

TOPEKA PLANNING COMMISSION

A G E N D A

Monday, May 18, 2015

6:00 P.M.

**214 East 8th Street
City Council Chambers, 2nd Floor
Municipal Building
Topeka, Kansas 66603**

Persons addressing the Planning Commission will be limited to four minutes of public address on a particular agenda item. Debate, questions/answer dialogue or discussion between Planning Commission members will not be counted towards the four minute time limitation. The Commission by affirmative vote of at least five members may extend the limitation an additional two minutes. The time limitation does not apply to the applicant's initial presentation.

Items on this agenda will be forwarded to the City Council for final consideration. The progress of the cases can be tracked at: http://www.topeka.org/planning/staff_assignment/tracker.pdf

All information forwarded to the City Council can be accessed via the internet on Thursday prior to the City Council meeting at: <http://public.agenda.topeka.org/meetings.aspx>



ADA Notice: For special accommodations for this event, please contact the Planning Department at 785-368-3728 at least three working days in advance.

HEARING PROCEDURES

Welcome! Your attendance and participation in tonight's hearing is important and ensures a comprehensive scope of review. Each item appearing on the agenda will be considered by the City of Topeka Planning Commission in the following manner:

1. The Topeka Planning Staff will introduce each agenda item and present the staff report and recommendation. Commission members will then have an opportunity to ask questions of staff.
2. Chairperson will call for a presentation by the applicant followed by questions from the Commission.
3. Chairperson will then call for public comments. Each speaker must come to the podium and state his/her name. At the conclusion of each speaker's comments, the Commission will have the opportunity to ask questions.
4. The applicant will be given an opportunity to respond to the public comments.
5. Chairperson will close the public hearing at which time no further public comments will be received, unless Planning Commission members have specific questions about evidence already presented. Commission members will then discuss the proposal.
6. Chairperson will then call for a motion on the item, which may be cast in the affirmative or negative. Upon a second to the motion, the Chairperson will call for a role call vote. Commission members will vote yes, no or abstain.

Each item appearing on the agenda represents a potential change in the manner in which land may be used or developed. Significant to this process is public comment. Your cooperation and attention to the above noted hearing procedure will ensure an orderly meeting and afford an opportunity for all to participate. Please Be Respectful! Each person's testimony is important regardless of his or her position.

All questions and comments shall be directed to the Chairperson from the podium and not to the applicant, staff or audience.

Members of the Topeka Planning Commission

Kevin Beck
Dustin Crook
Rosa Cavazos
Scott Gales, Chair
Dennis Haugh
Nicholas Jefferson, Vice Chair
Carole Jordan
Mike Lackey
Patrick Woods

Topeka Planning Staff

Bill Fiander, AICP, Planning Director
Carlton O. Scroggins, AICP, Planner III
Dan Warner, AICP, Planner III
Mike Hall, AICP, Planner III
Tim Paris, Planner II
Dean W. Diediker, Planner II
Annie Driver, AICP, Planner II
Susan Hanzlik, AICP, Planner II
Kris Wagers, Office Specialist

AGENDA
Topeka Planning Commission
Monday, May 18, 2015 at 6:00 P.M.

A. Roll call

B. Approval of minutes – April 20, 2015

C. Communications to the Commission

**D. Declaration of conflict of interest/exparte communications
by members of the commission or staff**

E. Action Items

- 1. Request by residents of Stone Crest Subdivision to initiate rezoning**

F. Adjournment

**Minutes of the
Topeka Planning Commission**

Monday, April 20, 2015

A. Roll call

Present: Scott Gales (Chair), Kevin Beck, Rosa Cavazos, Nicholas Jefferson, Patrick Woods, Mike Lackey, Dennis Haugh, Dustin Crook, Carole Jordan **(9)**

Absent: None **(0)**

Staff Present: Bill Fiander – Planning Director, Mike Hall – Planner III, Tim Paris – Planner II, Mary Feighny – Legal, and Kris Wagers – Office Specialist.

B. Approval of minutes

1. Minutes from March 16, 2015 meeting

Mr. Lackey moved for approval of the minutes as typed, seconded by Mr. Beck. **APPROVAL (9-0-0)**

C. Communications to the Commission – None

D. Declaration of conflict of interest/exparte communications by members of the Commission or staff – None

E. Public Hearings

- 1. HLD15/01 by Deborah Edwards** requesting Historic Landmark District zoning overlay for property currently zoned “R-2” Single-Family Residential Dwelling District, and “R-2/HL” Single-Family Residential Dwelling District with Historic Landmark zoning overlay on property located at 417, 419, and 423 SW Taylor Street. (Paris)

Mr. Woods asked if there would be any unforeseen consequences to surrounding properties, specifically the property at 423 SW Taylor. Mr. Paris stated that it had been converted to a duplex, which is not necessarily inconsistent with the design guidelines. It would be a legal non-conforming use with zoning guidelines.

Ms. Edwards (applicant) came forward and offered to answer any questions the commission may have. Mr. Gales asked if she lives at one of the properties under consideration and she stated yes, she lives at 419 SW Taylor.

Mr. Lackey asked if any neighbors had comments about the request, either for or against. Ms. Edwards pointed out that across the street are vacant lots and most of the properties on the block

are rentals so the neighbors are transient. She stated that 425 SW Taylor is also a John Nelson build and as her finances allow she hopes to acquire that property also.

Mr. Paris stated that the citizen participation process included a public meeting. Approximately 12 people attended; Mr. Woods asked if they were property owners or tenants and Ms. Edwards stated that most were Landmarks Commissioners. One neighbor attended who lives at 329 Western, in the "sister" house to Ms. Edwards's. Ms. Edwards stated she will be working with that owner to assist in the process of getting the property included on the local landmarks registry.

Mr. Haugh commended Ms. Edwards on preserving the properties.

Mr. Gales opened the meeting for Public Hearing. With none coming forward to speak, the **Public Hearing was closed.**

Mr. Lackey added his commendation to the efforts of Ms. Edwards, stating the homes are very attractive and she's taken very good care of them.

Mr. Lackey moved to approve the application, seconded by Ms. Jordan. Mr. Gales added his compliments to Ms. Edwards for taking the initiative to keep the properties up and going through the exercise of applying for historic designation.

At Ms. Edwards' request, she was given another opportunity to speak to the Commission. She stated that in the process of the nomination she was able to find Mr. Nelson's granddaughter, who is 100 years old. She will be participating in the City Council presentation.

With no further discussion, Mr. Gales called for a vote. **Approval (9-0-0)**

F. Discussion Items

1. Request by residents of Stone Crest Subdivision to initiate rezoning

Mike Hall reviewed the request and the options of the Planning Commission.

Mr. Gales asked for clarification regarding ownership of the empty lots. Mr. Hall confirmed that the lots were owned by 4 different people and pointed the Commissioners to a map provided that indicated who owns which properties.

Mr. Gales asked for clarification regarding the corner lot adjacent to the properties (45th & California); zoning for it is C-3 and Mr. Gales asked Mr. Fiander to give some broad examples of the types of business allowed in that zoning. Mr. Fiander explained that commercial zoning goes from C-1 to C-5. C-1 is lowest intensity, C-2 neighborhood retail. C-3 allows for larger footprints such as car dealerships, hardware stores that might have outside display/lawn & garden type areas, automobile repair, strip mall, grocery store, etc. C-3 is considered the "bridge" between neighborhood retail and the more intense commercial uses.

Mr. Haugh asked if M-1 is considered "transitional" between C-3 and R-1 districts. Mr. Hall stated that it's not unusual and transitions typically happen at the back of lots as in this area.

Mr. Jefferson inquired about the process; if the Planning Commission or City Council were to initiate a zone change such as this and it were ultimately approved, could the landowners turn around and request that it be zoned back to what it currently is? If so, that raises issues as to whether the Planning Commission could deny them based on the golden factors.

Ms. Feighny stated that possibility exists and would assume that if the PC goes forward with a re-zoning application, at some point it will go to the Governing Body, who will make a decision and there will be some sort of litigation or challenge following.

Mr. Lackey asked for verification that the property was zoned M-1 when all the current houses were built. Mr. Fiander stated that the zoning pre-dates the houses.

Mr. Woods asked for additional information about the "high end" duplexes and also asked if the owners intend to sell or rent the duplexes. Mr. Hall stated that he's spoken to one landowner who intends to keep the duplexes as income property. He doesn't know the intention of the other owners. Mr. Fiander referred the Commissioners to Mr. Hall's report, which gave a price point for leases of \$1,200 and above. Expected size of the duplexes is 1,800sq feet per unit; 3 bedroom / 2 bath with basements. There are design covenants in place that builders will have to adhere to. Mr. Hall added that ordinances allow for lot splits so at some point the duplexes could be split into townhomes and sold and owned separately as individual units.

Mr. Gales asked if the Covenants referred to by Mr. Fiander were platted into the properties. Mr. Fiander stated the covenants have no relation to the plat.

Mr. Beck asked if the current homes were custom-built by multiple builders or if they were all built by the original owners. Mr. Fiander stated that staff was under the impression there was a single builder of all the homes but someone else would need to confirm that.

Ms. Cavazos asked how soon the owners are planning to build. Mr. Hall stated that at least some of the sites are currently being cleared. Mr. Gales asked if any permits had been applied for and Mr. Hall stated no.

Mr. Gales explained that this is a petition and technically not part of the Public Hearing component of the Planning Commission meeting. The meeting could be opened for public comment if the Commissioners so wish.

Mr. Woods moved that the Planning Commission hear public comment, second from Mr. Beck. Motion approved by ayes (9-0-0)

Mr. Gales asked if there was a homeowner representative in the audience to represent the

neighborhood

Jeff Wineinger, of 4418 SE Gemstone Lane, came forward to speak. He stated that he has lived in his home since 2009. The zoning and restrictions were in place before any houses were built in the Stonecrest Subdivision. There were two builders who built the entire neighborhood; two separate companies but they basically worked together. The first homes went up in 2007 and the last home was built perhaps 3 years ago.

Mr. Wineinger explained that Gemstone Lane was zoned for either single family homes or duplexes on both sides of the street. The homeowners had a verbal agreement with the contractors to build single-family homes only on Gemstone Lane, even though zoning allowed for duplexes. Every initial homeowner on that street was made aware of that verbal agreement.

Mr. Wineinger stated that in 2014 the lots were sold at a tax auction. At that point Ramsey Custom Homes, working with one of the property owners, informed the homeowners that the intention was to build single-family homes and the homeowners were fine with that. In mid-March, 2015, a bulldozer showed up and started clearing trees. Homeowners started asking questions and that's when they learned the lots had been sold again and the new owners planned to build duplexes.

Mr. Wineinger stated that current homeowners have a number of concerns, first being that they had verbal agreements that duplexes would not be built across from them. He stated that they understand that's not really "legally defensible"; knowing what they do today, all of them as homeowners would probably have done something a lot sooner.

Mr. Wineinger stated homeowners are concerned that if duplexes go in, a number of things will happen, starting with increased traffic. Most duplex areas he has driven through have a lot of vehicles parked in the street and a lot of traffic.

Mr. Wineinger stated the landowners plan for the proposed duplexes to be rental properties homeowners are concerned that keeping up of yards will not be to the level of single-family homes like they currently have on Gemstone Lane. Mr. Wineinger stated that current homeowners take a lot of pride in their neighborhood, and for the last 3 or so years homeowners have been taking turns mowing the lots across the street to keep them neat because their pride in their neighborhood.

Mr. Wineinger stated that all but one of the current homeowners purchased their homes new and are already discussing potentially moving out because they don't want to have duplexes across the street from them.

Mr. Wineinger stated they understand this is a unique situation. He and the other homeowners would like to find a "win/win" answer. He has spoken with one of the builders three times and they're at an impasse. Builders plan to build duplexes that will be investment property to be

rented out; property owners will not be living there. One of the homeowners inquired about buying the lot across the street from them at whatever the property owner had invested in it but were turned down.

Mr. Wineinger stated that there are not a lot of newer neighborhoods like theirs in the Shawnee County District. Homeowners are concerned that if duplexes are built there, the neighborhood will deteriorate,

Mr. Wineinger said that that Planning Commission doesn't generally intend to have duplexes built across the street from single family homes; it's an oddity that they're built this way. He said that if the homeowners could go back, based on what they've learned over the past several weeks they would probably have been trying to do something several years ago.

Mr. Beck asked if the homeowners had been aware of the previous owners going bankrupt before it happened so that a written document could have been worked out with them. Mr. Wineinger stated he knew the company had been struggling and had heard "through the grapevine" that they'd declared bankruptcy. They knew when they were listed that the lots were going up for tax auction but they're a group of homeowners, not speculators, contractors, realtors, etc. Again – they didn't foresee the verbal agreement being worth nothing.

Mr. Lackey asked about recent conversations Mr. Wineinger might have had with the landowner(s). Mr. Wineinger stated he had spoken with one of the contractors; it wasn't until Mike Hall from the Planning Department came out to meet with the homeowners that they became aware of who all the landowners were. Mr. Wineinger said the contractor he spoke with doesn't feel he can make money building single-family homes. He indicated the other owners were also planning to build duplexes.

Mr. Haugh asked if building permits had been issued and Mr. Wineinger stated he didn't believe so based on what Mr. Hall had stated. Mr. Hall confirmed that no permits had yet been applied for.

Mr. Gales referred to the list of homeowners signatures provided in the Planning Commission packet and asked if it would be fair to say that Mr. Wineinger is speaking on behalf of most of the signers. Mr. Wineinger stated yes, though he thinks there may be a few who would like to speak at this meeting.

With no further questions from Commissioners, Mr. Wineinger thanked the Commission and took his seat.

Mr. Lackey asked staff if the fact that the petition was before the Planning Commission would have any bearing on the issuance of a building permit. Mr. Hall stated no; if an application for a building permit were received it would be issued or not issued based on the zoning in place at the time of the request.

Mr. Gales asked if anyone else would like to speak, asking that they speak about new issues rather than what had already been discussed by Mr. Wineinger.

Mr. Greg Smith of 4404 SE Gemstone came forward to speak. He stated that after retiring he looked long and hard to find a location to retire to. He mentioned that Lake Shawnee is just 4 blocks from them, and that when they retired, they didn't look for investment property but rather a retirement home. He feels that to put investment properties across from their retirement home is a mistake. It was not anticipated when they bought their home, which they're very pleased with. He doesn't feel that on the same size lot they can build a multi-family home of the same quality.

Mr. Smith thanked the Commissioners for their time and took his seat.

Mr. Mike Heptig, an attorney with Sloan Law Firm, came forward to speak on behalf of one of the builders, Mitch Bernard, owner of MTK Properties. He stated Mr. Bernard has a loose partnership with one of the other owners of some of the lots and though he doesn't represent this other landowner, Mr. Heptig has been asked to speak somewhat on his behalf because at this point their interests are aligned.

Mr. Heptig stated MTK Properties owns the south 3 lots and that the north 2 lots have recently been acquired by MTK Properties. Mr. Heptig stated the properties were purchased with the intention of putting duplex units on the lots. The property was zoned M-1 in 2006 and the existing covenants allow duplexes. He stated the duplexes being considered are bi-level duplexes, 1,800-2,000 square feet per unit (not per building). The existing covenants call for certain facades and 2-car garages, which each until will have. The intent of the builders is to create housing that is consistent with the nature of the community as is allowed by not only the zoning but also the existing covenants that were in place when all these homes were built.

Mr. Heptig pointed out that the corner of 45th & California is commercial C-3 zoning, obviously more intensive use than the residential that is being sought. There was a question earlier as to whether the M-1 was a buffer zone. Mr. Heptig quoted City Code 18.90.010 about M-1 being a buffer zone. He stated the property was zoned M-1 for that purpose and it is he and the builder's suggestion that it remain in that same fashion.

Mr. Heptig stated he heard a recurring theme about concern over property values and he wished to reiterate that the intent of the builders is to come up with a property that is consistent with the area; not to create low-income housing in the area. He stated design is for 3-bedroom, 2 bath, 1,800-2,000 sq. ft. with high-end finishes. Monthly rent will be \$1,200-\$1,350/month range. Mr. Heptig stated that while he understand the concern about degradation of the community, he thinks the intent of the builders is to avoid that.

Mr. Heptig stated that at this point no permits have been issued, but at this time the builders could get a permit. Plans are expected to be completed this week and once they're finalized the

permitting process can go forward. That is anticipated to happen quite quickly. From a practical standpoint, the city doesn't have the discretion to deny those permits when consistent with the zoning and the covenants. Mr. Heptig stated the if the Planning Commission did decide to recommend to investigate or initiate a zoning change, it's likely the builder will still go ahead, seek the permits, and complete the construction. At that point they'd be legal non-conforming use and there would still be duplexes on that street.

Mr. Heptig stated that he can commiserate with the homeowners regarding having been told there would not be duplexes in this area, but at that time a review of the covenants in place would have shown that duplex units were certainly allowed in that subdivision. Had those covenants been amended or modified at that time, duplexes could have been prohibited in that area. That was never done and it's not fair to ask a subsequent investor to live up to a statement made by someone when he didn't even know it was made.

Mr. Jefferson asked if Mr. Heptig is aware as to whether MTK owns any other property in the area. Mr. Heptig stated he thinks MTK owns property in the general area but doesn't know how geographically close.

Mr. Lackey asked who the second owner is that Mr. Heptig is speaking for. Mr. Heptig stated it is Jeff Hornbeck.

Mr. Jefferson asked if Mr. Heptig's client had discussed what reaction he might have if the Planning Commission or Governing Body initiated a zoning change. Mr. Heptig stated his client believes he can obtain permits and get the duplexes built before the process was completed.

Mr. Lackey asked if the owners would view a zoning change as taking away a property right. Mr. Heptig stated he has discussed with his client what alternative avenues there might be in the event this goes through.

Ms. Feighny asked what document embodies the covenants referred to. Mr. Heptig stated that there was a Declaration of Covenants and Restrictions for the Stonecrest Subdivision; essentially it requires certain square footage, basement, etc. It is a file of record. It is not part of the plat.

Mr. Jefferson asked if there is a HOA in place. Mr. Heptig stated no, not to his knowledge.

With no further comments or questions for Mr. Heptig, he took his seat.

Ms. Jennifer Wineinger, of 4418 SE Gemstone Lane, came forward to speak. Ms. Wineinger stated she wished to address some of the points made by Mr. Heptig.

In reference to the buffer zone typical of M-1 as a transition from C-3 to R-1, Ms. Wineinger stated there is a very hardy tree line so the C-3 zoning was never something the neighbors had

been concerned about. They were aware there would be businesses going up eventually.

Ms. Wineinger stated the neighbors understand that the duplexes will be "high end" but they are concerned that they'll go from doubling traffic to tripling it with duplexes. Ms. Wineinger stated there are a lot of children in the neighborhood.

Ms. Wineinger stated that she and her husband spent time a week or two ago, at the invitation of Mr. Bernard, driving around looking at some of his other properties. She stated the homes are of nicer quality but the first thing they saw were very poorly kept yards with lots and lots of weeds. Mr. Bernhard told Mr. Wineinger that he takes care of the yards and snow removal, but that's not what they witnessed. Ms. Wineinger stated she and her neighbors take very good care of their lawns and try to keep the weeds at bay, so that's one challenge. Traffic is another.

Ms. Wineinger stated they also went and viewed properties a little west of 43rd & California; a street that is basically all bi-level rental homes that eventually merges into an area where there are a few single family dwelling homes that are also rental, then single family homes that are owner occupied. She stated you could tell by the for rent signage out front. Ms. Wineinger stated that right off 45th & California it's just a dandelion field. Ms. Wineinger stated that to see what those circumstances unfortunately traditionally appear to become, it's really disheartening.

Ms. Wineinger stated that in regard to the question of why they didn't do something about the covenant, she doesn't think any of the homeowners in the neighborhood are attorneys and they just didn't think about having it changed in writing. She stated that it's "been a lesson in civics" and even if nothing can be done in their situation, it could be something that's addressed in the future for another neighborhood.

Ms. Wineinger stated the homeowners are prepared to go further and try to stand up for what they believe in.

Ms. Cavazos stated that Ms. Wineinger had mentioned duplexes in Aquarian Acres and asked if she knew what they rent for. Ms. Wineinger stated they are Mr. Bernard's and she thinks but is not certain that they are \$1,200/month minimum.

With no further comments or questions for Ms. Wineinger, she took her seat.

With nobody else coming forward to comment, Mr. Gales deferred to the Commission for further conversation or action.

Mr. Beck stated he thinks it would be beneficial to get a copy from staff of the covenants that had been referred to during the meeting. Mr. Hall stated that they are recorded with the Shawnee County Register of Deeds.

Mr. Gales stated that with the imminent development that can occur across the street, this isn't

something that, out of respect to those who have petitioned the Commission, should be put off indefinitely. He added that the Commission needed to make a decision based on adequate information. Mr. Lackey asked what, other than the covenants, the Commission might need to know.

Ms. Jordan stated she would like to know more about possible legal repercussions of taking an action like this on behalf of the City.

Mr. Gales stated that if the Planning Commission moves forward, they would in effect become the applicant. Ms. Feighny stated that if the Commission wishes to review the covenant and the easements, they might defer this until next month when they meet; that is one of the options.

Mr. Gales asked Mr. Fiander to research to see if there were precedence with something like this, specifically as to the roadmap if the Planning Commission were to become the applicant.

Mr. Lackey asked for a fair assessment of what the risks are, both pro and con, because it's the Planning Commission's job to balance risks. He stated he does not want to make a decision because he's worried about a lawsuit but because it's the right and legal thing to do.

Mr. Haugh stated that the covenants apparently deal with limitations regarding exterior of the building, etc. They don't address whether it's a duplex or not. He stated the Commissioners can find out the design that could be established, but if the real issue with the current homeowners is whether it's a duplex, then that's a waste of time.

Mr. Jefferson stated that his argument for seeing the covenant is that they haven't seen the covenant to know exactly what it says. All the Commissioners know is what's been represented to them. Mr. Jefferson agreed with other Commissioners that he'd like more information on the process and where decisions leave the property owners on each side of the street. Mr. Jefferson stated he does not feel comfortable voting tonight to initiate a rezoning of the property but he would like more information.

Mr. Beck stated that the document he wishes to see is not a waste of time to him because this is an important decision; something that is not done everyday and something that has ramifications either way. He added that any piece of information that he as a Commissioner can gather to make his decision is worthwhile to investigate.

Mr. Woods stated he would like to understand the crux of the opposition of the homeowners; is it primarily the traffic issue or are we also talking about taking care of property and having them rented out? Which is the real issue? Mr. Gales stated he thought he'd heard all three and Mr. Woods agreed but wondered which was most important.

Mr. Wineinger came forward to speak to Mr. Woods's question. Mr. Wineinger stated the neighbors see the issues as all rather tied together but one of the biggest things they're worried

about is the devaluing of their property with rental property/duplexes being built directly across the street. The others are very closely tied to that as well; they've looked at some of the other neighborhoods that have rental property and unfortunately they're not kept up. Mr. Wineinger stated that other areas of the city could probably be pointed to where homeowners don't take care of them, but that's not the case in their subdivision; there's not a yard that doesn't border on immaculate when it comes to taking care of the grass, mowing, landscaping, etc. There's also the traffic in the neighborhood, the transient population that come with rental property; there's only been one family out of all the homeowners that wasn't an original.

Mr. Woods thanked Mr. Wineinger.

Mr. Jefferson stated that included in the packet provided them was an example area of the 44th & Michigan area. He asked if anyone had compared the property values in that area. Mr. Wineinger stated he had not, but had determined that in that neighborhood the duplexes were there first, then single-family homes added later. From what he could tell, he thought the single-family homes across from the duplexes were rental property. Mr. Jefferson stated that If the major concern was property values, maybe they should compare similar neighborhoods.

Mr. Haugh asked Mr. Wineinger what his thoughts would be if the property were re-zoned to single-family and the houses built were not as nice as theirs because they were backed up to a C-3 zoned property. Mr. Wineinger referenced the covenants in place and the "buffer" treeline that is in place.

Mr. Gales stated that the reality is that the homes built could be single-family homes that were rental property because right now they're still investment lots. Mr. Wineinger stated he understands and they're prefer they be single family homes that are sold, but they can't control that.

Mr. Woods moved that the Planning Commission defer any action on this decision in order to give the staff time to conduct further analysis and provide the Commission with additional information at the next meeting. Seconded by Mr. Beck. Ms. Cavazos asked if the property owners would be allowed to get permits while this is under consideration by the Commission. Mr. Hall stated they can apply for permits and the Commission's consideration would not be cause to withhold approval. Mr. Gales added that technically, until the Commission applied for re-zoning and re-zoning was approved by the Governing Body, there would be nothing to stop the landowners from applying for permits and building on the property. Mr. Fiander laid out a "roadmap" as follows: If the Commission decided at their May meeting to initiate a re-zoning application, it wouldn't be back before the Commission until July, given the month and a half required before it comes back. If the application were approved in July, it would be mid to late August before it went before the Governing Body. During that time the landowners are able to seek permits, which are good for 6 months. Mr. Gales verified that were the Commission to take action tonight, it would only move the process up by one month.

Mr. Fiander stated that if the Commission did choose to initiate, they would have the option of initiating a PUD, a tailored initiation. On the other hand, if they decide not to initiate, it stops there. They don't become the applicant and it doesn't move forward.

With no further discussion, roll was called. **Motion passed (7-2-0 with Mr. Lackey and Mr. Haugh voting no)**

Mr. Gales asked Mr. Fiander to re-state the motion that passed and include what information was being asked for at the May meeting:

Mr. Fiander stated that the motion was to defer the item, whether to initiate or not initiate, to the May 18, 2015 Planning Commission meeting. Deferral allows time to have staff put together more information regarding legal ramifications, a roadmap for the process if they do initiate, any risks, pros or cons involved, and also potentially looking at property values, ownership and tenure patterns in comparable developments.

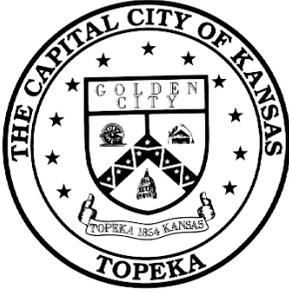
2. Visual Code Update

Mr. Fiander reviewed staff recommendations making Downtown Zoning and Design Guidelines as the first priority.

Mr. Gales stated that he wished to commend Mr. Fiander for continuing to pursue the items reviewed. He believes downtown zoning is something we are due for and the others could clearly use some further dialog.

G. Adjournment

Adjournment at 7:50PM



CITY OF TOPEKA

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MEMORANDUM

To: Topeka Planning Commission
From: Michael Hall, AICP, Current Planning Manager
Date: May 8, 2015
Re: Petition to Rezone SE Gemstone Lane

At the April 20, 2015 meeting, after taking comments from the petitioners and from the owners of the vacant property on the west side of Gemstone Lane, the Planning Commission decided to defer any action about the petition to the May 18th meeting to allow staff time to gather and present additional information regarding:

- legal ramifications and risks of a rezone application initiated by the Planning Commission;
- a “roadmap for the process”;
- values and tenure patterns of duplexes and single family homes in similar developments; and
- private restrictive covenants (Declaration of Restrictions) for the subject properties.

The information requested by the Planning Commission follows.

Legal Ramifications

Deputy City Attorney Mary Feighny addresses the legal issues by separate confidential memorandum.

Process / “A Roadmap”

If initiated by June 5th, the Commission would consider the application at their July meeting, and then it would go to the Governing Body for a decision no sooner than the third Tuesday in August.

The specific steps in the process include:

- Application initiated by June 5.
- Neighborhood Information Meeting

- Notification of proposed amendment sent by mail to property owners within 200 feet (minimum of 20 days prior to hearing)
- Publication of Notice of Public Hearing in The Topeka Metro News (minimum of 20 days prior to hearing)
- Staff Review and Recommendation (staff report)
- Public Hearing by Planning Commission (July 20 if application initiated by June 5)
- Final Decision by Governing Body (third Tuesday in August if initiated by June 5)

Property Values and Tenure Patterns in Similar Developments

The staff memo presented at the April 20 meeting includes the property values for the existing homes on the east side of Gemstone Lane. (See attached April 10th staff memorandum.)

As a comparison staff has collected the values and tenure patterns for the duplexes and single family residences on **SE Michigan Avenue in the Southboro Subdivision** about one half mile west of the subject property (See attached map.).

Of the nine lots on the west side of SE Michigan:

- Six lots are occupied by single family detached homes.
- Of the six homes, two are owner-occupied, three are renter-occupied, and one is under construction.
- The 2015 appraised values of the completed homes ranges from \$153,000 to \$167,000.

The six duplexes on the east side of SE Michigan, facing the single family detached homes, are renter-occupied. The 2015 appraised value of the six duplexes range from \$198,000 to \$221,000.

Staff also collected the values and tenure patterns for the duplexes and single family homes where they are comingled in the **Aquarian Acres subdivision in proximity to SE 29th and Croco** (See attached map.).

Of the three single family detached homes at SE Taurus and SE Virgo, two are owner occupied with 2015 appraised values of \$208,000 and \$229,000, respectively. The other single family home is renter-occupied with an appraised value of \$256,000.

There are several duplexes on SE Taurus which are renter-occupied with appraised values ranging from \$224,000 to 238,500.

Restrictive Covenants (Declaration of Restrictions, Stone Crest Communities)

See attached.

Other Factors

- Residents are concerned about the potential for duplexes to increase traffic and to cause a decline in property values.
- The owners of the vacant lots (West Side Property Owners or WSPOs) have stated, they intend to build “high-end” duplexes, with each unit having 1,800-2,000 square feet, a two-car garage, basement, three bedrooms and two baths, and with rents ranging from \$1,200 to \$1,350 per month.
- If initiated, the rezone application would be considered in opposition to the WSPOs, who together own roughly one half the land subject to the requested rezone.
- If initiated, the WSPOs may apply for building permits for duplexes, receive the permits, and make substantial progress on construction, essentially rendering a change in zoning to R-1 of little or no practical effect.
- The City’s past practice has been to initiate rezoning only for the purpose of implementing comprehensive plan or neighborhood plan policy specifically calling for a change in zoning. That part of the comprehensive plan that addresses land use is the recently adopted Land Use Growth Management Plan 2040 (LUGMP). The City has not adopted a neighborhood plan applicable to the subject property and its immediate surroundings.

The LUGMP includes no explicit or implicit policy directive for the downzoning of the subject property. The Future Land Use Map in the LUGMP designates the subject property as *Urban/Suburban Low Density Residential*. As stated, areas designated as such “*are predominantly characterized by a cohesive display of single-family or two-family residential development up to a maximum of 6 dwelling units per acre, primarily in the form of subdivisions.*” (p. 44) The LUGMP and sound planning principles encourage the arrangement of multiple family or medium density zoning, such as M-1 zoning, as an appropriate transition between single family zoning (R-1) and commercial zoning, in this case C-3 zoning.

Attachments

1. Map of Aquarian Acres
2. Photos of Aquarian Acres
3. Declaration of Restrictions, Stone Crest Communities
4. Memo and Attachments from April 20, 2015 Meeting:
 - Vicinity and Zoning Map
 - Petition from Homeowners
 - Map and Photos of SE Gemstone Lane and Abutting Lots
 - Map and Photos of Detached Single Family and Duplex Development, Southboro Subdivision

Kansas Secured Title
785-232-9349
Stone Crest Communities

Declaration of Restrictions

and Soloman Homes, LLC 
WHEREAS, Genesis Land Development, LLC/Developer, being the owner of real estate situated in Shawnee County, Kansas, and having heretofore dedicated to the public all of the streets, roads and easements on said real estate, now desire to place restrictions on the said lots for the use and benefit of the present owners and for their future grantees:

Lots 24 through 31, Block A; Lots 19 through 22, Block B; Lots 1 through 8, Block C; Lots 1 through 8, Block D; Lots 1 through 9, Block E; Lots 1 through 7, Block F; and Lot 1, Block G; Final Plat for Stone Crest Subdivision, Shawnee County, Kansas.

NOW, THEREFORE, in consideration of the premises, Genesis Land Development, LLC for themselves and for their successors and assigns, and for their future grantees, hereby declare that the aforesaid lots in Stone Crest shall be and are hereby restricted as to their use in the manner hereinafter set forth.

1. For the purpose of these restrictions, the word "street" shall mean any street, terrace, lane, boulevard or road of whatever name which is shown on the recorded plat of Stone Crest, and which has been heretofore dedicated to the public for the purpose of a public street.

The word "outbuilding" shall mean and enclosed covered structure not directly attached to the residence to which it is appurtenant.

The word "lot" may mean either any lot as platted, or any tract, or tracts of land as conveyed, which may consist of one or more lots, or a part or parts of one or more lots, as platted, and upon which a residence may be erected in accordance with the restrictions hereinafter set forth. A corner lot shall be deemed to be any such lot as platted, or any tract of land as conveyed, having more than one street contiguous to it. The street upon which the lot, or part thereof fronts, shall be deemed to be a front street; any other street contiguous to any such lot shall be deemed to be a side street.

2. None of said lots may be improved, used or occupied for anything other than single family or two family residential purposes. No flat or apartment house, though intended for residential purposes may be erected thereon. Any residence erected or maintained thereon shall be designed for occupancy by a single family per house or unit.

3. Each dwelling erected on said property must have the following minimum square foot area exclusive of basement, attached garage or porches

(a) In a ranch type dwelling the main floor area must cover one thousand three hundred (1,300) square feet;

(b) Bi-level, tri-level or one-half story must contain total finished living area on all levels of not less than one thousand five hundred (1,500) square feet;

- (c) A two story dwelling must contain at least one thousand (1,000) square feet on the main floor, and a minimum of five hundred (500) square feet on the second floor;
 - (d) Each dwelling must have a minimum of 6-12 pitch roof.
4. Each dwelling erected on said property must have in connection therewith the following:
- (a) A free standing, attached or built-in double garage;
 - (b) A double concrete driveway (18) feet minimum in width;
 - (c) A city sidewalk to city standards along the street easement, one foot from property line, five inches above curb and ¼ inch per foot slope towards street to be installed by owner of the lot.
 - (d) A minimum of seven and one half (7.5) foot side yard to be maintained on all lots unless otherwise indicated on plat plan or approved by the City of Topeka.
5. The construction of any dwellings permitted herein shall be completed within nine calendar months from the time construction begins.
6. No structure of a temporary character, trailer, RV, basement, tent, shack, garage, guest houses, barn or other buildings shall be used on any lot at any time as a residence, either temporarily or permanently. No sheds, storage buildings or structures of a similar character may be erected or maintained on any lot that exceeds 256 square feet or 12' in height. Any outbuilding must conform architecturally to the principal structure on each respective lot and be approved by Developer.
7. No cattle, horses, swine, sheep, goats or poultry of any kind shall be kept on any platted lot or lots which the Developer has sold or transferred to individuals or companies for developing. The keeping and/or breeding for commercial purposes of dogs, cats, birds or other animals shall be strictly prohibited. Not more than three (3) cats or three (3) dogs may be kept on any premises beyond the age of three (3) months.
8. No trash, ashes or other refuse may be thrown or dumped on any lot in this subdivision. Each landowner shall be responsible for the removal of garbage and refuse from his/her property by a licensed refuse hauler on at least a weekly basis. All garbage and refuse shall be contained and out of view from the street and neighbors. All lots shall be kept mowed to a reasonable height and all trees and shrubs shall be kept trimmed, so as to present a reasonable appearance.
9. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become any annoyance or nuisance to the neighborhood.
10. Any dwellings erected upon the above described real estate must be of new construction and constructed on site. No building shall be moved onto the above described real estate from some other location such as pre-manufactured home, trailer house or existing structure of any type.

11. No motor vehicles larger than a conversion van shall be kept, garaged or permanently stored on any said lots.

12. Any watercraft are to be housed in an enclosed structure and may not be parked stored or otherwise kept on any lot outside of enclosed structure.

13. No firearms are to be discharged in this area.

14. No motor homes, buses, campers, house trailers, modular homes or similar vehicles or structures shall be allowed at any time on any of said lots for a period of longer than twelve (12) hours while loading and unloading items from residence.

15. No satellite dishes in excess of twenty four (24) inches in diameter shall be allowed in said subdivision and all satellite dishes shall be so located as to be not visible from any street.

16. No solar energy panels shall be permitted in connection with any structure in said subdivision unless said panels are located as to be not visible from any street.

17. No wire fences shall be allowed on the subject property, except galvanized chain link fencing. All property line fences shall be constructed of chain link, wood, vinyl or split rail materials with a maximum height of six (6) feet above the ground level. All other types of fencing materials shall be approved by Developer. No front yard fencing is allowed.

18. All plans for constructing of residence shall be approved by Developer. No construction shall be commenced until written approval has been granted by Developer. A complete set of dwelling plans, together with any outbuilding plans, if the same are to be erected, shall be filed with the Developer and will be returned when construction is completed. Submissions shall be acted upon by the Developer within ten (10) days. Judgment by the Developer shall be for the purposes of conformance to the restrictions and architectural relationship to the other dwellings, and features of good design for the best interest of all residents in the development.

19. No tanks for the storage of liquids shall be placed above or below ground.

20. No sign shall be permitted on any lot, except a sign no larger than one hundred (150) square inches for the purpose of occupant identification, and a sign no larger than six hundred (600) square inches for the purpose of advertising the property for sale or lease. The above restrictions shall not prohibit the erection of signs for the purpose of identification of the subdivision.

21. Easements shall be retained by the owners for the use of public utility services where designated on said plat, with the right to construct, operate and maintain any public utility service and easement to any municipal government or public utility corporation authorized to construct, operate and maintain any such public utility.

22. No fences or walls shall be erected or maintained on any lot nearer a front street than the front building limit line of said lot.

23. These restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these restrictions are recorded, after which time said restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said restrictions in whole or in part.

24. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any restrictions either to restrain violations or to recover damages.

25. Invalidation of any one of these restrictions by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

26. A minimum of ten (10) percent of front of residence shall be constructed of masonry, stone, brick or synthetic stucco systems.

27. All roof coverings shall be thirty (30) year laminated shingles comparable to Timberline.

28. Any lot purchased that a residence is not constructed on shall be maintained and mowed by owner. If purchaser fails to maintain said lot, Developer shall maintain and mow lot and bill purchaser for services.

29. All utilities shall be placed underground.

30. No above ground pools.

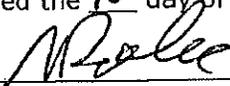
31. No Christmas lights installed before October 15th, and they must be removed by March 15th.

32. All residences will have a minimum of 600 square feet of basement area. No slab on grade, single family houses will be allowed.

33. All residences must have at least one hardwood tree planted in the front yard of 5 gallon size or larger and provide landscaping materials for the front yard (both requirements apply to any side yard bordering a through street i.e. corner lots). Said landscaping must be completed within 6 months of closing date.

34. All residences shall have at least one window assembly on the front of the home having three or more components. (i.e. triple window or double with transom)

IN WITNESS WHEREOF, Genesis Land Development, LLC, Developer, have caused this Declarations of Restrictions to be signed the 10 day of December, 2007.



Genesis Land Development, and Solomon Homes LLC
Gregory W. Brownlee, Manager

A FINAL PLAT FOR: STONE CREST SUBDIVISION

BOOK: 42 PAGE: 28

DATE: 2/16/16 TIME: 8:45 a.m.

A REPLAT OF BROOKFIELD ESTATES SUBDIVISION A, EXCEPT LOTS 3, 4, 5, 10, 11 AND 12, BLOCK C AND A TRACT OF LAND IN THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 16 EAST OF THE SIXTH PRINCIPAL MERIDIAN, SHAWNEE COUNTY, KANSAS.

LEGEND

- | | | |
|-----------------------------|------------------------------------|---|
| --- Property Line | SS.E. Sewer Sever Easement | W/A Right-of-way |
| - - - Lot Line | U.E. Utility Easement | A.O. Access Driveway |
| - · - · - Right-of-way Line | O.E. Drainage Easement | CM Concrete Monument - Set 5/8" Dia Iron Bar |
| - - - Center Line | T.E. Temporary Unrecorded Easement | W/Sig Stamped "BARTLET & WEST 14" |
| - · - · - Easement Line | Stream Buffer Easement | CM Concrete Monument - Found 5/8" Iron Bar - No Cap |
| - · - · - Section Line | Green Space Easement | SB Street Name Change |
| Restricted Access | | |
| No Access / No Egress | | |
| P.O.R. Point of Beginning | | |
| AC Acre | | |
| Δ Section Corner | | |
| ⊕ Access Point For Pump | | |
| ⊕ Station Only | | |

LEGAL DESCRIPTION

A TRACT OF LAND IN BROOKFIELD ESTATES SUBDIVISION "A", ACCORDING TO THE RECORDED PLAT THEREOF, AND IN THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 16 EAST OF THE SIXTH PRINCIPAL MERIDIAN, SHAWNEE COUNTY, KANSAS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SOUTH HALF; THENCE ON AN ASSUMED AZIMUTH OF 358 DEGREES 18 MINUTES 38 SECONDS, A DISTANCE OF 1116.51 FEET ALONG THE WEST LINE OF SAID SOUTH HALF TO A POINT 210.00 FEET FROM THE NORTHWEST CORNER OF SAID SOUTH HALF; THENCE EASTERLY, PARALLEL WITH THE NORTH LINE OF SAID SOUTH HALF, ON AN AZIMUTH 88 DEGREES 38 MINUTES 28 SECONDS, A DISTANCE OF 1050.00 FEET; THENCE ON AN AZIMUTH 358 DEGREES 18 MINUTES 38 SECONDS, A DISTANCE OF 270.00 FEET TO THE NORTH LINE OF SAID SOUTH HALF; THENCE ON AN AZIMUTH 88 DEGREES 38 MINUTES 28 SECONDS, A DISTANCE OF 1598.33 FEET ALONG SAID NORTH LINE TO THE EAST LINE OF SAID SOUTH HALF; THENCE ON AN AZIMUTH 178 DEGREES 35 MINUTES 30 SECONDS, A DISTANCE OF 132.84 FEET ALONG SAID EAST LINE TO THE SOUTH LINE OF SAID SOUTH HALF; THENCE ON AN AZIMUTH 268 DEGREES 35 MINUTES 30 SECONDS, A DISTANCE OF 1010.65 FEET ALONG SAID SOUTH LINE TO A POINT SOUTH OF THE SOUTHWEST CORNER OF LOT 5, BLOCK C, BROOKFIELD ESTATES SUBDIVISION "A"; THENCE ON AN AZIMUTH 358 DEGREES 18 MINUTES 38 SECONDS, A DISTANCE OF 720.00 FEET PARALLEL WITH THE EAST LINE OF SAID LOTS 5 AND 12 IN SAID BLOCK C, AND THEIR EXTENSIONS; THENCE ON AN AZIMUTH 268 DEGREES 35 MINUTES 30 SECONDS, A DISTANCE OF 450.00 FEET TO A POINT NORTH OF LOT 10, IN SAID BLOCK C; THENCE ON AN AZIMUTH 178 DEGREES 35 MINUTES 30 SECONDS, A DISTANCE OF 720.00 FEET, PARALLEL WITH THE WEST LINES OF LOTS 10 AND 11, IN SAID BLOCK C, AND THEIR EXTENSIONS; TO THE SOUTH LINE OF SAID SOUTH HALF; THENCE ON AN AZIMUTH 358 DEGREES 18 MINUTES 38 SECONDS, A DISTANCE OF 1163.55 FEET ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING.

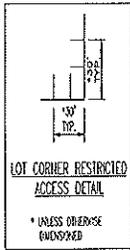
THE ABOVE DESCRIBED TRACT CONTAINS 68.02 ACRES, MORE OR LESS.

SURVEYOR CERTIFICATE:

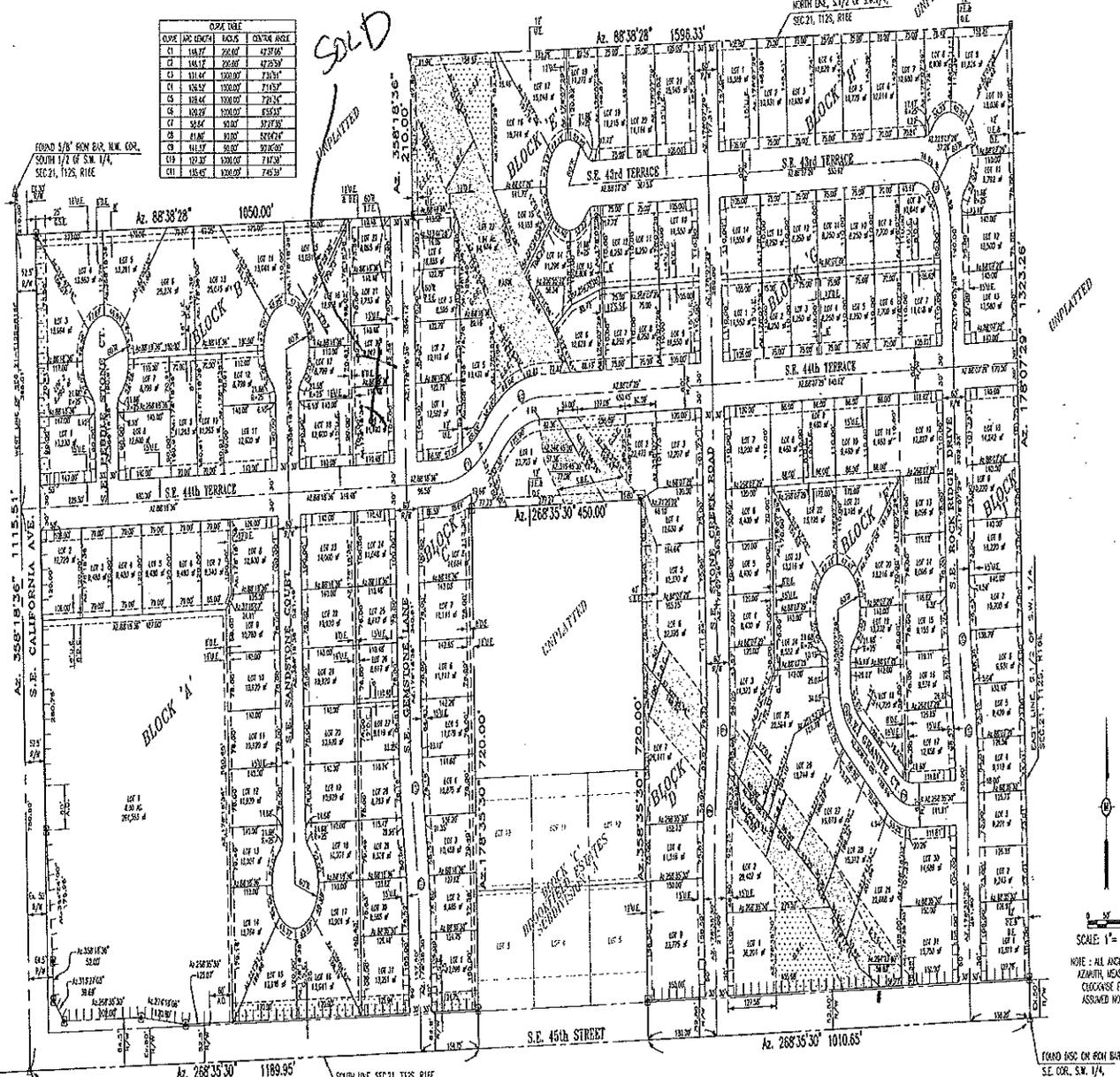
I HEREBY CERTIFY THE TERMS OF THIS PLAT TO BE CORRECT, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT ALL BOUNDARY CORNERS OF THIS SUBDIVISION HAVE BEEN MONUMENTED, ACCORDING TO KANSAS STATE

STATUTE, THIS 2ND DAY OF January 2016.

Bartlet & West
BARTLET & WEST ENGINEERS, INC.
1100 W. 17TH ST., SUITE 100
SHAWNEE, KS 66201



LOT CORNER RESTRICTED ACCESS DETAIL
* UNLESS OTHERWISE INDICATED



COUPE	LINE	BEARING	DISTANCE	CORNER	ANGLE
11	114.17'	268°35'30"	1189.95'	11	1189.95'
12	114.17'	268°35'30"	1189.95'	12	1189.95'
13	114.17'	268°35'30"	1189.95'	13	1189.95'
14	114.17'	268°35'30"	1189.95'	14	1189.95'
15	114.17'	268°35'30"	1189.95'	15	1189.95'
16	114.17'	268°35'30"	1189.95'	16	1189.95'
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26	114.17'	268°35'30"	1189.95'	26	1189.95'
27	114.17'	268°35'30"	1189.95'	27	1189.95'
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40	114.17'	268°35'30"	1189.95'	40	1189.95'
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49	114.17'	268°35'30"	1189.95'	49	1189.95'
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61	114.17'	268°35'30"	1189.95'	61	1189.95'
62	114.17'	268°35'30"	1189.95'	62	1189.95'
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67	114.17'	268°35'30"	1189.95'	67	1189.95'
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72	114.17'	268°35'30"	1189.95'	72	1189.95'
73	114.17'	268°35'30"	1189.95'	73	1189.95'
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77	114.17'	268°35'30"	1189.95'	77	1189.95'
78	114.17'	268°35'30"	1189.95'	78	1189.95'
79	114.17'	268°35'30"	1189.95'	79	1189.95'
80	114.17'	268°35'30"	1189.95'	80	1189.95'
81	114.17'	268°35'30"	1189.95'	81	1189.95'
82	114.17'	268°35'30"	1189.95'	82	1189.95'
83	114.17'	268°35'30"	1189.95'	83	1189.95'
84	114.17'	268°35'30"	1189.95'	84	1189.95'
85	114.17'	268°35'30"	1189.95'	85	1189.95'
86	114.17'	268°35'30"	1189.95'	86	1189.95'
87	114.17'	268°35'30"	1189.95'	87	1189.95'
88	114.17'	268°35'30"	1189.95'	88	1189.95'
89	114.17'	268°35'30"	1189.95'	89	1189.95'
90	114.17'	268°35'30"	1189.95'	90	1189.95'
91	114.17'	268°35'30"	1189.95'	91	1189.95'
92	114.17'	268°35'30"	1189.95'	92	1189.95'
93	114.17'	268°35'30"	1189.95'	93	1189.95'
94	114.17'	268°35'30"	1189.95'	94	1189.95'
95	114.17'	268°35'30"	1189.95'	95	1189.95'
96	114.17'	268°35'30"	1189.95'	96	1189.95'
97	114.17'	268°35'30"	1189.95'	97	1189.95'
98	114.17'	268°35'30"	1189.95'	98	1189.95'
99	114.17'	268°35'30"	1189.95'	99	1189.95'
100	114.17'	268°35'30"	1189.95'	100	1189.95'

SCALE: 1" = 100'

NOTE: ALL ANGLES ARE AZIMUTH, MEASURED CLOCKWISE FROM ASSUMED NORTH.

BARTLET & WEST ENGINEERS
STONE CREST SUBDIVISION
SHAWNEE COUNTY, KANSAS

FINAL PLAT
STONE CREST SUBDIVISION
SHAWNEE COUNTY, KANSAS

RECORDED BY	108
APPROVED BY	108
DATE	10/28/2005
SCALE	1" = 100'
DATE	OCT. 28, 2005
STAMP NO.	P05/23

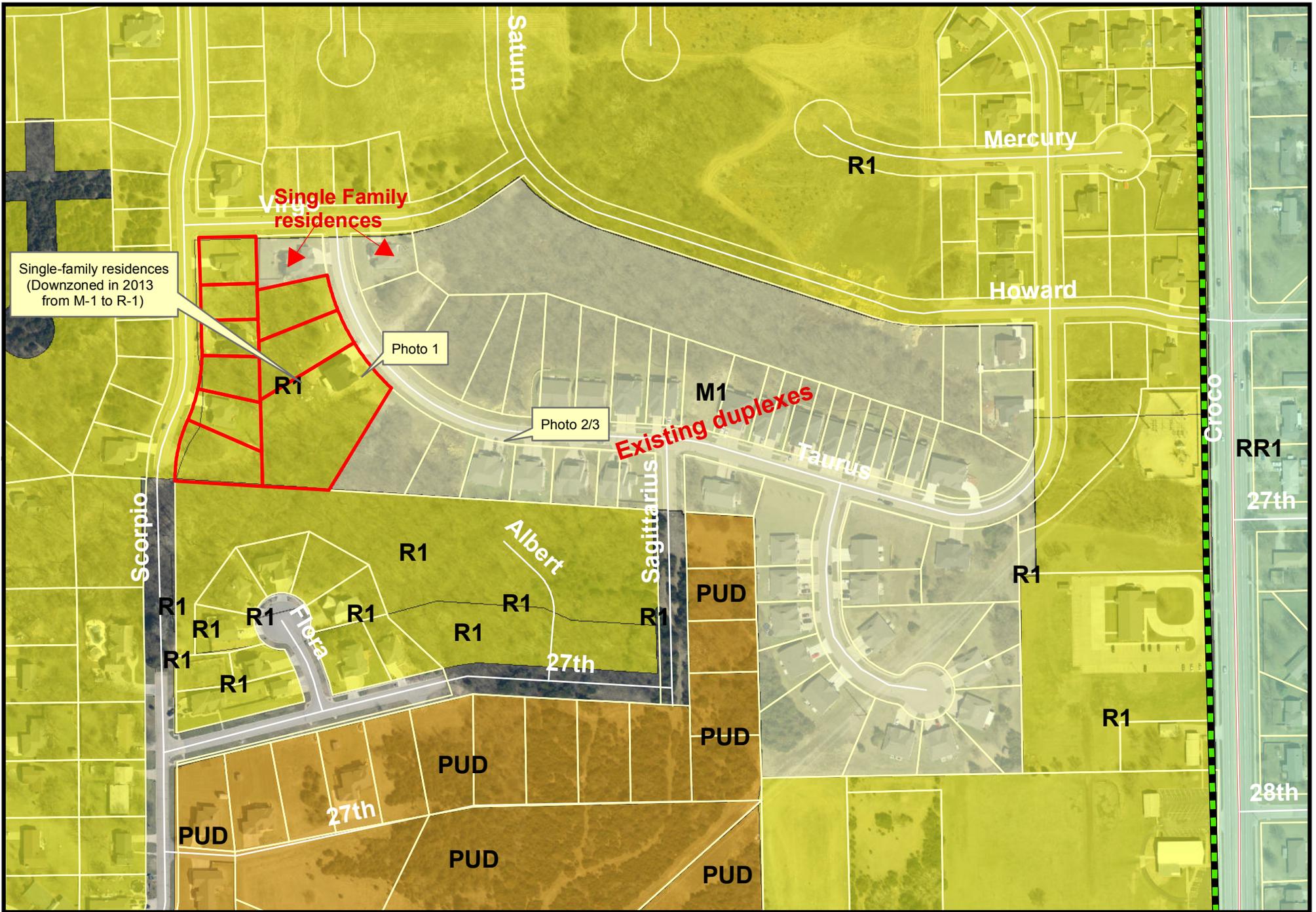
Aquarian Acres (SE Virgo – SE Taurus)



Photo 1: Single family residence being constructed that was downzoned in 2013 to R-1.



Photo 2 and 3: Duplexes along SE Taurus east of the single family residences



Aquarian Acres (northwest of SE 29th and SE Croco)





CITY OF TOPEKA

PLANNING DEPARTMENT
620 SE Madison Street, Unit 11
Topeka, Kansas 66607-1118
Tel.: (785) 368-3728

Bill Fiander, Director
Email: bfiander@topeka.org
Fax: 785-368-2535
www.topeka.org

MEMORANDUM

To: Topeka Planning Commission

From: Michael Hall, AICP, Current Planning Manager

Date: April 10, 2015

Re: Petition to Rezone SE Gemstone Lane

In March homeowners living on the east side of SE Gemstone Lane in the Stone Creek Subdivision learned of plans for the construction of duplexes on the west side of SE Gemstone Lane. Concerned about their potential negative impact, the homeowners inquired about zoning and learned SE Gemstone north of SE 45th Street is zoned M-1 Two Family Dwelling District which allows duplexes.

On March 30th the Planning Director received the attached petition from Jeff Wineinger, representing the homeowners, requesting “to have the Planning Commission rezone both the east and west sides of Gemstone Lane between SE 45th Street to the north end of the street where it stops just north of 44th Street.” The petition also asks that the issue be placed on the April 20 Planning Commission agenda.

Pursuant to the Zoning Ordinance (TMC 18.245.020) a rezone application may be considered either 1) in response to an application submitted by a property owner with the consent of all owners of the property subject to the rezone, or 2) upon initiation of an application by the Planning Commission or Governing Body. Staff has discussed the issue with the four owners of the vacant property on the west side of Gemstone Lane, and at this time they do not intend to consent to rezoning. They intend to build what they describe as high-end duplexes. In order for the rezoning request to move forward, the Planning Commission would have to agree to initiate a formal application.

History of Actions regarding SE Gemstone Lane

The M-1 zoning of the area fronting on both sides of SE Gemstone Lane (the subject property) was approved in 2006 upon an application by Stone Crest Development LLC (Ordinance No. 18678; case file Z06/14). The Stone Crest Subdivision was recorded in 2005.

M-1 and R-1 Zoning Classifications

The regulations of M-1 are nearly the same as the regulations of R-1. The key differences are:

- Detached single family, attached single family, and duplex residential uses are allowed by right in the M-1 zone. Of these uses, only detached single family residential is allowed in the R-1 zone.
- The required minimum front and rear yard setbacks in the M-1 zone are each 25 feet. The minimum front and rear setbacks in the R-1 zone are each 30 feet.

Character of the Neighborhood

The lots on the west side of SE Gemstone Lane are vacant with numerous native trees and underbrush. The lots on the east side of SE Gemstone Lane consist entirely of detached single family homes. The values of the 12 homes on the east side of SE Gemstone Lane range from \$180,670 to \$244,000 with a mean value of \$205,180.

The land in Stone Crest Subdivision east of the subject property is zoned R-1. Most of the lots in Stone Crest Subdivision east of the subject property contain detached single family homes with some lots being vacant.

Ten acres of land immediately between the subject property and SE California Avenue is zoned C-3 and is vacant.

Examples of Similar Development

Examples of duplexes facing single family homes on the same block in newer subdivisions are rare. However, an area along SE Michigan Avenue at SE 43rd in the Southboro Subdivision about one half mile west of the subject property is one example where detached single family homes have in recent years been built directly across the street from and facing duplexes. A map and photos are attached.

There are many examples in the area and throughout the city where duplexes have been eventually split and converted to “attached” single family homes.

Options

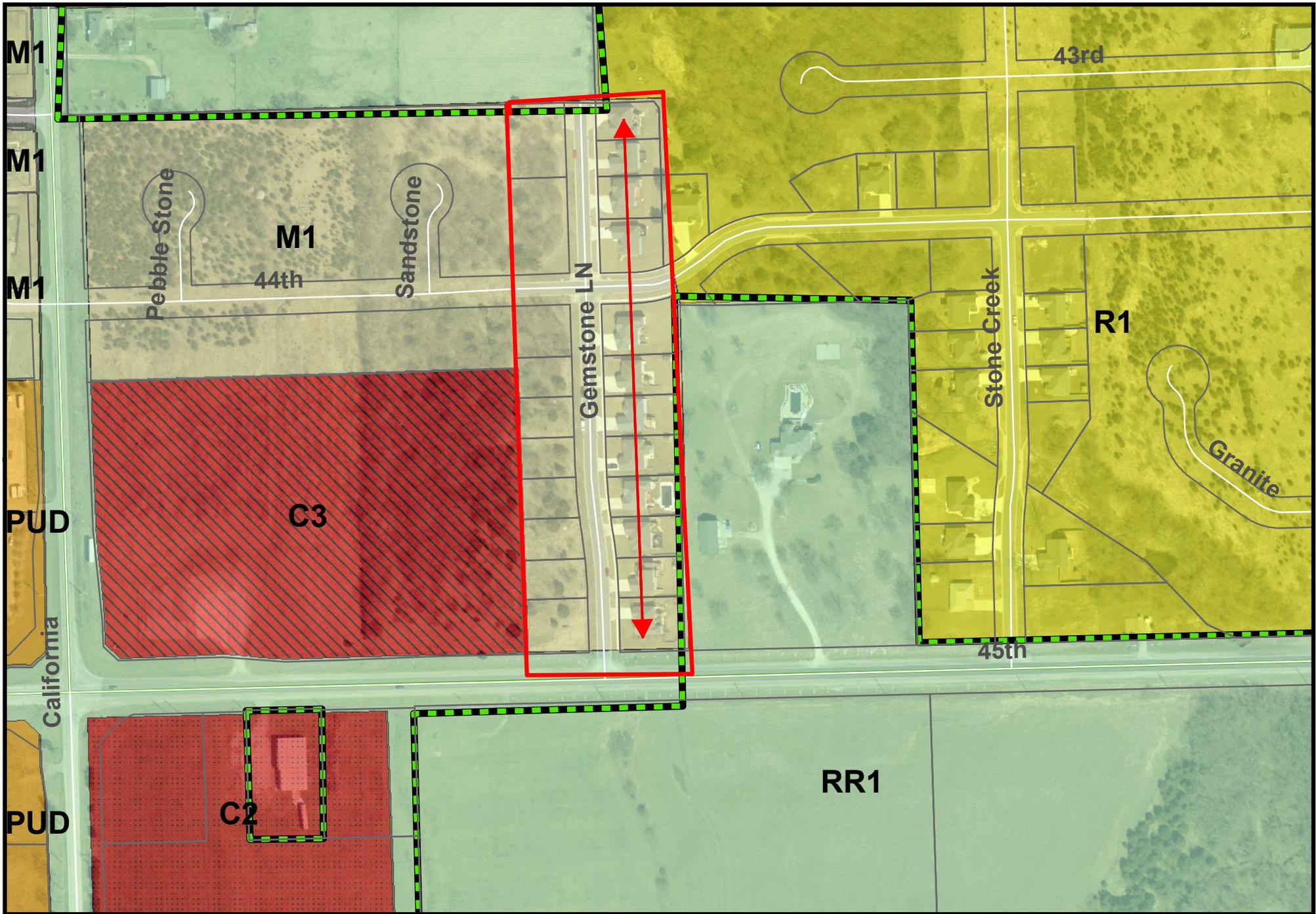
Staff recommends allowing comment at the April 20 meeting from the affected parties to decide one of the following options:

- Do not initiate a rezone application.
- Initiate a rezone application. If the Commission decides to initiate an application, staff will process the application following the same steps required for an application by a property owner.

- Defer any decision to initiate/not initiate a rezone application to a future meeting to allow staff time to present the Commission with additional information and analysis as considered necessary. Staff recommends holding a neighborhood information meeting prior to a decision of whether to initiate an application.

Attachments

- Vicinity and Zoning Map
- Petition from Homeowners
- Map and Photos of SE Gemstone Lane and Abutting Lots
- Map and Photos of Detached Single Family and Duplex Development, Southboro Subdivision



Stone Crest Subdivision

-  Property owners requesting rezoning to "R-1"
-  Subject properties being petitioned for rezoning to "R-1"



Jeff Wineinger
4418 SE Gemstone Ln
Topeka, KS 66609
March 29, 2015

Bill Fiander, AICP
Planning Director
City of Topeka Planning Department
620 SE Madison, 3rd Floor
Topeka, KS 66607

Dear Mr. Fiander:

The residents of the Stone Crest Subdivision located just east of SE 45th Street and California would like to formally request that the Planning Commission hear our concerns about the impending development and construction of duplexes for the use of rental investment property which are being built across from our single family homes.

Our request is to have the Planning Commission rezone both the east and west sides of Gemstone Lane between SE 45th Street to the north end of the street where it stops just north of 44th Street. Our complaint is that there already exists twelve single family homes on the east side of Gemstone Lane, and we do not see many, if any, situations in Topeka where duplexes are built directly across from single family homes.

As a neighborhood, we would ask that this complaint be placed on the agenda at your next meeting, which we understand to be on Monday, April 20th at 6:00 pm.

We are providing the following information and signatures from the majority of the home owners on Gemstone Lane. There are several owners that are not in town to sign off at this time, but I have been in contact with them, and they are in full support of this action. We also have other home owners in our subdivision that are concerned with the duplexes being built who are in support of this complaint, as well.

Thank you for your attention to the matter. Please feel free to contact me by phone if you have any further questions and to let me know if we are able to get on the April 20th agenda. I will in turn pass that information on to the rest of my neighbors who would like to attend the planning meeting. My cell phone number is 785-213-5650.

Sincerely,



Jeff Wineinger
Concerned Home Owner, Stone Crest Subdivision

Stone Crest Subdivision Request for Rezoning
Home Owners Signatures
March 29, 2015

Print Name: Jeff & Jennifer Wineinger
Address: 4418 SE Gemstone Ln
Topeka, KS 66609
Phone: 785

Signature: Jeff Wineinger
Jennifer Wineinger

Print Name: Daniel & Kristi Cooper
Address: 4434 SE Gemstone Ln
Topeka, KS 66609
Phone: 785-224-8169

Signature: D Cooper

Print Name: Kim Pentico & Steve Molen
Address: 4438 Gemstone Ln
Topeka, KS 66609
Phone: 785-267-3321

Signature: Kim Pentico
Steve Molen

Print Name: ERIC & ASHLEY ESQUIBEL
Address: 4430 SE Gemstone Ln
Topeka, KS 66609
Phone: 785-917-1769

Signature: Eric Esquibel
Ashley Esquibel

Print Name: Michael & Robin Clingman
Address: 4422 SE Gemstone
Topeka, KS 66609
Phone: 785-408-8251

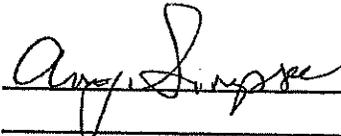
Signature: Michael Clingman
Robin Clingman

Print Name: Michael & Lorie Myers
Address: 4400 SE Gemstone Ln
Topeka, KS 66609
Phone: 785-383-2407

Signature: Michael Myers
Lorie Myers

Stone Crest Subdivision Request for Rezoning
Home Owners Signatures
March 29, 2015

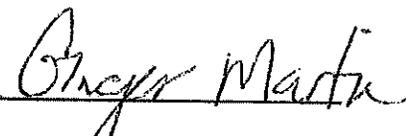
Print Name: Amy Simpson
Address: 4328 SE Gemstone Ln
Topeka, KS 66609
Phone: 785-246-6398

Signature: 

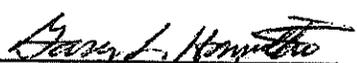
Print Name: Mickey Simpson
Address: 4328 SE Gemstone Ln
Topeka, KS 66609
Phone: 785-246-6398

Signature: 

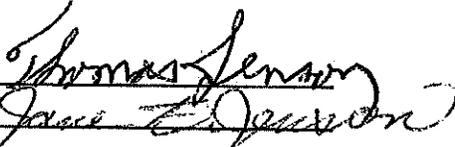
Print Name: Ginger & Barry Martin
Address: 2114 SE 44th Terr
Topeka, KS 66609
Phone: 316-259-4747

Signature: 

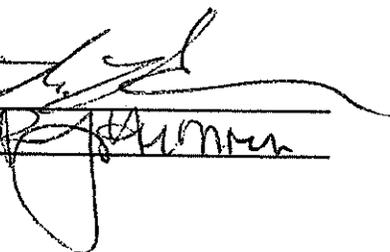
Print Name: GARY & SANDRA HAMILTON
Address: 2210 SE 44th TERRACE
TOPEKA, KS 66609
Phone: 785-267-4984

Signature: 


Print Name: THOMAS JENSON
Address: 4426 SE STONE CREEK
Phone: 267-0526

Signature: 

Print Name: Michael Hummer
Address: 4436 SE Stone Creek Rd
Topeka, KS 66609
Phone: 785-608-6317

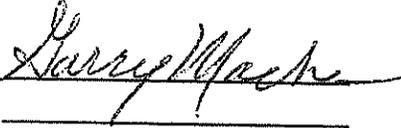
Signature: 

Stone Crest Subdivision Request for Rezoning
Home Owners Signatures
March 29, 2015

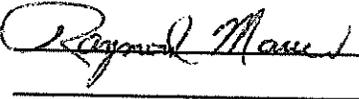
Print Name: Larry Bloomer
Address: 2220 SE 45th
Topeka, KS 66609
Phone: 785-217-4008

Signature: 

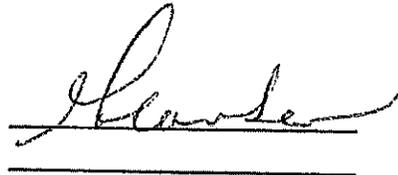
Print Name: GARRY MACHA
Address: 4427 SE Stone Creek
Topeka, KS
Phone: 785 408 5848

Signature: 

Print Name: Raymond Mauer
Address: 4423 SE Stone Creek Rd
Topeka, KS
Phone: 785-817-5971

Signature: 

Print Name: Olavm Seaver
Address: 4442 SE Genster
Phone: 785-640-2858

Signature: 

Print Name: _____
Address: _____
Phone: _____

Signature: _____

Print Name: _____
Address: _____
Phone: _____

Signature: _____

Jeff Wineinger <jeffbw1992@gmail.com>

A vote against multi-family homes on Gemstone Ln

1 message

GREGSMI@aol.com <GREGSMI@aol.com>

Sun, Mar 29, 2015 at 8:55 PM

To: jeffbw1992@gmail.com

Jeff, please add Donna and my signatures to our neighborhood petition. We feel that duplex housing on Gemstone, across the street from our single family homes, will be detrimental to home values and is not keeping with the family oriented neighborhood.

We are currently traveling so please proxy us on the petition to the planning commision.

Gregory Smith
Donna Smith
4404 SE Gemstone Lane
Topeka, KS.

Jeff Wineinger <jeffbw1992@gmail.com>

Endorsement of Gemstone Single-Family Rezoning

1 message

gage125 <gage125@hotmail.com>

Sun, Mar 29, 2015 at 8:28 PM

To: Benjamin Smith <benjamin.smith035@gmail.com>, jeffbw1992@gmail.com

Sent from my Galaxy SIII

----- Original message -----

From: Benjamin Smith

Date: 03/29/2015 8:20 PM (GMT-06:00)

To: jeffbw1992@gmail.com, Benjamin Smith

Subject: Endorsement of Gemstone Single-Family Rezoning

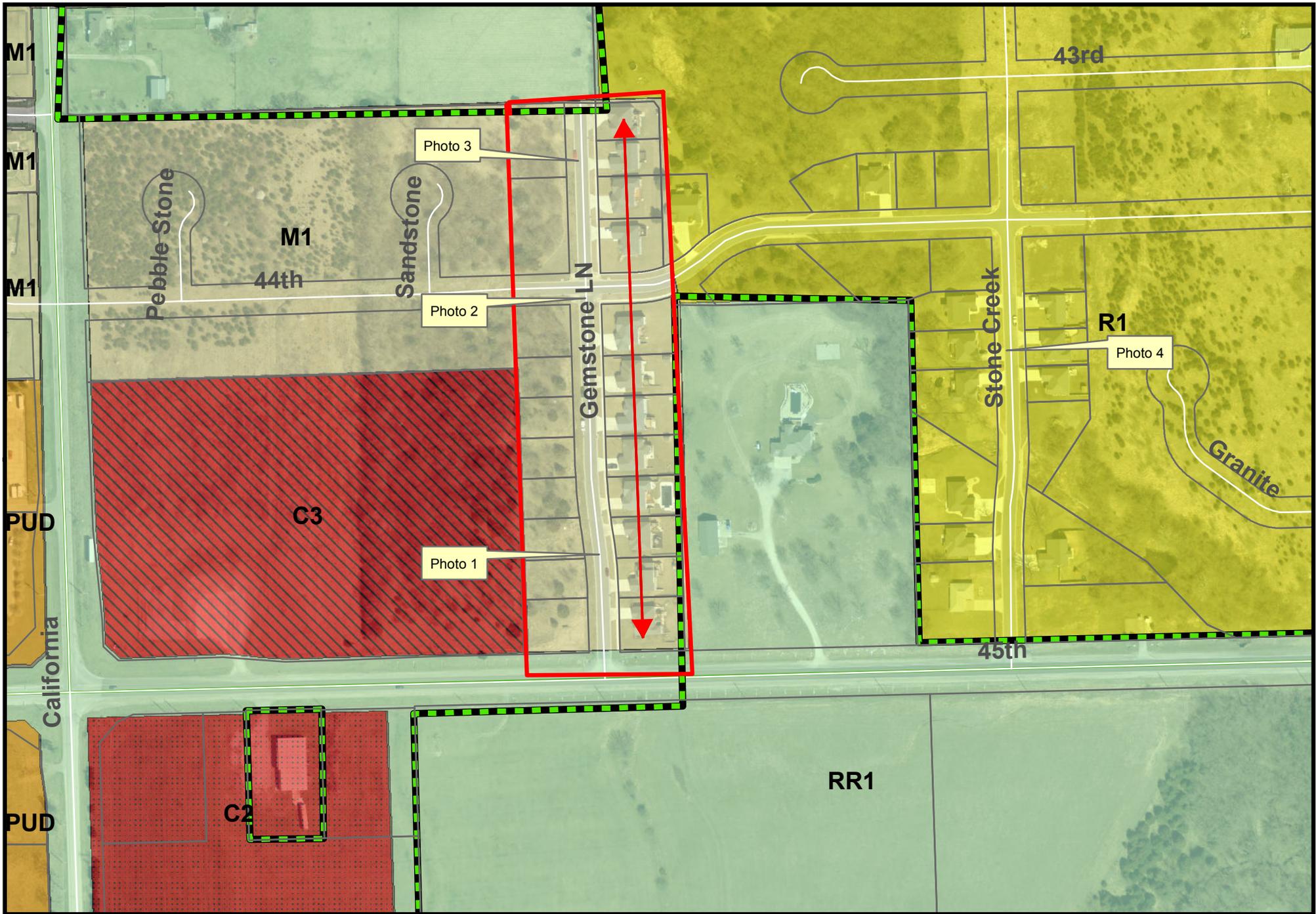
Sir/Ma'am,

I am in complete support of both the east and west side of Gemstone Lane being rezoned for single-family homes. In fact, I was told by the builder at the time of purchase, that it was only zoned for single family homes and that no multi-family homes would ever be built in the neighborhood. Being active duty military, the action to build multi-family homes right across the street would cause unnecessary financial stress to myself and the rest of the Gemstone residents. Please feel free to contact me for further information.

Most Respectfully,
Ben

BENJAMIN H. SMITH, Maj. USAF

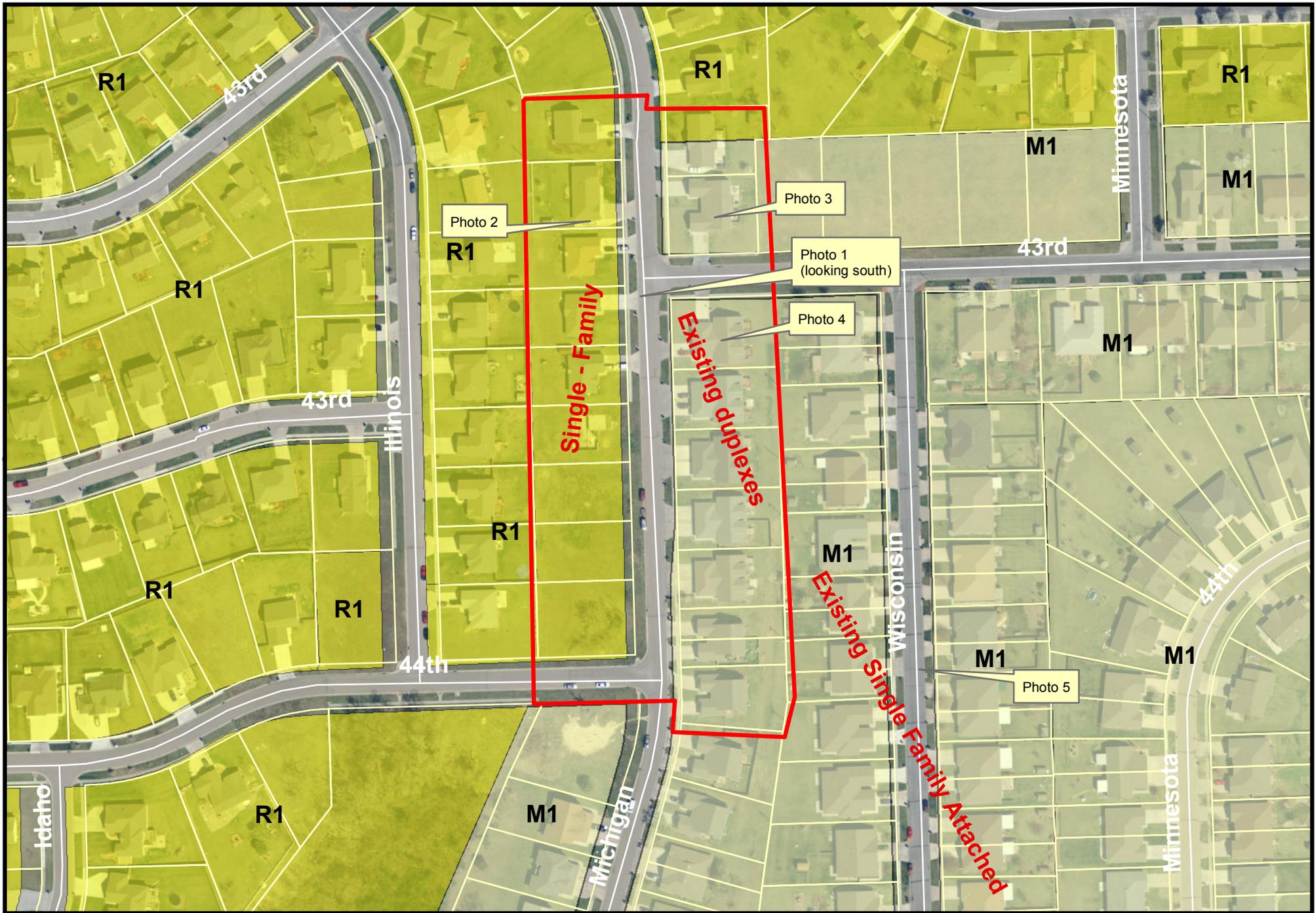
4414 Gemstone Lane,
Topeka, KS 66609



Stone Crest Subdivision

-  Property owners requesting rezoning to "R-1"
-  Subject properties being petitioned for rezoning to "R-1"





Southboro (SE Michigan-SE 43rd)



Stone Crest Subdivision (SE Gemstone and SE 45th)



Photo 1: Gemstone Lane, looking north



Photo 2: Gemstone Lane at 44th Street, looking east



Photo 3: Typical residence located on Gemstone Lane



Photo 4: Typical residence on SE Stone Creek – east of Gemstone

Southboro Subdivision (SE Michigan- Indiana) - Front yard facing single family residences lying on the west side of Michigan with duplexes fronting along the east side of Michigan



Photo 1: Photo taken at SE 43rd and Michigan, looking south . Duplexes on left side of photo; single family residences on right side of photo



Photo 2: Standard single family residence on west side of Michigan



Photos 3 and 4: Standard duplexes along east side of Michigan