the City of Andover Zoning Regulation – 1993)

H. Amendments to Change Zoning Districts. When a proposed amendment would result in a change of the zoning district classification of any specific property, the report of the Planning Commission, accompanied by a summary of the hearing, shall contain statements as to (1) the present and proposed district classifications, (2) the applicant's reasons for seeking such

reclassification, and (3) a statement of the factors where relevant upon which the recommendation of the Commission is based using the following factors as guidelines:

FACTORS AND FINDINGS:

YES NO 1. What are the existing uses and their character and condition on the subject property and in the surrounding neighborhood? (See Adjacent Existing Land Uses on page 1 of 4)

STAFF:
PLANNING:
COUNCIL:

YES NO 2. What is the current zoning of the subject property and that of the surrounding neighborhood in relationship to the requested change? (See Adjacent Zoning on page 1 of 4)

STAFF:
PLANNING:
COUNCIL:

YES NO 3. Is the length of time that the subject property has remained undeveloped or vacant as zoned a factor in the consideration?

X STAFF:
X PLANNING:
COUNCIL:

YES NO 4. Would the request correct an error in the application of these regulations?

X STAFF:
X PLANNING:
COUNCIL:

YES NO 5. Is the request caused by changed or changing conditions in the area of the subject property and, if so, what is the nature and significance of such changed or changing conditions?

X STAFF:
X PLANNING:
COUNCIL:

YES NO 6. Do adequate sewage disposal and water supply and all other necessary public facilities including street access exist or can they be provided to serve the uses that would be permitted on the subject property?

X STAFF: Adequate water, sewer, and streets are in place.
 X PLANNING:
 COUNCIL:

YES NO 7. Would the subject property need to be platted or replatted in lieu of dedications made for rights-of-way, easements access control or building setback lines?

X STAFF: The area would need to be replatted.
 X PLANNING:
 COUNCIL:

YES NO 8. Would a screening plan be necessary for existing and/or potential uses of the subject property?

X STAFF: The project will need to be reviewed and approved by the Site Plan Review Committee.
 X PLANNING:
 COUNCIL:

YES NO 9. Are suitable vacant lands or buildings available or not available for development that currently has the same zoning as is requested?

X STAFF: Special conditions
 X PLANNING:
 COUNCIL:

YES NO 10. If the request is for business or industrial uses, are such uses needed to provide more services or employment opportunities?

X STAFF:
 X PLANNING:
 COUNCIL:

YES NO 11. Is the subject property suitable for the current zoning to which it has been restricted?

X STAFF:
 X PLANNING:
 COUNCIL:

YES NO 12. To what extent would removal of the restrictions, i.e., the approval of the zoning request detrimentally affect other property in the neighborhood?

X STAFF: A slight increase in visibility and activity in the area.
 PLANNING: A slight increase in visibility and activity in the area.

COUNCIL:

YES NO 13. Would the request be consistent with the purpose of the zoning district classification and the intent and purpose of these regulations?

X STAFF: The proposed use is consistent with the surrounding uses along Andover Rd..

X PLANNING:
COUNCIL:

YES NO 14. Is the request in conformance with the Comprehensive Plan and does it further enhance the implementation of the Plan?

X STAFF: The proposed use provides a need in the community.

X PLANNING:
COUNCIL:

YES NO 15. What is the nature of the support or opposition to the request?

STAFF: None at this time.

PLANNING: None at this time.

COUNCIL:

YES NO 16. Are there any informational materials or recommendations available from knowledgeable persons or experts which would be helpful in its evaluation?

X STAFF: Approval contingent upon platting.

X PLANNING: Approval contingent upon platting.

COUNCIL:

YES NO 17. By comparison, does the relative gain to the public health, safety and general welfare outweigh the loss in property value or the hardship imposed upon the applicant by not approving the request?

STAFF:

X PLANNING:

COUNCIL:

Having considered the evidence at the hearing and the factors to evaluate the rezoning application, I Ken Boone, move that we recommend to the Governing Body that Case No. Z-2014-06 be approved to amend the Amended Village Crossing Preliminary Planned Unit Development Plan to allow creation of a new Parcel 3 from that portion of the existing Parcel 1

described as Lot 3a., and modifications of the existing B-2 Neighborhood Business District to allow:

1. An increase in the maximum allowable height limitation from 35 feet to 40 feet.
2. An increase in the maximum allowable floor space limitation of any separate business establishment from 5,000 square feet to 8,500 square feet.
3. An increase in the hours of operation limitation from the existing 7 a.m. to 11 p.m. restriction to 6 a.m. to midnight based on the findings 10, 11, 13, 14, 15 and 17 of the Planning Commission as recorded in the summary of this hearing. Motion seconded by Lynn Heath. Motion carried 6/0.

Lynn Heath made at motion at 7:44 p.m. to recess the Planning Commission and convene the Board of Zoning Appeals. William Schnauber seconded the motion. Motion carried 6/0.

7. **BZA-V-2014-04-** A public hearing on a variance to permit a 1.5% increase in the required 5% maximum surface area of wall signs limitation to allow for 126.09 square feet of new wall signs on property zoned as the B-3 Central Shopping District at 2036 N. Andover Road.
00:45:45

Quentin Coon opened the public hearing at 7:48 p.m.

Les Mangus explained the applicant desires a variance from the maximum area of wall signage allowed to accommodate corporate branding. The store is setback a distance from 21st Street and Andover Road and sits on a large lot area which creates the need for more signage area. Les Mangus noted the applicants will be utilizing a monument sign instead of a pole sign.

Brian Lindebak asked if the building will be built with a flat roof or a hip roof. Les Mangus said they received Site Plan approval with a flat roof but have resubmitted with a hip roof. Brian Lindebak asked what was approved for the rear of the building. Les Mangus said it was approved with landscaping but the new revision shows all four sides brick.

Jeff Laubauch was present to represent the application.

Mr. Laubauch stated the typical signage percentage Casey's is use to working with is around 10 percent, the applicants are proposing to remove the two "Pizza-To-Go" signs from the front of the building to get closer to the 5 percent of wall signage allowed. The applicants would like to still use their two snap signs for advertising on the building which puts them at 6.5 percent.

Chairman Coon asked if there was an input from the public. There was none. Chairman Coon closed the public hearing at 7:51 p.m.

ANDOVER BOARD OF ZONING APPEALS
2014

Agenda Item No. 7
For December 16,

VARIANCE REPORT *

CASE NUMBER: BZA-V-2014-04

APPLICANT/AGENT: Casey's Retail Company as agents for BC Partners LLC

REQUEST: Casey's Retail Company as agents for BC Partners LLC 150 N. Market Wichita, Kansas, pursuant to Section 10-107 of the City Zoning Regulations, requests a variance to permit a 1.5% increase in the required 5% maximum surface area of wall signs limitation to allow for 126.09 sq. ft. of new wall signs on property zoned as the B-3 Central Shopping District.

CASE HISTORY:

LOCATION: Legal description: Lot 1, Block 1 Andover Landing Addition to the City of Andover, Kansas.

General location: 2036 N. Andover Rd., Andover, Kansas.

SITE SIZE: . ±1.6 acres

ADJACENT ZONING AND EXISTING LAND USE:

North: B-3 BCC north campus

South: B-3 vacant property owned by the applicant

East: R-4 Andover Landing multifamily dwellings

West: B-3 Convenience store

*NOTE: This report has been prepared by the Zoning Administrator to assist the Board of Zoning Appeals to determine their findings from the evidence presented at the hearing so as to base their decision for a variance on the required five findings found in Section 10-107 D 1 of the Zoning Regulations. The Board may grant a request upon specific written findings of fact when all five conditions, as required by state statutes, are found to exist. The responses provided need to be evaluated with the evidence and reworded as necessary to reflect the Board of Zoning Appeals considered opinion. Conditions attached to the motion, if any, should be carefully worded to provide instructions to the applicant and facilitate enforcement by the Zoning Administrator.

DOES THE EVIDENCE DEMONSTRATE THAT:

1. The particular physical surroundings, shape or topographical condition of the specific property involved would result in a practical difficulty or unnecessary hardship upon or for the owner, lessee or occupant, as distinguished from a mere inconvenience, if the provisions of these regulations were literally enforced. True
2. The request for a variance is not based exclusively upon a desire of the owner, lessee, occupant or applicant to make more money out of the property. True
3. The granting of the variance will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located. True
4. The proposed variance will not impair an adequate supply of light or air to adjacent property, substantially increase congestion on public streets or roads, increase the danger of fire, endanger the public safety or substantially diminish or impair property values within the neighborhood. True

SPECIFIED CONDITIONS TO BE MET:

The Board may grant a variance upon specific written findings of fact based upon the particular evidence presented at the hearing so that all five of the conditions required by K.S.A 12-759(e) have been met which are listed below. If any of the conditions cannot be met, the condition(s) needs to be reworded from a positive to a negative statement and the variance not granted.

1. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zoning district, and is not created by an action or actions of the property owner or the applicant, because the proposed building is setback well beyond the 35' minimum setback.
2. That granting of the variance will not adversely affect the rights of adjacent property owners or residents, because the proposed building is setback well beyond the 35' minimum setback..
3. That strict application of the provisions of these regulations from which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application, because the subject property is considerably more than the required minimum lot size.
4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare, because the proposed building is setback well beyond the 35' minimum setback..

5. That granting the variance desired will not be opposed to the general spirit and intent of these regulations, because the proposed building is setback well beyond the 35' minimum setback, and the subject property is considerably more than the required minimum lot size.

Date Granted: December 16, 2014
Valid Until (date): June 16, 2015
(180 days Sec. 10-107G)

Quentin Coon, Chairman

William Schnauber, Secretary

Certified to the Zoning Administrator on this date of:

Having considered the evidence at the hearing and determined that the findings of fact in the Variance Report have been found to exist that support all the five conditions set out in Section 10-107D1 of the Zoning Regulations and K.S.A. 12-759(e) of the state statutes which are necessary for granting of a variance, I, Lynn Heath move that the Chairperson be authorized to sign a Resolution granting the variance for Case No. BZA-V-2014-04 as requested. Ken Boone seconded the motion. Motion carried 6/0.

Lynn Heath made a motion at 7:58 p.m. to adjourn the Board of Zoning Appeals and reconvene the Planning Commission. Ken Boone seconded the motion. Motion carried 6/0.

8. [Review and approve the plat of the Course at Green Valley Greens 12th.](#)
01:00:07

Les Mangus explained the proposed plat complies with the Subdivision Regulations with the exception of the dedication of the US-54/400 right of way in accordance with the US-54/400 Corridor Study, and the provision for an offsite utility easement for sanitary sewer. The Subdivision Committee has recommended that the final plat not be approved until the required US-54/400 right of way is dedicated. Staff recommends that the final plat not be approved for the following reasons:

1. The submission reflects insufficient road right of way for the expanded elements of US-54/400.
2. Expanded elements of US-54/400 are necessary to serve the subject property, in accordance with, and for alignment with, previous dedications of US-54/400 right of way, including those immediately adjacent and to the east of the subject property by the owners.
3. The US-54/400 dedication on the submitted plat is not of the character, extent, width, or location of a street that would conform to the approved US-54/400 Corridor Study element of the Comprehensive Plan.
4. The limited dedication of US-54/400 is not in relation to the other existing dedications or planned improvements for US-54/400.
5. The dedication does not meet the needs of the subject property, nor the functional components of the surrounding transportation system of which it is a part.
6. The inadequacy of the proposed US-54/400 right of way does not conform to the freeway/expressway nature of the classification of this portion of US-54/400 under the Functional Classification Map for the Wichita Area Metropolitan Planning Organization.
7. In absence of the typically required frontage and backage roads necessary to serve property of the nature of the subject property, the proposed dedication would provide inadequate service from a limited access arterial, which necessarily provides service to the subject property, as well as ingress and egress convenience to multiple surrounding lots and blocks.

Accordingly, and in consideration of the Subdivision Regulations generally, including but not limited to 6-107 A, F and H and 6-112 C, Staff recommends against approval of the submitted final plat.

Phil Meyer and Brad Stout were present to represent the application.

Mr. Meyer explained that from a utility standpoint the most logical solution would require a utility easement off of the golf course. In the northwest corner there is a route that could get sewer service to the property. It will take an offsite easement with the City and the applicants are more than willing to meet with the City to discuss obtaining it. It is the same case with drainage. The site currently drains to the west along the golf course to the lake. The drainage plan submitted to the city shows the installation of a storm sewer so runoff would be underground to the lake. This will require a storm sewer easement. Once again the applicants are willing to meet with the City to acquire an easement for the storm sewer extension. The applicants have no opposition to any utilities, they just need to work with the City to do so. The other requirement is for the dedication of right-of-way along Kellogg. The applicants are opposed to the dedication of the approximately 123.5 feet, they feel that is an excessive amount of land to dedicate.

Brian Lindebak noted it is important to have a 40 foot setback at the rear of the property where it abuts the single family. Mr. Meyer said he is not sure if the applicants are willing to agree to that, this is part of a PUD for the overall site. This site did not have that building setback the first time. There is a reserve north of the site that is at least 40 foot wide and full of trees that create an adequate buffer. So at this time the applicants do not want to agree to an additional setback. Brain Lindebak noted most of the trees are on the subject property. Mr. Meyer said they may be willing to negotiate right-of-way for additional setbacks.

Brad Stout added the following: the dedication of property at this platting stage is done when there is a relationship to the proposed property use and the demands the property use would place on public improvement. For example, if there would be traffic entering and exiting the property frequently it would be reasonable to require accel and decel lanes. It is this relationship that is necessary in order for us to say that the land owner receive some benefit in exchange for the land that is required for him to be given. In this case no such relationship exists, and that is our primary objection. There is 123 feet being required in order to facilitate an interstate highway, Highway 400. By definition an interstate highway does not serve the local property, it's not constructed for that purpose, it's constructed to move traffic along distances. In fact in this instance we know that is part of the City's Corridor plan, which I think was developed as early as 2011, so we know that the planned road improvements has no relationship whatsoever to our proposed use of the property. It is simply a demand on the property owner that he give-up a piece of his property to the public. And in fact the demand wouldn't change no matter what the use of our property was. Without that key relationship what we have with the dedication is simply taking property from the landowner. That violates the Fifth Amendment which states that no property shall be taken without just compensation. We are not here today asking for just compensation at all, instead we are asking that you not take it to begin with. So what we are really asking is that you approve the plat without the requirement that there be a dedication that has no real relationship to the proposed use of the property.

Brain Lindebak noted it did not appear that the commission was going to make much progress in regards to the dedication based on the applicant's stance and asked if a building setback would be substantial enough to prohibit any improvements on the property. Les Mangus said he thinks the situation is just a difference of opinion between the applicant and the City's counsel. The City has an opinion that this isn't a taking, it's a requirement of our Comprehensive Plan. To answer the question posed, a building setback would prevent a building from being built in the area, but what it wouldn't prevent would be the parking, the signage and the landscaping that all have a value and a residual effect would have to be bought as right-of-way in the future on the remainder of the parcel. Brian Lindebak asked if a reserve that could be used only for highway, utility or road improvements would be possible. Les Mangus said there has not yet been any discussion on that option up to this point.

Brian Lindebak asked if a building permit is required with a final plat. Les Mangus said a plat is required to obtain a building permit. Brain Lindebak asked if there are plans to develop the land at this time. Les Mangus said not that he is aware of.

Brian Lindebak made a motion to defer a decision on the Final Plat of the Course at Green Valley Greens 12th until such time that an agreement has been reached between the applicant and the City regarding the dedication of right-of-way. Lynn Heath seconded the motion. No vote was taken on the motion. Les Mangus stated he does not believe a deferral can be made. There is a time limit on the approval of a plat. The commission either has to take action or it is deemed approved by the lack of action. Brian Lindebak asked if a time limit of one year could be added to the motion. Les Mangus said he needed to double check the Subdivision Regulations, but he believes the max is 45 or 60 days. Brian Lindebak amended his motion to the defer a decision on the Final Plat of The Course at Green Valley Greens 12th for 60 days from date of application to allow time for an agreement to be reached between the applicate and the City, if an agreement

was not meet within the 60 days it will be deemed a denial by the Planning Commission. There was no seconded. Lynn Heath noted that he believed the Quick Trip at 143rd and Kellogg moved in with the understanding that when the highway expansion reached their location they would leave because they did not agree to a setback. Lynn Heath asked when the highway expansion is proposed to reach Andover. Les Mangus said it is currently in the neighborhood of 2030. Les Mangus noted Article 4 Section 108 of the Subdivision Regulations states Failure of Planning Commission to Act on Final Plat. If the Planning Commission fails to approve or disapprove the final plat within the 60 days designated by state law for its consideration as stated in Section 4-107, it shall be deemed to have been approved and a certificate shall be issued by the secretary upon demand, unless the subdivider shall have consented in writing to extend or waive such time limitation. (See K.S.A. 12-752[b].) Mr. Stout spoke to the situation with Quick Trip and the highway expansion stating that his involved with the property located at 143rd and Kellogg. He continued by saying the City of Wichita has denied that there is any agreement with Quick Trip regarding them leaving at any designated time without payment of just compensation. Brian Lindebak rescinded his motion. Chairman Coon asked if it is the general consensus of the commission to preserve the corridor plan. It was decided that it is. Lynn Heath made a motion to deny the Final Plat of The Course at Green Valley Greens 12th Addition. William Schnauber seconded the motion. Motion carried 6/0.

9. [Butler County Case VC#13-02 Petition of vacation of S. Clayton Drive and Beyer Lane in the Crescent Heights 1st Addition.](#)
01:19:26

Les Mangus explained following the Planning Commission recommendation to not vacate a portion of Kingsway Rd. there was some dialogue between neighbors about the status of S. Clayton Dr. and Beyer Ln. as noted in the attachments. The applicant has filed a petition to vacate the platted, but undeveloped, streets in order to retain the integrity of his property. Staff supports the applicant's request because the continuance of Beyer Rd. is obstructed by the previous vacation by the adjacent property owner, and the one block segment of S. Clayton drive serves no purpose given that the applicant owns the adjacent property on both sides.

Brian Lindebak asked if there are any utilities in the area. Les Mangus said they do not believe so.

Lynn Heath asked if the electrical lines are above or below ground. Les Mangus said they are above ground.

Brain Lindebak made a motion to recommended approval by Butler County to vacate South Clayton Drive and Beyer Lane in the Crescent Heights 1st Addition with the condition that the applicant be responsible for relocating any and all utilities within the right-of-way at their own cost. Lynn Heath seconded the motion. Motion carried 6/0.

10. [Approval of the annual meeting schedule.](#)
01:25:48

Lynn Heath made a motion to approve the annual meeting schedule. William Schnauber seconded the motion. Motion carried 6/0.

11. Member Items.

01:26:57

There were no member items.

A motion was made by Lynn Heath, seconded by William Schnauber to adjourn at 8:26 p.m. Motion carried 6/0.

Respectfully Submitted by

Kandace Hunt
Administrative Secretary

Approved this 20th day of January, 2015 by the Andover City Planning Commission/Board of Zoning Appeals, City of Andover