**17571**

**Roanoke Rapids City Council**

**February 3, 2015**

The regular meeting of the City Council of the City of Roanoke Rapids was held on the above date at 5:15 p.m. at the Lloyd Andrews City Meeting Hall.

Emery G. Doughtie, Mayor

Carl Ferebee, Mayor Pro Tem

Ernest C. Bobbitt)

Suetta S. Scarbrough)

Carol H. Cowen)

Wayne Smith)

Joseph Scherer, MPA, MS, City Manager

Gilbert Chichester, City Attorney

Lisa B. Vincent, MMC, NCCMC, City Clerk

Kathy Kearney, Deputy City Clerk/Human Resources Manager

MeLinda Hite, Finance Director

Larry Chalker, Public Works Director

John Simeon, Parks & Recreation Director

Chuck Hasty, Police Chief

Stacy Coggins, Fire Chief

Kelly Lasky, Planning & Development Director

Christina Caudle, Main Street/Development Director

Mayor Doughtie called the meeting to order and opened the meeting with prayer.

There being no conflict of interest with any of the items on the agenda, motion was made by ­­­­­­­­­­­Councilman Smith, seconded by Councilman Bobbitt and unanimously carried to adopt the business agenda for February 3, 2015.

***Prior to the meeting, members of BARC (Benevolent, Awards & Recognition Committee)***

***held a reception for employees receiving Service Anniversary Awards.***

**17572**

**Roanoke Rapids City Council**

**February 3, 2015**

Mayor Doughtie stated it is always great to recognize our employees.

The following employees received service anniversary award certificates and lapel pins from Mayor Doughtie and their respective department heads:

|  |  |  |
| --- | --- | --- |
| **Name** | **Department** | **Years of Service** |
| Dexter Hawkins | Public Works | 5 |
| Gerald Morris | Police | 5 |
| Christopher Biggerstaff | Police | 5 |
| Charles E. Turner, Jr. | Fire | 5 |
| Lori C. Jones | Finance/Tax | 5 |
| Larry D. Chalker | Public Works | 5 |
| Kathy A. Kearney | Administration | 10 |
| Frankie Griffin, Jr. | Police | 10 |
| Richard R. White, Jr. | Police | 10 |
| Gorton Williams | Police | 10 |
| Thomas K. Hale | Public Works | 10 |
| Richard G. Cook | Fire | 15 |
| Edward K. Hawkins | Fire | 15 |
| Nathan Wayne Medlin | Public Works | 25 |
| Stacy Coggins | Fire | 25 |
| Donald B. Tart | Planning & Development | 30 |

Mayor Doughtie stated this represents a lot of years of service from a great group of employees. He thanked everyone for their service.

Following remarks by Chief Hasty and presentation of a plaque to Retired Police Officer Tommy Massey, motion was made by Mayor Pro Tem Ferebee, seconded by Councilman Smith and unanimously carried to award Mr. Massey his service side arm and badge for and in consideration of the sum of One and No/100 Dollars ($1.00) received from him and upon his securing a permit as required by NCGS 14-402. ***(Note: The sum of One and No/100 Dollars ($1.00) was paid by Chief Hasty to Finance Director Hite.)***

Mayor Doughtie stated he was fortunate enough to attend a party this past Friday in honor of Tommy. He thanked Tommy for his years of service and wished him the best in his retirement.

**17573**

**Roanoke Rapids City Council**

**February 3, 2015**

Mayor Doughtie read and signed the following Proclamation:

**FEBRUARY - NATIONAL CANNED FOOD MONTH**

**WHEREAS,** *according to the Feeding America organization, although related, food insecurity and poverty are not the same. Poverty is only one of many factors associated with food insecurity. In fact, higher unemployment, lower household assets, and certain demographic characteristics also lead to a lack of access to adequate, nutritious food; and*

**WHEREAS*,*** *in 2013, an estimated 45.3 million people were in poverty and 49.1 million Americans lived in food insecure households, including 33.3 million adults and 15.8 million children; and*

**WHEREAS,** *the Angel’s Closet Ministry is helping to provide food, as well as other items, to needy families year-round; and*

**WHEREAS,** *February is National Canned Food Month which promotes the nutritious benefits, convenience and long shelf life of canned foods; and*

**WHEREAS,** *the City of Roanoke Rapids is proud to sponsor a canned food drive during the month of February to assist Angel’s Closet with feeding those in need;*

**NOW, THEREFORE, I, EMERY G. DOUGHTIE,** *by virtue of the authority vested in me as Mayor of the City of Roanoke Rapids do hereby proclaim* ***February*** *as* ***“National Canned Food Month”*** *in the City of Roanoke Rapids and encourage all residents to donate canned food items during the month of February to support the efforts of the Angel’s Closet Ministry to feed the hungry. Canned food items can be dropped off at the following collection sites:* City Hall/Police Department*;* Fire Stations 1 & 2*;* T. J. DavisRecreation Center*;* Chaloner Recreation Center *and* Public Works Department*. Residents can also place a bag of canned food items next to their front door for collection by 9:00 a.m. each Friday during the month of February.*

**PROCLAIMED** *this 3rd day of February, 2015. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

**Emery G. Doughtie, Mayor**

Motion was made by Councilwoman Scarbrough, seconded by Mayor Pro Tem Ferebee and unanimously carried to approve the Council Minutes dated January 20, 2015.

*Prior to the public hearing, those that signed up to speak that were not already under oath from the January 6, 2015 meeting were sworn in by either City Clerk Vincent or Deputy Clerk Kearney.*

**17574**

**Roanoke Rapids City Council**

**February 3, 2015**

Mayor Doughtie re-opened the public hearing and called on Planning & Development Director Lasky to make her presentation.

Planning & Development Director Lasky recapped her January 6, 2015 presentation of the following staff report and related maps:

**MEMORANDUM**

TO: Joseph Scherer, City Manager

FROM: Kelly Lasky, Planning & Development Director/s/

DATE: December 29, 2014

RE: **Conditional Use Permit Application for an Amendment to the Villages at Cross Creek Community Planned Unit Development Map to Change Approximately 20 Acres from PUD R-12 to PUD R-3 to Permit a Multi-Family Apartment Development with Amenities**

**Proposed Development by MaSuKi, Inc. (2014)**

An Application for a Conditional Use Permit was submitted by MaSuKi, Inc. (applicant and property owner) to amend the Villages at Cross Creek Planned Unit Development Map to permit PUD R-3, Residential Zoning to construct apartment buildings and amenities. The approximately 20 acres of property (portion of Halifax County Parcel 1205276) is located at least 500 feet east of Cross Creek Parkway, south of North Carolina Highway 125. Currently the property is zoned PUD R-12, Residential District and PUD R-3, Residential District is requested. The subject property is currently undeveloped and has been used for agricultural purposes.

The use of the property as a Planned Unit Development (PUD) is a use that is permitted with the approval of a Conditional Use Permit.

MaSuKi, Inc. proposes to construct eight (8) buildings containing a total of 192 residential units.

* Two- and three-bedroom options
* Proposed community amenities include
  + 3,200 square foot clubhouse
  + swimming pool
  + picnic area
  + playground
  + dog park
  + sidewalks
  + private garage storage
* Direct access to NC Hwy 125

**17575**

**Roanoke Rapids City Council**

**February 3, 2015**

**Background (Permitting History & Project Approvals)**

The Villages at Cross Creek was initially approved as one planned unit development project comprehensively addressing traffic, residential density, utilities and infrastructure, and other considerations. During 2005, the City Council approved a Conditional Use Permit authorizing the Villages at Cross Creek as a Planned Unit Development District with various zoning districts to include multi-family, single-family and commercially zoned areas fronting North Carolina Hwy 125. The Villages at Cross Creek PUD was approved as a Conditional Use Permit by City Council on March 22, 2005 subject to the following stipulations:

*1. The Planned Unit Development shall be developed in accordance with the PUD plat prepared by M. S. Consultants, Inc., entitled “Villages @ Cross Creek PUD Zoning Map – City of Roanoke Rapids, Halifax County, North Carolina”, dated February 10, 2005, as kept in the Office of Planning and Development for greater reference.*

*2.  Additional detailed construction drawings shall be provided to the Planning and Development staff, when requested, to determine compliance with any one or more of the provisions of the Land Use Ordinance, Building Code, Fire Code, City Code or other applicable required code or ordinance.*

*3. Final plat approval of the entire PUD or any phase thereof may be conditioned by developer providing an acceptable performance bond or other security to the City in the amount of 125% of the actual cost of all required improvements in compliance with Section 151-61 of the Land Use Ordinance in lieu of actual installation of improvements.  All requirements shall be fulfilled within not more than 12 months after final plat approval.*

The PUD was approved to be composed of residential areas encompassing multi-family, single-family and commercial uses.  At the time of development approval, the site consisted of a single parcel of land 194.45± acres in size.  The site was approved to be composed of eight (8) designated individual development areas.  The approved PUD map included 48.04 acres of high density multi-family R-3 & R-6 residential property; 59.20 acres of single-family R-40 residential property; 67.94 acres of single-family R-12 residential property and 19.27 acres of B-4 business commercial property.

The high density multi-family R-3 and R-6 residential areas are to be developed with patio homes and town homes.  Initial plans were approved for thirty-two (32) town home buildings with a total of one hundred-two (102) units and one club house, swimming pool and tennis court.

The Villages at Cross Creek PUD was intended to be developed in two phases. After a few years of sales and development, the original developer suffered with the down economy and lost ownership of the property to the bank. Today, the project is less than half-built.

During late 2013, MaSuKi, Inc. purchased a 104 acre tract of the property from Benchmark Community Bank and subsequently applied to rezone approximately 25 acres of the 104 acre tract from R-12 to R-3 zoning, which permits multi-family development. Initially, the request was processed as a standard or conventional rezoning. Staff determined that if the zoning districts of the Villages at Cross Creek had been approved as standard zoning districts, then the legislative rezoning process would have been appropriate. However, the standard rezoning process did not apply to the property given the approved Conditional Use Permit for the Villages at Cross Creek PUD Zoning Map. Planned Unit Development Districts are authorized by conditional use permits which are obtained from City Council. **A Planned Unit Development District requires an overall concept plan for the development of the tract prior to rezoning or establishing the new zoning district.**

**17576**

**Roanoke Rapids City Council**

**February 3, 2015**

An authorized Conditional Use Permit (CUP) is perpetually binding upon the property unless subsequently changed by City Council. The City Council may amend or change any CUP, after a public hearing upon recommendation by the Planning Board and subject to the same consideration for the original issuance of the Permit. Amendments to and modifications of permits are outlined in Section 151-65 of the Land Use Ordinance. The ordinance states that *insignificant deviations from the permit issued by the city council are permissible and the administrator may authorize such insignificant deviations. A deviation is insignificant if it has no discernible impact on neighboring properties, the general public, or those intended to occupy or use the proposed development. All other requests for changes will be processed as new applications.*

The City Council is now required to hold a public hearing followed by a recommendation to City Council concerning this matter.

*Planning and Development staff has made the following findings concerning this request:*

**SECTION I:**

**1. The requested permit is within its jurisdiction according to the table of permissible uses; or**

*The requested permit is within its jurisdiction subject to the approval of a Conditional Use Permit. As indicated in the Table of Permissible Uses (Section 151-149), a planned unit development (use Classification 30.000) is the only permissible use of a PUD zone and planned unit developments are permissible only in such zones. The Villages at Cross Creek PUD map was approved by City Council during 2005. Planned Unit Development Districts are designed to combine the characteristics of multiple zoning districts, including high and low residential densities, commercial and industrial uses.*

### 

**2. The application is complete; or**

*The application is complete.*

**3. If completed as proposed in the application, the development will comply with all requirements of The Land Use Ordinance; or**

*The Development will comply with all of the requirements of the Land Use Ordinance if completed as proposed in the application. The site plan will be required and will go through the formal Development Review Committee process. Once the site plan has been approved and the building plans are reviewed a building permit will be issued. Per the requirements of the Land Use Ordinance, the following conditions apply:*

1. *The minimum required parking spaces be provided for the residential development; no reductions in the required total number are permissible;*
2. *Parking facilities, landscaping and shading provided per Ordinance;*
3. *Parking facilities and lighting provided per Ordinance;*
4. *Dumpster locations screened per Ordinance;*
5. *Sidewalks throughout the development (shown in green on map);*
6. *Parking facilities dimensions per Ordinance;*
7. *Swimming pool barrier provided per Ordinance and NC State Building Code.*

**17577**

**Roanoke Rapids City Council**

**February 3, 2015**

**SECTION II:**

The following seven items were also considered when evaluating item #4 (a), (b), (c) and (d) that follows:

**1: ingress and egress to the lot and proposed structures, especially by pedestrians and automobiles, is safe and convenient in terms of access and traffic flow; and,**

*This is probably true; the site has direct access to NC Hwy 125. Traffic control measures and access on NC Hwy 125 are under the jurisdiction of the North Carolina Department of Transportation and subject to its approval.*

*The preliminary site layout shows egress having two lanes for access to NC Hwy 125; this alleviates stacking of egress traffic within the development by allowing separate lanes for left and right turns out of the development. Ingress and egress lanes are divided by a center median.*

*Pedestrian sidewalks are provided around the perimeter of the parking lots adjacent to the residential apartment buildings. Pedestrian connectivity is provided within the community amenities as well as to NC Hwy 125.*

**2: off-street parking and loading affects adjacent property (in terms of traffic generation, economic impact, noise, glare and odor) similar to uses permitted in that zoning district; and,**

*This is probably true; as currently proposed, the off-street parking requirements for the multi-family residential are provided. The Ordinance requires one-and-a-half (1.5) spaces for each one and two-bedroom units; two 2 spaces for each unit having three or more bedrooms; plus one (1) space for every four units. The minimum required parking for the residential development as proposed is 360 parking spaces; (based on 144 two-bedroom units; 48 three-bedroom units and 192 total units / 4 spaces). Additional parking is being provided for the clubhouse at one space per 200 square feet.*

*The requested permit is of similar land use type to properties along NC Hwy 125. There are other multi-family residential developments accessed by NC Hwy 125 in the vicinity of the proposed development.*

*The proposed change to the development may create some changes in the current traffic patterns. However, all proposed construction and site plans will be formally evaluated by city staff, the Development Review Committee, including NC Department of Transportation to ensure a proper design. The Development Review Committee includes the Sanitary District, NCDOT, Public Works, NC Dominion Power, Fire Marshal and Code Enforcement.*

*The number of dwelling units proposed for construction is 192 units divided among eight buildings. According to the Institute of Transportation Engineers Trip Generation Manual (7th edition) the residential apartment use proposed is expected to average 6.72 vehicular trips per day per dwelling unit. Based on this manual, which is utilized by NCDOT, approximately 1,290 vehicular trips per day could be added to NC Hwy 125.*

**3: refuse disposal affects adjacent property similar to uses permitted in that zoning district; and,**

*This is probably true; the refuse collection requirements of the City of Roanoke Rapids shall apply to the development. The preliminary site layout shows three separate dumpster locations. Dumpsters are required to be properly screened according to the ordinance.*

**4: utilities are available; and,**

**17578**

**Roanoke Rapids City Council**

**February 3, 2015**

*This is probably true; all utilities are currently available for the site. Connections and extensions shall be coordinated with appropriate entities. There are no specific utility considerations that should negatively impact this property at the present time. All utilities are readily available to the area. The development will be subject to impact or user fees as established by the appropriate utility entities.*

**5: the type, dimensions and character of screening and buffering satisfactorily screens adjacent property; and,**

*This is probably true; the parcel of land is zoned PUD and will be compatible to the adjoining uses. The Land Use Ordinance requires screening and buffering between neighboring land uses to provide an impression of separation of spaces by lessening any potential visual pollution that may otherwise occur in the urbanized area. Screening is necessary to safeguard public health, safety and welfare.*

*The preliminary site layout for the proposed development is adjacent to several land use types requiring various intensities of screening. The Ordinance requires the multi-family development to install the required screening during the time of building construction. The Ordinance requires Opaque Screen Type A between the requested land use and the existing permitted single-family residential land use (Cross Creek community). The Ordinance requires Opaque Screen Type C between the requested land use and the adjacent church property. The Ordinance does not require screening between the requested land use and the existing adjacent fire station.*

*Descriptions of the screening types are provided below. The applicant will be required to provide an acceptable screening type prior to the issuance of building permits.*

*Opaque Screen, Type "A". A screen that is opaque from the ground to a height of at least eight feet. An opaque screen is intended to exclude completely all visual contact between uses and to create a strong impression of spatial separation. The opaque screen may be composed of a wall, fence, landscaped earth berm, planted vegetation, or existing vegetation. Compliance of planted vegetative screens or natural vegetation will be judged based on the average mature height and density of foliage of the subject species or field observation of existing vegetation. The screen must be opaque in all seasons of the year. Suggested planting patterns that will achieve this standard are included in Appendix B of the Land Use Ordinance.*

*Opaque Screen, Type "C".**A screen that is opaque to a height of at least eight (8) feet. An opaque screen is intended to exclude completely all visual contact between uses and to create a strong impression of spatial separation. The opaque screen may be composed of a wall, fence, or earth berm.*

**6: signs and lighting affect adjacent property similar to uses permitted in that zoning district; and,**

*This is probably true; all signage will require a sign permit. All off-street parking areas shall also be lighted to meet Land Use Ordinance requirements by the developer. All proposed signage shall be constructed in accordance with the Land Use Ordinance.*

**7: required yards, open space and existing trees and other attractive and natural features of the land are preserved.**

**17579**

**Roanoke Rapids City Council**

**February 3, 2015**

*This is probably true; the site was originally approved for residential development and residential development is proposed. The proposed site plan includes the required yards and open space based on required building setbacks. There are no existing trees identified for preservation within the project area as the land is undeveloped and cleared. Any proposed changes are subject to review by Staff.*

**SECTION III:**

Given the preceding, the Staff has made the following findings concerning this request:

**4: If completed as proposed, the development, more probably than not:**

**(a) will not materially endanger the public health or safety; or**

*The staff has determined this is probably true; the development shall be required to comply with all applicable federal, state and local codes and ordinances. An assessment of the previously referenced seven items used to evaluate 4 (a), (b), (c) & (d) indicates no specific endangerment to the public health or safety that is not adequately addressed.*

**(b) will not substantially injure the value of the adjoining or abutting property; or**

*The staff believes this is probably true. Staff cannot determine the impact of value this proposed use would have on surrounding properties however based on the seven additional items used to evaluate 4, (a) (b) (c) & (d) any potential negative effects on adjoining or abutting property should be minimal.*

**(c) will be in harmony with the area in which it is to be located; or**

*The staff has determined this is probably true. Its use as proposed will be in harmony with the existing surrounding uses in the area based on the previously referenced seven items used to evaluate items 4 (a), (b), (c) & (d).*

**(d) will be in general conformity with the Comprehensive Development Plan, Thoroughfare Plan, or other plan officially adopted by the City Council.**

*The staff has determined this is probably true. The proposed request for an amendment to the PUD zoning map is considered to be reasonable. Reasonableness is determined by considering the size of the area, any special conditions or factors regarding the area, the consistency of the zoning with the land use plan, the degree of the change in the zoning, the degree it allows uses different from the surrounding area, and the relative benefits and/or detriments for the owner, the neighbors, and the surrounding community.*

*The Comprehensive Development Plan states the following policies should be considered:*

***General Land Use***

*I.1 Support infill development. Infill development is development or redevelopment of land that has been bypassed, remained vacant, undervalued and/or is underused as a result of continuing urban development process. Use of such lands for new housing and/or other urban development is considered a more desirable alternative than to continue to extend the outer development pattern laterally and*

**17580**

**Roanoke Rapids City Council**

**February 3, 2015**

*horizontally thus necessitating a higher expenditure for capital improvements than would be required for infill development.*

*I.19 Consider allowing different housing densities to abut one another as long as proper buffering and design is provided as needed and traffic generated by such land use does not mix within the neighborhood.*

*I.20 Encourage developers to utilize thoroughfares and natural topographic features to define the boundaries of a neighborhood and concentrate higher intensity uses at the outer boundaries of the neighborhood.*

*I.21 Require residential subdivisions generating 100 or more peak hour trips to prepare a traffic impact analysis/study, including mitigative action to reduce impact.*

**SECTION IV:**

The applicant has addressed the requisite questions, which must be answered by the City Council in the application. It is your obligation to ensure each has been adequately addressed after hearing all parties prior to rendering your final decision.

**Planning & Development Department Review**

After a complete review of the information submitted to date by the applicant, it is the Planning Staff’s opinion that the request satisfactorily meets the requirements of Section 151 – 94 of the Land Use Ordinance. The Staff recommends, however, if approval of the Permit is recommended, it is subject to the following stipulations:

1. *The Planned Unit Development shall be developed in accordance with the Highway 125 Apartments Proposed PUD Modifications plat prepared by DM2 Engineering PLLC, dated 09-26-14, to accommodate the Preliminary Site Layout of the Highway 125 Apartments, dated 09-26-14. The remaining unmodified areas shall remain consistent with the Cross Creek PUD plat prepared by M. S. Consultants, Inc., entitled “Villages @ Cross Creek PUD Zoning Map – City of Roanoke Rapids, Halifax County, North Carolina”, dated February 10, 2005, as kept in the Office of Planning and Development for greater reference.*
2. *The Highway 125 Apartment development shall remain consistent to the application submitted to the City for the Cross Creek PUD amendment for the development of market value housing units. It is not a violation of North Carolina General Statute Chapter 41A if land-use decisions or permitting of development is based on considerations of limiting high concentrations of affordable housing.*
3. *Additional detailed construction drawings and building plans shall be provided to the Planning and Development staff, when requested, to determine compliance with any one or more of the provisions of the Land Use Ordinance, Building Code, Fire Code, City Code or other applicable required code or ordinance.*
4. *Obtain all necessary approvals from NCDOT and Health Department prior to issuance of building permits for driveway, buildings, and commercial swimming pool.*
5. *The administrator may authorize the commencement of the intended use or the occupancy of buildings if the permit recipient provides a performance bond or other security to the City in the amount of 125% of the actual cost of all required improvements in compliance with Section 151-61 of the Land Use Ordinance in lieu of actual installation of improvements.  All requirements shall be fulfilled within not more than 12 months after approval.*

**17581**

**Roanoke Rapids City Council**

**February 3, 2015**

1. *Required screening between land uses shall be installed prior to issuance of a Certificate of Occupancy.*

**Requested Action**

The City Council has several options regarding this Conditional Use Permit application:

(1) Approval of the request as submitted;

(2) Approval of the request, subject to certain stated conditions;

(3) Denial of the request.

***A worksheet is provided to assist City Council in reviewing the application and necessary motions. Please discuss the application and provide a final decision.***

Mayor Doughtie asked if anyone had questions for Planning & Development Director Lasky.

Mr. Franklin Jones, Attorney for MaSuKi, Inc., stated at the last meeting some people mentioned spot zoning. He asked Planning & Development Director Lasky to explain spot zoning.

Planning & Development Director Lasky stated people typically think spot zoning is when you make changes to small areas but it has to do more so with the change in zoning compared to the zoning of surrounding properties. She stated it is her professional opinion that this rezoning request would not be spot zoning because the adjoining properties are of similar zones.

Mr. Jones stated covenants were also mentioned. He asked Planning & Development Director Lasky if she was aware of any covenants that would have a bearing on this proposed development.

Planning & Development Director Lasky stated covenants are civil matters and the City does not get involved in those matters. She stated her office does not have any on file.

Mr. Jones stated it would not be appropriate to consider the mentioned covenants in the deliberation process.

Planning & Development Director Lasky stated covenants are not a part of the Land Use Ordinance.

**17582**

**Roanoke Rapids City Council**

**February 3, 2015**

Mayor Pro Tem Ferebee asked about covenants versus restrictions.

Planning & Development Director Lasky explained that covenants of the homeowners association are recorded as deed restrictions. She stated the City, in the planning review process, does not consider civil matters such as covenants and deed restrictions. She stated they are private and the City does not enforce covenants. Planning & Development Director Lasky did point out that conditions of a Conditional Use Permit do run with the land and are recorded as part of the parcel.

Mr. Donald Vincent of 35 Winterberry Lane, Roanoke Rapids, NC stated he has a copy of the original covenants that were recorded with the Halifax County Register of Deeds on July 10, 2006 and notarized by Attorney Robert Hanudel in front of Mr. Michael Dunlow.

Councilman Smith asked if it would be proper for Council to review the covenants.

Mr. Jones objected.

City Attorney Chichester stated no. He stated the only thing Council can consider is relevant evidence. He stated as Planning & Development Director Lasky mentioned earlier, these restrictive covenants, although important to the homeowners, are private matters between the homeowners and the homeowners association. He stated the City does not get involved in enforcing covenants. City Attorney Chichester stated while Mr. Vincent can certainly talk about the covenants, they cannot be presented to City Council.

Mr. Vincent asked City Attorney Chichester if these covenants run with the land.

City Attorney Chichester stated he has never seen the covenants and does not know if they go with the land where the condos are located, where the homes are located or if they extend to the whole subdivision. He stated the important part is that if you are a property owner out there, the homeowners association has the right to enforce the covenants through the court system. He reiterated that the City does not have any jurisdiction over covenants.

**17583**

**Roanoke Rapids City Council**

**February 3, 2015**

Mr. Vincent asked if Mr. Gregory would be under the same covenants. He asked how he can break the covenants.

City Attorney Chichester stated he cannot offer an opinion on that. He stated he is not trying to sidestep the question but if Mr. Vincent and the other property owners feel the covenants cover that property, they may want to consult an attorney to advise them on the matter.

Mr. Vincent stated he would like to present to Council copies of an updated traffic study.

City Attorney Chichester advised Mr. Vincent that it would not be appropriate to provide Council copies of the study although he can talk about it.

Mr. Vincent stated Mr. Dreitzler presented at the last meeting a traffic study conducted in 2005. He stated they have come up with a 2012 study. He stated he does not believe Mr. Dreitzler was trying to mislead anyone but he just had the 2005 statistics. Mr. Vincent cited figures from the recording station (#36) on NC 125 from the cemetery to Citizens Community Bank as recording 3,700 vehicles daily. He stated the 2005 study indicated 3,200 vehicles daily. He stated the recording station (#9010) at the end of the road at Free Will Baptist Church that cuts back into old NC 125 indicated 8,300 vehicles a day. He stated if you take 192 new apartments and his figures were 12,073 more trips per day and you add to that the 3,700, MaSuKi, Inc. will be grabbing a significant amount of the 2005 allotment. Mr. Vincent stated with 2,530 trips per day, he will be grabbing 50%. He stated they contend that Mr. Dreitzler’s figures are wrong as the homeowners have the updated figures. He stated he has attended every meeting on this project--two Planning Board meetings and now the second City Council meeting--and has yet to hear Mr. Gregory say anything different from day one. He stated it is always the same. Mr. Vincent asked about Mr. Gregory’s concept plan. He stated he has not seen a concept plan. He stated he would also like to discuss security. He stated with homeownership, we feel we are in a pretty safe situation when we lock our doors at night and go to sleep. He stated we bought into this sense of security under the PUD. He stated now if you put 500 or 600 more people over there, he is not sure he will feel secure with that many people roaming around or coming in and out of the neighborhood. Mr. Vincent stated he does not believe this development is in harmony with the area and does not believe the former City Council that approved this PUD would have thought three-story buildings with this

**17584**

**Roanoke Rapids City Council**

**February 3, 2015**

many people would be in harmony with the area. Mr. Vincent stated we already have R-3 in the PUD. He stated if you keep putting R-3 zoning in there, you will defeat the purpose of the PUD. He stated you will have more R-3 than anything else. Mr. Vincent stated on the tax issue, he is very concerned about this development devaluing his property. He stated with the recent re-valuation, his house went down from $314,630 to $296,100--$18,530 depreciation. He stated if you allow Mr. Gregory to build out there, by his own testimony, the property values will go down 10%. He stated that would be a $48,000 loss, and that is not a minimal amount to him or to anyone else. Mr. Vincent stated Mr. Gregory needs to produce some type of plan. He stated he does not believe the City Council really knows the plan. He stated you must have a plan for everything before you start. He stated Victory Baptist Church had architectural plans that cost $100,000.

Mayor Doughtie reminded Mr. Vincent to stay on topic.

Mr. Vincent stated he does not see how this development would be in harmony with the surrounding area. He stated it has been said that the burden of proof is on the homeowners and he believes they have proven two things--that it is not in harmony and that it will devalue the surrounding property.

Mr. Jones asked Mr. Vincent if he has any particularized training or experience in the appraisal of real property

Mr. Vincent stated no but he has the figures from the Halifax County Tax Department.

Mr. Jones asked Mr. Vincent if he has any particularized training, education or experience in crime control.

Mr. Vincent stated no, he is not an expert.

Mr. Reggie Baird of 59 Winterberry Lane, Roanoke Rapids, NC stated Mr. Vincent stole his thunder. He stated since the last City Council meeting certain things have changed. He stated Mr. Vincent referenced the property tax re-valuation. He stated one thing he wanted to point out is that the Planning Board did approve the minutes of their last meeting where the developer--not the appraiser--stated “any decrease would only be about

**17585**

**Roanoke Rapids City Council**

**February 3, 2015**

10% to the adjoining property, which isn’t a very large number.” Mr. Baird stated one of the four things Council has to vote on is whether or not the development would injure the value of adjoining or abutting property. He pointed out that Councilwoman Scarbrough said at the last public hearing that 1% is too much. Mr. Baird stated we are not opposed to growth but our property values have decreased. He stated another issue Council must vote on is whether or not the development is in harmony with the area. He stated we have R-3 with 59 units of homeownership and we maintain our own roads and flower beds. He stated this is a proposed R-3 with three-story buildings with no homeownership and no skin in the game. Mr. Baird stated of the items Council has to vote on tonight, these two issues, in his opinion, can stop this project as the concept is proposed right now. He stated we are all in this PUD, we are all adjacent property owners, and we are all concerned. Mr. Baird stated Councilwoman Cowen and Councilman Smith specifically represent District 2. He asked that they represent them tonight.

Mr. Jones asked Mr. Baird if he has any particularized training in property appraisals.

Mr. Baird stated he does not.

Mr. Jones asked Mr. Baird if he understood that Mr. Thomas Barrett, a certified appraiser, had testified at the last hearing that the only affect would be on property adjoining and directly abutting the project.

Mr. Baird stated he did.

Ms. Marilyn Hale of 134 Savannah Circle N, Roanoke Rapids, NC stated what she was going to say was pretty much covered by the last two gentlemen that spoke. She stated she did look up the word “harmony” so she would have a little more explanation. She stated she found quite a few definitions: *pleasing arrangement of parts, in agreement, in accord, symmetrical, conformity, equal, in uniform.* Ms. Hale stated she is concerned about three-story buildings and storage buildings, and does not feel they would be in harmony with the surrounding area. She stated they have townhomes and houses, and they do not have storage buildings. She stated the three-story buildings would not be symmetrical and in uniform with what they have. She stated her tax value also went down, as most did, and she is concerned about the 10% decrease mentioned. She stated that is just too much of a

**17586**

**Roanoke Rapids City Council**

**February 3, 2015**

decrease. Ms. Hale stated she feels these comments are negative toward the criteria that must be met.

Mr. Jones asked Ms. Hale if it is true that the townhome property where she lives directly adjoins the property to the west that has multi-level and multi-unit apartments.

Ms. Hale stated yes.

Ms. Karen Daniels of 106 Charleston Place, Roanoke Rapids, NC stated she would like to read some excerpts from a letter from Planning & Development Director Lasky to Mr. Gregory’s company about why the April 15, 2014 hearing was cancelled for the rezoning process. She read excerpts from the following:

April 8, 2014

MaSuKi, Inc.

Mark Gregory, President

P.O. Box 374

Camden, NC 27921

**Reference: Application for Rezoning 25+/- acres of property located on the eastern side of Cross Creek Parkway, south of North Carolina Highway 125 (portion of Halifax County Parcel 1205276) from PUD R-12, Residential District to R-3, Residential District.**

Dear Mr. Gregory:

City officials and staff have received numerous telephone calls and office inquiries related to your application for the proposed zoning change from R-12 to R-3 Residential District for property located within the Villages at Cross Creek community. In response to the inquiries, the Planning & Development Department staff has re-evaluated your request with the City Attorney. **This recent analysis of the requested rezoning has resulted in a decision to discontinue the current rezoning process and a recommendation to proceed as a request for a Conditional Use Permit.** *An explanation of this decision is provided below.*

The Villages at Cross Creek was initially approved as one planned unit development project comprehensively addressing traffic, residential density, utilities and infrastructure, and other considerations. During 2005, the City Council approved a Conditional Use Permit authorizing the Villages at Cross Creek as a Planned Unit Development District with various zoning districts to include multi-family, single-family and commercially zoned areas fronting North Carolina Highway 125. The first stipulation, or condition, of the Permit states that

*“The Planned Unit Development shall be developed in accordance with the PUD plat prepared by M. S. Consultants,   Inc., entitled “Villages @ Cross Creek PUD Zoning Map – City of Roanoke Rapids, Halifax County, North Carolina”, dated February 9, 2005, as kept in the Office of Planning and Development for greater reference.”*

**17587**

**Roanoke Rapids City Council**

**February 3, 2015**

After a few years of sales and development, the original developer suffered with the down economy and lost ownership of the property to the bank. Today, the project is less than half-built.

We understand that during late 2013, MaSuKi, Inc. purchased a 104 acre tract of the property from Benchmark Community Bank and subsequently applied to rezone approximately 25 acres of the 104 acre tract from R-12 to R-3 zoning, which permits multi-family development. Currently, this request has been processed as a standard or conventional rezoning.

Staff has recently determined that if the zoning districts of the Villages at Cross Creek had been approved as standard zoning districts, then the current standard rezoning process would be appropriate. However, the standard rezoning process does not apply to your property given the approved Conditional Use Permit for the Villages at Cross Creek PUD Zoning Map. Planned Unit Development Districts are authorized by conditional use permits which are obtained from City Council. A Planned Unit Development District requires an overall concept plan for the development of the tract prior to rezoning or establishing the new zoning district.

An authorized Conditional Use Permit (CUP) is perpetually binding upon the property unless subsequently changed by City Council. The City Council may amend or change any CUP, after a public hearing upon recommendation by the Planning Board and subject to the same consideration for the original issuance of the Permit. Amendments to and modifications of permits are outlined in Section 151-65 of the Land Use Ordinance. The ordinance states that *insignificant deviations from the permit issued by the city council are permissible and the administrator may authorize such insignificant deviations. A deviation is insignificant if it has no discernible impact on neighboring properties, the general public, or those intended to occupy or use the proposed development. All other requests for changes will be processed as new applications.*

Staff has concluded that the proposed rezoning is a significant change from the authorized Conditional Use Permit due to the change in the characteristics of the approved PUD Zoning Map. Additionally, the proposed change has a potential impact on those who occupy or intend to occupy the development.

**City staff, in consultation with the City Attorney, has determined that the current rezoning process for your property must be discontinued; the requested change of zoning to the originally adopted Villages at Cross Creek PUD Zoning Map, dated February 9, 2005, shall be processed in accordance with the Land Use Ordinance as a conditional use permit request. Therefore, the Tuesday, April 15, 2014 public hearing will NOT be conducted.**

In order to move forward with your request to change the zoning of property owned by MaSuKi, Inc. a new CUP application requesting an amendment to the Villages at Cross Creek PUD Zoning Map should be submitted. An overall concept plan for the proposed changes to the approved development of the tract will be required for consideration to amend the Villages at Cross Creek PUD Zoning Map. As part of the CUP process, all property owners within the Villages at Cross Creek will be notified.

All conditional use permit requests are reviewed by the Planning Board for comment prior to a public hearing and City Council action. City Council consideration of conditional use permits are quasi-judicial decisions approved by a simple majority vote. Conditional Use Permit applications are available online at www.roanokerapidsnc.com or in the Planning & Development office. The application fee is $350. Please find enclosed excerpts of the Roanoke Rapids Land Use Ordinance concerning Conditional Use Permits.

If you have any questions or need further information, please contact me. Our office is located at 1040 Roanoke Avenue from 8:30 a.m. to 5:00 p.m. daily or we can be reached at (252) 533-2844 or klasky@roanokerapidsnc.com.

**17588**

**Roanoke Rapids City Council**

**February 3, 2015**

Sincerely,

Kelly Lasky/s/

Planning & Development Director

Ms. Daniels stated they feel that in April of 2014, it was already acknowledged that this development would cause a disharmonious situation in our area.

Ms. Margaret Cohn of 104 Charleston Place, Roanoke Rapids, NC stated every time she has attended these meetings, she has spoken about statistics but tonight, she would like to speak from her heart. She stated she is a small town girl from West Virginia. She stated she and her husband moved here six years ago, and she was glad to move back to a small town. She stated she loves living in an environment where neighbors look after each other and everyone knows your name. She stated this is an environment that she wants to live in for the rest of her life. Ms. Cohn stated she feels that even though everything is based on statistics, a resident’s home, heart and well-being has to be taken into consideration. She stated she, like most of her neighbors, are retired and they do not need to worry about a 1% or 10% decrease in property values. She stated they have saved their entire lives to live in this type of home. Ms. Cohn stated it is just too much of a sacrifice to ask of someone living on a fixed income. She stated she has read all of the statistics and knows the information, and based on that, she does not believe this is an appropriate use of the land. She stated based on her heart, where she lives and the people that she lives with and around, she does not believe it complies with the surrounding area.

Mr. Donald Sanders of 222 Forest Hill Drive, Littleton, NC stated he and his wife lived at the Villages at Cross Creek for a short time. He stated the two points he wanted to make have already been made so he will be very brief. He stated he just received his new property valuation and it is down 10% from last year. Mr. Sanders stated this is a significant amount. He stated his brother purchased his property at the Villages at Cross Creek because he needed a place that was low on maintenance and had easier access to shopping, restaurants and medical facilities. Mr. Sanders stated this proposal changes the nature of the Planned Unit Development with so much rental property versus homeownership. He stated it makes a difference in perception to people that might be tempted to move to such a place that allows them to continue a way of life that they could find in the Villages at Cross Creek--but 200 apartment buildings changes the nature of that. Mr. Sanders stated it would be unwise to change the PUD.

**17589**

**Roanoke Rapids City Council**

**February 3, 2015**

Mr. Thomas Barrett of 787 Rivers Edge Parkway, Roanoke Rapids, NC stated he is not going to go through everything from the last meeting but just wanted to address the issues that he was asked to address. He presented two presentation boards showing maps of areas (Hunting Ridge Road, Old Farm Road and Becker Farms Apartments) and depicted in red, the sales within the last 24 months. He stated he has looked at each one of the sales and compared them to other subdivisions all over town. Mr. Barrett stated the only one that you could say that an apartment had any effect on is this one *(pointing to a property on the board)* that directly backs up to the apartment. He pointed to another property that sold for top dollar and indicated how close it is to multi-family units. He showed another property that was the same. He stated you can go back and see that there are no facts or data whatsoever that says these properties sold for less money because of the multi-family apartments. Mr. Barrett pointed out the multi-family complex recently built on Georgia Avenue behind BB&T. He pointed out three sales the same way--not very far at all from the apartment complex. He indicated that as stated at the last hearing, he deals in facts and numbers. He stated that is his job. He stated there are no numbers that indicate property near multi-family units sold for less money than something four or five blocks away. Mr. Barrett stated if you look at the numbers, there are no facts to support that in the Roanoke Rapids real estate market, multi-family apartments have any adverse impacts on housing that does not directly abut it. He stated where the confusion is coming in is that it only affects property that backs up to the apartment. He stated if you are 500 feet away, there is no data to say that it will affect your property. He stated the data says that it does not affect your property. Mr. Barrett stated he wanted everyone to be clear on this--when you talk about the 10% decrease, it only applies to the property that directly backs up to the apartment. He stated you would walk out your back door and walk onto the apartment property. He stated once you get away from that, you can see one that sold for top dollar and it is probably no more than 250 feet from an apartment. He pointed to another that is less than 250 feet from an apartment. He stated all of these properties *(pointing to the board)* are probably closer to these apartments than what the properties would be in the Villages at Cross Creek. Mr. Barrett stated at the end of the day, there is nothing to support that a multi-family unit adversely impacts other properties. He stated the conclusion you have to reach is that the effect is zero on the property already out there. ***(Note: These boards are on file in the Clerk’s Office.)***

Councilwoman Scarbrough asked if Autumn Court is shown on these maps.

**17590**

**Roanoke Rapids City Council**

**February 3, 2015**

Mr. Barrett stated yes.

Councilwoman Scarbrough asked Mr. Barrett to point out Autumn Court and Greenbriar Road. She asked Mr. Barrett if he said there was no effect on the sales.

Mr. Barrett stated that is correct.

Councilwoman Scarbrough read a quote by Mr. Barrett from the minutes of the last public hearing stating “if you go back and look at historical data, it ranged from a 10% decrease on Autumn Court and about a 7% decrease on Greenbriar Road. She asked which it is.

Mr. Barrett explained that Councilman Smith brought to his attention at the last hearing that he was providing historical data, and that is why he came back this evening with these maps. He pointed out 107 Autumn Court that sold approximately five years ago and directly backs up to the apartments. He stated the house next door sold about seven years ago and they got good money for that house. Mr. Barrett stated the apartments had no effect on it whatsoever. He stated the data is there but he was trying to provide the most current data.

Councilwoman Scarbrough told Mr. Barrett that he said tonight that there was no change but during the last hearing, quoted a 10% change with historical data.

Mr. Barrett stated the 10% only applies to property that abuts apartments. He pointed out 107 Autumn Court, 105 Autumn Court, 109 Autumn Court, 113 Autumn Court and 115 Autumn Court. He stated once you get to 145 Autumn Court, there is nothing to support that the property would be affected at all. He stated 143 pretty much sits on Autumn Court but has a Hunting Ridge Road address. He stated that house sold about three months ago for $175,000. Mr. Barrett stated at the last hearing, he was talking about property that abuts apartments and used figures going back 9 or 10 years. He stated when you do a study like this that is typically what you do. He stated you go back in history over a longer period of time. He stated what you do not want to happen is to say these properties are affected 50% not realizing that it might have been affected because the market was down. He stated this is why you do this over a historical time period because it takes away all of the ebbs and flows of the market.

**17591**

**Roanoke Rapids City Council**

**February 3, 2015**

Councilwoman Scarbrough reminded Mr. Barrett that he also stated in those same minutes that he looked back 12 years.

Mr. Barrett stated you have to look over the longer period of time so you can get a more accurate number. He stated if you look at just a short period of time, there could be other effects than what you are trying to pinpoint. He stated when you look at it over a 10 to 12 year period, then you can look back to see if there was something else going on at that time. Mr. Barrett stated when you do a study like this you typically go back further in time. He stated what he is giving Council tonight is more current sales because that is what Councilman Smith had asked him for at the last public hearing. He stated Councilman Smith wanted to know the current sales but the proper way to do an analysis such as this is over an extended period of time.

Councilwoman Scarbrough stated she wanted to make sure she understood Mr. Barrett correctly.

Councilman Smith asked Mr. Barrett if he was aware of how Becker Farms was built.

Mr. Barrett stated to some degree. He stated he was mighty little then.

Councilman Smith explained that the first phase put in was the two-story apartments and the second phase was the one-story apartments. He stated the first house was built on Appleton Drive and it was a spec house. He stated that is when properties started being sold. He stated the apartments were there before any properties were sold. Councilman Smith stated the reason he knows this is because he put the carpet down in all of those apartments back in 1971. He stated the apartments were there before anyone purchased any land. He mentioned Mr. Barrett’s earlier quote of a house sold in Becker Farms. He stated he has not seen many houses over there selling for $160,000. He stated most of them are $300,000 to $500,000 homes. Councilman Smith told Mr. Barrett that he was not questioning his figures but does question the appraised value of the homes before they were sold. He asked Mr. Barrett if he has that information.

Mr. Barrett pointed to a house that sold for around $130,000 at one time and for $175,000 this time. He also pointed to a house that sold for $237,000 about 10 or 12 years ago.

**17592**

**Roanoke Rapids City Council**

**February 3, 2015**

Councilman Smith stated people paid more for houses when the market was up.

Mr. Barrett stated he is dealing purely in figures.

Councilman Smith told Mr. Barrett that he has some of the same questions that Councilwoman Scarbrough raised about what he stated at the last hearing and what he has stated this evening. He stated he understands what he was saying. Councilman Smith told Mr. Barrett that he appreciates him coming back but feels there is a little bit of conflict in what he told us last time and what he is telling us now.

Councilwoman Cowen stated she would like to repeat what she said during the last public hearing that the apartments were already in Becker Farms when people purchased the houses. She stated in the situation we are talking about tonight, the people have the houses and you are talking about putting in the apartments. Councilwoman Cowen stated that is a different issue. She stated the people in the Villages at Cross Creek purchased their property thinking they were going to have homes in the area and not apartments. She stated this is not the same situation as Becker Farms.

Councilman Bobbitt stated he agrees. He stated these are entirely two different situations. He stated this is a different location and different school situation. Councilman Bobbitt stated the houses were there first and it is not right to have apartments come in on top of them.

Mr. Barrett stated that is something outside his area of expertise. He stated he deals with numbers. He did state again that there is no data to say the value will go down because of the apartments.

Councilman Bobbitt stated if you build the apartments and then there is trouble, these people that have invested a great deal of money in their house will be the ones suffering.

Mr. Barrett stated again that is something outside his area of expertise.

Mr. Jones asked Mr. Barrett about his training and experience to make commercial appraisals and to make the kinds of conclusions he has made.

**17593**

**Roanoke Rapids City Council**

**February 3, 2015**

Mr. Barrett stated he is a State Certified General Real Estate Appraiser with 18 years of experience. He stated that includes numerous studies and analyses of the Roanoke Rapids real estate market.

Mr. Jones asked Mr. Barrett if, when he gave the 10% figure, that was the maximum of the affect to property directly backing up to apartments.

Mr. Barrett stated yes. He stated there is a 5% to 10% decrease in property directly abutting multi-family units.

Mr. Jones asked Mr. Barrett if he figured into the analysis when apartments were built versus homes.

Mr. Barrett stated no. He stated he conducted the analysis as if the apartments were there because that is the only way you can do an analysis. He stated you cannot do an analysis on speculation.

Mr. Jones asked Mr. Barrett if he took into account in anyway the fact that there are subsidized apartments directly adjoining the townhome property in the Villages at Cross Creek.

Mr. Barrett stated no because he was doing his analysis on this particular project. He stated there would be no need for an analysis because if someone purchased a house in the Villages at Cross Creek in the last five or six years, there were purchasing property 500 or 600 feet away from subsidized housing.

Mr. Jones asked Mr. Barrett if, to his knowledge, those subsidized apartments were already built when this PUD was developed.

Mr. Barrett stated yes.

Councilman Smith stated we already know there are apartments on the other side of the pond. He asked Mr. Barrett if his analysis included the effect on properties sandwiched between two apartment complexes.

**17594**

**Roanoke Rapids City Council**

**February 3, 2015**

Mr. Barrett stated he did take a look at that but you have to remember that there are another 20 acres of R-20 for single family houses that will be in there too. ***(Note: The remainder of Mr. Barrett’s response could not be transcribed due to a citizen approaching the Clerk to sign in late and take the oath.)***

Mr. Nick Rightmyer of DM2 Engineering, LLC presented a lengthy PowerPoint presentation *(80 pages)* which is incorporated by reference as “Exhibit 1” and hereby made a part of these minutes.

Following the presentation, Councilman Smith asked Mr. Rightmyer if he is working for the City or working against the City. He asked Mr. Rightmyer if he is employed by someone else.

Mr. Rightmyer stated he is employed by MaSuKi, Inc.

Councilman Smith asked Mr. Rightmyer if he has a contract with the City.

Mr. Rightmyer stated yes.

Councilman Smith asked Mr. Rightmyer if he thinks this is a conflict of interest.

Mr. Rightmyer stated for what we do for the City, he does not think there is a conflict of interest.

Mr. Jones asked Mr. Rightmyer about his educational background and qualifications.

Mr. Rightmyer stated he has a Bachelor’s Degree in Construction Engineering from NC State University. He stated he has been practicing engineering for about 10 years.

Mr. Jones asked him if he is a Civil Engineer.

Mr. Rightmyer stated yes.

**17595**

**Roanoke Rapids City Council**

**February 3, 2015**

Mr. Jones asked Mr. Rightmyer if he has an opinion about whether this proposed project would be in harmony with the surrounding area.

Mr. Rightmyer stated he believes it would be in harmony.

Mr. Jones asked Mr. Rightmyer what he bases that opinion on.

Mr. Rightmyer stated he based his opinion on what he found when he looked at the City’s Comprehensive Development Plan and what is already out there--the size and height of the buildings.

Mr. Kenneth Updike of 103 Savannah Circle N, Roanoke Rapids, NC stated he heard a few questions tonight about the other apartments. He stated you cannot even see them because of the leaves on the trees. He stated there is also a pond and fence between us. Mr. Updike stated the proposed apartments would be right across the field.

Ms. Sara Brown of 80 Pecan Drive, Apartment 103, Roanoke Rapids, NC stated she certainly is not an expert but wants to offer another perspective. She stated she currently rents in Roanoke Rapids and wants to own a home in the future. She stated in the meantime, she needs a secure place to live. Ms. Brown stated when she first moved to Roanoke Rapids from Fayetteville, she was appalled by the rental options here. She stated she was shown homes with no subfloors and plastic taped to the windows. She stated she understands that the homeowners have concerns but they need to consider the people that cannot yet afford a home but need a safe place to live. Ms. Brown stated the rental situation here is so dire that if she did not have a great job, she would leave. She stated even someone that needs subsidized housing deserves a nice home in a great neighborhood.

Mr. Jones requested that the diagrams *(presentation boards mentioned earlier that are on file in the Clerk’s Office due to size--“Exhibit 2”)* used earlier by Mr. Barrett be submitted into the record. He presented them to the Clerk. He also requested that the report from Mr. Bill Dreiztler, who testified during the last hearing, be submitted into the record. This report *(Traffic Evaluation of Proposed Apartment Complex off Hwy 125 in Roanoke Rapids, NC)* is incorporated by reference as “Exhibit 3” and hereby made a part of these minutes.

**17596**

**Roanoke Rapids City Council**

**February 3, 2015**

Mr. Jones stated for clarity that he is an attorney with an office in Halifax and that he is also a resident of Roanoke Rapids. He stated he has been hired to represent MaSuKi, Inc. in this Conditional Use Permit application process. He stated at the last hearing and also during this hearing, a number of people who certainly have a valid interest in this project have exercised their rights to talk about this project. He stated they have voiced absolute legitimate concerns that they have but he pointed out the fact that just because those concerns are legitimate, it does not necessarily mean that the Council members should consider them in their obligation and responsibility to apply the law. Mr. Jones reminded Council members that they are sitting as jurors, as some may have done in the past in court for a criminal or civil case. He stated you take an oath as a juror. He stated in your positions as City Council members, you sought these positions, were elected to these positions and have taken an oath of office that you will uphold and follow the law. Mr. Jones stated sometimes as a juror in a civil case, it seems you have to make a decision that you wish you did not have to make and sometimes as a City Council member you have to make decisions that if they were entirely up to you and your preference, you would not make. He stated in these cases, you are required to follow the law and the law is what is outlined in the worksheet--in the determinations you are to make. Mr. Jones stated Planning & Development Director Lasky and her staff has done a thorough evaluation of the application by MaSuKi, Inc. and they have made determinations that the application is complete and that all requirements have been met. He stated it is now up to the City Council to make a decision about whether it can confirm those findings by the Planning & Development Department. Mr. Jones stated he believes City Attorney Chichester pointed out at the last public hearing that once the application is complete and once MaSuKi, Inc. has met their burden of showing they have met these conditions, the burden then shifts to those opposed to the Conditional Use Permit to show that it somehow does not meet the requirements. He stated unless they have succeeded in doing that, then it is this Council’s duty to issue the Conditional Use Permit. He stated even if you personally do not like it or even if you do not wish that was the case, you have to follow the law. He stated if you follow your responsibility, duty and oath, you will issue the Conditional Use Permit.

Mr. Jones stated he is going to briefly go over the questions that have to be answered by Council. He stated you have to find that this project will not materially endanger the public health or safety. He stated he does not believe there is anything inherently dangerous about this project and about apartments being built. He stated they have

**17597**

**Roanoke Rapids City Council**

**February 3, 2015**

attempted to show and prove that there will not be any traffic concerns and they have provided expert testimony from Mr. Bill Dreitzler and submitted his report which reflects that this is not an overburden on a highway that is designated as a major thoroughfare. Mr. Jones stated he believes that Mr. Vincent brought up at the beginning of this hearing that there is some current information on the NCDOT traffic counts. He stated the fact of the matter is neither he nor anyone else has testified that this information changes the information about the overburden on the highway. He stated there has been no testimony that there will be any endangerment to the public health or safety. He stated that issue should be resolved in favor of this Conditional Use Permit.

Mr. Jones stated next, Council will have to find that the project will not substantially injure the value of adjoining or abutting property. He stated they have provided an expert that testified that based on his study which covered a 12-year period that there is no evidence that it would affect any property at all unless it backs directly up to the apartments. He stated as has been testified, MaSuKi, Inc. owns the property that would back up to the apartments so the only person affected by that would be MaSuKi, Inc. and its shareholders. Mr. Jones stated that question should be answered with no, that it will not substantially injure the value of adjoining or abutting property. He stated for those people that voiced an opinion, and certainly everyone is entitled to their opinion, their testimony is what is referred to in case law as speculative assertions and mere expressions of opinion about the possible effects of granting the permit. He stated those generalized fears do not support denial when competent evidence fails to support those concerns. He stated there has been no competent evidence given by anyone that the property values will be affected at all except for what Mr. Barrett testified about. Mr. Jones stated that issue should be resolved in favor of this Conditional Use Permit.

Mr. Jones stated in regards to the question of will the development be in general conformity with the Comprehensive Development Plan, Thoroughfare Plan, or other plan officially adopted by the City Council, the Planning & Development Department concluded that was probably true and that the proposed amendment to the PUD zoning map is considered to be reasonable. He stated that reasonableness is determined by considering the size of the area, any special conditions or factors regarding the area, the consistency of the zoning with the Land Use Plan, the degree of the change in the zoning, the degree it allows uses different from the surrounding area, and the relative benefits

**17598**

**Roanoke Rapids City Council**

**February 3, 2015**

and/or detriments for the owner, the neighbors, and the surrounding community. Mr. Jones stated it is important to consider the fact that there is a common sentiment among people that we want development in our community but we just do not want it in our backyard. He stated if the State of North Carolina did not have these rules in place, there would be no growth. Mr. Jones stated growth is considered a good thing because it brings in people, money and tax base. He stated that is part of the law and policy that Council has to follow.

Mr. Jones stated the Council has a hard job to do. He stated some people here that have invested money in their property have expressed concerns but the job of the Council is to look at the facts that have been presented that are material, relevant and competent evidence to show that the standards have not been met. He stated one of the ladies that spoke tonight said she was speaking from her heart. He stated he appreciates and respects that but that is not competent and material evidence that should be considered. Mr. Jones stated that is more of a personal preference, a generalized fear or an expression of opinion about the possible effects.

Mr. Jones stated in regards to the harmony in the area question, as shown in the maps and slides presented earlier, there are apartment buildings directly adjacent to and adjoining the property. He stated there is a small pond in between, and those apartments are not fair market value housing but subsidized housing. He stated the proposed apartments will be fair market value housing. Mr. Jones asked if we do not approve the apartments here, where in the City of Roanoke Rapids would a project be approved for anywhere that would not be dislocated from private residential homes and in an area that has commercial, residential and R-3 high density. Mr. Jones stated Mr. Rightmyer, in his presentation, touched on the point that if this project is approved, there would be no opportunity for anyone else to put in more high density. He stated this would be it.

Mr. Jones stated if you look carefully at the requirements and at the excellent report from the Planning & Development Department, and if you think about your responsibilities and duties as a City Council member and follow the law, we are confident that you will grant this Conditional Use Permit. He thanked Council for their time and consideration.

City Attorney Chichester advised Council to leave the public hearing open during the deliberation phase. He stated he would also like as City Attorney to make inquiry, for the

**17599**

**Roanoke Rapids City Council**

**February 3, 2015**

record, as to whether any member of Council has allowed or considered any evidence in the matter in the making of his or her decision other than what has been made here under oath. City Attorney Chichester asked that the record show that each member answered in the negative to the question.

Councilwoman Scarbrough asked Mr. Gregory why he stated at the Planning Board meeting that he anticipated a 10% loss in property values.

Mr. Gregory stated that figure was based upon information he received from Mr. Barrett but that 10% was for the adjoining apartments.

Councilwoman Scarbrough asked Mr. Gregory if he made that clear when he first made that statement.

Mr. Gregory stated he feels like he did.

Mayor Pro Tem Ferebee asked Planning & Development Director Lasky the zoning of the hospital property.

Planning & Development Director Lasky stated the hospital is zoned B-5 Commercial.

Mayor Pro Tem Ferebee stated that is not related to what is currently being proposed. He stated the reason he is asking is because he saw the photos in which the development was being compared to the hospital. He also asked Planning & Development Director Lasky to elaborate on the letter that Ms. Daniels read earlier.

Planning & Development Director Lasky stated approximately a year ago, Mr. Gregory notified her that he had purchased the 104-acre tract in question and had described his intentions of wanting to develop multi-family apartments. She stated at that time when looking at the zoning, staff decided the legislative zoning process was the way to move forward. She explained that the legislative zoning process is not based on sworn testimony and the project can be discussed freely outside of the public hearing. Planning & Development Director Lasky stated the Planning Board held a public meeting on the matter and received comments from the public and the applicant. She stated in the time

**17600**

**Roanoke Rapids City Council**

**February 3, 2015**

between the Planning Board and City Council meeting, during conversations that are allowed under the legislative zoning process, she made the professional opinion that since the original Cross Creek community was a Planned Unit Development with a Conditional Use Permit, that the standard rezoning process would not apply to this development--that the Conditional Use Permit process would have to be followed to change the Planned Unit Development Map. Planning & Development Director Lasky stated she wrote the letter to Mr. Gregory and notified him of her findings. She explained that under the Conditional Use Permit process, when you talk about significant and insignificant changes, there are certain things that are considered insignificant such as an adjustment to a lot line, etc. and something she could make an administrative decision on. She stated she considered the change to be made to be substantial in nature because it was changing the density of the development and since the development is not built out at this time, the only way to process the requested zoning change would be to go through the Conditional Use Permit process to amend the previous decision and to contact all property owners in the subdivision that have the right to speak and provide input into that process.

Councilman Smith asked Planning & Development Director Lasky who on her staff looks at these requests.

Planning & Development Director Lasky stated she looks at requests from a planning and zoning standpoint. She stated Administrative Assistant Kristyn Anderson assists in notifying the property owners and performs some of the general paperwork and mailings. She stated she is also assisted by Code Enforcement Supervisor Brian Duhadaway and Code Enforcement Officer Kris Jordan.

Councilman Smith asked if the Council, under the quasi-judicial process, has the right to investigate without talking to people and looking at things.

City Attorney Chichester stated that is a good question.

Councilman Smith stated the reason he asked that question is that when he looked this up, it said we do have the right to investigate but it did not say which State the information pertained to.

**17601**

**Roanoke Rapids City Council**

**February 3, 2015**

City Attorney Chichester stated the answer is yes but the problem is that you cannot use that information in making your decision. He stated you have to use the testimony presented under oath in the quasi-judicial hearing. City Attorney Chichester stated there has been some testimony that could be considered as hearsay and while it is admissible, it cannot be the sole basis for City Council making a decision.

Councilman Smith stated the reason he asked about this was because the Mayor, during the last public hearing, had asked the question about other apartment complexes that Mr. Gregory owns. He stated Mr. Gregory indicated that he had other apartments but he did not want us to look at them. Councilman Smith stated he brought that up because it is on record in the minutes.

Mayor Doughtie reminded Council before going forward that under Section I of the worksheet:

1. The requested permit is within its jurisdiction according to the table of permissible uses; and
2. The application is complete; and
3. If completed as proposed in the application, the development will comply with all requirements of the Land Use Ordinance.

Motion was made by Councilwoman Scarbrough, seconded by Mayor Pro Tem Ferebee and unanimously carried that, based on the foregoing staff report dated December 29, 2014 and items 1 – 7 of Section II included in that report, the proposed development **WILL NOT** materially endanger the public health or safety.

Councilman Smith stated he would like to make a motion that it is not true that the proposed development will not substantially injure the value of adjoining or abutting property based on the following reasons: (1) Mr. Barrett’s two conflicting statements about the 5% and 10% loss in property value; (2) the chance that the surrounding properties will lose some value from being sandwiched between two apartment complexes; (3) there has already been some loss in property value in the development; (4)

**17602**

**Roanoke Rapids City Council**

**February 3, 2015**

the current property owners in the development based their investment on the PUD approved by City Council in 2005; (5) Mr. Gregory purchased the land zoned PUD with the hopes of changing the zoning that the previous City Council approved. Councilman Smith stated he hopes we do not get investment and speculation mixed up. He stated homeowners purchase property as an investment that would appreciate in the future and although speculators are making informed decisions, speculation cannot usually be categorized as traditional investing.

Mayor Doughtie asked Councilman Smith to put that in the form of a motion.

Motion was made by Councilman Smith, seconded by Councilwoman Cowen and unanimously carried that, based on the foregoing staff report dated December 29, 2014 and items 1 - 7 of Section II included in that report, the proposed development **WILL** substantially injure the value of adjoining or abutting property.

Mayor Doughtie asked City Attorney Chichester if the Council needed to continue with the worksheet since item (b) was found not to be true.

City Attorney Chichester stated yes.

Motion was made by Mayor Pro Tem Ferebee, seconded by Councilman Smith and unanimously carried that, based on the foregoing staff report dated December 29, 2014 and items 1 – 7 of Section II included in that report, the proposed development **WILL NOT** be in harmony with the area in which it is to be located.

Motion was made by Councilwoman Scarbrough and seconded by Mayor Pro Tem Ferebee that, based on the foregoing staff report dated December 29, 2014 and items 1 – 7 of Section II included in that report, the proposed development **WILL** be in general conformity with the Comprehensive Development Plan, Thoroughfare Plan, or other plan officially adopted by the City Council.

Mayor Doughtie called for a vote and there being some confusion with the voting, Councilman Smith asked if it would be proper for him to ask a question at this time.

**17603**

**Roanoke Rapids City Council**

**February 3, 2015**

Mayor Doughtie stated he was not sure a question could be asked while the motion was on the floor. He stated he believes questions are allowed during the discussion.

City Attorney Chichester stated that is correct.

Councilwoman Scarbrough stated she was just informed that, even though she made the motion, she did not have to vote in favor of it.

Mayor Doughtie asked Councilwoman Scarbrough to restate her motion.

Motion was made by Councilwoman Scarbrough and seconded by Mayor Pro Tem Ferebee that, based on the foregoing staff report dated December 29, 2014 and items 1 – 7 of Section II included in that report, the proposed development **WILL** be in general conformity with the Comprehensive Development Plan, Thoroughfare Plan, or other plan officially adopted by the City Council.

Upon being put to a vote, Mayor Pro Tem Ferebee, Councilman Smith and Councilman Bobbitt voted in favor of the motion. Councilwoman Scarbrough and Councilwoman Cowen voted against the motion. The motion carried by a 3 to 2 vote.

Councilman Smith stated since we found that this last motion is true, what happens with the ones we found not to be true.

Planning & Development Director Lasky explained that in order to approve the permit, all four findings have to be found true or in the affirmative and since (b) and (c) have failed to pass in the affirmative, the City Council has to deny the request.

City Manager Scherer stated he believes Councilman Smith wants to know if finding (d) to be true invalidates (b) and (c).

Planning & Development Director Lasky stated no because they are separate considerations.

**17604**

**Roanoke Rapids City Council**

**February 3, 2015**

Councilman Smith apologized for his confusion. He stated it is his understanding, and he may be wrong, that once an item is found not to be true, you do not have to go through the rest of the process.

City Attorney Chichester stated he does not believe that is correct. He stated Council still has to go through and answer each one of the questions. He pointed out that even though Councilwoman Scarbrough made the motion on item (d) that it is true, she did not have to vote for it. City Attorney Chichester stated Council has to complete the process. He reiterated what Planning & Development Director Lasky said that if any one of the four is found not to be true, Council cannot issue the permit. He pointed out that if the permit is not issued, the reason for the denial must be stated.

Councilman Smith stated the last motion was made, seconded and there was no discussion. He stated the Mayor called for the vote and by his count, three voted for it and two voted against it. He stated we then brought the motion back up again without the motion coming off the floor. Councilman Smith asked the consequences of that.

City Attorney Chichester stated if the motion was made and seconded, and the vote was made and was clear, that is the way the vote should be.

Councilman Smith asked City Clerk Vincent if she recorded the vote on the last motion.

City Clerk Vincent stated she did, the vote being three in favor of the motion and two against the motion.

Councilman Smith thanked City Attorney Chichester and City Clerk Vincent for the clarification.

Motion was made by Mayor Pro Tem Ferebee, seconded by Councilman Bobbitt and unanimously carried to deny a Conditional Use Permit to MaSuKi, Inc. for an amendment to the Villages at Cross Creek Community Planned Unit Development Map

based on the fact that the application did not meet the requirements as items (b) and (c) were found not to be true.

**17605**

**Roanoke Rapids City Council**

**February 3, 2015**

Mayor Doughtie declared the public hearing closed.

Mayor Doughtie called for a five minute recess after which the meeting was reconvened.

Parks & Recreation Director Simeon stated at the December 2, 2014 City Council meeting, Mr. Terry Buffaloe discussed after hours activities frequently taking place at Chockoyotte Park. He stated Mr. Buffaloe indicated that he was representing several concerned citizens in his neighborhood that had requested a gate be placed at the entrance to stop this activity. Parks & Recreation Director Simeon reported that the Parks & Recreation Department staff fabricated metal gates and installed them at the entrance as requested. He indicated a photo of the gate is included in the Council’s agenda packet.

Parks & Recreation Director Simeon stated he is requesting City Council amend Section 97.01 of the Roanoke Rapids Code of Ordinances that currently states “all city parks and recreation areas shall be open to the public between sunrise and 11:00 p.m…….” to read “all city parks and recreation areas shall be open to the public between sunrise and sunset…….”. He stated closing these gates at sunset will allow them to be effective in deterring unwanted activities at Chockoyotte Park, especially during the fall and winter seasons when daylight savings takes place. Parks & Recreation Director Simeon stated he has spoken with Mr. Buffaloe on several occasions, and he indicated that the neighborhood is pleased with the gates.

Police Chief Hasty pointed out that this has helped with the vehicular traffic in the park.

Parks & Recreation Director Simeon indicated that Emry Park will be next on the list for a gate.

Motion was made by Councilman Bobbitt, seconded by Councilwoman Cowen and unanimously carried to adopt the following Ordinance:

**AN ORDINANCE TO AMEND CHAPTER 97 “PARKS AND RECREATION” OF THE ROANOKE RAPIDS CITY CODE.**

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROANOKE RAPIDS:**

**17606**

**Roanoke Rapids City Council**

**February 3, 2015**

**SECTION 1.** Section 97.01 be amended to read as follows:

**§ 97.01 HOURS OF OPERATION.**

All city parks and recreation areas shall be open to the public between sunrise and sunset, or as posted, on each day and it shall be unlawful for any person to use or inhabit any city park or recreation area at any other time except when the park or recreation area is open and being operated under the direct supervision of the Parks and Recreation Department or when same is being used by written authorization of the Parks and Recreation Department or its designated official.

**SECTION 2.** This Ordinance shall become effective upon adoption.

City Manager Scherer reported that the dehumidification system will be here any day. He stated the preliminary work has already been completed and it will take about 10 days to get everything functioning.

City Manager Scherer reported that leaf season is in full swing and the Public Works Department plans to get in the alleys in the near future. He reported that the Rochelle Dam repair project is still awaiting a part to be delivered.

City Manager Scherer reported that the Chamber’s next Business After Hours will be held on Thursday, February 12 at 5:30 p.m. at the Roanoke Canal Museum. He stated there will be an unveiling of a painting by local artist Napoleon Hill.

City Manager Scherer reported that the Planning & Development Department submitted two applications for the “Great Places in NC” Program through the NC Chapter of the American Planning Association. He stated one application is for the People’s Choice Award Category and the Canal Trail was submitted. He encouraged folks to vote on-line from February 9 through February 27. He stated the other application is for the Professional Category which is voted on by the Chapter. He stated the “Great Main Street in the Making” was submitted for this award. City Manager Scherer stated this is a great way for us to attract commercial attention to our community.

City Manager Scherer reported that Sheetz plans to open on February 17 and Zaxby’s plans to open on March 1.

**17607**

**Roanoke Rapids City Council**

**February 3, 2015**

City Manager Scherer reported that the Fire Department has completed their annual physicals and 100% of our people qualified as fit for duty.

City Manager Scherer asked Police Chief Hasty to review the Accident Free Week program.

Police Chief Hasty reported on the following statistics from the Accident Free Week program held January 26 through January 30:

* 220 State citations issued
* 14 wrecks (wrecks were averaging about 25 a week)
* Located 4 people on outstanding warrants
* 4 drug charges
* 1 gun charge
* Other charges: speeding, no registration, driving while license revoked, no operator’s license, stop sign/light, unsafe movements, improper passing, seat belt, inspection stickers

Mayor Doughtie asked Chief Hasty if he plans to do something similar to this again.

Chief Hasty stated yes. He stated he wants to try some different things.

There being no further business, motion was made by Councilman Bobbitt, seconded by Councilwoman Scarbrough and unanimously carried to adjourn.



2/17/15