Regular Minutes of the
Ashland City Planning Commission
December 5, 2011

The Ashland City Planning Commission met in regular session on December 5, 2011 At 5:30 p.m. in the Municipal Building.

Chairman Chris Lacrosse called the meeting to order at 5:33 p.m.

Commissioners present: Yvonne Stinnett, Ed Nichols, Hadley Williams, Roger Jackson, Gary Norwood, Chris LaCrosse

Commissioners Absent: None

Others Present: Michael W. Armstrong, Franklin Wilkinson, Cherie Akers, Jennifer Noe, Chris Neese, Ron Wilkinson

Approval of Minutes

A motion was made by Mayor Norwood and 2nd by Williams to approve the minutes from the Planning Commission meeting from November 7, 2011 with typographical corrections to paragraph eight, and paragraph twelve. The motion to approve the minutes with typographical errors corrected passed by unanimous voice vote.

Public Forum: None

Old Business:

A. **Discussion of Mobile Food Vendors:** The Commission took no action at this time.

New Business:

A. **Plat Amendment for Vantage Pointe Homes at Marrowbone Heights Subdivision**

Akers stated that the applicant is requesting an amendment to the plat and an amendment to the previously approved Master Plan for the Vantage Pointe PUD located at 1667 Highway 12 South. The original PUD was approved for 200 multi-family units, 13 single family and two commercial outparcels for future development. The applicant is also requesting to include an 80 bed assisted living facility to be located on Lot # 4A of the plat. The lot lines are modified in order to accommodate the assisted living facility. The project went to the Board of Zoning Appeals on November 29, 2011 and was granted the use of an Assisted Living facility as a special exception. In addition they were granted a height variance for the height of the main structure and a parking variance for off-street parking. The applicant is seeking to reconfigure the lot lines for lots 4A, 4B & 5. The single family section will still be located in lots 4B which will have 4 single family

structures or duplexes, and lot 5 will have 9 single family or duplexes. Lot 4A is the location for the assisted living facility. Akers stated her only comment was a request to get a sign-off from local utilities. If the Commission votes to approve the plat it should be contingent on receiving the sign-offs. Mayor Norwood asked if the sign-off for water and sewer is in regard to capacity. Akers stated that the capacity is listed on the plan. Mayor Norwood stated that the City had a letter from Stantec engineering saying there was enough capacity and the study does include an assisted living facility. Akers stated she had not received that report. Armstrong stated that he will acquire a copy of the report for the file and will forward a copy to the Planning Department. LaCrosse asked if the Commission had previously discussed the 50' wide right of way width of the easement that terminates through lot 5 or was it a 30' wide access to allow a driveway. Jackson did recall some discussion from our previous planner regarding the access but can not recall the details. LaCrosse asked Jennifer Noe if she had any comment on the easement. Noe stated she had not attended all of the meetings so she is not sure what was discussed. Akers stated that the Subdivision Regulations do require a 50' easement. Ron Wilkinson addressed the Commission and stated he had been in litigation with the Harrisons regarding access to the back property. The deed does not require that we provide an easement. The deed only required the provision of an access road which was done. Referring to the plat Ron Wilkinson stated that the existing road does not completely lay within the 50' easement noted on the plat but is very close. The original intent of the access easement was and remains is the secondary entrance for the Fire Department. The litigation was settled about three weeks ago and in doing so the developer agreed to give the Harrisons an access easement. Ron Wilkinson stated there is nothing done in the easement agreement or the settlement agreement that provides the Harrisons the opportunity to do anything on the back lot that the City would not allow, which currently is understood to be construction of one home. Originally the requirement was to provide a road to the back lot and was to be terminated upon the death of the Harrisons. Ron Wilkinson stated that that requirement was not of his company's making and was in place per the previous owners of the property. They have no rights other than the right to traverse the road. Anything other than constructing a single family dwelling on the lot would require the Harrisons to provide a maintenance agreement for the road with our company. The access was never intended to be a through fare to the back lot. Ron Wilkinson stated that the City attorney has a copy of the easement agreement and the settlement agreement. A motion to approve the plat amendment, contingent on signatures of required certificates, including water & sewer on the plat, was made by Mayor Norwood and 2nd by Nichols. The motion passed by roll call vote. Yvonne Stinnett - yes, Ed Nichols - yes, Hadley Williams - yes, Roger Jackson - yes, Gary Norwood - yes, Chris LaCrosse – yes.

B. Planned Unit Development Agreement Amendment of eighty (80) bed Assisted Living Facility

Akers stated that this agenda item requires amending the Master Concept Plan to accommodate the 80 unit assisted living facility on lot 4A and requires a review of the developer's agreement, which is a legal document between the developer and the City that outlines what the development requirements are. A motion to approve should also include the approval of the agreement. Akers stated that the City Attorney can comment

on the amended agreement and will require a signature by the City Council. Akers comments on the Master Plan included some requirements for labeling and delineating some items on the Master Plan. The applicant is providing, tonight, copies of the Master Plan that has addressed all the comments but at this time have Akers stated she had not had a chance to review the revised Master Plan. Any motion to approve should include compliance with comments. There should be enough time to conduct a detailed review before it is presented to the City Council. Akers stated her recommendation is for approval based on future compliance with comments before presentation to City Council. Akers stated that the Fire Chief does have some concerns regarding ingress and egress with the ladder truck. It was explained to the Fire Chief that the development of lot 4A will also have to come back for site plan approval. Any approval of the Master Plan should also be contingent on approval from the Fire Chief regarding the ingress and egress to the parcels. Williams asked if there would be a fence between the single family dwellings and the assisted living facility. Ron Wilkinson stated there will not be a fence but pointed out there will be a retaining wall along the drive. LaCrosse asked if there would be a cart path to the cafeteria. Ron Wilkinson stated there will be one for the cottages but not from the apartments. LaCrosse asked Jennifer Noe if there was anything she would like to discuss or make known to the Commission. Noe stated the original PUD agreement was done in 2009. At that time, phase one was the 200 unit apartment complex and phase two was for the two commercial parcels as well as the residential parcels. Phase one has been completed. Phase two is what we are discussing tonight to amend. The amendment refers to the Master Plan, to add the assisted living and to change the residential section. Initially in the contract there would be 13 buildings as either single family or duplexes. It is now configured differently but still represents 13 single family or duplexes. The 13 parcels are now divided in 4B and parcel 5. The division has something to do with financing and the way the loan is structured. There have been changes to the ordinance since then but this meets the requirement based on what we had in place at the time. The only other change is that the developer had two years to complete both phases. In the new PUD agreement the developer is asking for two more years form the signing of this PUD agreement to complete the assisted living as well as single family residential section. LaCrosse stated the original ordinance has changed but the Commission allowed itself the flexibility to set the densities with ordinance 381 and is of the understanding that the developer would like to stay with 13 single family structures. LaCrosse stated that he is of the opinion there is a need for independent living and thinks duplexes would be preferred over single family homes for the residential section. Ron Wilkinson stated his intent is to build duplexes on the remaining 13 lots. Also, in this business he likes to take the sum of the assisted living and memory care units and use that as the number of independent units to develop. In this case there is not enough area to accomplish that, so 13 duplexes is what we would like to do. We would also like to do that in a build-out phase so we can use our money to finance it instead of relying on a bank. We do not include that phase in the master note. As Jennifer Noe referred to, we segregated lot 5 because we wanted to put into the old lot 4, which is now 4A and 4B, some residential units to phase in, instead of having to build them all out at once. That is the hardest lease-up in our business, the independent cottages. It is a lifestyle decision change while the other is not and is generally made by members of the family. As a result of that we lease-up a little slower in the independent living. The ideal

numbers for this development would be 40 units but there is not enough space. It is our intent to build out the cottages as soon as possible. The facility is designed to handle the extra independent living group of people. It would be a long time before the single family market comes back so if it were just single family the property would be built by someone else but we do build independent cottages. LaCrosse acknowledged that under the first agreement it gave phase II two years to complete with an additional possible one year beyond that so will the independent living cottages be done within two years. Ron Wilkinson stated that what normally happens is after the assisted living center is complete and ready for occupancy the build out of the cottages will start. What we hope to do, now that the litigation is cleared up, is to be able to break ground the first quarter of next year and finish up the facility sometime in the fall. That way we could start to fill up the main building and at the same time start to build the cottages. Akers stated for clarification that the Master Plan is contingent on a traffic study. Section 5.0514e of the codes requires a traffic study. Obviously an assisted living center is a lower trip generator than the original commercial use however, the code does specifically say that if there is a change the traffic study should be amended to accommodate the new use and that is stated in my comments. I did receive a letter stating the average trip generation for the industry, based by the ITE, and am confident this document provides data to the Commission by which you can make an informed decision regarding the traffic study. LaCrosse stated the original traffic study was based on commercial use and this letter states that an assisted living facility should have a lesser traffic impact. Akers stated the only other thing is to label the Master Plan as exhibit A as referenced in the PUD agreement and label Exhibit B as such as referenced in the PUD agreement. A motion to grant approval of the Planned Unit Development agreement to include the assisted living facility contingent upon approval from the Fire Chief regarding ingress and egress, satisfactorily addressing all planning comments on the Master Plan, and waiving the traffic study in lieu of supporting traffic documents provided was made by Mayor Norwood and 2nd by Stinnett. The motion passed by roll call vote. Yvonne Stinnett - yes, Ed Nichols - yes, Hadley Williams - yes, Roger Jackson - yes, Gary Norwood - yes, Chris LaCrosse – yes.

C. Discussion of Non-Conforming Uses

Akers presented a section of the Tennessee Code Annotated that deals with con-conforming use. Wilkinson stated that this issue has come up because of non-conforming commercial sites that have not been used for over a year and asked if there is anything in place to require at least some minimal standards for dust free parking, landscaping, ingress, egress, etc., on such sites. Akers stated that the City's code is in violation of the Tennessee code. This needs to be change to reflect the requirements of the Tennessee code. The time limit for a legally non-conforming use once it has been abandoned is 30 months. There has to be intent for the use to be abandoned. If there is intent to abandon the use, the Tennessee code gives the legally non-conforming use up to 30 months to be "grandfathered". The City code allows for one year. LaCrosse requested an example. Akers stated that for example, if the use of an existing adult entertainment business in a C-2 zoning went out of business and was out of business for one year. That does not qualify for abandonment, even if the business is sold, the business would get 30 months to resume business before it looses its legally non-conforming status. Or, if a natural

disaster or something else damaged or destroyed the facility that would not be abandonment and the owner could rebuild and resume the business. It is their burden to prove that the existing non-conforming use existed prior to the zoning adoption. A change of ownership does not constitute a change in use. Signs are not included in this. Mayor Norwood stated he would like to include signs in regulating non-conformance. Akers did ask counsel at GNRC as to when certain standards could be applied to a site, other than bulk regulations. Akers stated that the Tennessee code does not give authority to require parking, landscaping, signs, etc., but does not specifically exclude the ability to implement these requirements. It has never been legally challenged. You can not change the requirements for bulk regulations but the City code may be drafted in such a way to at least include requirements for landscaping, parking, signs, etc., Akers stated that expansion of the site is allowed to a certain point but possibly a City code could be drafted to include expansion of the site to implement some requirements. After further discussion the Commission decided that the Planning staff should draft an ordinance to correct the City code to reflect the Tennessee Code Annotated and include an ability to require some minimal standards to non-conforming sites.

D. Discussion of Land Use Plan & Set Meeting Dates and Times for 2012

Mayor Norwood suggested waiting till the next calendar year until the new Mayor comes in to decide on how to proceed with the Land Use Plan and Committee. The Planning Commission agreed.

Other: LaCrosse stated that he personally, and in concurrence with the other member of the Planning Commission, would like express his gratitude toward Mayor Norwood for his tireless efforts and hard work over the past 12 years as the City Mayor and to wish him well toward his future pursuits.

Adjournment:

A motion to adjourn was made by Stinnett and 2nd by Williams. The meeting adjourned at 6:27 PM.

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Chairman Chris LaCrosse