



MINUTES

Planning Commission Meeting: March 11, 2024

Application:	<u>RZ24-0003:</u> Request for approval of a rezoning from the C-2 (Community Center) District to the CC (Cedar Creek) District and a preliminary site development plan for Cedar Ridge Mixed Use Community on approximately 14.37 acres; located southeast of S. Cedar Creek Parkway and W. Valley Parkway.
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Chair Wayne Janner introduced how the rezoning application and public hearing process would be conducted: First, City Staff would present the application and their recommendation. The Applicant would then make a presentation. After that, the public hearing would be opened. Each speaker would be called up and given five minutes to speak according to the Commission bylaws.

Chair Janner continued that this case has garnered resident interest, and the Commission appreciates resident participation as an important part of the process. Further, the Commission appreciates what the residents have to say and have read the packet with the resident comments, which totaled over 600 pages. At the public hearing, the Commissioners are particularly interested in any new information. Chair Janner gave further instructions about the format of the public hearing and his expectation for a respectful and civil exchange.

Commissioner Jim Terrones disclosed for the record that he is a resident and member of Cedar Creek Village II. He stated that at no time did he attend any public or neighborhood meetings. Whenever this project was on the Board agenda, he recused himself from that discussion.

Chair Janner stated that in hearing and discussing that situation with legal staff, the Commission agreed that **Commissioner Terrones** did not need to recuse himself for this Planning Commission conversation.

Mr. Nathan Jurey, Senior Planner presented RZ24-0003, a request to approve a rezoning of 14 acres of undeveloped property located on the southeast corner of Cedar Creek and Valley Parkway. The property was zoned as C-2 (Community Center Commercial District) in the 1980s and is directly abutting other commercial and business park zoning to the north, east, and south. The property is adjacent to the R-1 residential district across Cedar Creek Parkway. The developer is requesting to rezone to the CC (Cedar Creek) District which aligns with the Future Land Use designation of the city's

Comprehensive Plan and the vision of the Cedar Creek Area Plan approved by City Council in 2012.

Mr. Jurey explained that CC zoning would narrow the uses allowed. In contrast, C-2 District allows over 90 land uses including gas stations, fast food restaurants, big box retail stores, hotels and vertical mixed-use development (residential over storefront). The CC District would reduce the uses to 23 which were tailored to the character of Cedar Creek. Staff recommended prohibiting the drive-thru use as the CC District calls to limit this use already. The developer agreed to this restriction.

Mr. Jurey described the City's Comprehensive Plan, PlanOlathe, and how the proposed land use aligns with the Future Land Use designation for the Cedar Creek Mixed Use Center. He discussed several PlanOlathe goals that this development supports including Mixed Use Neighborhoods, Full Range of Housing Choices, Hierarchy of Activity Centers, Walkable Neighborhoods, and Land Conservation Techniques.

Mr. Jurey then discussed the history of Cedar Creek and its designated area plan including the distinction between the 1988 Cedar Creek developer's master plan and the 2012 Cedar Creek Area Plan, as both are commonly referenced as the Green Book. The 1988 master plan was the developer's private document never formally adopted by the City. The Cedar Creek Area Plan was jointly commissioned in 2008 by the City, Cedar Creek HOAs, and the Cedar Creek developers and formally adopted in 2012 by the City Council. The Cedar Creek Area Plan created a new vision for Cedar Creek and the Cedar Creek Overlay District, which provided new regulatory zoning standards to implement the vision.

The Cedar Creek Area Plan states that the preferred zoning district within the Cedar Creek Overlay is the Cedar Creek (CC) District to implement the vision of the area plan.

Mr. Jurey showed the land use map which designated mixed-use town centers at two intersections, one of which is on the subject property.

Mr. Jurey continued that the *Cedar Creek Area Plan* designated more urban Town Centers, in contrast to the existing suburban development. Town centers are pedestrian friendly developments with taller buildings located closer to the street to create enclosure and a sense of place for pedestrians.

Mr. Jurey presented the preliminary site development plan, which is a mixed-use development. The proposal includes a 2-level parking garage lined with apartments on the west and south sides. Above that garage, the multifamily building is shaped like an "E" with units clustered around 2 open space courtyards along the west and an outdoor pool on the east. There will be ground-floor commercial space for uses like a coffee shop and a salon. There are 2 townhome buildings that flank the main entrance drive. A one-story retail/restaurant building is proposed at the hard corner of Cedar Creek & Valley Parkway with a similar commercial building located next door. At the other corner, a two-story building is proposed with office over retail.

Mr. Jurey summarized that the total proposal includes 311 dwelling units, 44,000 square feet of commercial space, and 586 parking stalls. The developer intends to build the apartments first. Staff recommended a stipulation requiring at least one of the commercial buildings be built shortly thereafter. The remaining buildings will be built in Phase 2. The proposed plan has a density of 21.6 dwelling units per acre, complying with the maximum of 29 units per acre allowed in the Town Center. Staff recommended the density be capped at 22 units per acre, and the developer is agreeable.

Mr. Jurey discussed how the proposal aligns with the CC District's strict natural resource preservation standards. Eighty-seven percent (87%) of the existing steep slopes of this area will be preserved, exceeding the minimum of 70%. Thirty-eight percent (38%) of the existing wooded area will be preserved. In addition, the plan meets all perimeter buffering requirements along streets and internal landscaping standards.

Mr. Jurey presented the proposed architecture, which is consistent throughout and utilizes high quality building materials to create a sense of place. All buildings are primarily clad with Class 1 materials, using cultured stone, stucco, and glass, with minimal Class 3 materials used for accent. The buildings meet the design standards of the CC District.

Mr. Jurey presented the building height standards for Town Centers which requires both a minimum and a maximum building height, with a height modulation that allows up to 70 feet for buildings that use 'Green Principles.' All proposed buildings comply with this height requirement, and the 57.3-foot-tall multifamily building uses the 'modulation of height' allowance for 'Green' buildings. The Cedar Creek Area Plan provides a list of 'Green Principles' to consider which Mr. Jurey further explained. The developer has committed to implementing a list of green principles, which Mr. Jurey detailed.

Mr. Jurey stated that the developer met all public notice requirements. Over 240 residents attended the February neighborhood meeting. A Change.org and a signed petition were included in tonight's packet, as well as 206 comment letters, the vast majority in opposition. Since then, staff received more letters from residents and the results of a survey conducted by the Cedar Creek HOAs, all of which were provided to the Planning Commission.

Mr. Jurey stated the majority of the neighborhood feedback involved compatibility regarding height and scale, visual impact to the primary entrance to Cedar Creek, traffic impact, and environmental impacts.

Mr. Jurey addressed each of these topics. Regarding compatibility, the Cedar Creek Area Plan envisioned an urban Town Center at this intersection which would be intentionally distinct from the more suburban Cedar Creek. Regarding visual impact, the developer made revisions to address the feedback received at the neighborhood meeting. The building has been flipped, so its mass is now split into 3 smaller wings when viewed from Cedar Creek Parkway. Regarding traffic impact, Cedar Creek Parkway narrows from 4-lanes to 2-lanes underneath K-10 Highway. The City's engineers reviewed this area and found that this 2-lane section can handle the additional traffic generated by the proposal.

K-DOT is aware of this development, and they are currently studying K-10 Highway and future growth patterns to better anticipate when improvements may be needed and what those improvements will entail. Regarding environmental impacts, the proposal complies with the open space preservation requirements of the CC District and the stormwater requirements of Title 17. As with any other development, all required state and federal permits must be obtained prior to construction to ensure environmental and wildlife impacts are mitigated according to state and federal laws.

Mr. Jurey concluded this rezoning application meets the Golden Criteria as outlined in the staff report. Staff recommends approval of the rezoning with three stipulations regarding land use, density, and sign standards.

Staff also recommends approval of the preliminary site plan with five stipulations, regarding phasing, minimum commercial presence, maximum building height, and tree preservation and utility screening stipulations.

The developer has agreed with these recommended stipulations.

Chair Janner asked if the Commissioners had any questions for staff before the applicant's presentation.

Commissioner Terrones stated while he appreciates the traffic study, he travels this daily. He expressed that his experience is many cars exit and enter K-10 while bike riders pass under the bridge where Cedar Creek Parkway narrows to two-lane road. He asked whether and how staff will continue to monitor traffic to determine whether signals are necessary. If traffic signals are determined necessary, he asked who bears the costs. **Mr. Jurey** answered traffic is monitored as development occurs, and the City also evaluates traffic across the City on an annual basis. If a specific development requires a signal, that development bears the cost. However, this proposed development must pay excise taxes which contribute to signal costs throughout the City.

Commissioner Terrones asked for the status of the KDOT study. **Mr. Jurey** answered he understands there are still meetings available to attend. KDOT is still working through the study with their consultant.

Chair Janner asked if there were any other traffic questions.

Commissioner Chapman asked about how many homes are in Cedar Creek currently. **Mr. Jurey** answered it's 1700-1800 homes, though the area is still developing.

Commissioner Chapman stated he too is concerned with the number of Cedar Creek homes, each with multiple vehicles, plus the possible addition of another 300 occupants, with multiple vehicles and the continued growth of K-10. He's concerned about the exit and entrance from K-10 to Cedar Creek Parkway and asked staff to continue to evaluate if this project goes forward.

Chair Janner asked for details on how traffic studies are prepared and what information is evaluated.

Mr. Charlie Love, Chief Development Engineer answered in this particular case, the developer was required to analyze to the next arterial intersection. They used current traffic modeling methods and manuals to anticipate different traffic based on specific uses. The report demonstrated all levels of service at those existing intersections meet the requirements. The developer also did a 20-year forecast for future growth with adjacent improved intersections. However, they didn't extend to K-10 Highway, because that exceeds beyond the requirement. KDOT is currently studying K-10 which is anticipated to wrap up this summer.

Commissioner Bergida stated from resident letters, there was significant concern about additional traffic from other developments further east and north. Commissioner Bergida acknowledged the City's requirements and the KDOT's ongoing study, but he asked how the City usually handles this type of situation when additional information seems like it would be important.

Mr. Love confirmed that the applicant analyzed the required intersections immediately adjacent to their proposed development, which were acceptable, and KDOT is analyzing the K-10 Highway area. However, regardless of KDOT's study, staff understands the four-lane arterial section can carry approximately 35,000 vehicles per day. The current two-lane section can carry about 16,000 vehicles per day. Knowing that, staff is comfortable where things are currently. As growth continues, staff will continue to evaluate and address improvements as needed. Mr. Love confirmed he is somewhat familiar with the interim Lenexa improvements, but at this time, the current traffic controls are appropriate.

Commissioner Bergida stated from reading the 2005 KDOT traffic study, he understands the Cedar Creek intersection has a higher crash rate than the average Kansas City Metro rate. He asked if that was correct.

Mr. Love answered that in that particular study, they provide a ratio, which compares the whole state. That ratio isn't specifically dealing with just improvements on that 2-lane arterial or it being non-signalized, but also includes crashes within 0.3 miles along the corridor of K-10 which could be related to movements along the highway to get over, poor signing, etc. In summary, it isn't a direct correlation to going from 4-lane to 2-lane.

Commissioner Bergida stated he understands traffic along the Corridor has increased significantly over the last fifteen years and asked Mr. Love to confirm.

Mr. Love asked which corridor he was referring to, because there is the K-10 Corridor and Cedar Creek Parkway. He confirmed K-10 traffic has grown as expected.

Commissioner Terrones referenced the traffic study when 'traffic future conditions' says it "performs well." He asked what that's based on and what it means.

Mr. Love explained, traffic is letter-graded (A-E). In development, if the grade drops to an E level, then an improvement is warranted. In this study, even projected out 20 years, there were a couple of legs that went to Level C, but the need is still well-met.

Commissioner Creighton stated he understands from Mr. Jurey's presentation that the proposed new zoning with new uses are less-intense than the existing uses. Mr. Creighton stated he is not generally in favor of 'down-zoning' because the City forfeits the tax base and growth when they give up commercial property. Commissioner Creighton asked for staff's reasons for recommending going to a less-intense zoning.

Mr. Jurey answered that although the zoning would go from commercial to the CC District, the uses have been vetted through Cedar Creek Area Plan and were found to be appropriate.

Commissioner Creighton asked about the distance between the proposed and existing structures.

Mr. Jurey answered it's over 400 ft from structure to structure on the west. On the far southeastern corner, the closest structure is a little over 600 ft.

Commissioner Creighton stated under current zoning a 5-story hotel would be allowed. He asked, in height, how that type of hotel would compare to the proposed plan.

Mr. Jurey answered they would be similar in height. The C-2 District does permit a 60-foot building. The proposed building is 57.4 feet as measured by the Cedar Creek District.

With no further questions for staff, **Chair Janner** called the applicant forward for their presentation.

Mr. Curt Holland, Polsinelli PC, legal counsel for Oddo Development Company, 900 W. 48th Place, Kansas City, MO 64112. Mr. Holland introduced Henry Klover (Klover Architects), Jake Hattock (Schlagel and Associates), and Kristin Skinner (Priority Engineers). Mr. Holland thanked the Commissioners for their time and staff for their presentation and thorough analysis and staff report. Mr. Holland reiterated that staff recommended approval of this plan because it complies with the zoning regulations, Cedar Creek Area Plan, and the codified *Green Book*. Mr. Holland addressed the residents' comments and confirmed the applicant team has also read them. Mr. Holland stated the team (Oddo, Schlagel, Klover) are long-standing, well-thought of companies who are award-winning and who conduct nationwide work. Schlagel was with the original founders when Cedar Creek was empty. Mr. Holland concluded the applicant team is well-versed in the criteria and requirements of Olathe.

Mr. Holland stated the project area is currently zoned as C-2, but it was master-planned to be the CC District. The applicant's original proposed plan was compliant with C-2 zoning and would be allowed by right. This area was always planned for commercial/nonresidential uses under the Cedar Creek Area Plan. Mr. Holland stated there was always intended to be development that could include multi-levels that could

be visible. Mr. Holland showed a comparison between C-2 and CC Districts (regarding height, density, setbacks, open space and uses). Mr. Holland stated that when they first started this process, they brought in a plan with multi-family on it that would have been allowed by right. However, staff stated that according to the Comprehensive Plan, this area is preferred to be rezoned to the CC District. The applicant agreed and Mr. Holland stated there are some things in CC District that are better – save more trees, less impervious surface, greater setbacks and amenities. Thus, the applicant updated their plan. Tonight's proposal was reached in collaboration with the applicant team, taking into consideration staff's recommendations and resident comments. For example, they revised the building façade along Cedar Creek Parkway at request of the residents to create three segments of 75-80 ft wings (which is a 56% reduction in building mass along Cedar Creek Parkway). There is now separation between the buildings, so the "spine" of the E is interior to the project. Restaurant and retail space is along north end, which would not be allowed in C-2. Mr. Holland stated, the question is not whether apartments can be there, because they can. The question is whether to retain C-2 zoning or rezone to CC District.

Mr. Henry Klover, Klover Architects, 8813 Penrose Lane, #400, Lenexa, Kansas, 66219 presented the architectural design of the proposed plan. He stated this was a challenging site at the corner of Cedar Creek Parkway and W. Valley Parkway, with very large elevation drops. Because of the elevation changes and the rock, they put the parking underneath, in order to tuck the building into the hill and preserve the steep grade. The only access is off Shadow Ridge, so they wanted a promenade for the entrance. Their goal was to create space that people want to be. Mr. Klover shared renderings which he stated are accurate representations. The proposed site plan has amenities to be resort style living with a pool, two large courtyards, a fitness center, a pub, coffee shop, spa/salon, business center, dog wash, fire pits, bocce ball, and seating/lounge areas.

Chair Janner asked the Commissioner if they had any questions for the applicant.

Commissioner Terrones asked the applicant to explain what 'open space' means.

Mr. Klover answered that it's the internal development, like pathways, gardens, patios, firepits, courtyards. It is the public spaces where residents and visitors can engage and be part of the development.

Commissioner Terrones asked, during the final site development phase, a formal plaza is planned and asked applicant to expound on what that is.

Mr. Klover answered it's specifically the space between two restaurants. In general, it's a formal plaza where there would be plantings, maybe a fountain, possible shade structures, but the overall idea is to have places for people to sit and gather.

Commissioner Bergida asked about the architectural style and how it fits with nearby buildings.

Mr. Klover said the original owner had built a few buildings; Klover was asked to look at those buildings and other surrounding buildings as a template which he did. The style is generally a mountain lodge resort look that respects the surrounding rock and incorporates clean lines, large columns, and wood timbers.

Commissioner Bergida, regarding the height waiver request from 50 feet to 58 feet by considering environmental upgrades, asked why the plans couldn't conform to the 50 feet limit.

Mr. Klover answered it's about trying to make the units nice. Yes, they could have kept standard 8-foot ceilings, but current standards in a higher-end development, call for more spacious units, top floor penthouses, and fitness rooms which need higher ceilings.

Commissioner Bergida asked whether the buildings will be LEED certified.

Mr. Klover answered they would not. There are more appropriate programs, but for this development, they are following the Green Principles of the Area Plan.

Commissioner Bergida stated the building would be 57-58 feet on the top of the bluff, which he asked if it was 70-80 feet.

Mr. Klover said it was sitting at about an elevation of 970 feet [above sea level], where the podium level would set that that would be above.

Commissioner Bergida asked if we're looking at 127 feet, if someone was just on the road, that's how high this would go and asked if that was accurate.

Mr. Klover said yes, but the perspective also must be considered. He would challenge anyone that's driving northbound on Cedar Creek – he doesn't believe anyone would ever see it until they reach the corner and see the restaurant.

Commissioner Bergida asked if the parking garages are planned to go underneath the apartments or what the plan is.

Mr. Klover referenced a diagram and answered there's a lower level and upper level parking decks, with residential units and a "podium" level with amenities above.

Commissioner Bergida asked to confirm if some of the parking is underground.

Mr. Klover answered all the parking would be underground with the exception of the west side, which is shielded by residences.

Commissioner Bergida asked how much blasting would be required and the length of time it would take.

Mr. Klover answered that is part of the reason for the proposed plan and the stepping of the garage - to limit as much as possible. Because of the location of the rock ledge and

the elevation of the site and surrounding neighborhoods, they hope blasting would be minimized. He continued that any blasting would have to be approved.

Commissioner Bergida asked to confirm that ecological studies and an impact study regarding the nearby waterfall, that those will be conducted later in the process.

Mr. Klover stated the engineer could speak further but the stormwater study has been reviewed and approved. Mr. Klover added he knows there are additional things needed in the future.

Mr. Jake Hattock, Schlagel and Associates, 14920 W. 107th Street, Lenexa, Kansas, stated the stormwater study meets all Title 17 requirements.

Commissioner Bergida asked Mr. Holland to confirm that if this application is denied, there would be no economic harm to the developer since the developer intends to build regardless.

Mr. Holland answered that's hard to quantify. The greater harm would be to the community, in its loss of the benefits this project offers. He further stated the Golden Criteria doesn't account for that measure. Mr. Holland confirmed the site already permits multi-family uses.

Commissioner Creighton stated he appreciated the additional information. He echoed concerns regarding the topics Commissioner Bergida mentioned, including the height, and hopes that continues to be part of the conversation.

Mr. Holland stated he believed earlier renditions of the plan extended one floor higher, which they changed in order to respect the residents' concerns. Regarding stormwater, City staff has reviewed it against the City's ordinances. The City's code already covers those items and the applicant's study meets those code requirements.

With no additional questions for the applicant, **Chair Janner** opened the public hearing and provided additional instructions. He confirmed each speaker would be allotted a maximum of five minutes, in accordance with the Commission's bylaws. The entire five minutes or residual time may not be ceded to another speaker.

Commissioner Breen called the following speakers in their turn:

Speaker #1, David French, 10521 S. Highland Lane, referenced the Golden Rule Criteria, and stated the proposed plan negatively affects the surrounding properties. Mr. French expressed concerns about the style, density, location, and desirability of the proposed apartment complex; it does not fit the surrounding character of Cedar Creek. He argued it would negatively affect Cedar Creek's character, views, and property value. He also mentioned a factor that is not being considered is that other apartment complexes have been approved nearby. That said, those plans in Lenexa are more aligned with Cedar Creek than tonight's proposed plans; Lenexa's plans are lower density, lower height, and mansion-style apartments in contrast to Oddo's proposed higher density,

higher height and Colorado lodge style apartments. Mr. French argued these plans were made purely from a business standpoint, to increase the height to get enough units for viability.

Speaker #2, Stephen Morrison, 10512 S. Highland Lane, stated it was difficult to understand how the plan tops out at 157 feet, yet is said to only be 57 feet. He expressed how the height discrepancy doesn't sit well with residents. He stated this Town Center should be based on a main street, a grid of tree-lined streets, with lower-level shops facing the sidewalk. He said only three types of residential are allowed: small single-family, attached townhomes, and upper-level floors above street shops. He mentioned the street shops are not useful to Cedar Creek residents and should be banks, post offices, and useful amenities beyond those directed to the apartment occupants. In addition, he stated it was an unreasonable extrapolation for planning staff to allow 300 units when the *Green Book* allows 3 or more dwellings/units. He expressed concerns for traffic and the entrance to Cedar Creek. He noted many characteristics of the town centers are not present in the plan including the main street, plazas, public squares, differentiating banding for each level, and setbacks.

Speaker #3, Ted Stodolka, 10512 S. Highland Lane, stated that he is opposed because he wants to prevent character defect, as the character starts at the entrance of Cedar Creek. He emphasized that the Commission doesn't often have this kind of response. The Change.org petition received many signatures which is a large reaction in one month. Four hundred forty-five pages of the Planning Commission packet are emails/letters sent from Cedar Creek residents, and all but about six are opposed. Mr. Stodolka stated that the correspondence is heartfelt and deserves the Commission's attention. Three hundred fifty residents recently attended the only public meeting; still, fifteen sign-up sheets were full even with little to no notice, all of which were opposed to the proposed plan. Mr. Stodolka stated the HOA is developer-controlled. He continued the HOA's survey was not fair or representative of the residents. Mr. Stodolka continued the Commission must consider arguments about the relevant Kansas laws, including the Golden Criteria. He added the Commission cannot ethically or morally ignore the residents' real concerns and should instead stand in support of the residents by rejecting the Oddo proposal.

Speaker #4, Debra Ryan, 10212 S. Oak Manor Drive, stated that she built her home in Cedar Creek 11 years ago because she wanted to move away from a gas station and restaurants that were near their prior home in Overland Park. She loves the beauty and wildlife in Cedar Creek. She stated residents do not want a community center in their neighborhood. When comparing to 87th Street, the Cedar Creek residents don't want a busy, bustling Red Door restaurant at their entrance. She doesn't understand why anyone wants to build commercial there because there are existing commercial buildings that are empty; they don't need more empty buildings.

Speaker #5, Nick Payne, 26418 W. 109th Terrace, asked where the wildlife will go. This should be a concern for all parties involved. He is opposed because his wife fell in love with Cedar Creek: the rolling hills, lake, and openness. The Cedar Creek subdivision is

about the openness and nature, not the homes. He stated if the Planning Commission allows the development to go through, it will destroy Cedar Creek. He claimed Cedar Creek is one of the best things about Olathe and asked whether there is any better subdivision. He stated regarding traffic, he agrees with previous speakers and mentioned how traffic starts backing up at K-7. He said if more apartments are built (along Woodland, in Lenexa along K-10, and K-7 apartments), there will be a big problem. He stated there will be increased crime. He said he was worried there is no way to keep new residents from using Cedar Creek amenities and that the sound buffer (trees) would be removed. He said he had created the Change.org petition and has received 1100 signatures in opposition. In closing, he played a video and said a Woods at South glen neighbor must listen to construction from 6 am – 6 pm.

Speaker #6, Jennifer Hughes, 10824 S. Whitetail Lane, stated Cedar Creek is unique due to the connection to nature and greenspace, which the neighborhood pays hundreds of thousands of dollars annually to maintain. Her primary concern regarding the development is the wildlife, in reference to Golden Criteria #5 (the protection of public health, safety and welfare). She mentioned how the Preserve our Neighborhood Association wrote the Planning Commission twice, seeking removal of the application. The Association strongly objected the proposal and sought delay for six months for the neighborhood to conduct a review in light of its scale and impact. She expressed concern the developer had not sought an ecological review by the Kansas Department of Wildlife and the biological survey by the Kansas Department of Fish and Game. On March 4th, the homeowners received a written response from the Department of Wildlife, which stated it was expected for the developer to reach out to the Department. She stated homeowners are concerned about the lack of environmental review. She expressed strong concern regarding the environmental health and permanent damage of the surrounding area if development were to occur. She argued the developer should be required to conduct an ecological survey, and the plan should not be considered until completed. She ended by asking to delay the case for six months for the ecological survey to be completed.

Speaker #7, Lisa Studtmann, 10143 S. Shadow Circle, stated she is a longtime resident of Cedar Creek. She referred to the Golden Criteria that Staff are required to follow, specifically Criteria #2, regarding suitability of uses. Ms. Studtmann stated the staff report merely mentions the rule and asserts Cedar Creek zoning is presumed as better or preferred than the current zoning. She stated we should not assume that when a development will permanently alter and harm the quality and uniqueness of Cedar Creek's entrance, parkway, and greenspace. She stated that as currently zoned, the parcel is highly valuable and that C-2 fits appropriately. She continued there are five low-profile office buildings nearby which were set back into the trees to reduce visibility. She mentioned a new low-profile prairie-style building which was built two years ago that fits in with neighborhood and is a good example to emulate. Any C-2 uses could be built in this manner, naturally screened, and thus suitable. She stated the proposed project is out of scale and character with the surroundings. She referenced the original mission of Cedar Creek (*Green Book*, page 10) which was to preserve quality and unique character of Cedar Creek. Ms. Studtmann stated the staff report missed the mark by misinterpreting

the uniqueness of Cedar Creek which is ensured by the stringent architectural guidelines and parklike nature that are maintained by strict covenants and appropriate dues. She stated it is impossible to consider a massive apartment complex at the Cedar Creek entrance as they are unwanted and unoriginal. She petitioned the Commission to save the jewel in Olathe's crown by voting no.

Speaker #10, Gaby Greener, 10550 S. Highland Lane, stated she moved to Cedar Creek three years ago after searching all of Kansas City for a beautiful neighborhood and feels blessed to find Cedar Creek Community. She asked how the 20 feet height addition was approved for a green building. She argued the stated water and energy conservation measures are standard and should not be considered "green" items. She gave specific examples like EnergyStar appliances and air filters. She expressed concern regarding how staff recommended approval, because the green principles don't meet code for what the U.S. standards of green are.

Speaker #11, Martin Ryan, 10212 S. Oak Manor Drive, stated that most technical things have been covered by previous speakers, but he wanted to make these points about the traffic study. He said he drives in and out every day, and the roads get congested at certain times. One thing he likes about area is there are a lot of bike riders. There is no sidewalk and cross-country kids jog down that street all the time which would be more dangerous with more traffic. He asked if the height of the building needed to be 57-feet because of 10-foot ceilings and whether the developer could remove a story. He also said he does not believe this proposal adds any amenities to the resort-style living that most Cedar Creek residents want, and it seems any amenities are intended for the apartment occupants.

Speaker #11, Mike Lambert, Address Unknown, stated that he did not have much to add. He said the traffic study requires more consideration and that he is particularly concerned about K-10 congestion. Since the battery factory will be built in De Soto, there will be an accelerated increase of people on the highway, and the traffic study needs to take that factor into account.

Speaker #11, Sandra Askey, 26235 W. 110th Terrace, stated that much of what she had planned has already been said. She said the proposal does not fit the unique character of Cedar Creek and directly opposes some of the *Green Book* items about commercial development. Ms. Askey continued the purpose of low-lying buildings is to build them so they fit right in; this proposal is too dense, too massive and too high. She said she moved to Cedar Creek for the quiet; when they had some issues regarding noise, Tall Trellis has been wonderful and turned off their music at 9 pm. Ms. Askey asked how the developer will stop parties and enforce requirements. There is no neighborhood association for this commercial property, like there are for all the surrounding neighborhoods. Ms. Askey mentioned the Panasonic plant's higher-paid (upper management) people will want to buy a home, and others won't be able to afford to live in Cedar Creek. She would like to ask Oddo, if the site is so difficult to develop, why didn't they buy to the east where no one would see it. She stated that the proposal will lower

property values and character, and Olathe will lose what it calls the jewel of its crown. She asked the Commission to reconsider the proposal.

Speaker #14, Debra Denavs, 10330 S. Hollis Lane, stated she was concerned about noise pollution caused by the development as well as ambient noise after construction is finished. She is concerned the Little Learners located near the construction site will be affected. She presented information on noise limits and decibel thresholds. She said she is worried how blasting would affect nearby residents. She tested ambient noise near Tall Trellis at 58.3 decibels today at about 7:00 am. In addition to blasting concerns, she added how increased traffic, activity, the loss of mature trees, land contouring, and the nearby lakes and ponds will exacerbate the noise pollution. She stated the proposal is out of character with Cedar Creek. She requested a noise pollution independent study be conducted before the project moves forward. She concluded by urging the Commission to vote no.

Speaker #16, Mitch Cornell, 26500 W. 106th Terrace, stated that staff's comment about C-2 zoning was misleading. He believes in the current zoning of C-2, six residents per acre are allowed, and the pictures represented a five-story building. As it stands, six residents per acre would not constitute a five-story building. In the Cedar Creek (CC) zoning, it can be a higher structure. Also, regarding height restrictions, it has been mentioned it would be 127 to 150 feet from ground level; when Embassy Suites is visible from K-10 Highway, that's less than 150 feet. He said the question at hand isn't if developer can develop on the parcel but whether the zoning should be changed to allow him to build apartments. Mr. Cornell stated the developer said he would be fine to develop as the zoning stands. Mr. Cornell presented that the seller and the developer are on one side wanting to change the zoning; on the other side, there are 1,700 Cedar Creek homeowners with about 5,000 residents/taxpayers/voters who are opposed. Mr. Cornell asked the Commission to maintain the status quo and allow the development be built with garden-style apartments, townhouses or structures that are 6 people per acre,. Mr. Cornell presented the developer's proposal is designed so he can make a profit off apartments. The Commission needs to maintain Cedar Creek for Olathe, not for the sake of the developer. Mr. Cornell presented that the choice is either for profit or for constituents. He closed by urging the Commission not to approve the rezoning request.

Speaker #18, Phyllis French, 10521 S. Highland Lane, stated she has lived in Cedar Creek for a long time and lived across from the original Cedar Creek developer. She stated if he were not already passed, this high-rise apartment proposal at the entrance would have killed him. She wanted to bring up that Cedar Creek Parkway ties into Canyon Creek, which is a two-lane road. She expressed concern about nearby recently approved developments. These two developments in addition to tonight's proposed plan will increase traffic and back-ups, specifically on K-10. She explained how when she called the Johnson County Commissioner to relay this information, he was shocked that they had never looked at it like that. Ms. French said it will be a traffic nightmare and unsafe for all involved. She stated they also talked to KDOT, who doesn't plan to expand K-10 until 2040. She referenced the beautiful native Kansas environment Cedar Creek offers and would like to see it remain preserved and unchanged.

Speaker #19, Naomi Barber, 24760 W. 103rd Terrace, expressed concern that there is no protective wall or proverbial “moat” to keep others from using the Cedar Creek amenities. She stated Cedar Creek residents pay considerable dues to have the common places maintained. She expresses concern new residents will use Cedar Creek’s private trails and other amenities without paying dues, regardless of what measures Oddo puts in place to avoid that. Renters have no stake in maintaining the amenities. She ended by stating hotel guests would be better than renters for that area.

Speaker #20, Kimberly Stumpf, 10107 S. Shadow Circle, stated her primary concerns are traffic issues. She referenced her handout and explained there are two entrances to Cedar Creek: the south side of K-10 and the west side of K-7. There is a 600-unit Oddo apartment project, with restaurants, retail outlets, an elder facility and a gas station in Lenexa located on the north side of K-10,. Tonight’s proposal would be on the south side of that same K-10 interchange. She stated no one is considering the impact of multiple large projects around multiple sides of one interchange. She referenced other developments including apartments near K-7 and College Boulevard and the Honeywell expansion. She expressed how Amazon and other retail and food deliveries, trash services, and patrons will affect traffic. A daycare center at Valley Parkway and Cedar Creek Parkway also has parent drop-off/pick-up at peak traffic times. She is concerned the entrances of Cedar Creek will be affected by construction at the same time and this was not accounted for by Oddo’s traffic study. With additional retail, workers, etc, there will be bottlenecks and traffic jams and damaged quality of life for the Cedar Creek residents. She requested a comprehensive traffic project be conducted.

Speaker #23, Michael Peck, 26261 W. 108th Street, stated that he has nothing new to add. If the Planning Commission cannot recognize the brilliance of this group then he cannot add to it. He stated that residents were described as “animated” at the neighborhood meeting, but he said it is instead passion and caring. On behalf of his family, the neighbors, and the wildlife, he opposes this project.

Speaker #25, John Duggan, 9101 W. 110th Street, Overland Park, stated that he is a current developer of Cedar Creek. He stated he and Ron Mather have run the daily operations for the last 18 years, so he has an intimate knowledge of the project, the *Green Book*, and what’s been codified into the overlay district. He stated that regardless of the zoning, the development must comply with mandates of the *Green Book*. His primary objection is the site plan does not comply with the *Green Book*, regardless of what staff says. He stated his main concern is the proposed apartment complex would be highly visible at the subdivision entrance. He stated the decks will be visible from the parkway and a high-end complex on College Boulevard with drapes, plants, flags, and Christmas lights visible on the decks. He quoted the *Green Book* and said Cedar Creek’s amenities begin at the entrance. He continued that every city in the metro would love that entrance in their city and love to have an opportunity to preserve that entrance. He provided a handout and referenced page 3 where he critiqued the site plan. Mr. Duggan stated the site plan is misleading as it suggests you won’t see the buildings because the buildings are screened by a new restaurant. If the restaurant isn’t built, the garage will be what drivers see from the intersection. Through informal meetings, Mr. Duggan asked the

developer to move the building over; put the spine away from Cedar Creek Parkway. Mr. Duggan stated the developer told him this is a tricky site as it would require a lot of dirt and rock excavation. Mr. Duggan stated that's what working in Cedar Creek requires – chipping rock, moving streets, reducing densities to comply with the overlay district and preserve trees. Mr. Duggan stated he wants a better site plan for this site and asked the Commission to require the developer to comply with *Green Book*.

Speaker #26, Larry Louk, 26625 W. 103rd Street, stated he is president of the Cedar Creek Services Corporation which oversees the maintenance of the amenities (trails, pool, lake, ponds, etc.) in Cedar Creek. He expressed concern over the new apartment residents using the Cedar Creek amenities. The Corporation has had some discussions with Mr. Oddo, who said they could include a lease provision. However, Mr. Louk said that will not prevent people from walking out their apartment door and putting a fishing line in their lake. He mentioned concerns about the Zebra mussels. Although some residents have said the Board is developer-controlled, he stated most of the board members are residents. There are two other HOA's: Cedar Creek Village I and Cedar Creek Village II. The members on both those HOA's are elected by neighborhood representatives who are in turn elected by the residents in their neighborhood. He wanted to state not all the boards are developer-controlled. He wanted staff to comment on how the CC zoning is better for Cedar Creek and the site than C-2 zoning. Mr. Louk said we feel C-2 zoning is inferior. It doesn't provide us with as many safeguards with respect to the development itself. It's the Board's understanding that the developer can have as many apartments under C-2, as they could have under CC zoning. With all that said, he stated if apartments must be on this tract which they'd prefer the tract not be developed, but if they must be, the Board doesn't want to see them from the entrance or otherwise. The Board prefers CC zoning and a site plan where the apartments are not visible.

Speaker #27, Ann Horner, 26991 W 108th Street, stated Staff has done their work and the plan meets the "green eye-shade" test and meets the requirements. She stated she sat on the Planning Commission a number of years ago but doesn't recall ever seeing a full room like this. She wanted to add her voice to chorus of Cedar Creek residents stating how much they love their community and Olathe. She asked the City of Olathe to do right by them and not approve the plan. Ms. Horner stated this parcel has always been planned for development. The site has sat vacant and pristine for 40 years, so the thought of something else here is incomprehensible. Still, she stated she believes development could be done much better than the proposed plan, with much less impact. However, the one good thing from this proposal is it has brought what was a disagreeable community of people, together as a unified group.

Speaker #28, Scott Beeler, 5250 W. 116th Place, Suite 400, Leawood, stated he is representing a legally organized group called "Preserve Our Neighborhood" [PON]. He expressed how the development is too much, too big, and too fast. He wanted it noted for the record that he asked for additional time to represent a very large group of people, but his request was denied. He referenced a previous conversation with former Mayor Mike Copeland, who talked to Mr. Beeler about the importance of the view and gateways to Olathe and the reputation of this community. This development would jeopardize that with

this development. He argued the height of the building is over 50 yards straight up from the parkway, which doesn't align with the *Green Book*. The term "uniqueness" is used innumerable to describe Cedar Creek. The entrance is a valuable part of Cedar Creek. This proposed plan doesn't line up with the integrity of the *Green Book*, nor the ideals of the City of Olathe. In closing, he stated there is no encompassing traffic study involving K-10 and the surrounding new developments, no environmental/wildlife impact study, and no noise study. He noted there are currently no multi-family developments in the 17 existing subdistricts of Cedar Creek. With reference to Mr. Holland's statement that they can build multi-family right now, Mr. Beeler said they cannot – unless they build it on top of retail. This is an attempt to shoehorn a six-story, 300-unit apartment complex into a zoning category that would not allow it today.

Speaker #29, Amanda Anderson, 10185 S. Northlake Avenue, stated that her home lines up with the north edge of the apartment complex and is within the 400 feet of the development. She is a Professional Engineer, licensed in Kansas, and a Professional Traffic Operations Engineer. Purely from a land use and traffic perspective, she asked for the Planning Commission to approve the CC overlay. She stated that residential does not generate nearly as much traffic as commercial development. She said under the current zoning that creates more traffic than what is being proposed. She reviewed the traffic impact study; Ms. Anderson said it's very reasonable and what you would expect for this type of development. She continued the study followed the correct standards and process. She stated in looking at the traffic numbers, it cited ~300 vehicles per hour during the "p.m." peak hours which is a conservative estimate. The next table in the report demonstrated "inner use": The people who live there may use the restaurant so that reduces the number of trips through the intersection. That table showed around 200 trips generated in the "p.m." peak hour. That equates to just over 3 trips per minute through the intersection. Ms. Anderson would support the CC overlay. She also wanted to commend staff for recommending against a high turnover fast-food drive-through and stated a Chick-Fil-A can create as much traffic as the entire proposed development in a peak hour. She thought staff's prohibition against fast-food drive throughs was a fantastic addition. She continued that she does not want a truck stop or gas station in her back yard. She asked Planning Commission to seriously consider the CC Overlay.

Speaker #30, Matt Volz, 10185 S. Northlake Avenue, stated that he is also a Licensed Professional Engineer in Kansas. He lives in the Northlake Ridge neighborhood and within 500 feet of the proposed development. The view out his back yard is across Cedar Creek Parkway, and they will see what goes on at the site and hear the construction. He stated no one wants apartments, but the land has been zoned for commercial development for a long time. He would like residential but knows that is not going to happen because it is zoned for commercial mixed-use development right now. He would like to see development happen in a collaborative, cooperative manner with the residents. He would like the aesthetics to match with Cedar Creek. The Cedar Creek Overlay, the preferred overlay of the Cedar Creek Neighborhood, would best afford them that best opportunity. He said they want to work with developers. He stated he knows development is going to happen, so he would prefer the Planning Commission supports the Cedar Creek (CC) overlay.

Commissioner Breen called for any final speakers who had not yet spoken.

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

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

Chair Janner opened the discussion among the Commissioners.

Commissioner Creighton asked staff to comment on the unique nature and ecology, and whether the developer is required to work with KDHE (Kansas Dept. of Health and Environment) to assess environmental impacts.

Mr. Love stated at this time, the applicant is requesting to rezone property and from his understanding, there has not been an application made to the State. Mr. Love continued that is a process the applicant will do, but it comes at a later phase. Mr. Love offered to provide more details if the Commission would like that. Mr. Love stated the applicant would need an approved study to go forward with building permits and construction.

Chair Janner asked where in the process does that occur, and asked if it occurs during final platting.

Mr. Love said the applicant could potentially start at that time. They have to give notice of intent to the State, which then triggers multiple agencies' approvals. In summary, it has to happen before the applicant can start moving dirt on site.

Commissioner Bergida asked for a five-minute recess which was granted by **Chair Janner**.

Chair Janner resumed the meeting after the recess.

Commissioner Bergida thanked his fellow commissioners for the time spent reviewing this application in addition to thanking staff and the residents for their contributions. He continued that he spent about 20 hours reviewing materials over the weekend. Commissioner Bergida stated that one of the goals of the Comprehensive Plan is more resident input, which he acknowledged tonight. Commissioner Bergida stated he noticed the goals and intent of the *Green Book*. He asked staff how this rezoning would preserve the quality and unique character of Cedar Creek.

Mr. Jurey answered the *Green Book* lays out the vision of Cedar Creek: what it does and should look like and the general character of Cedar Creek. A lot of Cedar Creek exists as a suburban, open-space-centric development. Those are clear in the *Green Book*. The *Green Book* is also clear that it does want to see a more urban Town Center at a couple of key location.

Commissioner Bergida asked if this was a correct restatement: The argument is that this is what Cedar Creek has been in the past, but because this is in the Plan and this application fits with the Plan, that's why there's the recommendation for approval.

Mr. Jurey answered the quality of this development and how it fits into the uniqueness of providing a Town Center for Cedar Creek are some of the reasons that staff recommends approval.

Commissioner Bergida stated a number of the residents have brought up a concern regarding Town Centers. Commissioner Bergida asked staff to walk him through how this particular proposed development is a Town Center.

Mr. Jurey showed a Town Center illustration and definition from the *Green Book* and explained that buildings are pulled up to the street for the pedestrian orientation of the development, with parking to the rear of the site behind the buildings and away from the public street view with some ground or structured parking as well. He continued that the applicant is providing some open space between the commercial buildings, which will be fine-tuned as they find end-users for those commercial spaces.

Commissioner Bergida asked Mr. Jurey for further clarification.

Mr. Jurey answered the 'Main Street' area is largely the townhomes flanking the main entrance, as well as some commercial area leading up into the ground floor commercial and the apartments that lead up into the main commercial area. Also, the commercial buildings on the north side flank Valley Parkway and are pulled up to provide a pedestrian-oriented sidewalk along Valley Parkway as well.

Commissioner Bergida asked Mr. Jurey to show with his screen annotator, to demonstrate exactly where he was referencing for clarity.

Mr. Jurey demonstrated the previously mentioned items on the screen.

Commissioner Bergida asked whether there were two main streets: The street on Valley Parkway, and the L-shaped entrance on the western side.

Mr. Jurey answered yes, the applicant is providing elements of the 'main street' at both those locations.

Commissioner Bergida clarified they're providing elements of the 'main street' though not what people would traditionally think of as a Main Street.

Mr. Jurey answered, in terms of the size of this property, providing a whole full blown Main Street that you'd find in any small-town America would be pretty difficult.

Commissioner Bergida referenced it would be something like Lenexa City Center, where there is a main "drag."

Ms. Kim Hollingsworth, Planning Development Manager, added the 'Main Street' would be the main entrance into the site. It is key that the buildings are pushed up. Then, the development aligns with all the standards outlined in the overlay district for Town Center setbacks and street frontage. For items where it aligns near the street frontage, Nathan's detailing other areas where buildings are pulled up to the street. But the key is that there is the main entrance into the development which has almost an L shape, because then you move along the main apartment building and have further commercial and buildings pulled up to the street.

Commissioner Bergida stated a desire of the *Green Book*, was to have a variety of housing. He quoted from a goal of the *Green Book*: "Will accommodate different housing types and sizes without altering neighborhood character." It seemed at one point staff was saying this plan does not fit along with the current character. How does this project not alter the character of Cedar Creek?

Mr. Jurey answered that in his staff report, he outlined this is clearly a different character. The Cedar Creek Area Plan contemplated that issue over the course of four years. When Council adopted the plan in 2012, the Town Center development was envisioned as a distinctly and intentionally different character that can coexist with the suburban character of Cedar Creek as well.

Commissioner Bergida asked about the height exception request to the 50 foot limit in a Town Center. He stated while he appreciated the efforts to be more green, page 26 of the *Green Book* stated the goal is to encourage LEED certification. Since the applicant has stated that is not their intent, Commissioner Bergida asked why the Commission would still grant that exception if that is not the applicant's intent.

Mr. Jurey acknowledged the *Green Book* mentions LEED certification as one of the things it would encourage in the plan. However, the written standards that were codified state they need to consider the 'green principles' as outlined in the plan.

Commissioner Bergida asked to confirm that what Mr. Jurey said was even if the applicant isn't intending to do the LEED certification as the *Green Book* outlines as the goal, that still is, could be, or may be a reason to give them the exception.

Mr. Jurey confirmed, it may be a reason.

Commissioner Bergida referenced conversations over the last year regarding the goals of the Comprehensive Plan when it comes to a particular project. He stated he reviewed goals of the Comprehensive Plan and some, this definitely fits into, but there were some as well that he requested staff's feedback. He continued that LUCC 7.5 Community Image says respect unique community, neighborhood identities, settings and histories. Commissioner Bergida asked whether this development complies with that goal from the Comprehensive Plan.

Mr. Jurey answered the Cedar Creek area plan considered that and the potential for the Town Center at this location. The Cedar Creek area plan took that into consideration, yes.

Ms. Hollingsworth, Planning Development Manager, added that the Cedar Creek Plan sets the vision and image for Cedar Creek and then codifies development standards that staff uses to evaluate proposals. In staff's evaluation, staff uses the development standards like staff does for any development, and evaluates the project against those codified standards. The Cedar Creek plan has a lot of visioning language in the beginning section of it, which sets the image, and then the codified language is what staff uses to evaluate the project.

Commissioner Bergida said that makes sense. He further said what he was getting at is staff listed a number of different ways that this applied to the Comprehensive Plan within the rationale. But he continued he had identified about nine (9) different items where he wasn't sure the proposal does align with the Comprehensive Plan. Commissioner Bergida asked for the rationale for why staff chose the goals they did and whether it was based on the Cedar Creek Plan, which supports the rezoning of this application as opposed to using five of the other ones.

Ms. Hollingsworth asked Commissioner Bergida to confirm whether he was asking, why did staff pick the five that were placed into the staff report as justifying the first golden criteria. Commissioner Bergida confirmed that was his question.

Ms. Hollingsworth answered that though staff has whole list of all those policies, which staff reviews with every application, and staff provides the strongest, most closely related policies. The most critical policy is that the proposal aligns directly with the Comprehensive Plan itself which calls for Cedar Creek Mixed-Use. Then we add in other policies that support that it aligns with Cedar Creek, specifically Mixed-Use on this property.

Commissioner Bergida continued by quoting "LUCC 8.1 Mixture of complementary land uses. Encourage, enable a mixture of complementary land uses and major new developments in existing neighborhoods. A mixture of land use types, housing sizes and lot sizes may be possible if properly planned and respectful of neighborhood character" and it continues about compatibility. Commissioner Bergida asked staff to confirm whether they are saying, 'Because we're talking about the neighborhood character here, that yes we want to offer this diversity of options as long as it fits within the character of the community.'

Ms. Hollingsworth further explained the Comprehensive Plan does have that policy that he described. Then next, in the Cedar Creek Plan, it does reference that there is an existing character to Cedar Creek. However, there is a "but" statement which says, 'but it's introducing a *new* character by adoption of this [Cedar Creek Area] plan, that is also incorporated into *PlanOlathe*. She quoted from *PlanOlathe*: "The plan adopts and codifies new development patterns for Cedar Creek with more allowances for non-residential and mixed-use." Ms. Hollingsworth continued that it is in contrast to some of the surrounding character, however, directly in line with what the [Cedar Creek Area] Plan adopted in 2012 and then further was adopted and incorporated into the *PlanOlathe* Comprehensive Plan.

Commissioner Bergida summarized, staff is saying it does change the character of the community, but this is a planned change. This is why staff provided supporting documentation for “change” as opposed to the policies of the comprehensive plan that support continuity of the character of the neighborhood. He asked staff to confirm.

Ms. Hollingsworth clarified the Plan provided that this is a new element and new district being introduced - the Mixed-Use Town Center - into the [Cedar Creek Area] Plan’s adoption in 2012. Thus, staff used that component as the key analysis for this rezoning proposal.

Commissioner Bergida stated someone mentioned the property was vacant for 35 years. He asked the reason for the long term of vacancy and how the developer came to acquire the property.

Mr. Curt Holland answered he could not answer definitely for the 35 years the property was undeveloped. He could guess it was the market. There is much undeveloped C-2 ground still available to be developed. Along the highway and at the gateway entrance to Cedar Creek, there is C-2 on both sides, so there’s a lot of undeveloped C-2 land in that area. To the east side of Cedar Creek Parkway, that land was designated for non-commercial uses for about 40 years. With the exception of a few buildings that have been developed, that land is largely undeveloped. In summary, he could not provide exactly why the market has not required commercial uses for the period it’s been zoned as C-2.

Mr. Holland continued, regarding the owner’s acquisition of the property, they reviewed sites across this region to determine where they could build a project like this. This property was chosen as a prime location because C-2 already allows for multi-family. The request to rezone to Cedar Creek (CC) zoning was a recommendation by the staff, though applicant agreed CC would provide a better plan, but the site itself was zoned for this particular use.

Commissioner Bergida asked if the property was recently put on the market and whether it was acquired by private or public transaction and whether the conditions of the sale were known to Mr. Holland.

Mr. Holland answered he doesn’t know that that makes any difference to this. However, he confirmed it was recently acquired. Mr. Oddo now owns the property, and it was an arms-length transaction with the seller (previous owner) of the property like any other land transaction.

Commissioner Bergida stated he was trying to get to whether this land was held as an investment and it was only recently put on the market for development, or whether this property has been trying to be developed for 35 years and nothing has occurred.

Chair Janner interjected that the discussion was getting beyond the purview of the Commission’s specific issue.

Commissioner Bergida said he had one more question. Regarding the HOA's concerns that apartment residents could utilize the trails, etc, Commissioner Bergida inquired whether there was a plan for the apartment complex to pay fees or otherwise contribute to the maintenance of the area. He continued the existing community has made a large investment to keep the area in its current condition.

Mr. Holland answered there has been some discussion, but not in great detail. He further admitted they cannot prevent people from walking on a sidewalk. However, the proposed plan offers amenities on the property. He cannot state whether apartment residents will walk on Cedar Creek's trails or fish in the lake, but they will do everything they can to prevent that. Mr. Holland said they will provide plenty of notice, write it into leases, and do what they can to protect against that. Mr. Holland continued there would be many amenities on site already. He continued the retail area would be open to the public and not solely for the residents.

Commissioner Brown asked staff, regarding the slide with the definition of a Town Center, where that definition originated.

Mr. Jurey answered the definition comes from the 2012 adopted Cedar Creek Area Plan.

Commissioner Brown asked whether it was a generic definition, specific to this plan, specific to Olathe, to the American Planning Association, etc. He asked where the definition came from.

Mr. Jurey answered the definition was specific to the Area Plan.

Commissioner Brown referenced another slide Mr. Jurey had used of a side-by-side of the C-2 versus the CC zoning and asked that slide to be shown again. [Mr. Jurey did so.] Commissioner Brown asked, under the C-2 category that said "big box retail store" whether that could be for example, a Home Depot.

Mr. Jurey answered yes. He explained the CC District limits retail sales and retail businesses up to a maximum of 50,000 square feet. A typical big box store is approximately 100,000 square foot. For comparison, a grocery store would generally be 40-50,000 square foot. In conclusion, a Home Depot would not be able to go in there, in the CC District zoning.

Commissioner Brown clarified that he wanted to know whether a Home Depot would be allowed in the C-2 zoning.

Mr. Jurey confirmed it would be allowed in the C-2 zoning.

Commissioner Brown then referenced a map with the rest of the C-2 District and whether it was reasonable to assume one day those properties could also be rezoned to CC zoning. He acknowledged Mr. Jurey would have to project the future to answer. He clarified his question is whether other developers could decide to also rezone to CC zoning.

Mr. Jurey asked whether Commissioner Brown was asking about the areas to the north along K-10, and Commissioner Brown confirmed.

Mr. Jurey answered any developer has the right to develop under their existing zoning district - same as this property in question. However, staff would recommend rezoning to the CC District because that is the recommendation of the CC [Cedar Creek Area] Plan.

Commissioner Brown asked regarding tonight's property, whether a five-story hotel would be allowed.

Mr. Jurey confirmed that would be an allowed use under the C-2 zoning.

Commissioner Terrones stated first he had a point of clarification: The Commissioners received the number of handouts during tonight's meeting. He asked whether the handouts were new data.

Ms. Hollingsworth answered the handouts were additional correspondence received from residents or speakers that had planned a presentation. The handouts are being added in for the record. Each Commissioner was provided a copy, and staff additionally has a copy which will put into the record and go to the City Council.

Commissioner Terrones stated he understood it was not new information.

Ms. Hollingsworth provided that some information received tonight was new information. She continued, staff had passed along all correspondence that they received up until tonight's meeting. Then anything additionally the Commissioners received during this meeting, staff placed in front of the Commissioners and retained a copy. She stated there could be new information in front of the Commissioners, which was received from residents this evening.

Commissioner Terrones stated, regardless of the Commission's vote tonight, before the application proceeds to the City Council, whether there would be any consideration of having a wildlife study or noise study conducted.

Ms. Hollingsworth answered that is not the typical process. Staff follows a typical development process for every project. Those considerations come much later because plans get more refined as they move through the process which provides more opportunity to give that more refined information to those agencies which review it. Ms. Hollingsworth stated staff recommends following the normal process.

Commissioner Terrones referenced many of the residents' comments with concern for their property values. Commissioner Terrones acknowledged the staff report stated they are not in receipt of any information that would impact property values. Regardless of the Commission's vote, before this application proceeds to the City Council, he asked whether it would be possible to provide some sort of study to either support or not support that for the Councilmembers to consider regarding the impact on property values.

Ms. Hollingsworth answered that a study is not something that staff would conduct. The applicant could choose to provide that information. Staff does not have any information that would show any negative impacts on property values.

Commissioner Brown referenced a slide on the screen. He stated Mr. Jurey was showing on the northwest corner, that is already zoned CC. He asked staff whether it was safe to assume that property used to be zoned C-2.

Mr. Jurey answered he didn't recall the exact previous zoning, but the property was zoned to CC in the last four years or so.

Commissioner Brown asked the reason why it was rezoned.

Mr. Jurey answered it was rezoned, he believed, to allow residential development.

Ms. Hollingsworth added according to her memory, the property was zoned C-2, which was rezoned for villa-type attached units.

Chair Janner requested clarification for the record. He stated there were vastly different statements of the height and how it's measured.

Mr. Jurey answered that the CC District calculates building height from the front door. He referenced a slide diagram: the plan shows the "front door" as the entrance at the northeast corner of the ground floor commercial area and to the highest point of the roof is 57.3 feet. Mr. Jurey added that the distance from the ground to the roof on the west side facing Cedar Creek is 82 feet. He stated people have referenced a 150-foot tall building, which he believed might be calculated from the road, Cedar Creek Parkway, itself rather than from the grade at the building foundation.

Mr. Klover added that "50 yards" was another term that was used, which is 150 feet. He continued that the confusion stemmed in that when architects create drawings, architects set the bases at "100," so there's a baseline of 100 to accommodate for basements, downhill grades, etc. The building goes up 57 feet. Mr. Klover said a gentleman sent a drawing, saying it's 100 foot plus 57 feet, so therefore it's 157 feet tall. However, that's not accurate.

Mr. Klover continued, the ordinances, as Mr. Jurey said, directs to calculate at the front door. This is on a hill going down. He added the garages are going to be approximately 20 feet tall with the 2 levels, which are also down the hill as well. In summary, Mr. Klover stated he believed the confusion was the 100-foot base. There was a markup from one of the residents who believed the building was 157 feet tall, but that's not the case.

Commissioner Breen requested staff provide clarification regarding density per acre pertaining to C-2 versus CC zoning.

Mr. Jurey referenced another slide. He stated that vertical mixed-use would be allowed in the C-2 District. The C-2 District does not have a maximum density allowance. Instead,

density is restricted by building height and required parking. For example, in a hotel, there are not any restrictions on the number of hotel rooms, but there would be a restriction based on height of the hotel and parking that is needed to accommodate that hotel.

Commissioner Bergida stated there seemed to be confusion regarding the mixed-use development and whether the entire first floor had to be commercial. He asked staff to first confirm the definition of mixed-use development. Further, Commissioner Bergida noticed it appears the first floor is not all commercial and asked staff to comment.

Mr. Jurey answered that C-2 zoning allows 'vertical mixed-use,' which is defined as residential over storefronts. The proposed apartment (multi-family) building does not meet that currently. Mr. Jurey confirmed that if the C-2 zoning remained, the applicant would have to return to the drawing board.

With no additional questions, **Chair Janner** stated the challenging and frustrating part is we will walk away tonight with a lot of unanswered questions. He continued that the City Council would need to look very closely at this – whether that means further studies, the use of the land, etc. Chair Janner followed with concluding remarks.

Chair Janner continued this is not the last step. The Commission will vote. Chair Janner said he wanted to restate the Commission's vote tonight is to change C-2 to CC, and that is the one item that we're voting on tonight for that motion. He stated he would entertain a motion for that vote.

Commissioner Creighton requested to make a comment. He stated that at the very beginning, he had stated he does not like what he calls "downzoning" from a more intense use. He continued that he understands the residents' concern, and he is backing down on wanting to keep this property as C-2 because of the potential uses. This could be, if properly done, a more restrictive use. As the Planning Commission, the body has to look at the legal and the unified development ordinances. That said, Commissioner Creighton stated he sees this as two-steps: 1) The rezoning and 2) the preliminary plan.

Commissioner Creighton continued that he believed this plan meets the CC District requirements. However, he believed the parties could do better regarding the building height.

Commissioner Bergida interjected that if Commissioner Creighton were to move to amend that stipulation regarding the height, Commissioner Bergida would second that motion. Commissioner Bergida continued, referencing Commissioner Terrones' and Chair Janner's comments, he noted there were still many questions. Though it is not the traditional path, Commissioner Bergida stated he would entertain tabling this application until a K-10 traffic study, noise study, and ecological study were completed. If others want to add a property valuation also, he would consider it though it might pose an additional burden. If other Commissioners were amenable to tabling until those three studies come in, Commissioner Bergida stated he would make a motion to that end.

Commissioner Creighton answered he would not be willing to accept that. Commissioner Creighton stated everyone has had a chance to say something and now he believed the Commission needed to get this to the City Council. He continued, from what he understood from engineering staff earlier, that at some point down the road, if this is approved at the City Council level, those things will be required. He asked Ms. Hollingsworth whether that is correct.

Ms. Hollingsworth confirmed and stated the development cannot proceed unless the environmental studies and any further studies that are part of the typical development process have been performed before there's a shovel in the ground.

Commissioner Breen agreed and stated he didn't believe a motion to table the item was necessary. Those processes are put in place and are well-monitored. He stated that road would be crossed when it was time.

Chair Janner asked if Commissioner Breen was willing to make a motion.

Commissioner Breen confirmed he was. He stated he recommended a motion to approve RZ24-0003 as stipulated by staff. That motion was seconded by **Commissioner Creighton**.

Chair Janner called for a roll call vote.

Ms. Gourley called for votes.

Before his deciding vote, **Chair Janner** stated he has struggled with this, but he believed CC was still a better option than C-2, so he voted yes.

The motion passed 4 to 3 as follows:

- A. Staff recommends approval of the rezoning with the following stipulations.
 - 1. The *Drive-In / Drive-Through Facility* use as defined by the Cedar Creek Area Plan is prohibited.
 - 2. Residential density is limited to a maximum of 22 dwelling units per acre.
 - 3. Sign standards will be determined with final site development plans or through a comprehensive sign package.
- B. Staff recommends approval of the preliminary site development plan with the following stipulations:
 - 1. Prior to final certificate of occupancy for the multifamily building, a building permit must be issued for at least one (1) standalone commercial building.
 - 2. The multifamily building is limited to a maximum of 58-feet in height as measured according to the Cedar Creek Area Plan standards and must be

constructed using the green principles outlined in the Building Height Modulation Request Letter submitted by Klover Architects dated March 7, 2024.

3. The multifamily building must maintain a minimum of 3,500 sq. ft. of commercial space that is open to the public, not to include the leasing office and not for the exclusive use of residents or tenants of the development.
4. Installation of standard orange construction fencing must be installed around all tree preservation areas and maintained throughout the course of development.
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.