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The City Council of the City of Gardner, Kansas met in regular session on August 19, 2019, at 7:00 p.m. in the Council Chambers at Gardner City Hall, 120 East Main Street, Gardner, Kansas, with the Mayor Steve Shute presiding. Present were Councilmembers Lee Moore (via telephone), Rich Melton, Mark Baldwin, Randy Gregorcyk, and Todd Winters. City staff present were City Administrator James Pruetting; Business & Economic Development Director Larry Powell; Utilities Director Gonzalo Garcia; Public Works Director Michael Kramer; Parks and Recreation Director Jason Bruce; Finance Director Matthew Wolff; Police Chief James Belcher; City Clerk Sharon Rose; and City Attorney Ryan Denk. Others present included those listed on the attached sign-in sheet and others who did not sign in.

CALL TO ORDER

There being a quorum of Councilmembers present, the meeting was called to order by Mayor Shute at 7:00 p.m.

PLEDGE OF ALLEGIANCE

Mayor Shute led those present in the Pledge of Allegiance.

PRESENTATIONS

1. Proclaim August 31, 2019 as Gardner Day at the K

Mayor Shute read a proclamation recognizing August 31, 2019 as Gardner Day at the K in honor of Derek "Bubba" Starling and John Means

PUBLIC HEARING

PUBLIC COMMENTS

Adriana Meder, 32604 W. 171st Ct. - I sent you an email earlier today, but I'd like to read it in to public record. It's input for NDO (non-discrimination ordinance) for LGBTQ. I request to have an NDO for the LGBTQ community explored, drafted and considered for adoption by the governing body. There is no federal law or state statute or city municipal code that provides protection of discrimination for the LGBTQ community. The city can be proactive and adopt an NDO to protect people that are not currently covered. Several other communities in Johnson County and across the state have already taken steps in this direction. I ask that the governing body of the City of Gardner be proactive and inclusive of all residents and do the same. Thank you for the consideration.

CONSENT AGENDA

- 1. Standing approval of the minutes as written for the regular meeting on August 5, 2019.**
- 2. Standing approval of City expenditures prepared July 31, 2019, in the amount of \$226,361.20; August 2, 2019, in the amount of \$405,386.57; and August 9, 2019, in the amount of \$594,663.05.**
- 3. Consider authorizing the purchase of 800 tons of deicing salt from Independent Salt Co.**
- 4. Consider authorizing the purchase of a new grinder at the Big Bull Creek Lift Station**
- 5. Consider authorizing the purchase of a compact excavator and a skid loader for the Line Maintenance Division**

Councilmember Melton made a motion to approve the Consent Agenda.

Councilmember Winters Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

PLANNING & ZONING CONSENT AGENDA

COMMITTEE RECOMMENDATIONS

OLD BUSINESS

NEW BUSINESS

- 1. Consider adopting an ordinance rezoning Z-19-03 property located at the northwest corner of Moonlight Road and University Drive from RP-3, R-3, and RP-4 to RP-3 with an associated preliminary development plan PDP-19-03 for Tallgrass**

Business & Economic Director Larry Powell stated this is the 3rd apartment complex project this year that has had public attention. At two others, we had neighborhood meetings prior to public hearing events, this one we did not until a week ago at the request of the applicant. We invited the people in the notification zone, and several others attended from the neighborhood. As a result of conversations that evening and previous conversations in the two prior meetings, staff decided to adopt a policy within the department to address rezoning requests in residential areas to have a neighborhood meeting within the 66 day period. This 66 day period is between the conception of the project and the first round of comments are made and when most of the decisions and code requirements are reviewed by staff. In this timeframe, staff would host a neighborhood meeting and allow the applicant to present to the public. That would give the public a better feel and allow them to provide direct input from the neighborhood during the conceptual stage. The applicant would have an appropriate amount of time to make changes if desired. It's not a requirement of code or of council, but staff thinks it will be a positive for the public and the applicant.

We are here tonight review Application Z-19-03 and PDP-19-03, a rezoning and preliminary development plan for (parcel IDs CP94500000 0T0C and CP94500000 0T0D), and preliminary development plan dated July 1, 2019, and staff report dated July 23, 2019. The Planning Commission recommendation is attached. You were provided the long staff recommendation, and you've been given a copy of the protest petition, and the results of that petition. There are a number of items brought to the attention of the developer. He had conversations with people at the neighborhood meeting. The recommendation from Planning Commission is to approve it from RP-3, RP-4 and R-3 to RP-3. What is of concern is definitional aspects of change. RP-4 is a new mixed use designation created about a year and a half ago. The Cottages at University Park was the first applicant to try to use that zoning. He changed the zoning that was previously there from 2003 to the RP-4 zoning for the norther 2/3 of the land property in change for zoning tonight. Along with that, he changed the remaining back to an R-3. The reason being that it gave him density factors, which is what the RP-4 is designed to do. It gives a higher density usage level on the property, using smaller lot sizes and allow more buildings to be built more closely together. The RP-3 designation that has been brought forth tonight is a delineation of the R-3. Its base is R-3, RP-3 means it comes planned. It comes forward with a set plan of design and a criteria for that plan to be put into place. The previous RP-4 was also a planned unit and had a plan attached to it. The reason for the zoning change is that when you're changing the zoning, you're also adopting a new plan, which is the reason for the zone change. There is a misunderstanding that the zone change is to allow for the apartments. While that's true, it's to allow for the rezoning of the property to adopt the new planned units which are all apartments. The previous plan without the plan zoning delineates you can only build what's in the previous plan. That's why you have a change in plan adopted with a zoning change.

Mayor Shute opened public comments, asking for everyone to honor the 5 minute clock and try to bring something new to the conversation. There are a lot of common issues, but try to bring forth things that haven't been brought up in previous discussions or public hearings so that council can hear it, and make sure everybody who wants to be heard can be heard.

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Jake Williams 16259 Blair Ct. – We as a community come forward today to oppose the Tallgrass development. Most of us have been involved with this proposal since the planning meeting a few weeks back. In that short amount of time, we discovered a lot of information showing this plan will negatively affect our community and city as well. First is schooling. It's been a hot topic in Gardner. Every time it's brought up, there's a different answer. One thing that stays consistent is that the schools are reaching capacity, and in some cases, they are full. 600 apartments will bring more children to Gardner, and will put the only school on the north side of town over capacity. There are only two options – build another school, or move the boundaries, which will affect the entire city. If another school is built, there would need to be tax dollars to fund it. The superintendent has said if the boundaries are moved, there is no money for busing. This has the potential to financially impact a vast majority of families because they will have to pay for children to ride the bus. My second issue is investments as homeowners. We are over 100 residents strong, invested over \$25 million in our dwellings. We have a loud voice among you as our city elected officials. I've heard there is no proof that apartments can negatively impact values of our homes, but yet to find information sustaining that claim. I will illustrate for you a nice home in our community with a beautiful hardwood floor, granite countertops, nice cabinetry, but then look out the backdoor and within 50 feet of your property, you see a 16 unit building in direct line of sight, blocking out your best view of the skyline. Would you buy that home? I don't believe you would. I built my home next to a proposed community of luxury duplexes. I would have never done so knowing that apartments were the plan for this property. I've heard this is his property and he can do with it what he wants. According to the developer, he doesn't yet own this property. This land is still owned by Cottage Park, LLC. and Blue Valley Investment Corporation. I don't feel the developer and city staff went about this plan in a professional manner. It's been pushed down our throats for quick approval. We were only given a two day notice by letter in the mail and a public sign that was placed on a dead end road back in the weeds. We heard the developer met with the residents of three homes on Moonlight Rd, and planning to meet with council members. He did not decide to schedule a meeting with us until he had been asked by council members if he'd reached out to the residents of Copper Springs or the duplexes. When questioned, he said he talked with Mr. Martens and assumed he was the voice of Copper Springs. He never attempted to reach out to the residents of the duplexes until that point. He will tell you he asked staff prior to the planning meeting if there were any concerns regarding his plan. It's said there were only two, but it's hard to have concerns about a plan you didn't know exists. You will hear from several residents tonight and it will become very apparent that we don't feel the apartments are right for our city or this location. We strongly believe this plan was brought forth with no regard to the entire community and it will have a negative impact on us. When asked if the developer would be willing to change his plans, he stated no. He is not emotionally or physically invested in this neighborhood, community or city. He is presenting a plan to make a quick dollar and those who stand to lose are the folk behind me.

George Rifford, 28604 W. 162nd PI – Thank you for your time this evening. I would like to discuss some of our concerns regarding this parcel of land and the proposed rezoning and development. As mentioned by Jake, we as a community come forward opposing this particular development. We are not opposed to development in general; we actually are looking forward to development of this parcel as long as it meets the needs of all residents in the City of Gardner. We do not believe that the proper due diligence was performed for this particular development, so we oppose this particular development. There appears to be a natural spring located at the northwest corner of this parcel. Overlay the developer's plan on top of a map of the land, and you will find that the lat/long of this natural spring is directly underneath where the developer intends to build. It's my understanding that an environmental impact study is not required by the city of Gardner for any development, and it's also my understanding an environmental impact study was not completed. During last week's community meeting with the developer, he was asked if he was willing to make any concessions to his current plan. His answer was NO. I find it unconscionable that the developer nor the city is concerned about any potential downstream impacts of compromising this natural spring. For your edification: Environmental degradation is the deterioration of the environment through depletion of resources such as air, water and soil; the destruction of ecosystems; habitat destruction; the extinction of wildlife; and pollution. One component of environmental degradation is the depletion of fresh water. Approximately 2.5% of the water on earth is fresh, with the rest being salt. Fresh water is an exceptionally important resource as life is dependent on it. At the surface, this natural spring does not look large. Without an environmental impact study, how do we know what remains under the surface? By compromising the natural spring, heavy rainfall events will be carrying more sediment and contaminants down to Gardner Lake, possibly causing infilling and algae blooms. We need to have a better understanding of what will be continuing into the Kill Creek watershed. Compromising this spring could negate the developer's stormwater study and

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create unforeseen issues downstream unless an environmental impact study is accessed. Compromising this natural water source could complicate water eradication from current and future dwellings during heavy downpours. It's disturbing that the Gardner City Administration and Planning Commission is willing to set a precedent allowing for development without a better understanding of negative impacts from compromising the natural spring. An environmental impact study would help us better understand the size of the spring and the impact of its compromise. I'd also point out the location of the development. Per the city's master plan, developments like this should include amenities like gas stations, grocery stores, healthcare offices in close proximity of the residents. These are not in the developer's plan. These residents are being put on an island with nothing around them. The developer's other properties in Olathe have amenities a quarter mile away. My opinion is that this project doesn't fall within the guidelines of the master plan, and a mixed use development would be a better solution. Some comments from the Craig Brett duplexes to the south include concerns with the retention basin. If a drain pipe gets clogged and their basement floods, who is liable for the damages? They are concerned with traffic flow from University Dr. on 164th and taking a left and a right to get to their complex. The residents in those duplexes were told the villas would be built within 3 years, the villas would have a pool and an HOA, and they would be able to join that HOA. They wouldn't have purchased their homes if they were told it would be apartments. The four fundamentals of effective and efficient project management are Plan-Do-Check-Act. This plan only touches on the first two and rejects the CHECK and ACT. We always hear "measure twice, cut once". I ask you to vote NO on this rezoning and development plan, and allow time to perform proper due diligence and take another measurement before the final cut is made.

Alisa Koinzan, 16431 Blair St. – I live in duplexes Craig Brett built. We all have the same consensus that when this apartment complex was proposed, it will be directly in our back yard. I purchased the duplex directly from the developer, without a realtor. It was important to me to build my home as my forever home due to my health concerns. I needed to be on a single level, needed it small enough to maintain, and needed it to be zero entry. I worked with them to get everything I needed so I would never have to move again. Before I signed the contract, I wanted to know what would be in my backyard. I was told luxury villas and a walking path right behind me. They couldn't build on that because there's a natural creek that ran by there, so they were going to put a walking path there. I was okay with that, it would be a nice buffer between the luxury patio homes they were going to build there. I was told in a face to face meeting with Craig and Brett present and they rolled out the plans for me. I asked about the pool because I didn't want it in my backyard. They showed me on the plans where the pool would be. I was told these would be building in the next three years. There would be an HOA, and the pool and clubhouse would be accessible to all residents who join the HOA. I moved to Gardner because of the small town; I grew up in a small town. I loved that there was a cornfield. I grew up with a cornfield in my backyard. I knew it wasn't going to stay a cornfield; I'm not naïve, I knew it would be developed, but it was nice to know what was going to be there. I bought because I knew what would be built in my back yard. Gardner's master plan includes transitional housing for people to age in place, and this apartment complex does not meet the needs of aging in place. For people like me, I need to be in a place that I can age in place because I don't know from day to day what my medical is going to be. I can wake up and not be able to walk tomorrow; it was important for me to build here where I knew my needs were taken care of. I was not planning to share my backyard with 596 apartments with 16 units staring into my back window. I hope you take into consideration our feelings in this matter.

Brian Keeney, 28605 W. 162nd Pl. - Thanks to council for individual meetings as well as listening to our concerns tonight. Being in Law Enforcement, I would like to discuss the public safety aspect as well as traffic logistics. The developer stated in talking to both the chief of the fire department and Police Chief Belcher, that they foresee no issues with the addition of the apartment complex. The developer also stated that the chief of police told them that the apartment complex would not bring in additional crime. I can tell you as a LEO, that the chief of police would not make that statement. He cannot foresee the future and what possibly lies ahead. Whenever you bring in any large amount of additional housing, no matter the style, population goes up and crime goes up, calls for service goes up. It happens everywhere. I ran calls for service for the last 3 months on the apartments currently located in Gardner. In those complexes in three months, 178 calls for service were ran. The two largest complexes, The Reserve at Moonlight, with 294 units, and Aspen Place, with 188 units, topped out as the two highest call loads. Tallgrass wants to bring in 592 units, more than both of these combined. I also looked at the same call loads for single-family residences in those same areas and it was drastically decreased. Not because the apartment complex,

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but because single family units bring in less crime. I'm not saying this this developer is going to bring in criminals, but bringing in population in a close area, 592 units, possibly 700-1000 more residents in a 43 acre area, you will have additional crime. It's the natural ebb and flow of things. When I talked to both chiefs, they agreed that they are concerned about parking. If there's parking on the streets, it could conflict with them getting units in. Fire trucks, ambulances, police cars need to get close to the scene. The developer stated he is providing 1.4 parking stalls for every unit. That is a total of 829 parking stalls. If only 75% of the tenants have 2 cars, that is a total of 888 cars. This is over the number of parking stalls available, and puts them on the street. In the traffic study, the developer proposed that "parking on residential streets in front of the apartment will serve to prevent cut-through traffic and slow vehicles". How much due diligence was done? Was this traffic study read before it was approved and signed off on? Being in law enforcement, we never have enough bodies for what we need, fire departments are the same way. By adding a potential of 1000 more residents into this area, we are concerned for the police and fire that they may not have enough to serve the community the way they would like. Are there enough fire fighters and equipment currently in Gardner to support a complex of this size or will they have to rely on mutual aid? The closest station to this is New Century. Do you have enough LEOs to serve and protect? On May 14th, 608 vehicles drove through the intersection of Moonlight Road and University Drive during peak morning traffic, 7am-9am, and 667 vehicles drove through during the evening 4pm-6pm peak time. Those are two hour blocks; that seems like a lot of cars. In 2018, the same thing was done, and it was 494 cars in the morning and 644 in the evening. In just one year, it's already gone up by about 150 cars. They estimate in their traffic study for 853 cars in the morning and 940 cars in the evening. Currently that's between 3500-4000 vehicles going through the intersection every day. Apartments and townhomes make an average of seven trips per day, per unit. Multiply that by 592 units, and you get 4130 trips per day. Single family homes make an average of 10 trips per day. If Copper Springs builds another 200+ homes, that's another 2000 more trips. This averages 10,000 more trips per day in this intersection. Even the traffic study estimates, with the complex, 13,000 cars going through this intersection. The roads are bad there already, there isn't a traffic light. There's no proposed traffic light for this area. Who's going to pay for that? I just want council to look at that, are you read to make that decision for traffic lights, for additional manpower. Thank you for your time and consideration in this matter, with the amount of traffic to be increased, and the increase in service calls, and the unforeseen costs of traffic signals and hiring of additional officers, we believe a NO vote is warranted. Changes can be made to the current plan. We aren't saying don't bring in apartments; we're just asking that projects are done smartly with both sides.

Mr. Keeney ran out of time for his comments. Mayor Shute offered to enter the remainder of his notes into record. The section not read aloud is included here: To get mutual aid, the closest station, New Century, will have to cross the intersection of Moonlight Road and University Drive. The closest fire station to this complex is located in New Century. They would have to cross this intersection to reach the complex. Currently there are not traffic signals here, which causes a problem for vehicles to cross the intersection. I know citizens are supposed to pull over or stop for emergency equipment, but I will tell you this does not always happen. As first responders I will also tell you we are supposed to stop at all intersections and clear them before continuing on, but again I will tell you this does not always happen. Your worst nightmare is when a first responder is involved in an accident with a citizen, no matter who is at fault. We would like you to consider, if this is approved, to have the developer pay for the installation.

Lydia Kepler, 16255 Blair Ct. – I sent emails out to council, I know Mr. Melton responded just before the meeting, but I don't know what you wrote. I will go over my points. My first concern is significant density change. This land was zoned for R-3, RP-4, which is for medium density garden apartments and condos. When buying in Copper Spring, I knew this going in, knew it would be multi-family homes. According to the city's comprehensive plan, medium density is considered areas that have single-family attached homes, like duplexes, triplexes, and townhomes, and does specifically say it's for homes attached horizontally. This current plan is not appropriate for this rezoning as an R-3. We have more appropriate zoning, R-5, that calls for apartments. High density means units stacked vertically and horizontally, typically with common hallways and amenities, which sounds like what the 16-24 unit buildings are. The multi-family housing phrase has been utilized for R-3 and R-5, but we need to more specific with the zoning definitions. I realize that there's a shortage of apartments and single-family homes in

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Gardner. There's a need for transitional housing for retirees and empty-nesters that stay rooted here in the community. We have a need for homes, but need quality and appropriate development to better the city long-term and not the quick dollar, and provide development for all residents, including the property owners that have already invested our money, our time, our children to the city. Meeting with all the council members over the past two weeks, I have a clearer picture of the rights of a property owner. I asked and was informed of the approved zoning for the lot behind my house. I knew that going in and made the choice to buy the home. This developer was also made aware prior to buying this, which is why it's in contingency, what it was already zoned for. The city would not have to tell him what his houses look like, where to pour driveways, where to plant every tree, however the type of home for this area has already been voted on. We can tell the developer what doesn't work with the already zoned areas and he does have a responsibility of knowing what those regulations are prior to his purchase. The regulations ensure the growth for the developer and for the city. I'm concerned about property values, I've read a lot of articles on the effects of apartments on surrounding home value. Most say there's no effect, in 5 years, my property should still pay out what it's worth today. That being said, all articles did indicate the value change is not noted on the amount, but on the time. I'm going to have to find that one buyer who doesn't mind looking at a building this large behind the backyard. It may only be two stories, but will be 8-10 apartments wide, which is about 30-50 feet wide based on their current plan. The current approved housing ranges from 15-25 feet wide buildings, encouraging a neighborhood feel over the apartment complex. This will be a significant change to our view and rather than selling in a month, it may take 6 or 8 months. This is where the depreciation dollar may not necessarily be seen in the reports, but the community property values will be affected in other ways. Has the funding been reviewed, have the bonds been received? I was told that before the vote, we could ask and be provided information to ensure they were set. I want to thank Larry Powell for the idea of having neighborhood meetings.

Anthony Kobler, 28313 W. 162nd Terr. – Thank you for the opportunity to speak with you. There are a multitude of concerns on how this project is outlined and presented. No one here tonight is under the illusion that this land will not be developed or even developed differently than what was planned a few months ago. The concern to myself and everyone here is there seems to be little thought as to how this will affect the current neighborhoods in regards to safety, traffic and future needs of this section of Gardner. My biggest concern is safety for my 5 and 2 year old daughters. My children are a big part of why I moved to Gardner and not Olathe or Overland Park, because of the small town feel that we have here. There have been no indications that the city is prepared for a rapid increase in the amount of people we place in such a small area. Under the current plan, the street I live on, 162nd Terrace, will become a thoroughfare through Copper Springs. All the traffic of the subdivision will divert down this once it's connected to Moonlight. This will significantly increase traffic on this street which is not designed for such use. Children have freedoms now to ride up and down the street, be free range. The current plan will strip them almost entirely of their ability to do so. The developer, Mr. Blakely, has shown no qualms that he is strictly a businessman, he's most concerned with his business. He has seen this piece of land and has developed a plan to maximize his profits every square inch, ignoring most or all of our concerns. He's been asked if he's willing to work with the community and homeowners to develop something which would make him and the proposed residents in his development part of our community and his stated no. He said he tried to talk to the community but Phil Martens wouldn't speak to him. Mr. Blakely shirked any responsibility to the community at every opportunity. He is unaware that this is Gardner and not a much larger city. This is a town with big-city amenities in a small-town feel. Everyone knows everyone, we all watch out for one another. We care about our high school athletic, local dance studios, our major-league ball players, fireworks on the 4th of July, and our neighborhoods. Mr. Blakely doesn't care what's best for the residents of his proposed community or the surrounding neighborhoods, he doesn't care what's best for the City of Gardner. We ask that you, our city council, continue to lead this community responsibly and respectfully, and to continue to uphold the values which make this community so different from every other city in the area. You have an opportunity to show this community that you care about those who are already here, who decided to purchase homes here, and make the best of their lives here. You have an opportunity to show the landowners and citizens have as much, if not more, say in what happens in this town rather than big developers whose only concerns are their bottom lines. Give this plan the consideration it deserves and consider if this plan truly represents the values of this community, one in which we care about neighbors, and how the decisions we make impact everyone for the betterment of all. I respectfully request you vote no.

John Duggan, Martens Family Enterprises, 9101 W. 110th St, Suite 200, Overland Park – There are technical issues about the validity of the application. After the Planning Commission meeting, we asked staff through a KORA

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request for all the data in their file. We found out the application was filled out by Mr. Blakely, but Kansas state law and your own city ordinances require that the application be in the name of the property owner, which is Cottage Park, LLC. The affidavit of ownership that was attached to the application says Wyncroft Hill Apartments, LLC is the owner of the property, and they are not. There's nothing in the city's files that indicates that Cottage Park, LLC authorized anyone to proceed with a rezoning application of the land that they own, which would violate the state statutes, your ordinances, and be inconsistent with the form application on the city's website. The reason for this may be that Cottage Park, LLC didn't want their name on a piece of paper that said they wanted this property rezoned because just over a year ago, Cottage Park, LLC came to the city and made representations at a public hearing where they were specifically asked when they got the RP-3 and RP-4 approval. They were specifically asked if these duplexes, four-plexes and single family homes would be rentals, because there's opposition to those being rentals. Their representatives unequivocally said none of the property subject to RP3 or RP-4 would be rentals. That was the representation they made to get you and the Planning Commission to approve it. They made representations to a number of property owners to induce them to buy some of these duplexes. Now there's an application that nobody from that group presented in writing that suggests they are in favor of this. That may be a mitigation strategy to limit their exposure for damages. There's nothing before you that complies with your ordinances. The city did not provide envelope or mail receipts showing the date the letters were mailed. State law requires those mailed notices to be out 20 days before the hearing. There's a form letter that says "Dear Property Owner" and it's dated July 2nd, but many people say they got it the day or two before the July 23rd hearing. Some say they never got it at all and only found out through social media. To validate the process, you would want to keep photocopies of the envelopes with the postmark on them or a return receipt document that showed when the letters went out. The Planning staff has come to conclusion that the public meeting was important to provide feedback to the developer of the concerns of the residents. Staff recommended approval to the Planning Commission and they went through the golden factors. One of those factors was what is the impact on the adjoining property owners? Obviously staff didn't have the feedback from the adjoining property owners. They didn't hear what they had to say, and didn't hear about the representations that were made to the property owners about a pool and an HOA, about no rental units behind their houses. All of this is public record in the City of Gardner's minutes from the February 27, 2018 meeting, where the developer made all those statements on the record. The people that bought those duplexes are going to be adversely impacted by not being performed on the assurance there'd be no rentals behind their house, by not getting a pool, not getting a walking trail, not getting an HOA. There are some defects on what's going on here, and there is certainly an adverse impact on the adjoining property owners.

Todd Blakely, 1074 W. Santa Fe, Olathe – The plan before you is product of 4 month collaborative effort by our team and your staff. The plan has been vetted by your staff, and their staff report recommends approval. The Planning Commission voted to approve the plan on July 23rd. During our due diligence, we reached out to those disciplines whose job it is to protect and serve, not only those who would live in Tallgrass, but our surrounding neighbors. We met with school district, police and fire. None had issues or expressed any concerns about the proposed apartments. I never told anyone there would be no crime associated with our project. Of course there will be crime. It comes in any time you build any apartment property, or any property that was already approved for this site. We asked the police department if they had concerns the apartment community would bring in inordinate amount of crime, and the answer was no. We provided a traffic impact study performed by a licensed traffic engineer. It shows an adequate level of service upon completion of the entire development, not just phases 1 or 2. We provided a value impact study that concludes there would be no measurable impact on the value of the surrounding single-family homes. We have met or exceeded every requirement and expectation put to us by city staff and your development review process. This plan has been worked and reworked over the past 4 months, and we believe it's an excellent plan. In responses to some of the neighbors that said I said NO in the neighborhood meeting last week, that was in responses to a meeting we met with Phil Martens and his attorney, John Duggan, and Phil's daughter, Melissa Irish. Because of that meeting, we came up with 4 ways that we would consider amending our plan. We submitted those to Phil, and they were rejected. With no dialogue between ourselves and Mr. Martens, there's no way we will change our plan. Those options are still on the table. We will still commit to those, even though Mr. Martens rejected them. Of everything that excites us about Gardner and your community, one comment stands out. It's the declaration made several years ago that Gardner is open for business. That's why we are here tonight. We are ready to bring our business to your community. We hope you give us that opportunity. Thank you for your time and consideration.

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Pete Heaven, 9401 Indian Creek Pkwy, Overland Park – I am an attorney, and represented Blakely family for about 30 years, and have gone to trenches with them on several developments. I want to dispel one bit of confusion that Mr. Duggan brought up regarding the application. Said the application was in the name of Wyncroft Apartments and not the fee owner of the property. The application clearly discloses that Wyncroft Apartments is the contract purchaser. There's no representation made that it's the owner. It's very common for these applications to be done by the contract purchaser. I wish Mr. Duggan would have called me because the contract between Cottage Park, LLC and Wyncroft states that the Blakelys can't make an application for rezoning. There's no attempt to hide anything. I don't doubt the sincerity of folks you've heard from tonight. I agree with them in many respects. Lack of information causes concern, it causes anger, and it causes nervousness. Since 2003, this property has been zoned as multi-family. Nothing's been done with the property for 16 years, but the zoning has remained multi-family. Zoning is just the permission to do something, it's not a promise to do it. In 2008, virtually every development in Kansas City came to a halt, and most failed. Were people sued because they broke their promises to build houses or apartments or swimming pools? Of course not. Market changes, people change, financing changes. The most important in this matter is that density is not an issue and should not be. We hear from people that it's going to be very dense because of the apartments and all the people. The reality is the density of this project is 13.75. Duplex zoning in Gardner is a density from 12-15. We have duplex density, but we're using apartments. The current apartment dweller is there by choice and not necessity. Young people can afford home, but choose to live in an apartment where they can lock and leave and there's no maintenance. \$1000 a month is a lot of money for an apartment. People do that because they want to live in Gardner. They choose apartment living as opposed to living in a single-family home. With the Blakelys, you're going to get the best. They've been doing this for 50 years, on-site management, on-site supervision, and maintenance. If this were all duplexes, there probably wouldn't be common maintenance, but in these buildings there will be. Gardner can be proud of this product, and I hope you've looked at Todd Blakely's apartment complexes in Olathe. They are well-run, beautiful, and they have people want to be there as opposed to have to live there.

Michael Kane, 28318 W. 162nd St. – In our meetings with Mr. Blakely, he expressed that rent would start at \$800 a month and not \$1000. The \$1000 was on the high end for the two-bedrooms. I'm disappointed but I'm glad you are taking the time to listen to us. Mr. Blakely is apparently only willing to talk to and listen to Mr. Martens and not the surrounding community. You are our voice. Mr. Blakely said without a doubt in those meetings that he would not change the plan. He never said he wouldn't change it because Mr. Martens wouldn't talk to him. He just said he wouldn't change it.

Phil Martens, Martens Family Enterprises, 19000 W. 158th St, Olathe – I am the developer and builder that started Copper Springs, with 10 foot weeds and impassable road. There's a need for single-family homes in Gardner, and we we're the only ones putting up major numbers. Many are small number or rental properties. On the single-family homes being built, the problem is buffering. You don't put apartments next to single-family homes. The first plan I had in 2003 was duplexes up against them. That's why I bought the extra 60 acres, to continue Copper Springs, make nice, affordable houses. We're building up to four-450. Some of the bigger lots go right in the middle of his 16-unit apartments. At first we poured four 16 ft. buildings. We did meet, but the problem was the offer was still luxury \$800 apartments next to some of my single-family homes that pay \$2000-\$2400 a month. We talked to Todd Blakely and we got him down to three 16-unit buildings, but the problem is I still wouldn't have bought the property to the north and continued Copper Springs if I'd known they were going to completely change the plan from duplexes, or even the plan that was approved a year ago. The density on that was 4.7. Density is a factor. He just said duplexes and such are 13.75, and that's what the apartments are going to be. How does that go from 220 units that were approved last year and now they are over 560 units? Density is a factor. 13.75 is a lot different than the 4.7 that was there. In the plan approved in 2018, nobody in this audience from Copper Springs was there. I wasn't there. I wasn't affected. I thought was a great plan. They were going to do it well, they'd have a pool, a clubhouse, great. I thought this is what was going to happen here. When it was changed to this and you're railroaded into a vote, you know there are other options. We could send this back to Planning, work this out better. It's not that I don't want to meet, it's that I don't want apartments next to single-family. It's as simple as that. I met with Todd and he said he doesn't build duplexes, but if you look on the plan there are two lots that have to be duplexes. Build ten more of them down the street, and you can have them all back up to my single-family, I'd be okay with the rest of the community. I think it's crazy to go from 220 units to over 550 units. There will be traffic, you'll need a light at 167th & Moonlight. It will be years, if ever, there's another road that has access to Moonlight, through my property

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and the apartments. On the north end, there's a little step street that supposed to go out to Moonlight. That's our last phase, the preliminary plat will be coming here in the next few months. You won't see the people here, because I'm putting in what's supposed to go in. I'm not going up against something that's multi-family versus single-family. I appreciate your time, and you don't have to vote yes, you can send it back to Planning and get this right. It's a big project, everyone deserves that. Protect your people.

Jason Mullin, 28604 W. 162nd Terr. – I want to thank you for your time. I want to thank Mr. Powell for looking at the policies and procedures in place of notifying citizens. I commend him, because I can stand up here and reiterate what the homeowners behind me have said. I've done the same thing and I can listen to Todd and Phil bicker back and forth. But we as citizens should have been notified. It was not until we stressed concern that he decided to have a meeting with us. We need to look at the procedural side of things. We, as citizens, need to be thought of first.

Carmen Gardino, 16415 Blair St. – I own the duplex right on the street at 164th street where these cars will come in. It's a tiny blip of a street. They will come off University Drive and will take an immediate left or right and my house is right there. This traffic coming in will make noise, toss their trash, disregarding the children we have. I'm very concerned. I chose Gardner over many towns. I moved here November of 2018 and I fell in love with this little town. I like here. I thought this is quiet and peaceful. It's family feeling when you come here. That's why my husband and I chose to move here. I am 56 years old and I am NOT buying another home. I moved to a wonderful small town, Gardner, and now I'm very concerned with what you are doing. Gardner will be called the city of apartments. I don't want to see a big building outside my windows. There's not enough buffer. My home has the retention pond behind it. What will I have to deal with, all the water, the smell, the bugs? I can't even sit outside and enjoy my patio because of this. I work hard and I come home, I want to come home to a quiet place. Now Mr. Blakely, two weeks ago at the last meeting, said they'd have quiet hours from 11pm-7am. I'd like to know how he came up with 11pm. I looked at many cities in our area, and even Overland Park has a quiet ordinance that starts at 10pm, and it's 55 decibels. You don't want these apartment buildings making noise because you know what will happen, we will keep calling the police. How can this lease say quiet hours are 11pm-7am when they didn't take into consideration Gardner's noise ordinance codes? Are you looking at this apartment lease, what's written in it, what they are permitting these residents that are paying such a low amount of money to live there? I'm sad and angry. If you put this through without thinking it through, you're going to ruin your little town that I just loved. Please send this back. Don't put big buildings there. We need senior housing. Put senior housing there, smaller units there. The past plan was great. I was promised villas behind us and that we could be part of their association. Face to face, they lied to me, knowing why we were buying this home and coming here. The person who lied to me owns a home in Gardner. Don't they care about their kids growing up here? It's all about the dollar. There's more to it than just money. This is going to create problems. Stop this project, look over it, look what you are doing to your town, my town. Who is going to buy my home now? I don't have another down payment to go to another nice town. Thank you for hearing me.

Mayor Shute thanked everyone for their civility. He made a lot of notes. He asked council if they had questions for staff or the applicant. Councilmember Baldwin asked staff about the concerns over the application. Has it been reviewed and those comments addressed? Director Powell said the applicant was properly notified, the application received was properly filled out and notarized by those who had control of the property. The contractual agreement between a purchaser and an existing property owner isn't allowed to be an applicant when the property owner gives his consent for the application, which he did do in this case. Councilmember Baldwin already asked Director Powell about the notification and discussed it two weeks ago, but are we addressing that to make sure it doesn't happen again or if anything happened this time? Director Powell said everything was mailed out on July 2nd. Those who may not have received a notice may live outside the notification zone. They mail out a 200 ft. radius from the edge around the entire property for everyone in the city limits. If they live in the county, the limit is 1000 ft. We don't send registered letters, just regular letters. There are three signs that were supposed to be posted on the property by the applicant. Some of the residents only saw one. We also notified the public by advertising the public hearing process in the local newspaper. This is all done 20-21 days prior to the public hearing, which is a state requirement. We don't send registered letters or photocopy every letter envelope face we send out. We use the mailing information that AIMS (Johnson County Automated Information Mapping System), which is the legal ownership listing. Councilmember Baldwin thanked Director Powell and his staff from a meeting they had two weeks ago, and after the concerns with Waverly Plaza and meeting with homeowners, the suggestion to have the public meeting earlier

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in the process is what we discussed, so I'm pleased to see that this is going forward. That will be beneficial for everyone in the future. Councilmember Baldwin asked Director Kramer if there are concerns about the natural spring. An environmental study is not required, but has staff reviewed for a roads or utilities perspective? Director Kramer said staff has not done any investigations. The stormwater report addresses not only the stormwater detention, but also water quality, and that has been reviewed and approved.

Councilmember Gregorcyk appreciates everyone showing up. Phil Martens summed this up and looking at the master plan, the transitional piece of the master plan, which would be single family homes to duplexes to apartments on the north end or phase 3, that doesn't meet the standard. I would move that we send this back to the Planning Commission and reevaluate all the phases, which is a 3-5 year plan, and have the builders and homeowners go back through the process. Mayor Shute called point of order, the motion to move is not on the table, and we are only doing question and answer discussion. Gregorcyk struck his motion. The environmental study is a concern when the northern road is built out in conjunction with Copper Springs and tied in with Moonlight. We heard from the community that traffic is going to be an issue. I'm curious as to what and how we will handle that. I also asked Mr. Blakely about the lease agreement and I've not yet seen a copy, nor is it in our packet. I understand they would check backgrounds, employment verification, and credit checks, is that still the case, Todd? Mr. Blakely confirmed. I support the addition of the community touch that Mark spoke of. I met with Mr. Blakely and suggested that he reach out to staff and glad that they did, but it's all about buffering. As I read RP-5, this is more of an RP-5 neighborhood rather than RP-3, but I'm not an expert, just reading the words. Mayor Shute asked if that was a question you want to pose to staff. Director Powell asked if he's looking for a definition of zoning for RP-5 versus RP-3. Gregorcyk said he's read both of them, but would like clarification, because he feels that this is an RP-5 versus what we have in front of us. Director Powell stated the new Land Development Code put into place a layered apartment complex definition. He read the following "apartments are permitted in use in R-3 zoning, and the Gardner Land Development Code includes three apartment building types with varying amounts of required open space". This applicant has chosen the least dense apartment type. The three types are: Garden Apartment, which uses a maximum land area coverage of 40% up to three stories and permitted in R-3 and RP-3 districts, the Walk-up Apartment, which is higher in density in terms of land area with a maximum of 70% building coverage and three stories permitted in RP-4 and RP-5 districts, and Mid-rise Apartment, which is the highest density in terms of land area coverage with a maximum of 70% building coverage and 5 stories maximum permitted in the R-5 or RP-5. We have layers of apartment styles and sizes and complexity. The zoning is made to take into account those attributes. The current level of zoning request was one that required lesser ground coverage with smaller apartment buildings and more open space between, so it does fit that particular apartment definition. Gregorcyk asked why three large 2-3 story apartments were allowed on the northern edge that abuts to the single family homes if that doesn't fit the transitional aspect of RP-3. Powell said the set-back requirement for RP-3 next to additional residents of any kind is only 25 feet on its border. They moved those back to be 50 feet, plus you have the 23 feet that already exists on the single family side. You have a distance of 75 feet between houses and apartments proposed. The buildings have not been final platted yet. This is all a preliminary site development plan. We are dealing with distances on a piece of paper. Once they set the buildings into a final plan and those pieces on a per site basis, where each one goes, they generally end up being a little further than what the 50 feet is because of adjustments for road widths and some things that come into being. Without a final plan, I can't give exact locations for those buildings.

Director Kramer clarified the stormwater study, it was a preliminary study. There are final studies coming that include SWPPP and KDHE permits. Shute asked if there was any environmental assessment or requirement through KDHE. Kramer said they will on the stormwater permit, but he's not sure that would include the spring.

Councilmember Winters noticed the stormwater report says 31 buildings with ~160 residents. On this report, is the building more important how many people live there or how many units? Director Kramer said the drainage would look at impervious areas and not the number of units. Winters asked Attorney Ryan Denk if the 20-day notice that was sent out is a state law or best practice. Denk replied that the 20-day notice letter is a requirement of state statute KSA 12-757. It's not required that it's sent out any other way than regular 1st class mail. Some statutes dictate a higher level of service such as certified mail or return receipt requested, but KSA 12-757 is silent on that so 1st class mail is sufficient. Winters asked if someone kept their envelope with postdate on it, is that a valid concern? Denk read the statute "written notice of such a proposed amendment shall be mailed at least 20 days before the hearing to all owners of record of real property within the area to be altered", so they should have been

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deposited in the mail 20 days before the date of the public hearing. The public hearing date is the date that Planning Commission conducted the hearing. Winters said on the protest petition, they did not get the proper 20% that was required. He believes a large portion of that is owned by the City of Gardner, and a large portion is owned by Craig Brett Homes. Is there any conflict of interest there? Denk said the only exemptions in the statute of the area to be included in the calculations includes public rights-of-way. Because the city owns a tract of land doesn't mean it's excluded. In theory, the city of Gardner could have been a protestor to the application in question. Winters asked when the Planning Commission voted, were they voting only for the zoning change or were they voting on the whole plan? Powell clarified they were voting for both. Whenever you are doing a planned zone, you have to have an attached plan. We had a previous planned zone, and this application was requesting to remove that one and put this one in its place, so we have a both a rezoning request with an attached plan that would be approved at the same time by the Planning Commission. Those two actions are together. Winters returned to the stormwater plan. If they did address the spring, would it be before the final plan? When would that take place? Powell answered there are two levels of coverage. What we're doing right now is the preliminary development phase when the developer wishes to explain his use of the property. During this time, we have development standards that require a traffic study, a stormwater study, etc. There are additional future steps in the process, as Michael referred to the final development stormwater plan. As this progresses, if there is a piece of the property found to be environmentally contaminated or otherwise sensitive, or another aspect that needs further definition, it's reported in that aspect. If there is a property that shown to have a building in a certain position and we identify a soils or water problem or some issue that prevents a safe building from being constructed – 1) they don't get a building permit, 2) that particular aspect has to be addressed by the property owner so that it doesn't create a health hazard or safety issue for the residents of the area. If it's is a natural spring that continues to run so it fills up the containment pond continuously, they have to take that into account in addition to the normal rain runoff, because it's additional water running naturally through the area.

Councilmember Moore thanked everyone for their concerns. I heard a lot of emotion. I can't see faces, can only surmise feelings that are involved. It's very emotional for the residents. I can't look at it from the emotional perspective. I have to look at it from the perspective of do I have reason to send this back? Moore asked were there any irregularities regarding the notification process. Director Powell said there should not have been any reason any one of the letters that were sent not to have been delivered on time. They don't know why some people received their letters late. Everyone that should have been notified should have received that notification. Powell said the signed were placed on the properties either July 2 or July 3 by the applicant. We properly posted and have a copy of the posted newspaper release. Moore asked if there were any irregularities in the application itself, the application process, including the public hearings and the proceedings at the Planning Commission. Powell answered no. He said the public responded. They brought forth their concerns and issues. Planning Commission listened. They made their decision and their recommendation, and it was brought forth. Moore asked if this plan followed the comprehensive plan, or is there anything that might cause concern as far as the comprehensive plan. Powell stated the comprehensive plan is a diagram planning of itself, and there are parts of the application that merge well with a comprehensive plan and there are some parts that are actually in conflict with the comprehensive plan, but that's not unusual. We have aspects of every application tweaking and change or review so that we can bring it as close to the comprehensive plan as possible. The comprehensive plan is a living document and does change all the time. Moore asked Chief Belcher if the public safety impact from this development form unmanageable stress on the police department or the fire department. Chief Belcher said with growth, there's going to be crime that will come with it. It's just a matter of the type of crime. Are we talking about violent crime or petty crime? I feel confident if this plan moves forward, the police department will be able to police that area just like any other part of town. Moore asked Attorney Denk if throughout this process, the application, and everything up to this point, have any statutes been violated? Denk answered no, not to his knowledge.

Councilmember Melton asked if anyone from the audience have the stamped envelope the city sent out, with the postmark on it. If we photocopied before we sent to the post office, they wouldn't be postmarked yet. Director Powell said when we mail from here, we use a postage meter, and maybe we can check the postage meter. Melton said we might as well check for our own, to see when they were sent. Melton said he was with Lee Moore. We don't operate on feelings. We operate on what's legal and what's available per code. The master plan is something that's a guideline of things we'd like to see. In the end, if it's a property owner, no different than you, wants to do something

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with their property and it's within the codebook, we can't tell you no without a very firm legal standing. I know that's not a popular option.

Councilmember Gregorcyk asked one more question of Mr. Blakely. You said there were options for change that you and Phil Martens had not discussed. Can you explain those options? Blakely said he agreed to do four things. 1) On the Copper Springs side of the property line, they would erect a 6 ft. privacy fence located by Phil, but Blakely would pay for it, and it would be maintained by the homeowners whose land the is on. 2) They agreed to move some mature cedar trees into an area that would provide a secondary buffer. Blakeley believes having both is a waste of money, one or the other is makes sense. He prefers the landscape buffer. It's more expensive, but it's more attractive and serves the same purpose to delineate one property from the other. These mature cedar trees would be installed professionally. The trees would be installed when they could grade the northern tier adequately for proper drainage. They would then locate the walking path and locate where there's a stormsewer along that north line. They would make sure the trees would not be in conflict with those things and would give the neighborhood the option to choose one of these options. 3) They would agree to amend the plan to move amenities around and replace the 24-unit building on the north with the 16-unit building. This would increase the open active rec space between the buildings. That would be a total of 48 units along the north line. People say that's 48 units looking into their back windows, but half the units would be facing south, so there'd be 24 units, a combination of 1 and 2-bedroom apartments, facing the north. That's not much more than if they were duplexes packed as tight as is allowed. 4) The other suggestion is to eliminate the third story from two of the three-story buildings that are closest to the north property line. Those options are on the table. They made those to Phil a few weeks ago and stand by those, the only change being that they would like for the neighbors, if this is approved, to pick either the privacy fence or the landscaping buffer.

Councilmember Gregorcyk asked Mr. Blakely if he is handling the financial portion of the lift station that would be added, based on this potential apartment complex. Mr. Blakely confirmed that yes, he would.

City Attorney Denk said that before an action of rezoning, it's appropriate that disclosures of ex parte contacts be made known by the governing body. Has any member of the governing body had ex parte contacts outside of this meeting with either proponents or opponents of the zoning application in question? It would be appropriate to disclose that before you take action with a simple "yes, I've had contact" with either proponents or opponents.

Councilmember Moore asked if there will be additional opportunities for current residents to participate in additional planning activities on this specific project in the future. Director Powell said there are no more public hearings required. There are final development plans that are brought forth and approved by the Planning Commission. Anyone can appear before the Planning Commission when the final plat is brought forth and make a statement as to what could be done to improve or change them, but there is no public hearing requirement and no official notification. Staff posts the Planning Commission meetings 20 days in advance on the city's website. Anyone wanting to see what's coming up could see it. Staff could take an extra step and if someone wants a notification when a certain item comes back to the Planning Commission, they could do that.

Mayor Shute asked council members to state their disclosure of ex parte contacts. Councilmember Gregorcyk said he met with both residents of Copper Springs and the developer, contact with both side of the potential development. Councilmember Melton said he had conversations with both parties as well. Mayor Shute said he had as well, Councilmembers Winters, Baldwin and Moore said yes, they've had contacts with both parties.

Mayor Shute said there are three options at council's disposal. Attorney Denk confirmed. Shute said we can move to approve, we can move to vote down, and the third option is to refer back to the Planning Commission. With approval, there is an option to suggest adjustments without them going to a super majority. Attorney Denk said if the governing body takes any action different than what Planning Commission takes, that would require a super majority. Shute confirmed that any material changes at all to the proposal would require super majority, but not to send back. Sending it back only requires a majority vote. And with zoning, Mayor Shute asked for confirmation that he votes. Denk confirmed. Shute said that's 6 votes, so four votes to pass on any non-super majority votes with adjustments.

Councilmember Gregorcyk made a motion to send this item back to the Planning Commission incumbent upon the change to the northern piece of this plot and phase 3 addressing the buffer and/or transition from single family to apartments.

Councilmember Winters Seconded.

Director Powell asked to clarify the content of the motion. Is this to review it in regards to the buffer zone, but not in regards to the four items Blakely has offered? Gregorcyk confirmed. Mr. Powell said this would be to consider if the buffer zone is adequate at 50 feet. Gregorcyk clarified the reason he would send this back to the Planning Commission is to review if the three apartments on the northern plot and south of Copper Springs in phase 3 should be duplexes or condos based on the transitional piece, not the buffer piece. Powell confirmed he would like to see that those apartments be a transitional zone of some other type of residential property of a lesser nature. Gregorcyk confirmed yes, which would align with the master plan and with precedents that they have in other neighborhoods where they go from single family to duplexes to apartments.

Attorney Denk asked if Councilmember Winters still seconded the motion with the clarification in place. Winters confirmed.

With a split vote by the Councilmembers on the motion, the motion is lost.

Gregorcyk:	Yes
Melton:	No
Moore:	No
Winters:	Yes
Baldwin	No
Shute	Yes

Councilmember Baldwin asked if Mayor Shute would allow comments. Shute agreed. Baldwin voted no because he believes it's a waste of time. Planning Commission already approved it. I spent a lot of time looking to see if this is really R-5, talked to staff. All the comments I had coming in, every note I made from everyone speaking tonight, this comes down to density. Traffic, crime, kids' safety, everything is density. Those apartment buildings meet the garden apartment style. They meet RP-3. They're going to pass again. Only if Mr. Blakely would like to change his plan is that necessary, and he's already offered what he's willing to do. To send it back there so it can come right back to us seems to be a waste of time. Councilmember Gregorcyk said they all talked to both parties, and he talked to the community. He listens to the community that has invest in our community, they vote, they have children that go our schools, they shop in our stores, they buy the fuel here to go to work. In listening to them, and to your point, studying this and visiting with staff and the City Administrator, what I gleaned is that the buffer or the type of buildings being put in their backyard, that resonated with me. That's why I made the motion. Councilmember Winters said the density was important to him, and the buffer going to duplexes does reduce that density to a degree. I drove to three apartment complexes to find their capacity, they are massive. There are a lot of apartments. I was shocked to find out they are only half of what we're putting in here. This is a lot of apartments, so part of my agreement with Gregorcyk was the buffer will reduce that down to some degree. We're putting in this huge density right next to some of the larger and more expensive homes in Gardner, not close to any amenities. I don't think this is the right place, it doesn't follow the comprehensive plan, doesn't follow the master plan. Gregorcyk drove around as well. The apartments that are on the west side of S. Gardner Road, there's no single-family residential. Moving forward we should see the opposite of this, we should see apartments, duplexes, condos, four-plexes and then single family homes, moving likely in a northern direction. That's the reason I made the motion, because that would also address the density piece as well as the homeowners' issue with having that in their backyard.

Councilmember Melton made a motion to adopt an ordinance changing the zoning classifications of districts of certain lands located in the City of Gardner, Kansas, under the authority granted by Title 17 of the Municipal Code of the City of Gardner, Kansas.

Councilmember Baldwin seconded.

With a majority of the Councilmembers voting in favor of the motion, the Ordinance passed and was assigned Ordinance 2621.

Melton:	Yes
Moore:	Yes
Winters:	No
Baldwin:	Yes
Gregorcyk:	No
Shute:	Yes

2. Consider authorizing the execution of a DBIA Design Build contract with the Joint Venture Group of Burns & McDonnell and CAS Constructors, LLC., for the final design, construction and start-up of the Hillsdale Water Treatment Plant Expansion Project

Utilities Director Gonz Garcia said on April 1, council approved a contract for the preliminary design with the joint venture group Burns & McDonnell and CAS Constructors, LLC for a 2MGD (million gallons per day) facility for \$21.5 million. During the preliminary design, the scope changed to a 3MGD facility at a cost of \$24.8 million. Director Garcia brought in the joint-venture group Burns & McDonnell and CAS Constructors, LLC to explain the differences in estimates. John Mitchell with the joint-venture group introduced members of the design-build team. The original plan was to add 2MGD capacity to the existing plant and then add capacity in 2MGD phases to a total build out capacity of 12MGD. The initial study in the core treatment technology was based on a certain type of clarifier. Staff had concerns regarding difficulty of operation and maintenance over time. The team identified important enhancements that changed the core technology to a more conventional clarifier and the capacity increased to 3 MGD. Mr. Mitchell outlined why this was a good value for the city. Staff operators were familiar and comfortable with them. They went to treatment plants to see both technologies and talk with other operators to make the evaluation themselves that the difference in cost didn't affect the project much. Moving from 2MGD to 3MGD means they'll achieve the 12MGD in 4 phases instead of 6. The ability to consolidate construction activities, mobilizations, bonds and insurance, reduces the overall capital cost of the project. It also reduces O&M cost and lifecycle cost because when it's built out to 12MGC, it would be operating four trains of 3MGD versus six trains of 2MGD. Moving from 2MGD to 3MGD means they can increase capacity almost 50% for about 17% differential in capital cost. It's important to note that many of the facilities will be set up to go to 12MGD, and some will have the capacity to deliver 6MGD. The clarifiers and filters are sized for 3MGD, but will have hydraulic capacity to take almost 4MGD on an intermittent basis. When you're built out to 12MGD, the operators can remove any one of these units from service for maintenance and still be able to maintain 12MGD. The presentation included a video that walked through each of the individual parts and pieces of the plan. Included in the presentation was schedule. In order to deliver water within a year, they provided an accelerated schedule. With this, the lagoons would need to be cleaned out by October 15. The other constraint in schedule are the easements for the raw water pipeline. They will need to go through easement acquisition by January 24. In order to deliver an extra 1MGD by October, which is not peak demand, it carries \$186,000 in premium overtime labor. If they back up to an alternate schedule, the contract time is the same, but they'll reach substantial completion in April, before the next peak demand and reduce the premium overtime labor by \$186,000. Mr. Mitchell laid out the additional roadmap for the 5, 10, 15 and 20 years, with the most critical being the finished water transmission line, getting the water from the pant to the distribution system in town. That existing line is limited to 6MGD. A new pipeline should be in place by 2025 due to demand by 2027. His

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recommendation is to begin an alignment study and start acquiring easements as soon as possible. He also shared that the raw water intake can only take 6MGD as well and is not expandable. A second intake will be needed by 2025. There will also need to be a high service pump station upgrade. After all this is done, looking at the demand curve, this will allow the use of all the capacity of the original plant up to 4MGD, all the capacity of the expansion up to 3MGD, and that takes you to about 2035 before additional investments are needed.

Councilmember Winters asked with additional expansions, there would less time and money comparatively to this initial plan? Mr. Mitchell said the 2035 expansion would look like additional parts and pieces, another cell for chemicals, another clarifier, another train in the filter building. They would cost less than the initial buildout.

Councilmember Melton recommends that staff gather more rights of way. If we can gather those now, it would be beneficial. Mayor Shute agreed, and clarified that we are already getting right of way for the existing transmission line. Mr. Mitchell corrected him and said this was for the raw water line. Melton said it would be cheaper and easier for future expansion if to do it now than in 2035. It would be cheaper now than in 15 years, and easier because nobody's built on top of it. Mayor Shute said we should try to acquire both sets of easements now. Mr. Mitchell said yes, they'll start on the raw water line first, and move on to the finished water as soon as possible.

Councilmember Gregorcyk asked Director Garcia about Rural Water District #7. They retained a consulting firm to conduct analysis of Gardner's expansion, its financial impact. The findings will be presented to their board to review and consider its options. Is there a timeline on that? Director Garcia said they are evaluating two options for purchasing water. One is from Miami #2, they are expanding their facility in a couple of years. Or two, they are looking at us. Garcia told them the city needs a decision before July, but knows they are still working on it with a consultant doing a comparison. They should have an answer within 30 days.

Councilmember Melton made a motion to authorize the City Administrator to execute a DBIA Design Build contract with the Joint Venture Group of Burns & McDonnell and CAS Constructors, LLC., for the final design, construction and start-up of the Hillsdale Water Treatment Plant Expansion Project, in the amount of \$24,795,542.00.

Councilmember Gregorcyk Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

3. Consider authorizing the execution of Amendment 1 to Hillsdale WTP Expansion Phase I agreement with Burns & McDonnell-CAS Constructors for easement acquisition support

Utilities Director Gonz Garcia said the phase one design led to needing additional easements for the raw water line. It was identified that we didn't have any records on a permanent easement for the raw water line that was installed in 1998.

Councilmember Gregorcyk asked if this was a "not to exceed" contract? Mayor Shute confirmed.

Councilmember Gregorcyk made a motion to authorize the City Administrator to execute Amendment 1 to Hillsdale WTP Expansion Phase 1 agreement with Burns & McDonnell-CAS Constructors for easement acquisition support, in the amount of 26,076.00.

Councilmember Melton Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

COUNCIL UPDATES

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Director Kramer reported that the airport board meeting was moved from last Monday to this Wednesday the 21st here in council chambers at 6pm.

Councilmember Gregorcyk asked Director Kramer about status of crosswalk on 183rd. Kramer said it's out for bid and closes Friday. In regard to new business 1, he thanks the staff and council for their civility and the professional perspective that everyone took.

Councilmember Melton reported that he reached out to school district based on Heath Freeman's idea about a homecoming parade. The school district can't put it together, it's too much work for them to take on. They are going to focus on keeping what's going on with the fair instead of trying to do a separate one. They don't have the manpower. Mayor Shute asked if there was booster club or volunteer organization. Melton didn't believe so, as they struggle to get volunteers for their Project Grad program. Melton continued by thanking staff for fixing the fountain at Cornerstone Park. Thanks to Mayor and Daneeka for organizing this Gardner day at the K. He had the idea for it, and the mayor looked up the dates, and got this going. Mayor Shute also thanked Jason Camis from Gardner Edgerton Chamber of Commerce for doing the heavy lifting on this. Melton asked Director Kramer about costs for fog sealing. How much does it cost per road to fog seal after chip seal. Melton would like costs per street or per foot so he can give citizens a perspective on why the city doesn't fog seal everything. He wants to be able to justify the expense one way or the other. And in response to the request for the non-discrimination ordinance (NDO), Melton said he did a video a few months back asking for anyone who has had any issues to come forward and speak with him. When they write an NDO, the goal is to resolve an issue. Without any knowledge of what's happening, writing an NDO based on what we don't know isn't going to work. He has yet to hear from anyone. There was a recent facebook poll that more people contacted him about saying they didn't want to put their name in because they were afraid of being harassed. He got more comments on that than on his video.

Councilmember Moore responded to Melton's request on the fog seal costs, and asked what it costs in opportunity to cover additional lane miles with chip seal. If they do fog seal, how much chip seal do they have to forego to do that? There's a cost associated with doing fog seal, but the city is behind the curve on covering all the streets, so while fog seal is awesome and adds a couple years of longevity to a chip seal surface, there is a cost involved in terms of other streets that will not get treated. Moore also floated the idea of directing staff to study bike lanes on the major thoroughfares through town, like Center, Moonlight, and Madison. Is there funding, state, county, federal, grants, for bike lanes? We are a growing community and not inviting to bicyclists. Mayor Shute agrees and is curious about costs involved. Is there something that the city could off-set with grants? There are grants that are for bike lanes or other kinds of pedestrian access to roadways. Gregorcyk said that would align with parks initiatives. Gregorcyk also asked to go back to what Melton and Moore were asking about fog sealing. Are we diverting money from curbing? His neighbor was out last night scooping three buckets of gravel out of her curb. This was in one neighborhood, but is indicative of what's going on across the city. Are we diverting from curbs for fog seal. Councilmember Baldwin said since everyone is bringing up costs involving the roadways and they don't have a way to pay for any of it, he suggests a work session on how the city will do all of this and look at all the numbers. Mayor Shute agreed and said they need to incorporate the Public Works and Accessibility Advisory in a joint session. It's a lot of people, but worth it, because they do need to come up with short, medium, and long term solutions for this. The sales tax is going to sunset and they need a plan to manage the ongoing maintenance and the additional needs for bike lanes and accessible transportation. Mayor Shute directed staff to look into scheduling a work session.

Councilmember Winters thanked the parks and recreation staff for the Gardner Grind. It was a great event, even with the rain. It just pushed it back a little bit. It seemed well attended, and everyone seemed to have fun. The obstacles were fun and the mud was great. His kids had a good time.

Councilmember Baldwin returned to new business 1. He would like to see staff create a PDF that spells out the duties of a Planning Commission, the duties of a City Council, on these types of issues. What can citizens do once they receive a notification or when they see these signs, what do they mean? There are times they are asked the same questions, so he would like something posted on the website. Director Powell said they have something similar used internally to mark the passage of each project. It won't take a lot to make it a public

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document. Mayor Shute thinks it will help to get rid of some of the confusion surrounding these projects. Baldwin said that document and the extra meeting early on will help facilitation. Mayor Shute loves the additional neighborhood meeting. He said that will help get folks around there a feeling that they have a little impact themselves on these projects, a voice at the beginning of the process rather than the end when they don't think it'll do any good. Councilmember Moore said he made use of the website regarding the planning process when dealing with one of the parties. He thinks an infographic about the planning process would have value. Mayor Shute agreed, using budget wheel as example, because planning is a similar cycle.

Mayor Shute said there's been a lot of discussion regarding NDO around Johnson County. He knows Attorney Denk has worked on a couple of them for other municipalities and asked for his thoughts on potential pitfalls or advantages. Denk said the reason municipalities are taking action on these NDOs where they perceive a gap between state and federal law and other classes of employees such as LGBTQ communities, there's a perception that there's a gap of protection. There have been movements by different communities for non-discrimination resolutions going back 10 years. The current movement is to create an enforcement mechanism, to take it one step beyond a resolution expressing support, for enforcement of individuals' rights for those gap individuals. Local governments don't have full legislative powers of state and federal governments. They don't have legal authority to create causes of action, causes of action for damages. Their enforcement authority is limited to their expression of their police powers, and that includes the ability to enforce codes, ability to take enforcement action through municipal courts. Denk has concerns that at the state and federal levels, there are dedicated administrative bodies that are committed to the enforcement aspect. The Kansas Human Rights Commission is in charge of enforcing the Kansas Human Rights Act. The EEOC and Dept. of Justice are charged with enforcement of federal civil rights laws. The NDOs he's see are not bringing on additional manpower, but taking individuals such as codes enforcement officials or existing police staff and municipal courts to be the enforcement arm. There needs to be thought put into these people who are already full up on what they're doing in terms of code enforcement, in terms of enforcement of our different statutes, Uniform of Public Offense Code, standard traffic ordinances. To layer on additional job duties and responsibility without clearly dedicated training, not saying it can't be negotiated or worked around, but if you want to put more resources into you can do that and create a more effective enforcement mechanism. Denk has concerns about a code enforcement official or police officer now doing an investigation of an employment type nature or denial of services based on a protected classification. At the state and federal level this is someone with a high degree of training and professionalism in investigating those issues. Mayor Shute said there's conflicting case law with this already. There's a disconnect and conflicting case law as to what is considered protection and how does that mesh with the ability of private company to refuse service for any reason or no reason. Would this create an opening for liability on the part of the city if the municipal court judge ruled one way or another with the party that loses coming around and suing the city for breach of process? Denk said they'd have to take that into consideration and carefully draft it. Several city attorneys have looked at the various issues and tried to negotiate, but they are all coming up with different solutions. Mayor Shute said every single municipal law or ordinance is different, sometimes radically so. Denk said they have to be mindful of that concern if they do go down this path. Gregorcyk asked if an acknowledgement would be good. Mayor Shute said like a resolution of support, similar to what past communities have done and encouraging the state and federal governments to take action. Gregorcyk said he sees this as more of a top-down opportunity versus bottom-up. He doesn't think municipalities need to get into this body of water. An acknowledgement is fair, but they don't need to deal with the pros and cons or the staffing of highly trained professionals. Mayor Shute said that's something that council have to sign on to. Councilmember Baldwin said he thought there was a recent proclamation that said Gardner was a welcoming community. It didn't spell out LGBTQ, but we are a welcoming community and non-discriminatory. Mayor Shute said that's a proclamation and not a sense of the body, which is what a resolution is. It carries a bit more weight although it does not have force of law. The mayor would be willing to explore it, but doesn't think the city is in a position until there's case law on the existing ordinances on the books. He doesn't want to be the test case. The mayor asked if there was consensus to talk about a resolution of support. Winters is okay with a resolution. The mayor said it's a feel-good. Melton is not a "feel-good" guy. He said if there's a problem, they fix it. Baldwin also doesn't see the point in a

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resolution for feeling good. Then you'll do one for everybody, for anything? Winters said it's just for discrimination in general. Melton said if he has to tell people he doesn't discriminate, that's a problem. The mayor said that's the world we live in these days. Melton said he just lets his actions show. Mayor Shute said there will be more discussion on this and they'll keep their options open.

ADJOURNMENT

There being no further business to come before the Council, on a motion duly made by Councilmember Melton and seconded by Councilmember Gregorcyk the meeting adjourned at 9:51p.m.

City Clerk

City of Gardner, KS

Council Actions

August 19, 2019

The City Council took the following actions at the August 19, 2019, meeting:

1. Approved the minutes as written for the regular meeting on August 5, 2019. (Passed unanimously)
2. Approved City expenditures prepared July 31, 2019, in the amount of \$226,361.20; August 2, 2019, in the amount of \$405,386.57; and August 9, 2019, in the amount of \$594,663.05. (Passed unanimously)
3. Authorized the purchase of 800 tons of deicing salt from Independent Salt Co. (Passed unanimously)
4. Authorized the purchase of a new grinder at the Big Bull Creek Lift Station (Passed unanimously)
5. Authorized the purchase of a compact excavator and a skid loader for the Line Maintenance Division (Passed unanimously)
6. Adopted Ordinance 2621, an ordinance changing the zoning classifications or districts of certain lands located in the City of Gardner, Kansas, under the authority granted by Title 17 of the Municipal Code of the City of Gardner, Kansas (Passed 4-2)
7. Authorized the City Administrator to execute a DBIA Design Build contract with the Joint Venture Group of Burns & McDonnell and CAS Constructors, LLC., for the final design, construction and start-up of the Hillsdale Water Treatment Plant Expansion Project, in the amount of \$24,795,542.00. (Passed unanimously)
8. Authorized the City Administrator to execute Amendment 1 to Hillsdale WTP Expansion Phase I agreement with Burns & McDonnell-CAS Constructors for easement acquisition support, in the amount of \$28,076.00 (Passed unanimously)