



## **MINUTES – Opening Remarks**

### **Planning Commission Meeting: April 29, 2024**

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The Planning Commission convened at 7:00 p.m. to meet in regular session with **Chairman Wayne Janner** presiding. Commissioners Taylor Breen, Keith Brown, Ken Chapman, Jeffrey Creighton, Megan Lynn and Jim Terrones were present. Commissioners Tony Bergida and Chip Corcoran were absent.

*Recited Pledge of Allegiance.*

**Chair Janner** made introductory comments. He stated the televised Planning Commission meetings will come to an end on May 31<sup>st</sup>. After that date, meetings will be available to view via live streaming on the Olathe website.

**Chair Janner** directed commissioners to report if they have had ex parte communication when that item is reached in the agenda.

**Chair Janner** referenced the Planning Commission Consent Agenda, which included two items.

**Chair Janner** asked if any items need to be removed for separate discussion or additional information. Seeing none, Chair Janner asked for a motion on the consent agenda.

A motion to approve MN24-0408 was made by **Commissioner Breen** and seconded by **Commissioner Terrones**. The motion passed 7 to 0.



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<b>Application:</b>	<b><u>MP24-0008:</u></b> Request for approval of a minor plat of Silvercreek Landing, First Plat, containing five (5) lots on approximately 0.31 acres, located northwest of S. Sunnybrook Boulevard and W. 116th Terrace.
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A motion to approve MP24-0008 was made by **Commissioner Breen** and seconded by **Commissioner Terrones**. The motion passed with a vote of 7 to 0 with the following stipulation:

1. Documents for the required Homeowners Association must be recorded with the minor plat. The documents must contemplate the shared maintenance of all common drives, open space, stormwater and utility services.



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<b>Application:</b>	<b><u>SU23-0007:</u></b> Request for approval of a special use permit for the expansion of a compound area for Verizon on approximately 7.42 acres, located at 15201 S. Mur-Len Road.
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A motion to continue SU23-0007 to a future Planning Commission meeting was made by **Commissioner Chapman** and seconded by **Commissioner Creighton**.

The motion passed with a vote of 7 to 0.



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<b>Application:</b>	<b><u>RZ24-0007:</u></b> Request for approval of a rezoning from the RP-1 (Planned Single-Family) District, CP-1 (Planned Retail Business) District, and the CP-O (Planned Office) District to the C-1 (Neighborhood Center) District and a preliminary site development plan for Primrose School of Olathe on approximately 3.74 acres; located southwest of W. 158th Street and S. Hunter Road.
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A motion to continue RZ24-0007 to a future Planning Commission meeting was made by **Commissioner Breen** and seconded by **Commissioner Chapman**.

The motion passed with a vote of 7 to 0.



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### Planning Commission Meeting: April 29, 2024

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<b>Application:</b>	<b><u>RZ23-0011</u>:</b> Request for approval of a rezoning from the M-2 (General Industrial) District to the C-2 (Community Center) District and a preliminary site development plan for New Creation Community Center on approximately 0.26 acres; located at 504 E. Kansas City Road.
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**Ms. Emily Carrillo, Senior Planner**, presented RZ23-0011, a request to approve a rezoning to the C-2 (Community Center) District and a preliminary site development plan for New Creation Community Center at 504 E. Kansas City Road. The existing building, constructed in the mid-1960s, was previously used as an auction facility. The property was zoned to M-2 in 1970. New Creation, a non-profit organization, purchased the property in 2023 to use as a gathering space and social service support location for those recovering from substance abuse disorders. This use is categorized by the UDO as “Social Services” which is not permitted in the M-2 zoning district. Thus, staff notified the applicant that rezoning to C-2 would be required for their intended use. The applicant did begin utilizing the property for their patrons prior to submitting the application but have since been working closely with staff to bring the site and use into compliance.

Ms. Carrillo continued that the C-2 District permits over 94 uses that include pedestrian-scale commercial uses that draw from multiple neighborhoods as called for by PlanOlathe. While the district is appropriate for this location, zoning restrictions are recommended to ensure compatibility with the area and adjacent residential zoning. The requested zoning aligns with the Future Land Use map which designates the area as a mix of Urban Center/Downtown.. It would create a less intense district adjacent to residential and allow for commercial uses that directly support the neighborhood. This application meets the goals and policies of PlanOlathe regarding consistency with the Comprehensive Plan, encouraging a mix of complimentary uses for Downtown and Original Town Neighborhoods.

Ms. Carrillo presented the elevations of the New Creation Community Center. The applicant has made improvements since acquiring the structure, including painting and repair of the siding and the entry canopy, removal of bars from windows, and new building signage. New metal awnings will be placed in the future over the exterior doors on the east primary façade. Ms. Carrillo presented the preliminary site development plan, which includes an existing non-conforming structure which is permitted to remain in accordance with UDO Section 18.60. Ms. Carrillo continued, stating the applicant will reduce the

existing impervious surface by removing sections of paved areas and gravel (adjacent to Kansas City Road) and replace those areas with sod. Landscaping will be added as space allows, along the entrances and to help screen the parking as well as the trash enclosure. Onsite parking meets code requirements for the proposed use. Ms. Carrillo stated there is an existing 15-foot-wide sanitary sewer easement along the north end of the property; therefore, any new construction, including expansion or accessory structures, would not be permitted within that area as stipulated in the plans.

Ms. Carrillo stated all public notice requirements have been met, and a neighborhood meeting was held with one member of the public in attendance. The applicant addressed all questions. Overall, the resident express general support of the project, use, and New Creation's service in the community. Meeting notes were included in the packet. Staff has not received any correspondence regarding the project.

Ms. Carrillo summarized the application meets the criteria for considering zoning applications. Staff recommends approval of the rezoning to the C-2 district with the one stipulation regarding the land use restrictions. Staff also recommends approval of the preliminary site development plan with stipulations to address a few required details prior to final site development plans.

**Chair Janner** thanked Ms. Carrillo for her presentation. He stated it is his understanding New Creation has other operations in the neighborhood. He asked whether staff has identified those locations.

**Ms. Carrillo** answered there are a few associated residential properties in the vicinity which are all zoned appropriately and permitted by right.

**Chair Janner** asked for a map of those locations. Ms. Carrillo stated she did not have a specific map available, but answered she believed most were generally to the north of the subject property.

**Chair Janner** called for any additional questions for staff.

**Commissioner Creighton** stated the area has a number of different land uses (M-2, R-1, R-3, CP, etc.). While he did not take issue with the proposed use, Commissioner Creighton asked if the organization outgrows their current operation, whether other businesses could move into this building. Commissioner Creighton expressed he was concerned not to limit a future business owner on the property and asked for a few examples of what businesses would still be allowed.

**Ms. Carrillo** answered that uses that would serve the adjacent residential area and slightly beyond that area would be allowed, for example, a daycare.

**Commissioner Creighton** asked whether making this change would put any hardship on the M-2 that are still in the area, limiting what they can do in the future on those sites.

**Ms. Carrillo** answered no. If any M-2 or any of those properties wanted to submit for a zoning amendment or application, staff would align recommendations with the future land use map.

**Commissioner Creighton** asked whether rezoning to C-2 would be the ultimate goal for this area? He noted this area has changed significantly from the primarily industrial and retail area it was when he came to Olathe in 1984.

**Ms. Carrillo** answered, less intense zoning, like C-2 or C-1 would be appropriate for this area.

With no additional questions, **Chair Janner** opened the public hearing, but no one was signed up to speak.

With no further comments, **Chair Janner** entertained a motion to close the public hearing.

A motion was made by **Commissioner Breen** to close the public hearing, seconded by **Commissioner Chapman**. The motion passed by a vote of 7 to 0.

With no further discussion, **Chair Janner** entertained a motion on the item.

**Commissioner Creighton** moved to recommend approval of RZ23-0011, subject to all staff comments and recommendations including the preliminary site development plan, and **Commissioner Breen** seconded.

The motion passed with a vote of 7 to 0 as follows:

- A. Staff recommends approval of RZ23-0011 for the following reasons:
  1. The proposed development complies with the policies and goals of the PlanOlathe Comprehensive Plan.
  2. The requested rezoning to the C-2 District meets the Unified Development Ordinance (UDO) criteria for considering zoning applications.
- B. Staff recommends approval of the rezoning to the C-2 District with the following stipulations:
  1. The following uses are prohibited:
    - a. Animal Care – Indoor or Outdoor Kennel
    - b. Bars, Taverns, and Drinking Establishments
    - c. Convenience Stores, with Gas Sales
    - d. Entertainment Establishment
    - e. Gas Station

- f. Leasing/Rental – Consumer or Recreational Goods
- g. Liquor Store
- h. Any Distance Restricted Businesses as listed in Olathe Municipal Code Chapter 5.43

C. Staff recommends approval of the preliminary development plan with the following stipulations:

1. Proposed accessory structures must be removed and relocated outside of the existing sanitary sewer easement with submittal of the final site development plan.
2. Building elevations must be revised to include awnings or canopies over exterior doorways located on the east (primary) façade with submittal of the final site development plan.
3. Approved parking areas will be paved and striped per UDO 18.30.160.
4. All exterior signs require a permit in accordance with UDO 18.50.190.
5. All new on-site wiring and cables must be placed underground.
6. Exterior ground-mounted or building mounted equipment including but not limited to, mechanical equipment, utilities' meter banks and coolers must be screened from public view with three (3) sided landscaping or an architectural treatment compatible with the building architecture.





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<b>Application:</b>	<b><u>RZ23-0013:</u></b> Request for approval of a rezoning from the RP-1 (Planned Single-Family Residential) District to the C-1 (Neighborhood Center) District and a preliminary site development plan for Caribou Coffee on approximately 1.10 acres; located northeast of W. 159th Street and S. Brentwood Road.
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**Ms. Emily Carrillo, Senior Planner**, presented RZ23-0013, a request to rezone Tract A of the Asbury Center along with an associated preliminary site development plan for Caribou Coffee, at the northeast corner of W 159th Street and Brentwood Road.

Ms. Carrillo stated this development proposal includes two (2) commercial lots, which are on the southeast corner of the larger Asbury Center commercial development. The overall Asbury Center has begun to develop: There is an existing daycare on the northeast portion of the development. A rezoning application with preliminary plans for Lot 4 was recently approved in October 2023, for Central Bank and a separate multi-tenant commercial building. A rezoning application for Primrose Daycare on Lot 1 was continued tonight, so that application is currently pending as well.

Ms. Carrillo presented that the subject property is currently zoned RP-1 (Planned Single Family Residential) District, and the applicant is requesting to rezone to the C-1 (Neighborhood Center) District to allow for Caribou Coffee and conceptual commercial building. The C-1 District provides for a greater variety of neighborhood-focused commercial uses and services and is also consistent with both pending applications previously mentioned. The PlanOlathe Future Land Use Map designates this area as Conventional Neighborhood, which typically consists of single-family residential homes. PlanOlathe calls for Neighborhood Centers distributed throughout residential areas to provide local access and convenience to goods and services and to promote walkability. The Asbury Center has started to establish as a Low-Intensity Neighborhood Center, which is consistent with other commercial nodes along Mur-Len and Ridgeview Roads.

Ms. Carrillo continued, stating the proposed C-1 District aligns with other policies of PlanOlathe regarding complete neighborhoods, high quality design and providing a mix of complementary land uses. The C-1 District permits over 70 uses that provide convenience of goods and services called for by PlanOlathe. While the rezoning is compatible with the adjacent commercial and office districts already found in the

development, use restrictions are recommended. These restricted uses are consistent with the overall development stipulations, restricting drive-throughs.

Ms. Carrillo showed an image of the UDO's Use Matrix, demonstrating that the proposed coffee shop with drive-through is categorized as "Restaurant, Carryout or Fast Food" as defined in UDO Chapter 18.20.500. This use is not permitted in the existing RP-1 District, which is why the applicant is requesting to rezone to the C-1 District. Ms. Carrillo explained that fast food uses in general typically attract a higher volume of traffic, require increased exterior lighting, contribute to additional noise, and may operate with longer hours of operation, up to 24 hours.

With these potential factors, staff recommends restricting "Restaurant, Carryout or Fast Food" use at this location, due to the direct proximity of residential neighborhoods to the west and the southwest, as well as the need to maintain consistency within the overall Asbury Center development. The applicant is amenable to the proposed land use restrictions with the exception of the fast-food use. Staff advised the applicant of the incompatibility of the requested land use at this location as recommended. However, they still desired to proceed with this application.

Although Staff supports rezoning to the C-1 District, Staff does not support the requested land use at this location. As stated in UDO 18.40, if the land use is prohibited, then the plan application automatically fails. Staff did complete a full review of the site plan and the building design despite the recommendation for denial.

Ms. Carrillo presented the proposed site plan for Caribou Coffee, which includes a 605 square foot fast-food building with the drive-through on Lot 1. A future Phase 2 includes a conceptual 4,500 square foot general commercial building. The details provided for Lot 2 are conceptual only and do not include the typical level of detail. A revised preliminary site development plan will be required for Lot 2 prior to submittal of the final site development plan.

Ms. Carrillo presented the applicant's plans and renderings of the Caribou Coffee shop and outdoor patio area, including pedestrian connections and planned landscaping that would preserve trees and exceed requirements. Ms. Carrillo presented the building's orientation which was designed to meet the zoning district and the site design category intent for proximity to the street and maximum build-out frontage percentages. Per Code, drive-through windows must not face a public street. Instead, the drive through window is located on the north side of the building, which also allows for internal circulation of this site. There is a walk-up order window located on the south side for pedestrians. The proposed outdoor seating and pedestrian connections create a public facing outdoor amenity space within the larger Asbury Center development.

The applicant requests two (2) waivers. The first waiver is to the setback adjacent to 159th Street and the building frontage: The building sits at about 15 feet, and the requirement within the zoning district is 20 feet. The applicant requests their building frontage be reduced from 50% as required by C-1 District, to 30%. Ms. Carrillo noted both waiver

requests (15 feet building setback and 30% frontage) do meet the site design Category 3 requirements.

Ms. Carrillo continued that both Lots 1 and 2 are subject to the commercial and retail building design standards per the UDO. The west, north and south elevations of the coffee shop are considered primary facades. A second waiver is requested in order to reduce the amount of glass required on these primary facades from 25% down to 20% due to the building's compact footprint and the interior functions of the space needed for operations. Ms. Carrillo showed perspectives.

Ms. Carrillo stated all public notice requirements have been met and a neighborhood meeting was held. Eight (8) residents attended the meeting and asked questions regarding access, anticipated traffic, compatibility with adjacent land uses, and clarification regarding staff's recommendation. During the meeting, no one spoke in opposition of the proposal. The applicant addressed all questions, and overall, residents expressed their support of the proposed use.

After the packet was published, staff received one e-mail correspondence, which was then provided to the Commissioners in advance of tonight's meeting. That resident agreed with the proposal when she attended the neighborhood meeting and later changed her opinion, expressing concern about opening the door to fast-food in general and concern about regarding the use in the vicinity of the residential.

Ms. Carrillo concluded that staff recommends approval of a rezoning to the C-1 District with three land use restrictions (Fast-Food or Carryout Restaurants; Animal Care Facilities with Outdoor Kennels; and Any Distance Restricted Businesses as listed in Olathe Municipal Code Chapter 5.43). However, staff recommends denial of the preliminary site development plan due to the recommendation of the proposed fast food land use associated with the development plan.

Ms. Carrillo further directed that staff needs two separate motions this evening: a motion to consider the zoning district [Motion 1], and a second motion regarding the preliminary site development plan for the coffee shop use [Motion 2].

Ms. Carrillo stated the applicant would like to briefly speak about the project.

**Chair Janner** called the applicant forward.

**Mr. Joe Campbell, 14593 S Twilight Lane, Olathe, KS 66062**, stated he was the original developer for the 73-acre parcel that includes the Village of Asbury, Asbury Estates and Asbury Center. He thanked Emily and staff for their quick responses and collaboration. Mr. Campbell also introduced Mr. Rob Barse, Mint Development, which is the preferred contractor for Caribou Coffee and present at the meeting. Mr. Campbell stated there are others (members of the public) present first who would like to speak and then he'd like to be available for questions afterwards.

**Chair Janner** agreed if there are additional questions, he can bring Applicant back to the podium to address those.

**Chair Janner** called for questions from the Commissioners.

**Commissioner Terrones** asked whether the plan was for a 24- hour coffee drive through or whether there were any time limitations on hours of operation.

**Ms. Carrillo** answered their planned hours of operation typically are about 6:00 am to 6:00 pm, which could vary a few hours based on locations throughout the nation. For example, it's sometimes 5:00 am to 7:00 pm.

**Commissioner Chapman** asked staff to explain the difference between fast food and fast casual.

**Ms. Carrillo** showed the UDO's Use Matrix, which lists three different categories for restaurant uses: Fast Food, Fast Casual and then more traditional Sit Down. There are several factors to consider: Meals that are pre-packaged versus fresh, healthier meals prepared on site. Hours of operation are a factor. Fast Casual has an option to dine in with utensils, real plates and place settings. Those are the main differences between a fast food and a fast casual.

**Commissioner Chapman** referenced one of the presentation slides which listed items typically found with some fast-food restaurants, for example hours of operation and increased exterior lighting. Commissioner Chapman asked whether there is an indication for increased exterior lighting with this particular plan request.

**Ms. Carrillo** stated staff hasn't evaluated that level of detail in the proposed development plan. Those statements are factors for fast food in general.

**Commissioner Creighton** acknowledged he understands the request for two separate motions and that staff is supportive of the rezoning but has concerns about the preliminary site development plan. He further acknowledged concerns in the resident's email about setting precedent for more intense fast-food use and concerns about possible headlights in the early morning or evenings shining into her residence. He asked staff to respond to these two concerns.

**Ms. Carrillo** showed the site plan and referenced landscaping and the drive through pattern. She stated the residence in question was to the west. Ms. Carrillo noted the applicant is exceeding landscape requirements, but staff would work to make sure that there is significant landscaping along Brentwood or perhaps extend small low retaining walls along 159<sup>th</sup> to help screen the lights prior to any final plan approval. Ms. Carrillo continued that regarding the use, if this were to be recommended for approval, Section 13 of the staff report identifies additional stipulations staff recommends. Ms. Carrillo continued if another location or fast food use were proposed in the future, staff would analyze that proposal against the future land use map, considering the adjacent vicinity and what's appropriate.

**Commissioner Creighton** stated he was asking in order to better understand staff's recommendation, because in the recommendation for the zoning district, it said "the following use would be prohibited - fast food."

**Ms. Kim Hollingsworth, Planning and Development Manager** asked to add one additional piece of information regarding precedent-setting. She stated in all the properties around this subject property, that use is restricted currently. If there was a fast food request in the future, it would go through the entire process of neighborhood meeting, public hearing at Planning Commission, and City Council, whether it is a new district or a zoning amendment to an existing district. It would have all those checkpoints in place.

With no further questions, **Chair Janner** opened the public hearing and called the first speaker to the podium.

**Mr. Bill Seiler, 15554 S. Hillside St. Unit 3903, Villas of Asbury, Olathe, KS 66062** stated he is the president of the board for the HOA. He is here individually because the Board and the HOA have not taken a formal position one way or the other. Mr. Seiler stated in the application process last fall for Central Bank they were initially concerned about fast food use, because of longer operating hours and traffic. Mr. Seiler talked to Ms. Mitchell this morning, who sent the e-mail. If the Commission moves forward with the preliminary site approval, Mr. Seiler asked that the Commission accepts conditions to restrict time on the operation of whatever business goes in and any future businesses on the property. Mr. Seiler asked that the Commission address the headlight issue. Mr. Seiler further noted discussion with his community, there are a lot of people that would welcome this particular addition. He believed the major concern of his HOA's residents are at the south end, off W 158th Place with the traffic coming and the hours of operation. Though it's not formally an age-restricted community, most residents there are probably past 60. Mr. Seiler told Mr. Campbell and Rob from Caribou that they would come and make a comment to indicate that the HOA doesn't have strong opposition one way or the other, but the residents do want the restrictions to be part of any approval.

With no further speakers signed up to speak, **Chair Janner** entertained a motion to close the public hearing.

**Commissioner Creighton** moved to close the public hearing and **Commission Terrones** seconded. The motion passed 7 to 0.

**Chair Janner** then called for any discussion amongst the Commission.

**Commissioner Chapman** stated in September, the Commission approved and passed on to City Council, the development which initially was to be a restaurant, which the Commission characterized as fast casual, but with two drive through lanes. This one here is going to be providing food as well. It will have different types of food, but through one single drive through lane. He continued he was in favor of the rezoning, but also in favor of allowing Item Number 13 [referencing the staff report], regarding the zoning district,

with items one and two, prohibiting the fast food or carry out restaurants only on Lot 2 and then the hours of operation.

**Commissioner Breen** acknowledged Commissioner Chapman's reference to the September application and asked staff to articulate or remind the Commission about the few past cases that dealt with the fast food. Commissioner Breen stated he was under the impression that the Commission had rejected fast food on a neighboring property before, but indicated perhaps he was incorrectly recalling that outcome.

**Ms. Hollingsworth** asking Commissioner Breen whether he was talking about the adjacent property to the east, and **Commissioner Breen** confirmed. **Ms. Hollingsworth** then stated that property was approved as fast casual or sit down restaurant - not fast food. Ms. Hollingsworth further clarified a business has to check all of the boxes on fast casual: healthier menu, more expensive items, items made to order, and also the silverware piece. A restaurant has to do all those items, not just a few, in order to be in the fast casual category.

**Commissioner Breen** restated the adjacent property was a 'fast casual' designation and thanked Ms. Hollingsworth for the reminder.

**Commissioner Brown** requested that Ms. Carrillo put one of the presentation slides back on the screen with the options on the two motions. He requested Ms. Carrillo re-explain the options.

**Ms. Carrillo** pulled up the slide and stated two motions would be needed: One on the zoning district and the second to consider the preliminary site development plan.

**Chair Janner** asked **Commissioner Brown** if he needed any further information on that, and Commissioner Brown declined.

**Commissioner Creighton** asked staff to confirm the question that Mr. Seiler posed: If the Commission were to approve the restricted hours of operation, and down the road the business changed from Caribou to whatever else it could be, would those hours stay with it and any change would have to be come back through for consideration.

**Ms. Carrillo** confirmed that is correct and stated any of those stipulations run with the zoning and with the land. If there's any delineating from that, that would require a zoning action and a public hearing.

**Chair Janner** stated if there were no other questions or discussion, he would entertain a motion on Item One, the rezoning, to the C-1 District.

**Commissioner Creighton** moved for the approval of the rezoning to the C1 District for RZ23-0013, and **Commissioner Brown** seconded.

**Commissioner Creighton** asked if he may clarify his motion.

**Ms. Hollingsworth** agreed, stating she was going to ask for clarification on whether or not that included staff's recommended stipulation regarding the land use restrictions.

**Chair Janner** added, this would be "sub .1" [referencing Staff Report].

**Commissioner Creighton** asked to clarify. He asked, if the Commission wanted to move forward with Item Number 2 and approval - which is opposite of what staff is recommending – whether the Commission would need to strike [stipulation] 1(a.) from the rezoning or take some other action.

**Chair Janner** and **Commissioner Breen** also asked what the appropriate step would be, whether modifying the original item, or overriding it.

**Ms. Hollingsworth** answered Commissioner Creighton could modify Item 1.a [Fast-food or Carryout restaurants] if that is the recommendation. Alternatively, the Commissioner could go back and clarify, that is also procedurally allowed. There is a second on the original motion. Ms. Hollingsworth suggested Commissioner Creighton could clarify so it's more clear what the Commissioners are voting on.

**Mr. Chris Grunewald, Deputy City Attorney** added, for the sake of clarity for the Commissioners, it was important in his view for the Commissioners to have a sense of where they want to land on whether Caribou should be there because the stipulations that go into the rezoning approval will matter for whether or not the preliminary plan is acceptable. To the extent that the Commissioners are looking for understanding your consensus on the ultimate end product here, which is whether or not the combination of the two motions recommends Caribou or does not, the Commissioners will need to make that decision on both motions together, because the stipulations that staff is recommending on the rezoning would prohibit fast food on Lot 1, and if you did that, it would be mean that the preliminary plan to put a Caribou there as fast food would fail. The two motions are linked, though staff does ask that the Commission votes separately on the rezoning and the plan, so staff can have some real clarity on those two separate actions.

**Commissioner Brown** asked Mr. Grunewald for clarification on if Motion 1 passes, whether than then makes Motion 2 fail, or instead makes it moot. Further, would the Commission still vote on Motion 2 if Motion 1 passes?

**Mr. Grunewald** answered, if the Commission voted on Motion 1 which is Staff's recommendation, it does seem that the only vote on Motion 2 is to deny their plan. The Commission would really be making the decision on that first motion.

**Commissioner Brown** asked if a second vote would be required, because the motion would be moot.

**Mr. Grunewald** answered it was his opinion the Commission could skip the second vote, but he would defer to Kim Hollingsworth if she has a preference on that for the record.

**Ms. Hollingsworth** answered that she felt a vote on Motion 2 would help clarify the record, but acknowledged it was contingent upon Motion 1 passing. Ms. Hollingsworth asked if Commissioner Creighton could clarify his motion on the floor.

**Chair Janner** requested to ask further clarifying questions. Chair Janner provided an example that if the Commission recommended approval as a C-1 District, any plan that came forward to the Planning Commission later, the Commission may choose to override a stipulation on a zoning. He asked if that was correct. For example, if this site is approved as C-1 and then McDonald's wanted to come in five years, the Commission could override the stipulation that's in place. Chair Janner asked whether it was accurate to state the Commission was not tied to that outcome because the Commission has the ability to vary on a stipulation at any time.

**Ms. Hollingsworth** stated if she correctly understood the question, right now the current motion is to consider the district plus land uses. If a fast food restaurant was recommended for approval and City Council made that decision ultimately, it could be any fast food restaurant. The Commission could now add stipulations about hours of operation, etcetera, but it could be anything that falls into that category.

**Commissioner Breen** said, to that point, and he asked for input from the Commissioners - it seems the Commission feels ok about a coffee shop going there, but there's concern about the McDonald's going there so.

**Chair Janner** added it appears the residents are in lockstep with that as well.

**Commissioner Breen** asked as it pertained to Commissioner Creighton's motion, whether the Commission could modify the prohibited use with the rezoning to say, "fast food or carry out restaurants with the exception of a coffee shop." He asked whether that would be an acceptable use because it still restricts the fast food as a broad category but carves out approval for this specific business. Commissioner Breen asked for input from planning or legal staff.

**Commissioner Brown** asked if he needed to withdraw his second on the motion.

**Chair Janner** added that brought up the next question if for example, the Commission were going to create a stipulation on the hours, whether that would be part of Motion 1 or Motion 2.

**Mr. Grunewald** answered that procedurally, nothing needed to be withdrawn. There is a motion. There was still going to be a discussion for Commissioner Creighton to clarify the motion. It was seconded, and it's on the table. It's completely acceptable for the Commission to be discussing that motion, getting advice from staff on how to go forward. The motion could remain there. Once all have finished that discussion, as they're talking with Staff, the Commission can figure out what they want to do with that one motion. There are opportunities to amend the motion, or the motion maker to withdraw it. Those are all things that can get sorted out after the Commissioners have gotten square on all of the options that are on the table. The second thing Mr. Grunewald said the Commission



would be doing, is clarifying. Commissioner Creighton would get the chance to clarify that motion.

Mr. Grunewald continued that he also wanted to provide feedback on the question of fast food in the future or not. He stated staff has presented, and what the Commission needs to take up, is the rezoning. Rezoning is where you're controlling that land use, and that decision needs to be clear here today as to what the Commission is recommending. Mr. Grunewald stated he was unclear what Chairman Janner was intending with his questions, but the Commission wouldn't use a vote on a preliminary plan to override zoning. The Commission needs to make the land use decision separately. Right here with the zoning, the Commission can do things with the zoning use with stipulations, as staff has recommended, or can prohibit uses, or can impose hour restrictions, etc. Those are all things that can be put in. The Commission needs to deal with it in the rezoning. It's appropriate to have land use restrictions in a rezoning ordinance. Those can always be reconsidered later with a rezoning application in the future by an applicant and Planning Commission and City Council will take it up as it's presented. However, right here, the Commission needs to make a decision on these prohibited uses.

**Chair Janner** asked then whether the hours restriction would be part of Motion 1.

**Mr. Grunewald** answered that's correct. If that's the direction that the Commission goes, then it would be appropriate (that is presented as an alternative in the staff report) that you would have a modification to the prohibited uses and include in the zoning ordinance hours restrictions, because that's goes to the use and it is appropriate for it to be in the zoning portion of the discussion. Mr. Grunewald stated he also believed Ms. Hollingsworth needed a chance to address the idea of whether the Commission could limit the uses down to just fast food or to coffee shop.

**Ms. Hollingsworth** referenced the staff report on the screen. Staff's recommendation is in Section 12, and then Section 13 is an alternative if that's the direction the Planning Commission would want to go. There's an alternative option. That alternative would allow fast food only on Lot 1 and includes a hours of operation restriction.

Ms. Hollingsworth further stated she wanted to touch on the idea of having fast food with the exception of coffee or coffee shop. The UDO does not have that distinction clearly defined. Ms. Hollingsworth suggested the caveat would be that the business primarily serves coffee, though that nuance could be a challenge in the future. Since it's not clearly defined in the UDO, perhaps the Commission could use language like, "primarily serves coffee" but that would be hard to quantify and regulate over time.

**Commissioner Creighton** requested to clarify his motion. When he made that motion for recommending approval, he stated he was doing so from Section 13 [referencing the staff report]. He wanted to prohibit fast food use only on the other lot, to allow Caribou to go forward.

**Ms. Hollingsworth** restated and asked if he was clarifying that as written in Section 13 of the staff report, it would allow C-1 District fast food only on Lot 1 and then a prohibition on the hours of operation.

**Commissioner Creighton** confirmed and stated he wanted everyone to be clear what he was trying to do.

**Chair Janner** asked to confirm Commissioner Creighton was trying to do Section 13.

**Commissioner Creighton** confirmed yes, [Staff Report Section] #13. A1 and 2.

**Chair Janner** stated he would accept that as an amendment to Commissioner Creighton's original motion. Chair Janner asked whether Commissioner Brown, who had previously seconded the motion, was agreeable to that modification.

**Commissioner Brown** agreed.

**Commissioner Creighton** stated, if wasn't technically an amendment, but rather a clarification.

**Commissioner Chapman** asked whether the Commission was voting on the second motion and not the first motion.

**Chair Janner** answered, no. The staff report shows two different versions of what Motion 1 could be. The Commission is still voting on Motion 1, which is the change in the zone to C-1.

**Commissioner Chapman** stated Motion 1 isn't just the change in the zoning.

**Chair Janner** answered, it is with restrictions on the land use.

**Mr. Grunewald** confirmed the Chair was correct. Motion 1 is on the zoning. Motion 2 refers to the preliminary plan, which the Commission shouldn't address until they get through Motion 1.

**Commissioner Chapman** asked to confirm that is the motion that was on the floor, which was confirmed.

**Ms. Hollingsworth** asked Commissioner Creighton if he could restate his motion so it's very clear for the record with his intended details as to district land use and hours if he could.

**Commissioner Creighton** agreed and restated he was recommending approval of RZ23-0013 subject to the staff recommendations under Item 13, A1 and 2., as in the report.

**Chair Janner** asked Commissioner Brown whether he was amenable to that clarification.

**Commissioner Brown** stated he thought the Commission was voting on 13 after 12.

**Chair Janner** answered, the Commission was voting on 13 as Motion 1.

**Commissioner Brown** confirmed he was agreeable to it.

**Chair Janner** asked if the Commissioners needed any further clarification. Chair Janner stated there was a motion and a second. Chair Janner called for a roll call vote on Motion 1.

Motion 1 passed 7 to 0 as follows:

A. Approval of the C-1 District with the following stipulations:

1. The following uses are prohibited:

- a. Fast-Food or Carryout Restaurants (Prohibited on Lot 2 only)
- b. Animal Care Facilities with Outdoor Kennels
- c. Any Distance Restricted Businesses as listed in Olathe Municipal Code Chapter 5.43.

2. Hours of operation for the 'Restaurant, Carryout, or Fast Food' use on Lot 1 are limited to 5:00 am to 8:00 pm. daily.

**Chair Janner** stated he would now move forward on Motion 2 and requested staff put that screen back up for the Commissioners to view.

Chair Janner asked whether there was any discussion among Commissioners for Motion 2.

**Commissioner Breen** requested clarification for staff under Section 13(B)(4) where staff discussed the revised access and traffic circulation. Commissioner Breen noted the plan seemed very tight and very conducive to traffic jams coming in off of 159th Street trying to turn in. He asked staff to articulate how staff might envision traffic looking there and what staff would be looking for in line with a revised circulation plan.

**Ms. Carrillo** answered, regarding that stipulation, Lot 1 takes full access from Hunter Street which is an internal private street. City staff still has questions how this circulation will work and more particularly the exit only on to Hunter, as traffic would be entering in this shared drive and continuing out. Some issues they would like to still further explore would potentially be with the western exit only access to avoid any potential conflicts with turning in and out and navigating through that access point. An example might be perhaps to reduce the width of that exit point.

**Mr. Chet Belcher, Chief Community Development Officer**, added when Ms. Carrillo was demonstrating the path, it showed an opportunity for a left turning movement crossing entrance movement. The City would work with the engineer on this project. It could be just a “right out” at that first entrance to keep those crossing or conflicting movements in front of each other.

With no further questions. Chair Janner entertained a motion on Item #2.

**Commissioner Creighton** recommended under RZ23-0013 that the Commission approve the preliminary site development plan, under [Staff Report, Section 13] Letter B, including all items 1 through 5 as stipulated.

**Commissioner Breen** asked, for clarity, whether that was under bullet 13 and Commissioner Creighton confirmed.

**Commissioner Chapman** seconded the motion.

Motion 2 passed with a vote of 7 to 0 as follows:

B. Approval of the Preliminary Site Development Plan with the following stipulations:

1. A waiver is granted from UDO 18.20.130.B to decrease the minimum front yard setback from 20-feet to 15-feet and to reduce the minimum frontage buildout from 50% to 30% along 159th Street as shown on the preliminary site development plan dated April 1, 2024.
2. A waiver is granted from UDO 18.15.020.G.8.b to decrease the minimum glass requirement from 25% to 20% on the primary facades for Lot 1 as shown on the elevations dated April 1, 2024.
3. A revised preliminary site development plan is required for Lot 2 prior to submittal of a final site development plan.
4. Revised access and traffic circulation for Lot 1 will be provided with final site development plans as required by the City Engineer.
5. Exterior ground-mounted or building mounted equipment including but not limited to, mechanical equipment, utilities’ meter banks and coolers must be screened from public view with three (3) sided landscaping or an architectural treatment compatible with the building architecture.



## **MINUTES – Closing Remarks**

### **Planning Commission Meeting: April 29, 2024**

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**Chet Belcher, Chief Community Development Officer**, congratulated Commissioner Breen on being named in *Ingram's* "40 Under Forty".

*Meeting adjourned.*