

Direction: CITY1680.DSS

Chairperson Erickson called the regular meeting of the Plan and Zoning Commission to order at 5:30 p.m. on Monday, November 7, 2016, in the Council Chambers of the West Des Moines City Hall, located at 4200 Mills Civic Parkway, in West Des Moines.

Roll Call: Andersen, Costa, Crowley, Erickson, Hatfield, Southworth.....Present  
Brown.....Absent

**Item 1 - Consent Agenda**

**Item 1a - Minutes of the meeting of October 24, 2016**

Chairperson Erickson asked for any comments or modifications to the October 24, 2016 minutes.

Moved by Commissioner Costa, seconded by Commissioner Crowley, the Plan and Zoning Commission approved the October 24, 2016 meeting minutes.

Vote: Andersen, Costa, Crowley, Erickson, Hatfield, Southworth.....Yes  
Brown.....Absent

Motion carried.

**Item 2 – Public Hearings**

**2a - Whisper Ridge Buffer Vacation Plat 3, Lots 15-18, 9104, 9110, 9116 and 9124 Autumn Court – Vacate 30’ buffer park easement along the rear (south) lot lines of Lots 15-18, Whisper Ridge Plat 3 – Hidden Creek, LLC - VAC-003253-2016**

Chairperson Erickson opened the public hearing and asked the Recording Secretary to state when the public notice was published. The recording secretary indicated that the notice was published in the Des Moines Register on October 28, 2016.

Chairperson Erickson asked for a motion to accept and make a part of the record all testimony and all other documents received at this public hearing.

Moved by Commissioner Hatfield, seconded by Commissioner Southworth, the Plan and Zoning Commission accept and make a part of the record all testimony and all other documents received at this public hearing.

Vote: Andersen, Costa, Crowley, Erickson, Hatfield, Southworth.....Yes  
Brown.....Absent

Motion carried.

Mark Abels, Attorney, 400 Locust Street, Suite 400, Des Moines, representing the applicant, requested approval of a vacation request. Mr. Abels stated the request came about because there is a potential buyer for Lot 17 and their proposed plan would not work with the existing

65' building setback line. Mr. Abels explained that ordinarily there would be a 35' building setback line, but because of the 30' buffer park it became 65'. When the plat was approved, the buffer park was put in place because it was anticipated that Coachlight Drive would extend all the way to the western boundary of the plat which would have resulted in a public street on both sides of the subject lots. Mr. Abels continued that Autumn Court would be on one side and Coachlight Drive on the other, making it a double frontage lot making the buffer park necessary. He stated through ongoing discussions with Hickory Knolls owners related to the platting process for Whisper Ridge, an agreement was reached that ended the public street at 91<sup>st</sup> Street and left Rockwood Lane as a private easement for existing owners. In reviewing the specifics on lot 17, they realized by definition under the code, there was not a double frontage lot, so they could request that the buffer park be vacated.

Mr. Abels attended the subcommittee where Councilmember Sandager expressed concern with solid fences being put in place any closer than 30' back from the rear lot line. After the meeting, Mr. Abels discovered private covenants already exist on the lot which state you can't have solid fences anywhere on the lot. Lot 18 of the development has been sold and built on with a wrought iron fence on the property 30' from the rear property line adjacent to Rockwood Lane. He added Lot 18 only has a small portion of its backyard butting up against Rockwood Lane.

With this request, Mr. Abels had discussions with staff and residents. Staff recommended allowing vacation of the buffer park with a condition that there be no opaque fences. He expressed that Hidden Creek, LLC is fine with that condition and was willing to add an additional condition that no out-buildings or accessory buildings would be built within the 30' former buffer area, as a further step to reassure Hickory Knolls owners this will not be unsightly or displeasing to them. He stated, however, that is not what Hickory Knolls owners would like, they would like 30' to be completely no build including fences whether they are opaque or not. Mr. Lowry (the applicant) was not in attendance so Mr. Abels stated he could not confirm if the applicant was willing to accept that condition. In his last conversation with Mr. Lowry, he said he would like non-opaque fences to be built near the rear lot line for maximum backyard use for homeowners, negating the need to have a gate in the fence to come out and maintain that 30' area. Mr. Abels noted they have worked very hard and diligently with the Hickory Knolls owners in the past to overcome issues and problems so when Mr. Lowry returns they will continue the dialogue to see if there is any further room for discussion.

Brad Munford, Planner, explained the buffer park was added as part of the original plat approval. He stated that during the Whisper Ridge platting process, the Hickory Knolls owners agreed to allow 91<sup>st</sup> street to connect with their private drive (Rockwood Lane) with the understanding that buffering would be in place. He continued to say that the subcommittee looked at these issues and directed staff to look at vacating the buffer with the stipulation that they wouldn't be any solid fences along that area. Mr. Munford explained Rockwood Lane is different than a normal private drive as it heads towards property not within the city limits which creates an issue in applying City requirements to existing conditions on property outside the City. Rockwood Lane started off as an easement functioning as a private road, but the City cannot find it documented as a legal private road. With this in mind, staff is recommending approval of the application with the stipulation being amended no structures or fences more than 50 percent opaque are allowed within the first 30' of the rear yard.

Linda Schemmel, Development Coordinator, clarified due to the action in front of the Commission being an easement vacation, conditions related to the location of structures and setbacks for structures should not be added. She stated such restrictions could be part of a different action or the association could pursue it as part of their association documents.

Chairperson Erickson clarified the owner is amenable to accommodating such restrictions, but this is not the mechanism for City action on the requested restrictions. To which Ms. Schemmel responded affirmatively.

Chairperson Erickson asked if anyone from the audience would like to speak to this item.

Richard Santi, 33681 Rockwood Lane, wanted to clarify what had been stated previously. One of the lots in the Hickory Knolls plat is within the City of West Des Moines and was annexed voluntarily, the other 4 lots are not in West Des Moines. He continued, Rockwood Lane has never been an easement and has always been privately owned by the five lot owners in Hickory Knolls.

Mr. Santi said he submitted a written response to the vacation request and he and the residents of Hickory Knolls stand by what was in that response, they do not want a fence of any kind erected on the boundary line between Rockwood Lane and the lots in question because of aesthetics. Mr. Santi continued that if the request is granted it would permit a fence be built right along property line of Rockwood Lane, making it difficult to maintain with a fence on the boundary line. Mr. Santi stated he is requesting that the condition be imposed that the fence be 30' from the rear property line which is within the current buffer park easement shown on the Whisper Ridge Plat. The Hickory Knolls owners relied upon that when the Plat was submitted and it is a big deal for them because they drive by it every day. Aesthetically having the fence back at least 30' would be more pleasing and the mowing issue would be resolved.

Mr. Santi wanted to comment on what Councilmember Sandager brought up in the Subcommittee meeting that Rockwood Lane is a private roadway, but in the future one or more of the owners will sell their lot for redevelopment. He continued there are 50 acres of prime real estate which would result in it becoming a public street. In the future, Rockwood Lane could become a public street and then it wouldn't comply with buffer park easement requirements if you permit fences and other structures to be erected within that 30' area. He raised an issue about notice received from the city regarding the public hearing in response to correspondence dated Nov. 1 from hickory Knolls owners. He then submitted a response to that letter that he would like the city and the Commissioners to consider.

Chairperson Erickson then closed the public hearing asked for continued discussion or a motion. He clarified the recommendation before the Commission is to allow the buffer park to go away and the 30' prohibition is only on solid fences. As currently written, you could put a less than 50% opaque fence in that 30'.

Commissioner Andersen stated the Hickory Knolls residents have a valid point if the street were to become a public street the fences are on the lot lines and in the instance that they can't move the fences they've built the house so far back.

Commissioner Andersen drafted a motion disapproving the motion in its current language.

Chairperson Erickson clarified the motion being any fence built on the properties would need to be at least 30' from the property line, opaque or otherwise.

Ms. Schemmel cautioned that conditions related to the placement of the structure should not be included on a vacation request. If Commissioners are concerned about the location of the fence the only mechanism available to limit structures within 30 feet of Rockwood Lane with this action is to recommend denial of the vacation.

Chairperson Erickson asked if the vacation is not dependent on staff recommendation as currently written. It's not staff's recommendation that is controlling the ability to locate that fence in the first 30 feet, it's once it's vacated, all bets are off. Ms. Schemmel responded once the easement is vacated then setbacks and other provisions return to the requirements within the zoning ordinance.

Chairperson Erickson inquired as to what are the alternatives. Ms. Schemmel explained if the desire is to address setbacks or locations of structures across the affected lots it could be done through a platting action or rezoning action.

Chairperson Erickson questioned if the vacation request was initiated because the structure, as proposed, didn't fit within the current setback and wanted more information on the relationship between the buffer easement and the building setback. Ms. Schemmel replied in single family zoning the rear yard setback is measured from the edge of the buffer rather than the edge of the property line, so in this situation you have a 30' buffer and then a 35' rear yard setback. When this was originally platted, there was the assumption that Rockwood Lane would become a public street.

Chairperson Erickson inquired if the applicant could resolve the setback requirements by requesting a variance through the Board of Adjustment. Ms. Schemmel responded that it is difficult to do a variance action on four lots because a variance is specific to a lot and the applicant will need to demonstrate a hardship for the requested variance.

Commissioner Crowley asked what does 50 percent opaque mean. Ms. Schemmel explained rather than specifying a material such as wrought-iron, the requirement is generic in saying the fence design needs to provide a minimum of 50 percent open area. Doing so would eliminate the opaque feel, which was a concern brought up in the subcommittee, and would provide flexibility for owners on fence material and design.

Chairperson Erickson wanted to know why they could have that as a requirement of this action but cannot have the same action on locating the fence 30' away from the rear property line. Ms. Schemmel explained the condition is addressing the design of the fence but not the location.

Commissioner Southworth asked would a better venue for this request be the Board of Adjustment. Ms. Schemmel replied the individual property owner could move forward with a variance request if not successful with the vacation, but the action in front of the Commission tonight is to vacate the buffer park, affecting all lots backing Rockwood Lane. She reiterated the individual property owner's would have to demonstrate hardship and the uniqueness of

their particular proposal should they move forward with a variance request to the Board of Adjustment.

Commissioner Andersen inquired if all the lots are vacant. Ms. Schemmel responded she believes that there is the one lot on the cul-de-sac with a home being constructed.

Mr. Abels mentioned that in the event that this became a public street there is an original 66' reserved width and an additional 2' have been dedicated on the Whisper Ridge side. When the Sandal side is developed which is the South side, the city will require an additional 2'. Mr. Abels continued there will be 70' total set aside resulting in the full 70' of road right of way normally required. He concluded, in reference to the fences being out of place, they would not be because there is a full width of 70' for the public street.

Mr. Abels emphasized that this is the appropriate forum to vacate the buffer park for this reason, the buffer park was originally something that was a reflection on the plat of what the code requires and not a private covenant. He stated there was a mistake having that on the plat because as it turns out they didn't need the buffer park. He continued that the problem with the Board of Adjustment is they must prove hardship showing you can't build anything on this lot at all. We can say that they (the property owners) are not entitled to a variance.

Chairperson Erickson asked Mr. Abels to clarify his statement that the buffer park was a mistake. Mr. Abels replied the preliminary plat process was started at a time when the City wanted the public street to go all the way back to the west boundary. Upon further discussion and negotiation it was part of the bigger picture of the Hickory Knolls owners not wanting a public street going any closer to their properties than necessary. Mr. Abels stated that worked out well saving costs for the developer to end at 91<sup>st</sup> Street.

He emphasized the goal is not to create a less slightly or aesthetically pleasing setting for the Hickory Knolls owners, noting they will be driving by as this location is not visible from any of their properties.

Mr. Abels further explained by eliminating the buffer park, which in essence was a mistake, moves the setback line back to 35' allowing the desired structure on Lot 17 to be built. He stated he would have to talk with the city attorney about the particulars, but there is already a private covenant that you can't have any solid fences anywhere on the lot. He stated the requirements under the private covenant on out buildings is that they have to be properly screened.

Mr. Santi stated Hickory Knoll owners don't want any type of fence on the boundary line of Rockwood Lane and Whisper Ridge, but are willing to accept as long as any fence constructed isn't on the boundary line. He said that shouldn't interfere with the desire of the developer or perspective purchaser to build the home he/she wants to build.

Chairperson Erickson posed to Mr. Santi that most people have a lot with a fence on their property and mow up against it twice a week, and wanted to know why it is an issue on these lots. Mr. Santi responded the original plat provided for a 30' buffer park easement and no build area and based on that representation Hickory Knolls owners did not object to the plat.

Commissioner Andersen withdrew her motion and Commissioner Crowley moved for approval of staff recommendations letting property owner’s deal with it moving forward. Chairperson Erickson clarified with Mr. Abels that the applicant is willing to work with the owners in terms of private covenants, to which Mr. Abels agreed. Chairperson Erickson seconded the motion with assurance that the applicant will work with homeowners creating a private covenant.

Commissioner Southworth then asked for clarification of the motion.

Chairperson Erickson responded they have modified the motion to approve the vacation with staff recommendations. He also noted that the condition on the composition of fence is adding to the confusion and asked if Commissioner Crowley would be open to modifying the motion to remove the condition on the fence. Commissioner Crowley agreed to the modification and Chairperson Erickson as the second, also agreed to the modification.

Moved by Commissioner Crowley seconded by Chairperson Erickson, the Plan and Zoning Commission approve a resolution recommending to the City Council approval of the vacation request with the amendment that the Condition of Approval in staff’s recommendation be removed.

Vote: Anderson, Costa, Crowley, Erickson, Hatfield, Southworth.....Yes  
Brown.....Absent  
Motion carried.

**2b - 1<sup>st</sup> Street Redevelopment PUD Amendment, SW corner of 1<sup>st</sup> Street and Grand Avenue – Amend PUD sketch to allow the adjustments to buildings and the associated site modifications – First Street LP – ZC-003246-2016**

Chairperson Erickson opened the public hearing and asked the Recording Secretary to state when the public notice was published. The recording secretary indicated that the notice was published in the Des Moines Register on October 28, 2016.

Chairperson Erickson asked for a motion to accept and make a part of the record all testimony and all other documents received at this public hearing.

Moved by Commissioner Andersen, seconded by Commissioner Southworth the Plan and Zoning Commission accept and make a part of the record all testimony and all other documents received at this public hearing.

Vote: Andersen, Costa, Crowley, Erickson, Hatfield, Southworth.....Yes  
Brown.....Absent  
Motion carried.

Jamie Malloy, Studio Melee, 1312 Locust St. Des Moines, IA, 50319, representing the applicant, 1<sup>st</sup> Street LP, John Mandelbaum, asked for an internal organization change to the site, noting nothing with the Plat has changed. Mr. Malloy stated the request stemmed from the placement of the Auto Zone parcel on Lot 4, the original PUD had the building on the south side of the lot rather than the north side. He continued the original location was over a storm sewer which is going to be inactive in the near future. During negotiations with Auto Zone over

the summer they found out that storm sewer will not be inactive in time for Auto Zone to start building. Mr. Malloy stated there are no prospective tenants for the other parcels currently, but they are trying to keep options open.

As part of the staff recommendation, they are working with the DOT to gain approval of a relocated drive to improve access to the development and site circulation.

Commissioner Crowley asked if the driveway would be a right-in right-out only. Mr. Malloy responded that was correct.

Chairperson Erickson asked if anyone from the audience would like to speak to this item; seeing none, closed the public hearing and asked for continued discussion or a motion.

Moved by Commissioner Hatfield seconded by Commissioner Crowley, the Plan and Zoning Commission approve a resolution recommending to the City Council approval of the rezoning request.

Vote: Andersen, Costa, Crowley, Erickson, Hatfield, Southworth.....Yes  
Brown.....Absent  
Motion carried.

**Item 3 – Old Business**

There were no Old Business items reported

**Item 4 – New Business**

**4a - Country Club Office Plaza West Plat 8, 1080 Jordan Creek Parkway – Replat Lot 1  
Country Club Office Plaza West Plat 3 and Outlot B, Country Club Office Plaza – Dallas  
County Partners – PP-003239-2016**

Tom Rupprecht, R&R Realty Group and Dallas County Partners, 1225 Jordan Creek Parkway, West Des Moines, IA 50266 requested approval of a preliminary plat to replat an outlot into a buildable lot. Mr. Rupprecht stated they are in agreement with staff comments except they do want the right of way obtained by the city through an easement, similar to a past project, The Newport Building.

Kara Tragesser, Planner noted that at this time, the right-of-way issue was included for the Commission’s information when reviewing the preliminary plat. Usually, the City requires right-of-way dedication by fee title, but has accepted it by easement in certain situations. The City Council will make the final decision regarding the right-of-way disposition with the final plat.

Chairperson Erickson asked if we go forward with the recommendation as written the applicant would have to discuss that specific issue with council. Ms. Tragesser responded affirmatively.

Chairperson Erickson asked if anyone from the audience would like to speak to this item; seeing none, asked for continued discussion or a motion

Moved by Commissioner Costa seconded by Commissioner Southworth, Plan and Zoning Commission adopt a resolution recommending the City Council approval of a Preliminary Plat at Country Club Office Plaza West Plat 8, 1080 Jordan Creek Parkway.

Vote: Andersen, Costa, Crowley, Erickson, Southworth.....Yes  
Brown.....Absent  
Hatfield.....Abstain

Motion carried.

**4b - Westfield Office Building, 1080 Jordan Creek Parkway – Approval of Grading Plan to grade the site and to excavate for underground parking – SP-003280-2016**

Tom Rupprecht, R & R Realty Group, 1225 Jordan Creek Parkway, West Des Moines, requested approval of a grading permit and was in agreement with staff review and comments.

Kara Tragesser, Planner, explained the grading plan is to allow for the excavation of two holes for future underground parking and overall site grading and recommended approval.

Chairperson Erickson asked if anyone from the audience would like to speak to this item; seeing none, asked for continued discussion or a motion

Moved by Commissioner Crowley, seconded by Commissioner Andersen, Plan and Zoning Commission adopt a resolution recommending the City Council approval of a Grading Plan for Westfield Office Building, 1080 Jordan Creek Parkway.

Vote: Andersen, Costa, Crowley, Erickson, Southworth.....Yes  
Brown.....Absent  
Hatfield.....Abstain

Motion carried

**4c. - Urban Renewal Plan – Osmium Review Urban Renewal Plan for Consistency with the Comprehensive Plan**

Clyde Evans, Community Economic Development Director, presented the Urban Renewal Plan to the commission for findings of consistency with the Comprehensive Plan. Mr. Evans pointed out on the map where the Microsoft Osmium site is located and stated that to support the development the City will be extending Veterans Parkway all the way westerly to tie into Grand Prairie Parkway and then will construct Grand Prairie down to the Raccoon River. He continued the City will be paving 50<sup>th</sup> Street down to Veterans Parkway and then Adams Street over to 60<sup>th</sup> Street and then a portion of 60<sup>th</sup> Street. There is also a sewer line that will be extended. The Osmium area is primarily to the west of the interstate and is located in three counties, thus the reason for the separate maps. From Raccoon River Drive down to Madison/Dallas County line then the next section is what is in Madison County and running from the county line across Veterans Parkway and a strip in Warren County as well. In order for the City to have the ability to expand tax increment financing for public improvements, they have to be within an urban renewal area. The City has already received permission from Madison and Warren County to include unincorporated area that is going to be within the urban



renewal plan. The City held a consultation meeting on the project with one attendee who had no questions. He concluded, at this time, it is recommended that the Commission find the project consistent with the Comprehensive Plan.

Chairperson Erickson asked if anyone from the audience would like to speak to this item; seeing none, asked for continued discussion or a motion

Moved by Commissioner Crowley, seconded by Commissioner Andersen, Plan and Zoning Commission adopt a resolution finding that the Osmium Urban Renewal Plan is consistent with the Comprehensive Plan.

Vote: Andersen, Costa, Crowley, Erickson, Hatfield, Southworth.....Yes  
Brown.....Absent  
Motion carried.

**Item 5 – Staff Reports**

There were no Staff Reports.

**Item 6 - Adjournment**

Chairman Erickson asked for a motion to adjourn the meeting.

Motion by Commissioner Southworth, seconded by Commissioner Andersen, to adjourn the meeting.

Vote: Andersen, Costa, Crowley, Erickson, Hatfield, Southworth.....Yes  
Brown.....Absent  
Motion carried.

The meeting adjourned at 6:13 p.m.

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Craig Erickson, Chairman

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Juanita Greer, Recording Secretary