

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 137-13

AN ORDINANCE

approving the Final Plat of Landmark Subdivision – Plat 2, a minor subdivision; accepting the dedication of rights-of-way and easements; authorizing a performance contract; granting a variance from the Subdivision Regulations relating to construction of a sidewalk along a portion of Country Club Drive; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Council hereby approves the Final Plat of Landmark Subdivision – Plat 2, dated March 11, 2013, a minor subdivision located north of Country Club Drive and south of McAlester Street, containing approximately 5.46 acres in the City of Columbia, Boone County, Missouri, and hereby authorizes and directs the Mayor and City Clerk to sign the plat evidencing such approval.

SECTION 2. The City Council hereby accepts the dedication of all rights-of-way and easements as dedicated upon the plat.

SECTION 3. The City Manager is hereby authorized to execute a performance contract with Bear Creek Properties, LLC in connection with the approval of the Final Plat of Landmark Subdivision – Plat 2. The form and content of the contract shall be substantially as set forth in "Exhibit A" attached hereto and made a part hereof as fully as if set forth herein verbatim.

SECTION 4. Subdivider is granted a variance from the requirements of Section 25-48.1 of the Subdivision Regulations so that a sidewalk shall not be required along the portion of the north side of Country Club Drive, adjacent to Lot 2-A and Lot 2-B within Landmark Subdivision – Plat 2.

SECTION 5. This ordinance shall be in full force and effect from and after its passage.

PASSED this _____ day of _____, 2013.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

PERFORMANCE CONTRACT

This contract is entered into on this _____ day of _____, 20____ between the City of Columbia, MO ("City") and Bear Creek Properties, LLC ("Subdivider").

City and Subdivider agree as follows:

1. Subdivider shall construct, erect and install all improvements and utilities required in connection with the final plat of Landmark Subdivision Plat 2, including sidewalks and all improvements and utilities shown on the plat and related construction plans, within 36 months after the City Council approves the plat.
2. If street, utility or other construction of public improvements should occur on or adjacent to land in the subdivision at the initiative of the City Council, as benefit assessment projects, Subdivider agrees to bear Subdivider's equitable and proportionate share of construction costs, as determined by such assessments.
3. No utility service connections or occupancy permits shall be issued to the Subdivider or to any other person for any structure on land in the subdivision unless and until all utilities and improvements have been constructed, erected and installed in the structure and upon the lot or lots on which the structure is situated in accordance with all applicable ordinances, rules and regulations of the City.
4. No occupancy permit shall be issued to Subdivider or any other person for any structure constructed on land in the subdivision unless the street and sidewalk adjacent to the structure have been completed in compliance with the City's Standard Street Specifications.
5. City may construct, erect or install any improvement or utility not constructed, erected or installed by Subdivider as required by this contract. City may perform such work using City employees or City may contract for performance of the work. Subdivider shall reimburse City for all costs and expenses incurred by City in connection with the construction, erection or installation of improvements in utilities under this paragraph. Subdivider agrees to pay City all expenses and costs, including reasonable attorneys' fees, incurred by City in collecting amounts owed by Subdivider under this paragraph.
6. City shall not require a bond or other surety to secure the construction of the improvements and utilities required in connection with the final plat.
7. The obligations of Subdivider under this contract shall not be assigned without the express consent of the City Council.

8. The remedies set forth in this contract are not exclusive. City does not waive any other remedies available to enforce Subdivider's obligations under this contract or to recover damages resulting from Subdivider's failure to perform its obligations under this contract.

9. This contract is not intended to confer any rights or remedies on any person other than the parties.

IN WITNESS WHEREOF, the parties have executed this contract on the day and year first above written.

CITY OF COLUMBIA, MISSOURI

BY: _____
Mike Matthes, City Manager

ATTEST:

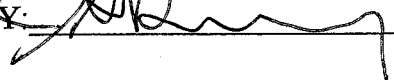
Sheela Amin, City Clerk

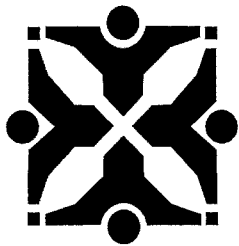
APPROVED AS TO FORM:

Nancy Thompson, City Counselor

BEAR CREEK PROPERTIES, LLC

Subdivider

BY:  _____



Source: Community Development - Planning

Agenda Item No:

To: City Council

From: City Manager and Staff

Council Meeting Date: May 20, 2013

Re: Bear Creek Properties, LLC replat, easement dedication, and variance requests (Case #13-52)

EXECUTIVE SUMMARY:

A request by C. Stephen Heying (surveyor), on behalf of Bear Creek Properties, LLC (owner), for a three-lot replat to be known as "Landmark Subdivision, Plat 2," sidewalk variance, and easement vacation and dedication. The 5.46-acre site is north of Country Club Drive and south of McAlester Street. (Case #13-52)

DISCUSSION:

The applicant requests approval of a three-lot replat as well as a sidewalk variance, and an easement vacation and dedication. The plat reapportions lot 2 of Landmark Subdivision into parcels of approximately 1.4, 3.3, and 0.7 acres. Proposed lot 2-B would be the only lot to have frontage on both Country Club Drive and McAlester Street. The plat meets the specifications of the Subdivision Ordinance and has been reviewed by pertinent City and external departments and agencies.

The easement vacation removes a utility easement that cuts north-south through the middle of lot 2-B. A new easement would be added at the northeast corner of lot 2-B to serve lot 2-A. The vacation and dedication have been reviewed and approved by utility providers. The easement vacation was given first reading at Council on Monday, May 6.

The applicant seeks a variance to Section 25-48.1 of the Subdivision Regulations (sidewalks construction) for the portion of the site fronting on Country Club Drive. The nearest sidewalk adjacent to this portion of the property is located along the Landmark Hospital's Alfred Street frontage, to the west. There is an intervening residential parcel between it and the subject site on Alfred Street, creating a gap, and there is no sidewalk to the east along Country Club Drive. The applicant will build the sidewalk along McAlester Street on the north side of the site as required by the Subdivision Regulations.

The Subdivision Regulations require sidewalks be installed as part of the platting process. Staff review of the variance criteria within both the Subdivision Regulations and Chapter 24 of the City Code concluded that the hardship necessary to support the requested variance had not been shown. As such, staff cannot support approval of the sidewalk variance.

The previously approved performance contract for Landmark Subdivision included provisions that stipulated only those lots for which construction plans were submitted were required to build sidewalks. As Landmark Hospital was the only structure built on the originally platted site since the plat was approved, the remaining area—the subject of this replat—was not subject to sidewalk construction. The site will now be subject to such improvements per the Subdivision Regulations.

The Planning and Zoning Commission, at its May 9, 2013 meeting, voted unanimously (6-0) to approve the replat, easement vacation, and sidewalk variance along Country Club Drive. Three people, the applicant and his representatives, spoke during the public comment in favor of the request. Commission comments pertaining to this request focused on the ability to "tax bill" for future sidewalk construction should they ever be required or desired.

The staff report, locator maps, and meeting excerpts are attached.

FISCAL IMPACT:

None.

VISION IMPACT:

<http://www.gocolumbiamo.com/Council/Meetings/visionimpact.php>

None.

SUGGESTED COUNCIL ACTIONS:

The Planning and Zoning Commission recommends approval of the replat, easement vacation, and sidewalk variance along Country Club Drive.

FISCAL and VISION NOTES:					
City Fiscal Impact Enter all that apply		Program Impact		Mandates	
City's current net FY cost	\$0.00	New Program/ Agency?	No	Federal or State mandated?	No
Amount of funds already appropriated	\$0.00	Duplicates/Expands an existing program?	No	Vision Implementation impact	
Amount of budget amendment needed	\$0.00	Fiscal Impact on any local political subdivision?	No	Enter all that apply: Refer to Web site	
Estimated 2 year net costs:		Resources Required		Vision Impact?	No
One Time	\$0.00	Requires add'l FTE Personnel?	No	Primary Vision, Strategy and/or Goal Item #	N/A
Operating/ Ongoing	\$0.00	Requires add'l facilities?	No	Secondary Vision, Strategy and/or Goal Item #	N/A
		Requires add'l capital equipment?	No	Fiscal year implementation Task #	N/A

**AGENDA REPORT
PLANNING AND ZONING COMMISSION MEETING
APRIL 18, 2013**

SUMMARY

A request by C. Stephen Heying (surveyor), on behalf of Bear Creek Properties, LLC (owner), for a three-lot replat to be known as "Landmark Subdivision, Plat 2," sidewalk variance, and easement vacation and dedication. The 5.46-acre site is located north of Country Club Drive and south of McAlester Street. (Case #13-52)

DISCUSSION

The applicant requests approval of a three-lot replat as well as an easement vacation and dedication. The plat reappropriates lot 2 of Landmark Subdivision into parcels of approximately 1.4, 3.3, and 0.7 acres. The proposed lot 2-B would be the only lot to have frontage on both Country Club Drive and McAlester Street. The plat meets the specifications of the Subdivision Ordinance and has been reviewed by pertinent City and external departments and agencies.

The easement vacation removes a utility easement that cuts north-south through the middle of lot 2-B. A new easement would be added at the northeast corner of lot 2-B to serve lot 2-A. The vacation and dedication have been reviewed and approved by utility providers. The easement vacation was given first reading at Council on Monday, May 6.

The sidewalk variance request to Section 25-48.1 of the Subdivision Regulations is for the portion of the site fronting on Country Club Drive. The nearest sidewalk on this stretch of road is in front of Landmark Hospital, to the west. There is an intervening residential parcel between it and the subject site on Alfred Street, creating a gap, and there is no sidewalk along Country Club Drive. The applicant commits to building the sidewalk along McAlester Street on the north side of the site. As the regulations call for sidewalks when a plat is processed, staff cannot recommend approval of the sidewalk variance.

A performance contract had been authorized when the property was previously platted; however, it stipulated that only lots for which construction plans were submitted required sidewalks to be installed. As Landmark Hospital was the only structure built on the originally platted site since that plat was approved, the remaining area--the subject of this replat--was not subject to sidewalk construction. The site will now be subject to such improvement. Variance worksheet materials are attached, stating the applicant's justification for the request.

STAFF RECOMMENDATION

Staff recommends approval of the replat (including the easement dedication).
Staff recommends denial of the sidewalk variance.

SITE CHARACTERISTICS

Area (acres)	5.46
Topography	Sloping downward to west, southwest
Vegetation	Grass and trees
Watershed	Hinkson Creek
Existing zoning	R-1

UTILITIES & SERVICES

Sanitary Sewer	All City of Columbia Services
Water	
Electric	
Fire Protection	

ACCESS

Country Club Drive	South of site
Major Roadway Plan classification	Local
Capital Improvement Program projects	Description: N/A Cost: Timeline:
Right-of-way	50'

McAlester Street	North of site
Major Roadway Plan classification	Local
Capital Improvement Program projects	Description: N/A Cost: Timeline:
Right-of-way	50'

Pedestrian Access Needs	
Sidewalks	None; needed with replat
CATSO Bicycle/Pedestrian Network Plan	N/A

PARKS & RECREATION

Neighborhood Parks Plan	N/A
Trails Plan	N/A
Trail easement(s)	None

Report prepared by ML

Approved by PRZ



Case 13-52: Landmark Subdivision, Plat 2 Replat and easement vacation/dedication

0 100 200 400
Feet

1 inch = 200 feet





Case 13-52: Landmark Subdivision, Plat 2
Replat and easement vacation/dedication



1 inch = 200 feet





City of Columbia
Planning Department
701 E. Broadway, Columbia, MO
(573) 874-7239 planning@gocolumbiamo.com

Variance Worksheet

For office use:

Case #: 13-52	Submission Date:	Planner Assigned: Lepke
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Where the Planning and Zoning Commission finds that undue hardships or practical difficulties may result from strict compliance with the City's Subdivision Regulations, it may recommend and the Council may approve variances so that substantial justice may be done and the public interest secured, provided that any such variance shall not have the effect of nullifying the intent and purpose of the Subdivision Regulations.

The Commission shall not recommend variances unless it finds and determines that the following criteria are met¹. Please explain how the requested variance complies with each of the below requirements:

1. The granting of the variance will not be detrimental to the public safety, health or welfare or injurious to other property or improvements in the neighborhood in which the property is located.

Applicant Bear Creek Properties, LLC has filed a request to replat Lot 2 of Landmark Subdivision Plat 1 into 3 lots (Lots 2A, 2B and 2C). Applicant seeks a variance eliminating the requirement for sidewalk construction along Country Club Drive. Lot 2 has approximately 608.2 feet of frontage on McAlester Street. It additionally has approximately 173.36 feet of frontage on Country Club Drive. Country Club Drive is an unimproved street. There are no sidewalks along any portion of Country Club Drive. Most of Country Club Drive is bounded along one side by a golf course. Applicant only requests a sidewalk variance as to Country Club Drive. Such a variance would not be detrimental to public safety, health or welfare, or injurious to other property or improvements in the neighborhood. To the contrary, Applicant understands that the owners and residents of other properties along Country Club Drive prefer no sidewalk so as to retain landscaping and green areas and the rural atmosphere. If the replatting of Lot 2 into 3 Lots is approved, Applicant will transfer the easternmost lot (Lot 2A) to Martha John and James Downey, owners of the adjacent property to the east. The John/Downey property does not have a sidewalk and such owners do not plan to install a sidewalk. They are opposed to having a sidewalk constructed upon Lot 2A. Addition of sidewalk along 173.36 feet of Country Club Drive will serve no useful purpose where the other properties along such street are occupied and fully improved such that no sidewalks will be added in the foreseeable future. Applicant plans to construct a sidewalk along McAlester Street, and in fact, intends to investigate the possibility of construction of a sidewalk across the property immediately to the west of the subject tract so that there will be continuous sidewalk from Lot 2 to Old Highway 63.

2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought, are not applicable generally to other property, and are not self-imposed.

Landmark Subdivision was platted by the Virginia Dyas McAlester Trust. Such Trust signed a performance contract requiring sidewalk installation on Lot 1 but not on Lot 2. Lot 1 now has sidewalks. The street frontages of Lots 1 and 2 do not, however, abut. There are properties in between Lots 1 and 2 without sidewalks. Lot 1 does not front on Country Club Drive but fronts along Old Highway 63, McAlester Street and Alfred Street. Lot 2 fronts on Country Club Drive which has no sidewalks along its entire length, however, Applicant may be required to install sidewalk along such street. Such condition is unique to this property, not applicable generally to other properties and is not self-imposed. The other properties along Country Club Drive are already improved and will not be required to have sidewalks. Applicant is not responsible for the lack of sidewalks on the other properties along Country Club Drive.

¹ Per Section 25-20: Variances and exceptions

3. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations was carried out; and

Construction of a sidewalk along Country Club Drive would be cost-prohibitive without apparent benefit to anyone. Construction of such a sidewalk is not desired by neighbors and, in fact, is opposed. Applicant faces a particular hardship as the sidewalk requirement only affects the Applicant where other properties along Country Club Drive do not have, and will not be required to install, sidewalks.

4. The variance will not in any manner abrogate the provisions of the comprehensive plan of the City.

There is no current evidence of future reasons to install a sidewalk along Country Club Drive.



**City of Columbia
Planning Department**

701 E. Broadway, Columbia, MO
(573) 874-7239 planning@gocolumbiamo.com

Sidewalk Variance Worksheet
(for sidewalks along unimproved streets)

For office use:

Case #:	Submission Date:	Planner Assigned:
13-52		Lepke

Please answer the following questions¹:

1. What is the cost of constructing the sidewalk, relative to the cost of the proposed development?

Applicant Bear Creek Properties, LLC has filed a request to replat Lot 2 of Landmark Subdivision Plat 1 into 3 lots (Lots 2A, 2B and 2C). Applicant seeks a variance eliminating the requirement for sidewalk construction along Country Club Drive. Lot 2 has approximately 608.2 feet of frontage on McAlester Street. It additionally has approximately 173.36 feet of frontage on Country Club Drive. Country Club Drive is an unimproved street. There are no sidewalks along any portion of Country Club Drive. Most of Country Club Drive is bounded along one side by a golf course. Applicant only requests a sidewalk variance as to Country Club Drive. The lowest quote received for the sidewalks is \$4.00 per square foot for a 5' wide sidewalk. Thus, the sidewalk along McAlester Street at 608.2' is estimated to cost at least \$12,000, however, it may run as high as \$20,000 because there is a culvert in the way. The sidewalk along Country Club Drive at 173.36' will cost at least an additional \$3,467.20. Once Lot 2 is replatted into 3 lots, only Lots 2A and 2B will have frontage along Country Club Drive. Lot 2A will be conveyed to Martha John and James Downey who have no plans for any development on such Lot. The Lot 2A frontage along Country Club Drive will be approximately 60' and, therefore, the cost for sidewalk along Lot 2A will be at least \$1,200. A home is planned for Lot 2B at an approximate cost of \$500,000. The sidewalk cost for the Lot 2B frontage on Country Club Drive (approximately 113.6') will be at least \$2,272. Lot 2C does not have frontage on Country Club Drive.

2. Is the terrain such that sidewalks or walkways are physically feasible?

Yes.

3. Would the sidewalk be located in a developed area, on a low traffic volume local street without sidewalks?

Yes. There are no sidewalks along any portion of Country Club Drive. Most of Country Club Drive is bounded along one side by a golf course.

4. Are there any current or future parks, schools or other pedestrian generators near the development for which a sidewalk or walkway would provide access?

No.

If an alternative walkway is being proposed, please describe how the alternative would deviate from standard sidewalk requirements.

If applicable, please attach a map showing the proposed alternative walkway alignment.

¹ Based on factors for determining sidewalk need, identified in Council Policy Resolution PR 48-06A

We, the undersigned, are in favor of the replat of Landmark Subdivision Plat 1 as proposed by the Applicant, Bear Creek Properties, LLC, however, we are opposed to the construction of a sidewalk along Country Club Drive and, therefore, support the variance with respect to such sidewalk as requested by the Applicant.

Signature Name Printed Address Date

M. Kelly Dreier M. Kelly Dreier 2208 Country Lane 5/9/13

Peggy Bobnenkamp Peggy Bobnenkamp 1907 Country Club Dr. 5/9/13

Carole Babel Carole Babel 1909 Country Club Dr. 5/9/13

Morrows A M 2001 N. Country Club Dr. 5/9/13

Martha K. John Martha K. John 2011 N Country Club Dr 5-9-13

Valerie Brown Valerie Brown 2025 N Country Club Dr 5-8-13

Bob Hutton Bob Hutton 2252 Country Ln 5/9/13

Jayne Wack Jayne Wack 2257 Country Lane 5/9/13

Gary D Smith Gary D Smith 884 Fairway Dr 5/9/13

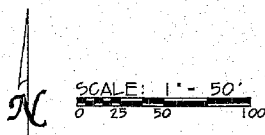
Russell & Tony Bender Russell & Tony Bender 2265 Country Lane 5/9/13

Barry Hibdon Barry Hibdon 914 Fairway Circle 5/9/13

LANDMARK SUBDIVISION - PLAT 2

COLUMBIA, BOONE COUNTY, MISSOURI

MARCH 11, 2013



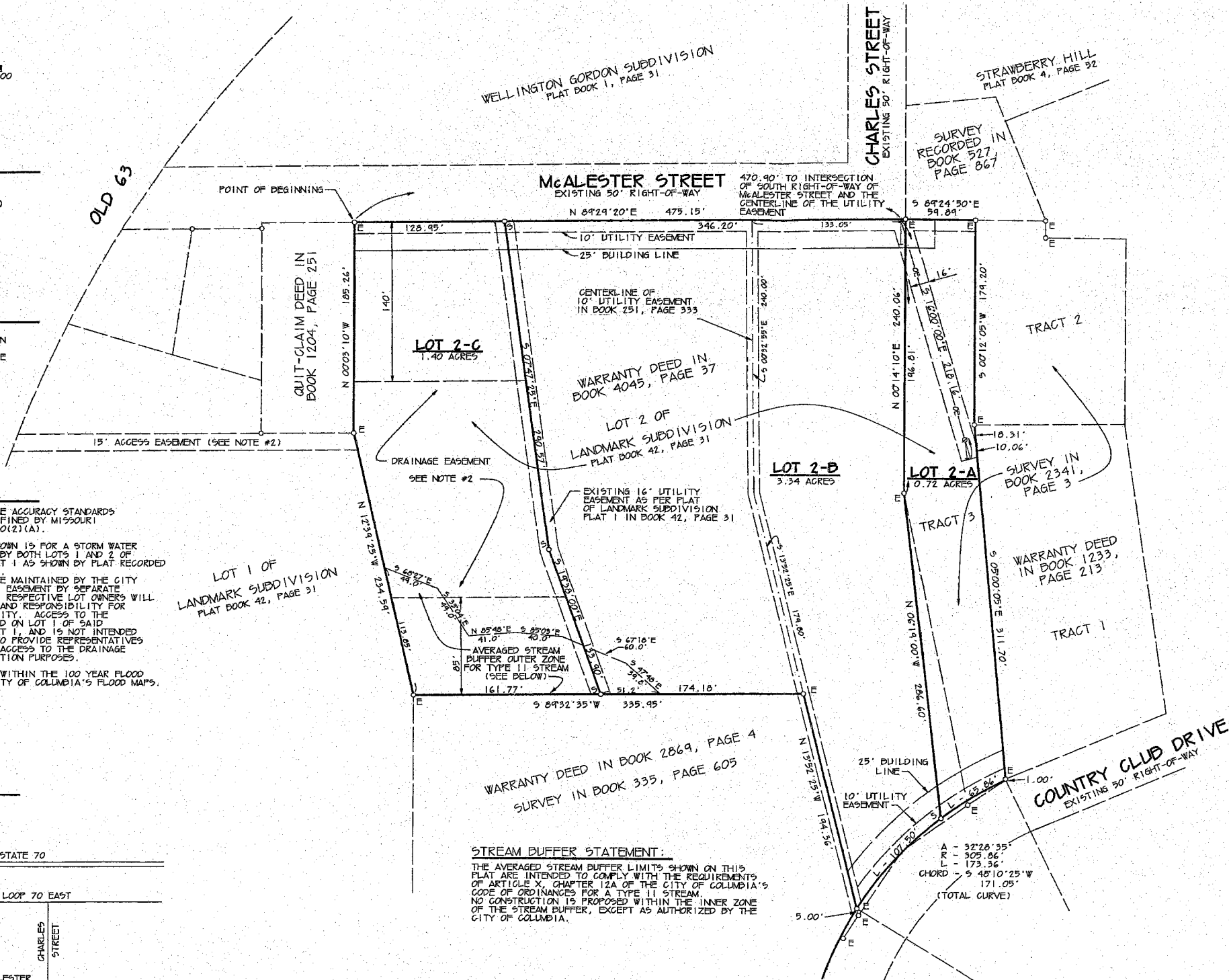
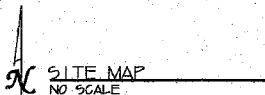
LEGEND:
IRON PIPE OR RE-BAR
EXISTING
SET
POWER POLE (EXISTING)
(60.00') RECORD DIMENSION
GUIDE WIRE

BASIS OF BEARING:

THE NORTH LINE OF LOT 2 OF
LANDMARK SUBDIVISION AS SHOWN
BY THE PLAT RECORDED IN PLAT
BOOK 42, PAGE 31 OF THE BOONE
COUNTY RECORDS.

NOTES:

- 1.) THIS PLAT CONFORMS TO THE ACCURACY STANDARDS
FOR URBAN PROPERTY AS DEFINED BY MISSOURI
STATUTE 4 CSR 2030-16.040(2)(A).
- 2.) THE DRAINAGE EASEMENT SHOWN IS FOR A STORM WATER
FACILITY TO BE UTILIZED BY BOTH LOTS 1 AND 2 OF
LANDMARK SUBDIVISION PLAT 1 AS SHOWN BY PLAT RECORDED
IN PLAT BOOK 42, PAGE 31.
THIS FACILITY WILL NOT BE MAINTAINED BY THE CITY
OF COLUMBIA. A DRAINAGE EASEMENT BY SEPARATE
DOCUMENT EXECUTED BY THE RESPECTIVE LOT OWNERS WILL
DESCRIBE THE CONDITIONS AND RESPONSIBILITY FOR
MAINTENANCE OF THE FACILITY. ACCESS TO THE
EASEMENT AREA IS PROVIDED ON LOT 1 OF SAID
LANDMARK SUBDIVISION PLAT 1, AND IS NOT INTENDED
FOR PUBLIC USE, BUT IS TO PROVIDE REPRESENTATIVES
OF THE CITY OF COLUMBIA ACCESS TO THE DRAINAGE
EASEMENT AREA FOR INSPECTION PURPOSES.
- 3.) THIS TRACT DOES NOT LIE WITHIN THE 100 YEAR FLOOD
PLAIN AS SHOWN BY THE CITY OF COLUMBIA'S FLOOD MAPS.



STREAM BUFFER STATEMENT:
THE AVERAGED STREAM BUFFER LIMITS SHOWN ON THIS
PLAT ARE INTENDED TO COMPLY WITH THE REQUIREMENTS
OF ARTICLE X, CHAPTER 12A OF THE CITY OF COLUMBIA'S
CODE OF ORDINANCES FOR A TYPE II STREAM.
NO CONSTRUCTION IS PROPOSED WITHIN THE INNER ZONE
OF THE STREAM BUFFER, EXCEPT AS AUTHORIZED BY THE
CITY OF COLUMBIA.

APPROVED BY THE CITY OF COLUMBIA PLANNING AND ZONING
COMMISSION ON THIS DAY OF 2013.

DOUG WHEELER - CHAIRPERSON

APPROVED BY THE CITY OF COLUMBIA CITY COUNCIL ON
THIS DAY OF 2013.

ROBERT McDAVID - MAYOR

HEELA AMIN - CITY CLERK

SURVEY AND PLAT BY:
C. STEPHEN HEYING SURVEYING
1202 MADISON STREET
COLUMBIA, MISSOURI 65203
(573) 442-3455

DESCRIPTION:

A TRACT OF LAND IN THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP
46 NORTH, RANGE 12 WEST, IN COLUMBIA, BOONE COUNTY, MISSOURI, BEING LOT 2 OF
LANDMARK SUBDIVISION AS SHOWN BY THE PLAT RECORDED IN PLAT BOOK 42, PAGE 31 OF
THE BOONE COUNTY RECORDS AND BEING FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 2 OF LANDMARK SUBDIVISION, THENCE
ALONG THE LINES OF SAID LOT 2, N 89°29'20"E, 475.15 FEET; THENCE S 89°24'50"E,
59.89 FEET; THENCE S 00°12'05"W, 179.20 FEET; THENCE S 09°00'05"E, 311.70 FEET;
THENCE 173.36 FEET ALONG A CURVE TO THE LEFT THAT IS NON TANGENT TO THE PRECEDING
COURSE HAVING A RADIUS OF 305.86 FEET THE CHORD OF SAID CURVE BEING S 48°10'25"W,
171.05 FEET; THENCE N 13°52'25"W, 144.36 FEET; THENCE S 89°32'35"W, 335.95 FEET;
THENCE N 12°34'25"W, 234.59 FEET; THENCE N 00°03'10"W, 185.26 FEET TO THE POINT OF
BEGINNING AND CONTAINING 3.46 ACRES.

SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

I HEREBY CERTIFY THAT I MADE A SURVEY OF THE ABOVE DESCRIBED TRACT OF LAND AND
SUBDIVIDED IT AS SHOWN ON THE ATTACHED DRAWING IN ACCORDANCE WITH THE CURRENT
MISSOURI MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS.

C. STEPHEN HEYING, PLS 1991
NOTARY PUBLIC
MY COMMISSION EXPIRES -

STATE OF MISSOURI)
COUNTY OF BOONE) ss

SUBSCRIBED AND SWORN TO BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND
STATE ON THIS DAY OF 2013.

- NOTARY PUBLIC
MY COMMISSION EXPIRES -

KNOW ALL MEN BY THESE PRESENTS:

THAT BEAR CREEK PROPERTIES, A MISSOURI LIMITED LIABILITY COMPANY, IS THE SOLE
OWNER OF THE ABOVE DESCRIBED TRACT OF LAND AND HAS CAUSED THE SAME TO BE
SURVEYED, SUBDIVIDED AND PLATTED AS SHOWN ON THE ATTACHED DRAWING.

EASEMENTS OF THE TYPES AND WIDTHS SHOWN ARE HEREBY DEDICATED TO THE
CITY OF COLUMBIA, MISSOURI, FOR PUBLIC USE.

BEAR CREEK PROPERTIES, LLC

JOHN A. DUPLY - MEMBER

STATE OF MISSOURI)
COUNTY OF BOONE) ss

ON THIS DAY OF 2013 BEFORE ME, A NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE, APPEARED JOHN A. DUPLY, MEMBER OF BEAR CREEK PROPERTIES
A MISSOURI LIMITED LIABILITY COMPANY, TO ME PERSONALLY KNOWN TO BE THE PERSON
WHO EXECUTED THE FOREGOING INSTRUMENT OF WRITING AND ACKNOWLEDGED THAT HE DID
THE SAME AS THE FREE ACT AND DEED OF SAID LIMITED LIABILITY COMPANY.

- NOTARY PUBLIC
MY COMMISSION EXPIRES -

EXCERPTS
PLANNING AND ZONING COMMISSION
May 9, 2013

IV.) SUBDIVISIONS

13-52 A request by C. Stephen Heying (surveyor), on behalf of Bear Creek Properties, LLC (owner), for a three-lot replat to be known as "Landmark Subdivision, Plat 2," and easement vacation and dedication. The 5.46-acre site is located north of Country Club Drive and south of McAlester Street. (This item was tabled at the April 18, 2013 meeting.)

DR. PURI: May we have a Staff report, please.

Staff report was given by Mr. Matthew Lepke of the Planning and Development Department. Staff recommends approval of the replat (including the easement dedication). Staff recommends denial of the sidewalk variance.

DR. PURI: Commissioners, any questions for the Staff? Ms. Peters?

MS. PETERS: On the sidewalk, is that something that if it were ever installed it could be tax billed so the applicant wouldn't have to install it at this time or have money put forward?

MR. ZENNER: That is correct. We do retain the option. This would be considered or classified as an unimproved road right-of-way. And under those provisions, within Chapter 24 of the code, yes, a waiver of sidewalk installation at the time of building permit issuance does not waive the City's right to tax bill at a later date.

MS. PETERS: Thank you.

MR. LEE: Dr. Puri?

DR. PURI: Go ahead.

MR. LEE: There is no sidewalk anywhere on that south side; is that correct?

MR. LEPKE: Correct, not along Country Club. The only section on Alfred is that in front of Landmark Hospital there.

MR. LEE: Okay. So --

MR. LEPKE: And it goes along 63 and Alfred in front of Landmark.

MR. LEE: So Staff is recommending that the variance for the sidewalk on this little, tiny piece right here not be waived. Why?

MR. LEPKE: Because Staff's job is to uphold the codes and ordinances of the City. Essentially, that's the reason why. We really don't have great leeway on these. At the same time, if the applicant makes a really good case, you can take that into consideration.

MR. ZENNER: The criteria typically associated with a sidewalk variance for the Commission to consider, as well as City Council, there has to be a topographic or other physical hardship that would eliminate the ability to construct the sidewalk, which this particular location does not, in Staff's opinion, have. You typically look at the ability or the need to connect other public facilities to the

actual sidewalk segment that would be constructed. This is obviously a neighborhood road leading back to the country club. It is not connecting to any other public space or school, which would be one item if you look at the criteria that would maybe be in a plus category for it. You don't look at financial hardship. It is our understanding with the improvement of a single-family home on this particular larger parcel, the actual cost of the sidewalk installation versus the cost of the construction of a new home doesn't create a hardship whatsoever. The house will be significantly more expensive than the actual improvement of this small segment. When you look at all of the criteria, as Mr. Lepke's pointed out, we have very limited latitude. If you can't prove hardship because we have some physical obstacle or some topographic problem, mere inconvenience or financial challenge doesn't really justify it. And it is the purview of the Commission as well as the City Council to then weigh the testimony of the applicant as to the viability or the need for that sidewalk. It is not ours to basically pass judgment if it is appropriate or not appropriate to construct it. In this particular instance, the Commission has probably some significant latitude in making a recommendation to Council. I think what we would show to you or at least express, as Mr. Lepke said, the applicants are willing to construct the sidewalk entirely along the McAlester frontage of this property. And if you can notice from the aerial photography, the two -- there's three lots to the west of this particular western boundary. The first two actually have a sidewalk installed on them, the third one does not, which would leave an odd gap along McAlester. The applicants have conveyed to Mr. Lepke that they would be willing to pursue negotiating potentially with that property owner in order to complete a whole sidewalk section in order to make the connection from their easterly boundary all the way back out to Old 63, thereby creating, really, connectivity back to a larger sidewalk system. I think also, historically, if you look at the Commission's track record as it relates to sidewalk construction, there has been some desire expressed in past cases where we've got to start somewhere and ultimately you weigh, do you start somewhere where you have nothing and you may not have anything in the future or do you start to install sidewalk where there is a propensity or a likelihood that you will have the rest of the parcels improved and ultimately over time you will create a sidewalk network. I think it could be argued that the McAlester Street frontage is more important from that aspect than possibly the Country Club perspective. But this is a decision that the Commission has to weigh on. Technically, from a Staff perspective, we cannot support the waiver based on the fact that there does not appear to be any financial or other topographic related challenge to the parcel itself, and that is the criteria by which we have to evaluate these.

MR. LEE: That was more of an answer than I anticipated.

DR. PURI: That's Mr. Zenner.

MR. LEE: Well, one final question, if I may. Is it anticipated that sidewalks will be required down Country Club at some point in the future?

MR. LEPKE: Considering that all of the parcels on the north side are improved, at least as we see here in the aerial photograph, more than likely there's little need to replat lots or -- and if

someone was to add on to a home, more than likely it would not require any sidewalk. So there's little chance of a network growing to the east here, which is why I'm sort of shrugging my shoulders and nodding deferentially to you about this.

MR. LEE: Thank you.

DR. PURI: Commissioners, any other questions of Staff? Okay. This is under the subdivision section, not public hearing section, but we have a customary approach to accept public input on this. So at this time I open up the floor to any input on this case. Please come to the podium and state your name and address and you can address this body.

MS. LEWIS: I'm Marjorie Lewis; I'm an attorney with offices at 601 East Broadway, Suite 203, Columbia, Missouri. I'm here on behalf of the applicant, Bear Creek Properties, LLC. First, if I may approach, I have a page of signatures of persons that are agreeing with the replat request and also opposing the construction of a sidewalk along Country Club Drive.

DR. PURI: Go ahead. Thank you.

MS. LEWIS: Here with me tonight, also for the applicant, is John Dupuy. Also here is Steve Heying, the surveyor who submitted the application here. As indicated the applicant has filed a request to replat Lot 2 into three tracts: 2A, 2B, and 2C. There are several reasons for the need for this replat, one of which was that there is -- there's an old ten-foot utility easement running almost through the center of the tract that needs to be vacated to make the tract fully usable. Additionally, Martha John and James Downey are the owners of the adjacent tract to the -- it's to the east, isn't it? Yes, the adjacent tract to the east. And they have been using, along with their tract, a portion of the subject tract. And actually, the parties -- so the applicant and the John/Downey owners -- have a contract to convey part of the tract -- the subject tract to Ms. John and Mr. Downey. It's divided into lots -- the replat would divide it into lots 2A, 2B, and 2C. It's proposed that 2A would be the tract that is transferred. 2B, the middle lot will end up having a house. That's the intention at this point in time. And then, Lot 2C, to the west, the purpose of that being a separate lot is that there's a drainage easement over on that side. The replat is not going to eliminate any restrictions, nor will it be detrimental to the neighbors. Again, I'll mention that we did submit a consent that was signed by many of the neighbors. Additionally, the applicant is seeking a vacation of the existing unused easement that goes through approximately the middle of the tract. It's a ten-foot utility easement. That matter has been to a first reading with Council. It will be on the next Council consent agenda, unless it's removed from that agenda. So it's a little bit unique here tonight and Mr. Heying can answer specific questions if you have them, but the plat that you have in front of you, the proposed plat 2 actually shows the easement on it that's going to be vacated. But what we want is approval of the plat with the vacation, because that's what the City Council is going to approve. So I'm not sure how Staff will want to word that. Then we go to the notorious sidewalk variance. We -- Landmark Subdivision was originally platted by the McAlester Trust into Lots 1 and 2. The Trust signed a performance contract requiring sidewalk installation on Lot 1, but not on Lot 2, and that was because

only Lot 1 was going to be developed. Lot 1 was developed by Landmark Hospital and it now has sidewalks, but they are not adjacent to and do not abut where the subject property would have sidewalks if it's required to. The subdivision ordinances do require sidewalks when you're replatting. Lot 2 has approximately 608.2 feet of frontage on McAlester Street. It also has approximately 173.36 feet of frontage on Country Club Drive. Country Club Drive has no sidewalks that we were able to discern and Country Club Drive is -- and this is important to note -- is an unimproved street. And there is a specific set of guidelines that's been adopted by the City when dealing with the request for a sidewalk variance along an unimproved city street. Most of Country Club Drive is bounded along one side by a golf course. Applicant is only requesting a sidewalk variance as to Country Club Drive and, again, it will put in the sidewalk along McAlester Street. The investment along McAlester Street will be significant. It's estimated to cost 12,000 to \$20,000. The sidewalk along Country Club Drive is estimated to cost approximately \$3,467. I won't go into specifics of the cost of each thing. They're in the worksheets that we submitted. But one thing to note is that the owners in this area are -- you know, along Country Club Drive, they don't want a little patch of sidewalk right in the middle of their kind of rural scenic area. And it's right across from a golf course. There's no sidewalk on that side. The consent that I submitted shows that the other residents do not want a sidewalk. Lot 2A would be conveyed to Ms. John and Mr. Downey. They don't want a sidewalk and they would not intend to construct a sidewalk if -- you know, if they had any say in it. The applicant is not responsible for the lack of sidewalks on any of the other properties or for the fact that it would be required to put in a sidewalk. There are no sidewalks and it's not likely that there will be any sidewalks in the future -- or in the foreseeable future. The condition is unique to this property and it's not applicable, generally, to other properties and is not self-imposed. The variance would not be detrimental to public safety, health, or welfare, or injurious to other property or improvements in the neighborhood. To the contrary, the applicant understands that the owners and residents of other properties are not in favor of the sidewalk. Addition of that sidewalk along Country Club will not serve any useful purpose where the other properties along the street are occupied and fully improved such that no sidewalks will be added in the foreseeable future. And although the house that is desired to be constructed will have some substantial value, there's more at issue here than the value of the sidewalk. I mean, that is \$3,500, but it's also nobody wants a little patch of sidewalk in this area. And I would argue that this is a particular hardship. You know, financial concerns are not the only concern. And I want to respectfully disagree slightly, and I could be wrong and I'm sure it will be pointed out to me if I am, but I think that there is a specific guideline on sidewalk variances where it is an unimproved city street. And there's a policy resolution that provides guidelines, and that policy guideline does not mention the fact that there has to be a topographic concern, you know, some sort of unique physical problem that would keep you from having a sidewalk. As shown by the worksheets that we filled out, I believe that we have met the concerns that are expressed by the City in adopting those worksheets and we hope that you will approve our request tonight for the replat, easement vacation, and for the

dedication of an easement which is shown on the replat and also for the variance of the sidewalk. Thank you. And if you have any questions for me, I'm happy to answer them. And also Mr. Heying and Mr. Dupuy are here and they can answer any questions if you have them.

DR. PURI: Commissioners, any questions? I see none. Thank you.

MR. HEYING: I'm Steve Heying, surveyor, office at 1202 Madison Street, Columbia, Missouri. I would just like to mention on the sidewalk variance that the entire area was designed by Hurst John, which is Martha John's father, as an architect. And part of the architectural design was that Country Club have no curb and gutter. There are no ditches for most of it either, but it's built flush to the ground. That way you can get golf carts, you can get golf bag two-wheel carts, you know, on and off the street and go up and down it. Country Club Drive is access to the Country Club period. It doesn't go through. It doesn't go anywhere else. The sidewalk in this area would, in fact, become a barrier that has curb and gutter and cause, actually, drainage problems that now are not there. So it would be a burden to the drainage of the area along Country Club Drive that currently does not collect anywhere along the street. It is decimated -- the drainage is disseminated all along the street. The other thing is, is that Lot 2A that's to be transferred to Martha John and James Downey is actually -- before this was subject to an altercation whereby the -- this is the house that Hurst John built for himself to live in and that he always thought that he had created the lot to include this area. They've always used this area as part of their lot. This is not to be used as a separate lot, not to be developed as a separate lot. We were required to plat it as if it was a separate lot to where it could be developed. That is not the intention. The intention is to add it to the existing lot to the east. The reason why we did it this way is because we didn't want to involve going through replatting the existing lot with the existing house on it. We didn't think that was necessary or pertinent to what we were trying to do. We just needed to add this area of land to that area of land. The lot to the -- 2C, to the west, has all sorts of other issues with it that don't concern -- the idea of the plat was to make Lot 2B a buildable lot for a high-end, single-family house along Country Club Drive that is in keeping with the neighborhood. I'd be happy to answer any other technical questions. It's a little bit -- on vacating the easement, I guess the plan is -- right now is to submit the mylar after the approval of the grant of vacation for the easement without showing it on the subdivision plat. In the past we've shown this on the subdivision plat, that it was there and that it was as -- in a book and page and it got vacated in a book and page. So it serves notice that it's -- you know, in the record that it was recorded as being an easement and then it got vacated by another document as recorded. I suppose what we'll do is make a note to that effect and that way it won't encumber the lot with showing the easement one way or the other through the lot, after we go ahead and get done with this.

DR. PURI: Any questions, Commissioners? I see none. Thank you. Anyone else?

MR. DUPUY: I'm John Dupuy, 2264 Country Lane. It's a house just down that same neighborhood, and that's the house I'll be building. Questions?

DR. PURI: Any questions, Commission?

MR. DUPUY: I got a lot of kids so it's going to be a big house.

DR. PURI: Thank you. Okay. Discussion, Commissioners? Mr. Lee?

MR. LEE: I would just say it seems really pretty straightforward, to go ahead and grant the proposal to replat and grant the variance to the sidewalk.

DR. PURI: Ms. Peters?

MS. PETERS: I have a question for Staff. On the sidewalk variance, let me see if I can ask a question in the appropriate manner. It's my understanding that the City -- the likelihood of the City ever putting sidewalks in this neighborhood is almost zero.

MR. LEPKE: (Nodded head.)

MS. PETERS: And it's a technicality that we're dealing with. They will not be required to put in the sidewalk. If by some miracle sidewalks were ever required here 50 years from now, this would already be on the books that a sidewalk is required. By not granting the variance, it allows the integrity of this body to remain so that the next variance that comes in for a sidewalk, there's not a precedent of this body granting willy-nilly some variances and some not. And at this point, if we do not grant the variance, there is no money out of pocket for the applicant. If this were ever built, it would be tax billed, but that would be somewhere down the road and that would only be if complete sidewalks on every lot within this development were built.

MR. ZENNER: Yes. You are correct. You are not setting precedent and you are protected.

MS. PETERS: Okay.

DR. PURI: Thank you, Mr. Zenner.

MS. PETERS: That was a short answer. I appreciate that.

UNIDENTIFIED SPEAKER: That was a long question.

MS. PETERS: I think that might've been the first yes.

MR. ZENNER: You're safe.

MS. PETERS: With that in mind, I totally understand them wanting the variance, but it does give this body integrity to remain in tact so that we can't be manipulated by future applicants. The City will not require them to build it. It will merely be on the record that if sidewalks are ever built anywhere else there, it's already on the books. So I would support Staff's recommendation, or the recommending of approval of the replat, including the easement dedication -- yeah, the easement dedication and the recommendation of denial for sidewalks. That's what I would be happy to support.

DR. PURI: We're going to discuss this. Just hang on. Commissioners, any discussion?
Mr. Reichlin?

MR. REICHLIN: Are we making a motion now or --

DR. PURI: We can if you want to make a motion.

MR. REICHLIN: Just as a point of order, we could vote on them separately, couldn't we? Is that correct?

MR. ZENNER: You can vote on them separately. A point of information at this point: With a subdivision plat, you have a performance contract and a performance contract requires that all public improvements be installed. Part of the public improvement process is the installation of sidewalks. In this particular instance, what the applicant is requesting, what Staff is -- as strange as it may sound -- not supporting, is the waiver of a sidewalk construction for Country Club Drive. The only way to waive that construction requirement from the performance contract is that the Planning and Zoning Commission would need to find in favor of the applicant's request to waive that standard for just Country Club Drive. The performance contract would stay in tact for the construction on McAlester. And when the construction -- or permit is drawn for Lot 2B, the sidewalk performance requirement would be executed. They would have to build it with 2B's construction permit only on McAlester, not on the Country Club frontage. That is how your -- that is how your recommendation would need to be crafted. Basically, an approval of the three-lot subdivision, without the requirement of construction of the sidewalk along Country Club, if that is the direction that you're desiring to go in. That recommendation -- to point to Ms. Peters' concern -- does not impugn the Planning Commission for any future action that might be brought before you for a sidewalk variance request. Each case is handled independently and there is no precedent set by your action this evening.

DR. PURI: Mr. Vander Tuig?

MR. VANDER TUIG: No. I'm good.

DR. PURI: You're good? Mr. Reichlin, you had another comment?

MR. REICHLIN: I was just going to mention that I was intending to support the proposal with the proposed variance.

DR. PURI: I want to be clear. You're saying that we don't have to approve the variance. We can approve no construction on that piece of road. Right?

MR. ZENNER: You would have to approve the applicant's request to have a variance, which means you would be approving something in contradiction to Staff's recommendation.

DR. PURI: We have to approve the variance to --

MR. ZENNER: Yes.

DR. PURI: -- not have the sidewalk.

MR. ZENNER: You have to approve the variance, plus you would have to approve the -- recommend approval of the subdivision plat.

DR. PURI: Okay.

MR. ZENNER: I believe that's what Ms. Peters was wanting you to do, but it got spit out the wrong way, maybe.

DR. PURI: Mr. Strodtman?

MR. STRODTMAN: I plan on supporting it, so go on.

DR. PURI: I'll weight on it. I always don't like the sidewalks that just a piece in the middle of nowhere. For as long as I've been here, I don't think it's sensible. So I think that the overall

presentation of the plan is fine. I think McAlester Street should have the sidewalk. I think Country Club Drive does not need a sidewalk and I am in agreement with the applicant. So I intend to support this also with the variance. So would anybody like to frame a motion?

MR. REICHLIN: I'll give it a go.

DR. PURI: Go ahead.

MR. REICHLIN: I move that in the matter of Case 13-52, a request by C. Stephen Heying, on behalf of Bear Creek Properties, for a three-lot replat to be known as "Landmark Subdivision, Plat 2," and the easement vacation and dedication. The 5.46-acre tract is located on north Country Club Drive and south of McAlester.

MR. VANDER TUIG: With the sidewalk variance?

MR. REICHLIN: With the sidewalk variance for Country Club Drive only.

DR. PURI: Mr. Lee, you're seconding?

MR. LEE: I will second that.

DR. PURI: Okay. May we have a roll call, please?

MR. VANDER TUIG: We have a motion and a second for Case No. 13-52, approval for a three-lot replat to be known as Landmark Subdivision, Plat 2, and the easement vacation along with the variance for the sidewalk along Country Club Drive.

Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Mr. Lee, Ms. Peters, Dr. Puri, Mr. Reichlin, Mr. Strodtman, Mr. Vander Tuig,. Motion carries 6-0.