

**NORMAN PLANNING COMMISSION  
REGULAR SESSION MINUTES**

**JUNE 14, 2018**

The Planning Commission of the City of Norman, Cleveland County, State of Oklahoma, met in Regular Session in the Council Chambers of the Norman Municipal Building, 201 West Gray Street, on the 14<sup>th</sup> day of June, 2018. Notice and agenda of the meeting were posted at the Norman Municipal Building and online at <http://www.normanok.gov/content/boards-commissions> at least twenty-four hours prior to the beginning of the meeting.

Chairman Neil Robinson called the meeting to order at 6:30 p.m.

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Item No. 1, being:

**ROLL CALL**

MEMBERS PRESENT

Sandy Bahan  
Tom Knotts  
Neil Robinson  
Lark Zink  
Dave Boeck  
Erin Williford

MEMBERS ABSENT

Nouman Jan  
Chris Lewis  
Andy Sherrer

A quorum was present.

STAFF MEMBERS PRESENT

Susan Connors, Director, Planning &  
Community Development  
Jane Hudson, Principal Planner  
Roné Tromble, Recording Secretary  
David Riesland, Traffic Engineer  
Ken Danner, Subdivision Development  
Manager  
Drew Norlin, Asst. Development Coordinator  
Elisabeth Muckala, Assistant City Attorney  
Bryce Holland, Multimedia Specialist

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Item No. 3a, being:

**O-1718-52 – AN ORDINANCE OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, CLOSING A PORTION OF RIGHT-OF-WAY SOUTH OF ROCK CREEK ROAD AND WEST OF PENDELTON DRIVE IN THE SOUTHWEST QUARTER OF SECTION FOURTEEN (14), TOWNSHIP NINE (9) NORTH, RANGE THREE (3) WEST OF THE INDIAN MERIDIAN, NORMAN, CLEVELAND COUNTY, OKLAHOMA; AND PROVIDING FOR THE SEVERABILITY THEREOF.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Staff Report
3. Ordinance No. O-1718-52

and

Item No. 3b, being:

**O-1718-53 – S&S FAMILY PROPERTIES, L.L.C. REQUESTS REZONING FROM A-2, RURAL AGRICULTURAL DISTRICT, TO C-2, GENERAL COMMERCIAL DISTRICT, FOR APPROXIMATELY 0.78 ACRES OF PROPERTY GENERALLY LOCATED SOUTH OF ROCK CREEK ROAD AND WEST OF PENDELTON DRIVE.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Staff Report

**PRESENTATION BY STAFF:**

1. Jane Hudson reviewed the staff reports, copies of which are filed with the minutes. Staff supports the request to close the northern 33 feet of old Rock Creek Road and recommends approval of Ordinance No. O-1718-52. Based on the previous agreements for development and use of the site, staff supports Ordinance No. O-1718-53. Protests were received from property owners within the notification area that amounted to 17.3%.

2. Mr. Knotts – What is the distance between the single family on the south and the southern part of this subject tract?

Ms. Hudson – This should be 33 feet – the remaining area.

3. Mr. Robinson – Is that 33 foot segment that's up against the fence – is that to remain right-of-way?

Ms. Hudson – Yes.

**PRESENTATION BY THE APPLICANT:**

1. Harold Heiple, representing the applicant – Indulge me for a minute. I think it will help everybody if you get a little history behind why you have never seen a contract that is the basis of these concurrent resolutions in the history of Norman before, and you probably never will again. Back in 2009, we were getting ready to build the connections for the bridge to nowhere. The bridge over Rock Creek had been built and no connections on either end. Finally, federal and State money came along and said, okay, let's do it and we're going to relocate part of Rock Creek and in that kind of situation it is common that the municipality has to come up with the money to buy the easements that are necessary. Well, my people have owned this piece in their family for years. It's owned by two sisters – S & S stands for Sandra Kerr and Sherry Clark, the daughters of Colonel Yarbrough, and they inherited the property from their father. In 2009, what was taken from them included not only the area where Rock Creek was relocated, but a considerable more amount of property further over to the east and there's a rain garden over there and things along the service road that also were taken. So the City approached us and said we don't have enough money to pay you the fair market value of the property we need to take from you. Fortunately, they were dealing with a couple of ladies who didn't say, well, that's too bad; come back when you've got money, because that would have killed the project pretty much on that. Jeff Bryant, the City Attorney, and I started negotiating back and forth and

I went to California for the high school graduation of a grandson. I got a call one Monday that said, Harold, we really need to talk, because Del City has \$1.5 million of money from ODOT for a project that they've decided they're not going to do and they've turned it back to ODOT, and ODOT just called Norman and said, Norman, you can have that \$1.5 million if you let us know by noon on Friday. Well, folks, between that time and noon on Friday I spent a lot more time in the motel computer room than I did at the high school graduation, but we managed to hammer it out, and in doing so, instead of taking a whole lot of money and just walking, we took part of it land in trade and another part some appreciation as far as what could happen with it as far as zoning was concerned. A part of the plan was that every bit of the applicant's property was colored red on the Comp Plan. There was no zoning at the time, but I knew that if it was red on Comp Plan it would be relatively easy to get commercial zoning when the time came. I didn't know where it would be. We didn't have any idea who would be on what, because they owned 27 acres up in there. The property that has developed north of Rock Creek has been primarily, in fact virtually all offices and apartments. I'm not aware, unless there's some boutique commercial up there, of any at all. So this basically – this request for this C-2 on this little tiny piece is the first commercial request that's been sent out. Now I fully understand concern of neighbors who are looking at what some of them term a greenbelt and want to preserve that. That's not an uncommon thing in Norman. But I felt that the notice that was sent out was not completely clear as to exactly what was going to happen, and I think the letters of protest that were sent in reflect some of that confusion. Because of that, I sent a letter to the first eight houses – now if you're looking at that picture right up there and you start to the right of Pendleton and you count over, as you go around the curve, you get 11 and 12 houses, but the eight houses that back up to that property – and that picture is not correctly drawn, because the width of what I call the whale up there – that's the lot that looks like a whale swimming to the right-hand side of the paper – extends only 422' east-west and it stopped, according to the plat that I have, it stopped at the eighth house from the corner. So I wrote this letter to the eight people who live in those first eight houses, saying you are the most impacted by what is coming before you, and therefore let me give you some thoughts about why I think that notice was not correct. I gave them a statement in there – I have a copy of the letter and you're welcome to take it. Briefly, it gave some background about highway right-of-way and the fact that a section line road in Oklahoma contains 33' of dedicated highway roadway right-of-way on each side of the section line. Now, the property that is owned by S&S is in Section 14 of 9-3 – township 9 north, 3 west. The property owned south of that section line is in Section 23 – so they're not even in the same sections. Now, you see the cross-hatched portions that are looking up there. I'm sorry, the drawing is correct – well, not in the sense that it shows – it's the area that comes up to the eighth house that is – that cross-hatched property is what we're talking about. That's what the City is going to vacate part of and we're asking to rezone. Now look at that white strip under that dotted line – that's the 33' that was asked about that stays with them. It is right now highway right-of-way – highway easement. It will stay that way; it's not being closed. It's zoned agricultural. It contains a very large City water line which serves everybody out in that area and will not be moved. There is no chance that the City is ever going to close that half of the right-of-way; they have no reason to. Part of the contract was that, by agreeing to close this area here, the City was going to tear up the concrete, and that's exactly what they did in 2009. Because that white strip that's down there – before 2009 – that was the eastbound lane of Rock Creek Road. So the cars were going just right behind the fences of the people that are there now, and that certainly won't happen, and hasn't happened since 2009, and when this comes to they still will have that 33 feet of grass and the trees – that's one thing that one of the protesting neighbors from the area that backs up to it said we want to keep our trees. Well, there's no plan – we don't have any control over that land and there's no plan to tear anything down or to displace the grass that is there. So it is not a fact that some of them have been concerned about that this is just a grab and is going to put smokestacks right on the other side of their fences, because that's not the case. The rezoning to C-2 is because we don't know what might go in there. Now, obviously, when you have less than one acre, it's not going to be a mall; it's not going to be a Walmart Super Center or anything like that. It'll be some kind of a

small, one single story retail structure. That was the agreement, specifically, in 2009. This contract carries a whole lot of very specific things, because we had a lot of negotiating to do to try to get to the point that these ladies would be at least reasonably compensated for all the property that was being taken. Sandra Kerr is sitting here tonight. One of the ladies, the other sister, is out of town. But these are not people who are developers, who are hit and run just to get a fast buck and go on down to turn the next page. They've waited a long time and this closing of the right-of-way by the City is concurrent and mutually dependent on our rezoning, because that was part of this very specific contract. You go ahead and close it; we get to keep and put C-2 single family space on that tract. Now, there is another little tract right across Pendleton – you'll see it. It looks like a rectangle but in the upper left corner it's got a little curve. That also is retained under the contract under the ownership of S&S, and it's zoned agricultural; it'll stay that way. The contract specifically provides that we can use it for drainage and open space that might be required for any other development on the S&S property, and that – as those of you who are familiar with the drainage requirements of the City are aware, that's a big item to have things like that available. So those are the two. There will not be any change to that. There will not be any change at all to the 33' immediately behind their fences. Now, if you go over on Rock Creek Trail, which is up there now, and you stand – if you go to Pendleton and stand there just at the intersection, there's a double yellow line right in the middle of Rock Creek Trail. If you stand there and you look directly to the west, you can see where the section line goes to 36<sup>th</sup> Avenue, and it's a long way from the fences back there that are of the houses. And yet that is as far – that line – the sight line – is as far back as we're going – the cross-hatched property. So the 33' that are the bottom part of that subject tract contain a little over 13,000 square feet – that's all the City is doing is closing that particular easement for that side. The remainder of it is open territory. We don't know where someone who would buy would want to locate whatever particular single story business that they put in it. That's going to be dependent on whoever comes and buys it; we're not going to try to dictate who builds what where, other than to be committed to the fact that it's a single story, and we will also, besides the contract, we will have a restrictive covenant to file with the zoning ordinance that will – at the time that we put it in to make sure that people always know exactly what can and cannot be done on that particular single piece. There were three of the people who live in the eight houses that I sent the letters to have written letters of protest, and I'm prepared to address each of those three, but I don't want to take more time than you feel is necessary. If they come up and inquire about them, I'll be happy to come back up and try to answer them. But we're not putting anything backed up against their fences. We're not taking away their trees. We're not taking that 33 feet. We don't own it; we can't do it according to law. By contract, we are entitled to the C-2 zoning by the fact that it is, and has been since 2009, colored red on the Comp Plan – it certainly implies, with all the standard requirements that we would have to have in order to get C-2 zoning. With that, I'll be happy to answer any questions that I might. But we would respectfully ask you to approve both the City's request to close and our request to rezone.

2. Mr. Boeck – The only question I have is what are the north-south dimensions on the whale?

Mr. Heiple – What are the north-south dimensions? I can't tell you precisely because of the angles that are in there.

Mr. Boeck – Yeah, but I was just saying on the east side and on the west side, which is the long side and the short side.

Mr. Heiple – Well, the east side – you see where the letters ACT are in subject tract up there – that would be the longest north-south.

Mr. Boeck – That's what I was asking, what that dimension was. I was asking what that dimension is – north-south dimension.

Mr. Heiple – And what I'm trying to say is I know that that bottom line down there is 33', so it's more than 33' going up to the top, and I can tell you the exact amount of square footage that's in both the entire tract and in the roadway easement – a little under 14,000 square feet.

Mr. Boeck – That doesn't help me. I was trying to get some dimensions so I could think about what could be built there.

Mr. Heiple – That's going to be the challenge of somebody who may want to buy it. Who knows? Somebody may come in there and say there's no way we can make it fit. By the way, one of the other portions in the contract is there are no curb cuts onto Rock Creek, and the only curb cut allowed is at the very southeast corner of the whole up there, which would line up with Rock Creek Trail as it's coming.

3. Mr. Robinson – Will the public right-of-way to the south of the tract be used as a driveway?

Mr. Heiple – In the white area?

Mr. Robinson – Yeah.

Mr. Heiple – The white area is not ours. We couldn't use any part of it for parking.

Mr. Robinson – You could build a road there. It's a public right-of-way.

Mr. Heiple – No. No. No. We can't build a road on it. We can't do anything to that strip of white below the dotted line.

Mr. Robinson – So the access will be limited to Pendleton?

Mr. Heiple – Yes. Pendleton – you'll come off of Pendleton. That's right. And the southeast corner right there of the dotted line property. And that's the only place that the traffic engineer would consent – he really didn't want to allow that. It was kind of a case of landlocked, otherwise. But that's it. As I say, I'd be happy to answer any questions or to come back and respond to specific concerns that the residents had, because we respect the fact people don't want to have their lives or the property values diminished and that's understandable. I think that we have done a lot more than is usually done to be sure that there's a buffer there and that it will be as less an impact as could possibly be done.

#### **AUDIENCE PARTICIPATION:**

1. William Sims, 3400 Remington Street – Which is the corner of Remington and Pendleton. I have a couple of questions; I'm not sure if you folks are the people to ask or it's the actual Planning Department or whatever. The City a couple of years back made these apartments up here – Legacy Trail Apartments – and the only access to those apartments is directly north of Pendleton onto Rock Creek. I don't know what the total number of units are in that particular apartment complex, but it's probably similar to the number of houses in the Prairie Creek Subdivision to the south. It's a traffic nightmare many hours of the day because of the traffic coming out of those apartments. The business development across – the Legacy Business Park – not so bad. Apartments, yes. By the way, we built a bridge from nowhere across to the new retail and everything on the east side of the road, which adds to the traffic problems that we already have on Rock Creek, which wasn't there before we built the bridge and before we added all of this. The afternoons coming home – I come down the service road, turn on Rock Creek Trail, and most of the time I'll turn left and go south to my house. Occasionally I need to pick up a gallon of milk or something. I will often have to sit for several minutes just to make it to the stop sign on Rock Creek Trail to turn right to wait again to be able to take and get out onto Rock Creek Road to go to the neighborhood Walmart. It's a disaster, and then you're talking about that's going to be where you're – only place you're going to have access into that property is off of Pendleton which is, again – it's just going to add to the already problems that we've got with a very short distance between Rock Creek and that entrance. What was not discussed is there's some high voltage power lines that go through that property. I don't know all the regulations and stuff, but typically there's not anything built underneath high voltage power lines. So I assume OG&E or OEC, whoever's power lines they are, those would have to be relocated. So there's lots of things that I will agree with Mr. Heiple that were not included in that letter that we received and it's very disappointing not to have the information. Has the Planning Department contacted the Traffic Department, and has there been any kind of traffic survey done for this area? I haven't seen anything on the streets to take and do a traffic count whatsoever, so I'm assuming the answer to that is no. Haven't seen anything in regards – and

heard anything where the power lines are going to be moved. Are they going to be moved back to the residential area? Are they going to be moved out to the street? We don't know. There's just an awful lot of things that we don't have answers to. As he indicated, we don't have any knowledge of what's going to go there. Is it going to be a liquor store? Is it going to be a 24-hour 7-Eleven? There's lots of things there that just really are a little unnerving as a resident immediately to the south of it. If we can get those answers, I'll be happy to voice my concerns for or against them, but as of right now I'm very much adamantly opposed to the rezoning of this to commercial and the building of anything in that small area because it's just going to add to the already traffic issues that we have. Thank you.

2. Connie Brooks, 3417 Remington Street -- Which is Lot 5, right directly behind the subject tract. I don't want a Taco Bell behind my house. I don't want a bar behind my house. We enjoy our back yard patio with grandkids and kids. As the other gentleman said, the traffic is already horrendous. There are wrecks at Rock Creek and Pendleton quite frequently and it's just going to get worse. So I, too, am adamantly opposed to this being rezoned. Thank you.

3. Sau Lan Ho, 3405 Remington Street – I live on the second house north of Remington Street. I think there is a lot of concern for us, especially when you're looking at the map. Even though there is a 33' distance from our back yard to the new project but that is not a comfort for us at all. I'm thinking that 33 feet space – I'm looking at it now is it create an incubator from the new project to our back yard. We all know Oklahoma wind and that is a space to trap everything there – then who will be responsible to that? Then about the safety, and that will incubate for whatever reason for whatever people wanted to do things over there and anybody can imagine that. About the traffic – it's not only the traffic. It is downright dangerous, because we all experience it when we are leaving our house go north try to get to Walmart area and people coming to south – they try to come to Pendleton or going to turning to east to the service road and they don't turn signal – they don't watch us and they will just in front of us at different turn. I thought eventually there will be big, big dangerous and traffic and people will get killed over there. That is our concern. I think it is every one of us' concern. Thank you so much.

4. Brenda Toland, 2340 Buckhorn Drive – Good evening, distinguished Commission members and Mr. Heiple. Thank you for allowing us to come speak; we appreciate your time and your consideration of our concerns. I've lived at 2340 Buckhorn Drive since 1994. I, and I'm sure many of my fellow neighbors, moved to that neighborhood because it was quiet and safe and our restrictions protect us from certain detriments to our property such as no livestock is allowed that would be loud and smelly. We're not allowed to park trailers in our driveways to cause unsightly scenes. Even the City protects us from people who don't mow their grass; they come out and put out a notice and it has to be mowed. So we feel comfortable in our neighborhood that we have good property values and are concerned, in addition to all these that have already been named, the single story commercial building could be anything. It could be a 24-hour drive-through with a speaker box that's 34' from their back yard, with people all night long saying, give me a number 2 with a Dr. Pepper. So you'd have to contend with that. They could put their smelly trash out right up to that line. Any number of things. We don't know. That's what concerns me, is there are not really any restrictions as to what could be put there. So it could greatly devalue the property, especially of the eight people who their fence is right up to it. But, as we all know, if their property value goes down, if someone two blocks over puts their house up for sale, the selling price is determined by other homes that have sold in the area. So if their home sold for less, the rest of the homes are going to sell for less. So it's not going to only affect those eight people. I'm number 12, by the way. But it can affect our entire neighborhood. So I think we are here speaking on behalf of the entire Prairie Creek neighborhood. I walked the neighborhood myself – all of Remington Street and Remington Court – and talked to many neighbors who expressed their concern and, due to the busyness of everyone's lives, they were unable to come tonight or even maybe send in a letter, but they did express their concern. So

thank you very much for your concern, because you members are the ones that are standing between us and what's happening. Now, on the other hand, the nice ladies, Sandra and Geri, that own the property, have a right to develop this and make money off of it. We all have that right. But just as they have the right to smoke cigarettes, they don't have the right to smoke them next to me and harm my health. So I don't think that something should be allowed to be put there that would harm us and our livelihood. So, as written, I adamantly oppose it. Now, if it were to have further restrictions, such as across the street there's some very nice businesses – minimal traffic in them – if it was something like that, I would have no qualms and I would agree to it. But, as is, without the restrictions, I have to oppose it and I hope you can see our concern with that. Thank you very much.

5. Brandon Buss, 3409 Remington Street – Which is the third house there behind the subject tract. I guess I want to start off by saying Harold mentioned that he didn't think that a lot of us understood what was going on with that letter that came through. There may have been some pieces of it, such as the 33' that he says that they can't touch – don't know if the City could touch it – you know what could go on there, so I wasn't clear about that, but I'm pretty sure most of the neighborhood is clear is about what's wanting to rezone it to – the C-2, right? And I think you said this was the first piece of C-2 in the area that was going to be actually rezoned as C-2. We have built that – as a City built that area up. It looks really nice. There's beautiful light poles going through there. The area is nice, like she said. Across the street we've got some nice businesses over there. Keller Williams, I think, is over there. A couple of other – some type of a doctor's office, I think, is over there of some type. Those types of business keep that area nice and I think helps keep things nice. Putting in – correct me if I'm wrong – a piece of C-2 could be anything, correct? Retail. It could be, like somebody said, I think, a Taco Bell or something like that. Is that correct? If so, I think that just downgrades our area over there. The other thing that I want to say is the entrance to that is going to be right there on the back of our properties. If the only entrance into there is on the southeast corner of that subject tract, then that tells me the parking is going to be on our side – up to my back fence – 33' away from my back yard, basically. I don't know how many of you guys want parking 33' away from your back yard, but that means that there's going to be lights, which is going to shine in my back yard. That means there's probably going to be trash on that side, because they're definitely not going to put the trash on the Rock Creek Road side if there's going to be some type of trash. There's going to be deliveries right behind my house, which I am adamantly opposed to. So, if you can't tell, I'm adamantly opposed to this. We spend a lot of time in our back yards. I know a lot of the neighbors do there. To have some type of commercial business right behind us, I'm not in favor of at all. I think that's pretty much all I have. I just feel like you're taking – I think somebody said they're taking our privacy away. I think they're taking our privacy away by putting this subject tract land there. Harold said it's a small piece and it is a small piece. There's not a whole lot that could go in there. But there is enough room to take away our privacy on what we have there. Thank you.

**DISCUSSION AND ACTION BY THE PLANNING COMMISSION:**

1. Mr. Robinson – I have a question for Mr. Heiple. One of the things that's been brought up by the public are access issues and the traffic. Has there been a traffic study, or do you plan a traffic study for this?

Mr. Heiple – This particular piece would not require a traffic study. But let me just give you a little history. I pushed like the devil to get that Pendleton extended into that property up there, and I asked for several more curb cuts onto Rock Creek, which the traffic engineer turned down summarily. I totally agree with the fact that you've got a traffic gridlock up there, and one of two things ought to happen – or both. That is either get a stop light – a 4-way stop light put in up there, which could still handle most of the traffic on Rock Creek. It's kind of like when I go out to Main Street and I go on Mercedes. Well, I've got to sit there at Mercedes for a while, but I'm going to get to be able to turn left sooner or later. So that is something that I think should – great pressure should be brought and I'll guarantee you we'll support any way we can additional

improvements as far as traffic – traffic light and/or additional curb cuts onto – not on the south side of Rock Creek, but into the north side so that the people that have gotten up there can have other ways to get out. Does that cover your concern about the traffic?

2. Mr. Heiple – Let me respond to a couple of things -- the people who talked about restrictive covenants that they have available. Basically, we've got some restrictions in ours that we will have to have. But the comments about things like traffic not being allowed to park in the front, things like air quality and sound level – these are all regulated by City ordinance. I can appreciate the lady that stood up here and ordered a Dr. Pepper in a very loud tone, because at one time we had an automobile dealership on West Main Street that had speakers out there that was blowing the neighbors away at 10:00 at night. I know that the City, for example, can prevent light from coming over a property boundary line, by using box lights that requires that the retailer shine straight down and not intrude on the neighbors. Things like that are available and I have no problem in asking the clients even to put things like that into their own restrictive covenants that we put on the property to show that we're not going to have anything that will shine lights into their back yard. I'll ask them to consider also the fact that – to in some way discourage outside speakers. Because I know we've got theoretically a noise ordinance that covers that, but I could see that we ought to be able to give some limitation. I would encourage my clients to let's explore that to take away as much as we can the possibility of sound intrusion, as well as light intrusion, that comes in. If it comes to smell quality on the property – if it's smelling like that, friends, it's a nuisance and the City will nail you for a nuisance before they'll do anything else. So there are a lot of protections that existing City laws provide and all folks have got to do is pick up the telephone and complain, because our complaint department has to be on a reactive basis. City doesn't respond unless there is a complaint lodged. So I would encourage the residents out there to feel free to object to anything that talked about violating the noise ordinance, the light ordinance, or anything else that goes on. We're not trying to destroy anybody's lives at all. I am adamantly – I've been standing up here for 50 years and I am adamantly convinced that a small tract could go in that location out there without adversely impacting the people, but I do think that some special attention needs to be given to this traffic situation, because that is intolerable. When you've got Rock Creek Road going wide open and no regulation – not having a stop, you could sit out there for a whole long time, and the world shouldn't exist like that. So, anyway, that I hope addressed some of these things.

3. Mr. Knotts – Can you tell me what the turning radius of an F-150 pick-up is? Do you have that on the top of your head?

Mr. Robinson – Somewhere around 38'.

Mr. Knotts – That would be the inside radius?

Mr. Robinson – It would be hard for one to get in here.

Mr. Knotts – To get in and turn and have a drive-thru is where I'm going with that, and the idea that with only one entrance – curb cut – it really doesn't – I mean, it's not prohibited, but it doesn't lend itself.

Mr. Boeck – And it's not just turning radius – to do a drive-thru I think you have to have like a minimum of about 110' of leader driveway.

Mr. Robinson – I think another issue, too, is the proximity to the intersection there for vehicles coming and going out of a driveway on Pendleton would be really difficult for that traffic to be managed. I mean, maybe they could work it out. I would think the tendency would be to go down into the public right-of-way to the south and pave that as a public street and use it as an access – that's what I would think.

Mr. Knotts – But it still – the limited size of that – using comparative areas there, it looks like it may be 80' north-south on the big end.

Mr. Boeck – I was thinking 90, but somewhere in there.

Mr. Knotts – Big end of the whale.

Mr. Boeck – About 15' on the short end of the whale – 20.



Mr. Knotts – So it really doesn't lend itself for – I mean, we didn't find out whether she wanted cheese with that Number Two, but it doesn't really lend itself to drive-thru restaurant or that kind of situation. We do have, fortunately, light ordinances that would keep these lights out of any of their back yards and things like that.

4. Ms. Zink – I do have a question for Mr. Heiple, if that's okay. I'm just concerned about the precedent of allowing an agreement that's already been taken place between the City and it was ratified by the Council being reneged on. Is there anything in the agreement that says what would happen if it doesn't come to pass that the rezoning is approved?

Mr. Heiple – Yes, ma'am. A breach of contract lawsuit would be filed. Just like Kathryn Walker told me when I said Kathryn, we'll put in restrictive covenants to embrace the things we promised in the contract. She said, you don't have to, Harold, we can sue you for breach of contract. That's a two-way street. Very honestly, my clients don't have any choice if the City Council doesn't approve it. They've got no other recourse but to go file a lawsuit for breach of contract and I'll give odds that they'll win. A city council – well, I don't want to tell them they can't do something. But there are certainly legal qualifications to doing that, and that's the difference between this particular application and every other application I've ever dealt with, because I've been subject to everything that's been raised here before and they're all legitimate requests that we had to comply with. This was one that got the City of Norman to agree to do this thing because we got the City an additional \$1.5 million by Friday at noon that it wouldn't have had.

Mr. Boeck – So why didn't the City just do this? This seems like a conundrum. We're wasting our time here because it's already been approved and – you've told us before that we're just a recommending body and that you'd take us to court anyhow if we tried to set policy.

Mr. Heiple – I'm not going to take you to court. I can't. You are a recommending body. I know that. Very honestly, you can do whatever you want except postpone over the objection of the applicant. We've been down that road before.

Mr. Boeck – And due to what's been going on between us and City Council, everything that we pass here lately doesn't get even considered by City Council.

Mr. Heiple – I'm not undertaking to heal any wounds or calm any waters that's going between those two bodies. You're on your own there. I'm just telling you that the City Council is the only one that's got the final action here. So the difference is, as a recommending body, while you are faced with the fact that, yes, it could be a breach of contract, there's nothing to prevent every one of you from voting recommending denial on this thing. I hope you won't. But you're not exposing yourself to any liability if you don't. But you are putting the City Council into a situation of, well, I guess we better really give serious consideration whether we want to get sued for breach of contract or not. I will tell you very quickly that if there's a breach of contract suit brought, it will not be me bringing the lawsuit. By that I mean it will be a very large law firm whose costs of defense and prosecution are expensive.

Mr. Boeck – Well, we've learned from this City Council that we can pass something unanimously – eight to nothing – and they can turn it down eight to nothing without even a wink.

Mr. Heiple – Dave, that's always been the situation. I mean, that's always been the legal situation. Unfortunately – or fortunately in years past there's been a closer communication and closer cooperation between Planning Commission and City Council. We can't – I don't think any of us – you or me – can comment on what that relation is or should be. There's nothing that I can do about it.

5. Ms. Muckala – In light of questions about the contract, I did bring the agreement that we're talking about, which is publicly filed of record, to point you to language that pertains to this. There have been a couple of questions – I'll try to address them both. The first is that 33' that's to the south – the white strip that's not being discussed for vacation. That is public right-of-way. It will remain so unless vacated separately. What is particular about that – we've talked about the use as a street. In this case, this parcel owner has agreed in this agreement that they

may only access that parcel by the southeast corner. So as far as their ability to do that, they cannot. They can only access that parcel based on that contractual agreement, just as Mr. Heiple said. That's their responsibility to file those restrictive covenants upon development of that parcel. So the other questions related to the zoning aspect of this request. What happened at the time of the agreement is that there was a land use change to this parcel, as well as others. There's been some mention of the use in the area. There's a request for C-2, but the ones to the north on other slides, which I won't attempt to find, but they showed that the ones to the north of Rock Creek are also C-2. Land use for a lot of this land was all changed at the same time in 2009 in our 2025 Plan to commercial. I can read you some language here from the agreement that says, these two Pendleton parcels will be recognized as commercial properties under the 2025 Land Use Plan and, upon appropriate application, will be considered for development with the following conditions – and those are all the conditions that Ms. Hudson has listed for you before. Further, there is discussion of the allowance for this applicant previously to submit their 2025 change separately of zoning, which was an exception that occurred as part of this agreement, which happened and was granted. So it is 2025 commercial. It says at the bottom of that provision, it is recognized that such a recommended increase in intensity of use will require appropriate applications for a zoning change and a preliminary plat. So that's why we're here. And absolutely you are to vote on this in your capacity as Commissioners.

Mr. Robinson – In your opinion, does that agreement require the City Council to accept a rezoning application?

Ms. Muckala – Zoning cannot be accomplished by contract. It must be afforded a public hearing under our ordinances, and so you are the body that accomplishes the changing of zoning. It can't be this contract. Does that answer your question?

Mr. Robinson -- So our recommendation goes to the City Council. The City Council then is free, under that agreement, to reject the rezoning?

Ms. Muckala – Would you repeat the last part of your question?

Mr. Robinson – If we recommend, for instance, to deny this and it moves on to the City Council and the City Council agrees and denies the application for the rezoning, are they free under that agreement that you just cited to reject that rezoning application?

Ms. Muckala – They do have the power to reject the rezoning. Nothing can control Mr. Heiple or his clients' actions after that, but they do have the power to reject that. And, I'm sorry, I misspoke before. You are the recommendatory body.

Mr. Robinson – Okay. Thank you.

*Dave Boeck moved to recommend adoption of Ordinance No. O-1718-52 to the City Council. Tom Knotts seconded the motion.*

There being no further discussion, a vote on the motion was taken with the following result:

YEAS	Sandy Bahan, Tom Knotts, Lark Zink
NAYES	Neil Robinson, Dave Boeck, Erin Williford
MEMBERS ABSENT	Nouman Jan, Chris Lewis, Andy Sherrer

Ms. Tromble announced that the motion, to recommend adoption of Ordinance No. O-1718-52 to the City Council, failed by a vote of 3-3.

*Dave Boeck moved to recommend adoption of Ordinance No. O-1718-53 to the City Council. Erin Williford seconded the motion.*

There being no further discussion, a vote on the motion was taken with the following result:

YEAS	Tom Knotts
NAYES	Sandy Bahan, Neil Robinson, Lark Zink, Dave Boeck, Erin Williford
MEMBERS ABSENT	Nouman Jan, Chris Lewis, Andy Sherrer

Ms. Tromble announced that the motion, to recommend adoption of Ordinance No. O-1718-53 to the City Council, failed by a vote of 1-5.

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