

## OLD BUSINESS

**2008-0302** Request for Approval of an Extension of the Final Site Condominium Plan until July 14, 2015 - Pine Woods Site Condominiums, a proposed 29-unit development on 9.6 acres, located south of Auburn, east of Livernois, zoned R-4, One-Family Residential, L&R Homes, Inc., Applicant  
*(Reference: Memo prepared by Ed Anzek, dated June 13, 2014 and Final Plans had been placed on file and by reference became part of the record thereof.)*

*Present for the applicant was Vito Randazzo, L & R Homes, Inc., 2490 Walton Blvd., Suite 103, Rochester Hills, MI 48309.*

*Mr. Randazzo stated his request, and said that they were working with Engineering through construction plan details so they could move forward. He pointed out that the economy was growing, and he believed that they would break ground soon.*

*Seeing no further discussion, and taking under advisement Chairperson Boswell's comment that the matter had been before them many times previously, Mr. Schroeder moved the following motion, seconded by Mr. Hetrick.*

*Before the vote, Mr. Kaltsounis asked if Raffler Drive had been approved as the internal road name. Mr. Randazzo said that to his knowledge, it was approved, and he did not believe they could change it.*

**A motion was made by Schroeder, seconded by Hetrick, that this matter be Recommended for Approval to the City Council Regular Meeting. The motion carried by the following vote:**

**Aye** 9 - Boswell, Brnabic, Dettloff, Hetrick, Hooper, Kaltsounis, Reece, Schroeder and Yukon

## UNFINISHED BUSINESS

**2013-0264** Request for Recommendation of a Final Planned Unit Development Agreement - City File No. 13-009 - Villas at Shadow Pines, a proposed 28-unit residential development on 9.8 acres located on the north side of South Boulevard, between Adams and Crooks, zoned R-4, One-Family Residential, Parcel No. 15-31-400-018, Shadow Pines, LLC, Applicant  
*(Reference: Memo prepared by Ed Anzek, dated June 13, 2014 and associated documents from the previous meeting at which this item was postponed were placed on file and by reference became part of the record*

thereof.)

*Present for the applicant were Jim Polyzois and Mark Gesuale, Shadow Pines, LLC, 14955 Technology Dr., Shelby Twp., MI 48315; Bill Mosher, Apex Engineering, P.O. Box 1182, Birmingham, MI 48312; and Ralph Nunez, Design Team Plus., 975 E. Maple Rd., Suite 210, Birmingham, MI 48009.*

*Chairperson Boswell announced that the next item was from the meeting from a month ago when it was postponed. He read the requests and asked the applicants to come forward.*

*Chairperson Boswell stated that ordinarily, he would ask Staff or the applicant to give an overview of the plans, but he felt that they had reviewed it fairly extensively previously. He suggested that they take no more than 45 minutes on these items. They held a Public Hearing and discussed it comprehensively, and he recommended that it was time to make some decisions.*

*Chairperson Boswell noted that he had asked Mr. Staran to the meeting because he had a few questions. He brought up a hypothetical situation, although it did involve a real one. If there was an applicant (Person A) and there was a neighbor next door (Person B) who infringed on Person A's property continuously, he wondered who, by law, would be responsible to put an end to that infringement. Mr. Staran said that generally, no one had the right to encroach, infringe or trespass onto a neighbor's property under ordinary circumstances. Chairperson Boswell clarified that under ordinary circumstances, property owner B would be required to put a halt to the infringements. Mr. Staran agreed, unless there was some type of agreement to do differently. Chairperson Boswell asked if the fact that it had gone on for 25 years had any mitigating effect. Mr. Staran answered that it could, but not necessarily. People were required to contain their activities onto their own property. If they were causing something to go onto adjoining property, it could be problematic if they did not have permission to do so. In this particular case, talking about golf balls, it had been uneventful for 20-25 years due to the fact that there had been no development on the subject property. Now that the subject property was proposed for development, the concern had come into focus. Mr. Staran added that the passage of time, in and of itself, should not change the legalities.*

*Chairperson Boswell indicated that the Planning Commission had always tried to promote amity between a developer and his neighbors. That was*

*why, a month ago, the Commission postponed the decisions. He asked the applicants if anything had changed and what possible solutions they had come up with.*

*Mr. Polyzois responded that he had the opportunity to meet with Mr. Mike Bylen, proprietor of the golf course, to discuss many different scenarios that would allow them to co-exist, to try to erase Mr. Bylen's concerns and to address his issues. Mr. Polyzois felt that they had made considerable progress. They had productive discussions in the direction of planting some large trees along the property line, creating some berms that would elevate the trees and to position them in a way that would deter golfers from driving onto the subject site and lead them instead toward the green for hole 11. As it stood, the hole was currently wide open, and a golfer would tend to think that it was an open area that was in play. The trees should help eliminate that, and he believed that Mr. Bylen was in support of that.*

*Chairperson Boswell asked how many trees were proposed. Mr. Polyzois advised that there would be approximately 20. Mr. Nunez added that they would be machine-moved trees, deciduous trees that would probably be 6-8" calipers and 25 feet high. There would be a mix of evergreen trees - some Norway Spruces, which go up to 35 feet high and some White Spruces at almost 25 feet high. They would be working with Mr. Bylen's golf course architect and theirs to look at a grading plan that would elevate the berms and allow the trees to be planted on top of the berms. Mr. Nunez said that they were proposing a six-foot high decorative fence at the entrance way. That would replace the chain link fence there currently that went two feet onto the subject property. Mr. Bylen would like to consider having a balance by having a fence that ran the length of the property line, so golfers would know that they were on private property. Mr. Nunez felt that they could work with Mr. Bylen about the length of the fence.*

*Chairperson Boswell asked if the trees and fence would cost \$40,000.00, a cost estimate discussed at the last meeting, or if there would be something more included. Mr. Nunez thought that the trees alone would cost \$40,000. They were about \$2,000 each to move. Mr. Polyzois advised that Mr. Bylen had indicated that there was a possibility of removing some trees from the golf course and repositioning them to their property line, which would help defray the cost.*

*Mr. Hetrick asked about the tee boxes, and if they would be maintained as they were or adjusted to point people more toward the fairway.*

*Mr. Nunez believed that Mr. Bylen could speak to that a little more, depending on his golf course architect. Mr. Bylen really wanted to start to direct the attention of the golfer towards the west direction by mounting the vegetation as proposed, so the golfer would know where to set a ball versus where the box was now. Mr. Nunez was not sure whether or not Mr. Bylen was looking at modifying the tee boxes. Mr. Polyzois said that the changes they were proposing would certainly reduce the fairway width and further transition the golfer to be more focused on the area they were looking at.*

*Mr. Schroeder asked if the berm and fence would be on the applicant's property or jointly be on both properties. Mr. Nunez explained that the fence would be on the property line; the berms would be on the golf course side. They did not want to have to relocate the cart path, so some of the berming would be on the east side of the cart path, and some on the west. The cart path would continue as it was, and they would be working on the placement of the trees. He remarked that they would be doing surgery to make sure the trees were placed to do the best job. Mr. Schroeder clarified that the cart path was all on the golf course property. Mr. Nunez said that currently, there was one infringement where the golf course was over the property line, but it was about two feet, so they did not feel a need to change the path. They would fence around it.*

*Mr. Schroeder commented that he certainly appreciated the applicant's efforts in working with a problem that was not theirs - that was created by someone else. Mr. Nunez said that he appreciated that, and he said that both parties had come to the table and worked things out. Mr. Schroeder claimed that that, in itself, was an accomplishment. He asked if the applicants had talked with any of the other neighbors. Mr. Nunez said that after last month's meeting, they again looked at the possibility of moving the lots, but shifting units and the road would cause an impact to the neighbor to the south. They had a good working relationship with that neighbor, and there was a land swap, and they got a piece of that neighbor's property, so they did not want to muddle that. There was an issue about indemnification forever on golf balls hitting homes, and he thought that Mr. Polyzois might talk with Mr. Staran about it, but unless everyone around the golf course was required to provide that, he thought it was a little much. They were doing their best to minimize concerns, and he believed they could with the modifications proposed.*

*Mr. Schroeder thought it was a great development, and that the applicants were going above and beyond the call of duty to get things taken care of.*

*Mr. Kaltsounis commended the applicants. He said that the Planning Commission went through these types of situations a lot, and when there were problems between neighbors, they always asked everyone to get together to see how they could come up with solutions. He said that he applauded the applicants for the work that they had done. He asked if the modifications would be included as a condition in the motion for Site Plan recommendation.*

*Mr. Anzek believed that the commitments the applicants were making offsite would be part of the PUD Agreement. Mr. Staran agreed. Mr. Hooper pointed out paragraph 6 h., which would have to be re-written. Mr. Kaltsounis suggested that an added condition should state that paragraph 6 h. shall be re-written to document the proposal put forth at the Planning Commission meeting on June 17, 2014.*

*Mr. Yukon asked the applicants if they had had any discussions with Mr. Bylen about a warranty for the trees. He assumed that there would be a one-year warranty. Mr. Nunez replied that machine-moved trees normally did not come with a warranty; that was why they needed to use a qualified contractor that would not move trees in the wrong time frame. He had been told that after July 15th, evergreen trees could be moved without any problems. Deciduous trees would have to be moved after Labor Day. They would put an additive in the soil, and the trees would be treated beforehand for stress. Mr. Yukon asked what steps would be taken to make sure that the trees were treated or replaced if there was a problem in the first year or two, remarking that he hoped there would not be a problem. He reminded that sometimes, transplanted trees could go into shock. He was curious as to whether there were any discussions regarding that type of event.*

*Mr. Polyzois said that they had really not touched upon that, but he said that he was receptive to incorporating some language regarding a period of time after planting. If a tree died or needed to be replaced, he could render some type of warranty for a year. In the spirit of compromise, he assured that he was willing to do what he needed to make everything work without the need for fencing and to cooperate with Mr. Bylen. Mr. Yukon thought that would be fair.*

*Mr. Staran said that along those lines, the City had a lot of experience through its Tree Conservation Ordinance and tree replacement requirements. Typically, the City required performance and maintenance bonds for two growing seasons. He thought that Mr. Yukon's concerns*

could be addressed by building that into paragraph 6 h. Mr. Nunez mentioned that they would be planting oversized trees versus the normal requirements for replacement trees - three-inch caliper and two credits - and they would like to get some credits banked. They had other projects in the City for which they would like to take advantage of the credits. Chairperson Boswell did not think that should be a problem. Mr. Staran thought it made sense, and he indicated that the City could work with the applicant regarding that. Mr. Anzek pointed out that the Ordinance allowed trees to be planted on public property if they could not be planted on site, and the golf course was City-owned. Mr. Staran agreed.

Mr. Schroeder recalled that when the golf course was developed, there was a great effort made to preserve trees. He doubted whether any of those trees would be picked for replanting. He suggested that it might be worth it to have the City's Forester look at the trees. The Forester could also advise on the health of the trees and the potential for replanting. Mr. Nunez said that normally, if trees were located on the same property, they did not have to be inspected by the Health Department. If they were coming from a site that was not a qualified nursery, they would have to be inspected so they were not bringing in a diseased tree. Mr. Schroeder said that he understood that, but he said that there might be something noticeable with the trees. Mr. Nunez thought that Mr. Bylen was keeping his grounds meticulous, but if the Forester approved it, they could move them onsite. He commented that it would be a lot cheaper. Mr. Schroeder wanted them to understand that it was purely advisory.

Ms. Brnabic knew that the applicants had discussed about \$40,000.00 for the modifications, but she wondered if the applicants had an estimate confirmed. Mr. Nunez talked with a tree remover who told him that the range was \$1,500 to \$2,000, depending on how far he had to transport those trees to the site. They were looking at the high end, and that was how they came up with \$40,000. Ms. Brnabic asked how much the fencing would cost. Mr. Nunez said that he did not have an estimate. It would be a three to five-foot high decorative fence, but he did not have a number. Ms. Brnabic wondered if they would hear from Mr. Bylen, and Chairperson Boswell informed that he had turned in a card to speak.

Mr. Hetrick said that they were talking about what was being done to the golf course, including adding the trees, a fence and perhaps including a warranty, but he did not see where it had been added to the PUD Agreement. He felt that it was important to have the comments documented in the PUD Agreement including the changes Mr. Staran had suggested.

*Mr. Polyzois said that as he indicated at the last meeting, all of Mr. Staran's comments had been incorporated into the new PUD Agreement, except for the timeline for completion. His attorney was going to reach out to Mr. Staran to work on that language. He knew that there would be changes to paragraph 6 h. regarding the scope of the work, so he wanted to get a clear understanding of those factors and then incorporate them into a final agreement. Mr. Hetrick concluded that if the final version had the changes, he would be fine with it.*

*Chairperson Boswell opened the public comments at 7:30 p.m.*

**Michael Bylen, 3600 Pine Trace Blvd., Rochester Hills, MI 48309** *Mr. Bylen stated that he represented Pine Trace Golf Club. He felt that he and the applicants had some substantive and very sincere conversations. He commented that Mr. Polyzois had been very good to work with and had been accommodating. He wished to reiterate a few things that he thought had come up in error. Mr. Bylen advised that when they built Pine Trace Golf Club, they followed the current design recommendations that were then in effect by the Golf Course Architects Association of America and the Urban Land Institute. Those had changed today. Pine Trace was not involved in any way in designing the ball or the club and in no way affected the changes in those recommendations. The applicant's golf course architect said that the environment was safe. Mr. Bylen claimed that contrary to someone else creating an issue for a neighbor, the issue, if it did exist, existed because of the change in technology in golf. They went through a very thorough review from the City of Rochester Hills when they built the course. The Engineering Department, in particular, looked at it very thoroughly. If there was any thought that they built or designed it in an inappropriate way, he felt that they had to recognize that the Engineering Department looked at it closely. If there was anything inappropriate at that time, it should have been flagged. He stated that it was not, in fact, inappropriate for the standards that existed at that time. He said that he was well aware that the Commission could approve whatever it wanted. When he came last month, he was not trying to stop the project. He said that when they got Pine Trace, there were eight homes around the site. When the proposed development and the one to the east were done, there would be over 300 homes adjacent to Pine Trace Golf Club. Some of that development was due to the golf course. In none of those earlier developments had he ever stood before the City in any way raising any issues. He had embraced those developments, as he would the proposed. He has had a very good working relationship with the other developers, and he was developing*

*that type of relationship with the applicants. He advised that he was present to raise a safety concern that existed. Every time he thought they were getting somewhere to mitigate it, and he had a great working relationship with Mr. Staran, he was thinking that the only way to mitigate was to put netting up, which was not anything anyone wanted. They had tried to create a situation that could mitigate, to the greatest degree possible without a net, the occurrence of golf balls going onto the subject site and injuring someone. His main concern was the safety of those individuals. With the questions about liability, the use and the timeframe, he would not deny that 25 years ago a ball flew onto the site, but the occurrence had been much greater in the last 10-15 years with the changes in clubs and balls. When he listened to Mr. Staran's response, he really felt that he (Mr. Bylen) had a liability that he might not be able to remedy with trees. He maintained that there was the dilemma. He had asked for some type of indemnity for the units. He had asked if the units could be moved or eliminated, but that was not an option. They even embraced somehow trying to find out if there could be more units, which was Mr. Staran's idea, and eliminating the first three units. Unfortunately, with the wetlands and the location of the retention, that did not seem to be possible. He said that he appreciated the fact that Mr. Kaltsounis, on a regular occurrence, dealt with disputes between developments and existing neighbors. He felt that some people could assume that this was the first time that such a thing had occurred.*

*Chairperson Boswell said that he was impressed. He thought that Mr. Bylen and the applicants had worked hard, and he thought that the trees would make a difference. If they did not and a net had to be put up, he would be very disappointed. The other alternative would be to make it a par 3 and cut the course by one stroke, although he realized that Mr. Bylen did not want to do that.*

*Mr. Bylen said that it was also mentioned that fill dirt would be brought in. There would be grading costs and some relocation of irrigation and adding irrigation for the new plantings. As far as the trees on site, he had probably planted 500 trees since he came there. There were many trees that could be moved to a good effect. The goal was to try to change the focus as much as possible. He knew that they could not take a driver out of people's hands. If they shortened the tees, it would put it in their hands more because some people would try to hit to the 11th green from a tee shot. He thought that to change someone's focus, it would require more than 20 trees. He knew there was a limit and if they were \$2,000 a piece, he could not, in good conscience, expect the applicants to put in 40 trees in addition to the grading, etc. He indicated that he really had a decision*



to make. He remarked that he would, unfortunately, be calling Mr. Staran again.

Ms. Brnabic asked if Mr. Bylen would be willing to put in additional trees at his expense if he did not feel that 20 would be adequate. Mr. Bylen said that was why he brought up moving trees. If he was going to start to put money out of pocket, he had to have certainty. If he needed certainty, it would be netting. Ms. Brnabic asked Mr. Bylen if he considered netting more desirable than trees. He said that he did not, but he felt that would eliminate the conversation that started everything - the whole liability side of it. It sounded as if it were firmly in his court. Ms. Brnabic asked Mr. Bylen if he considered netting more desirable than modifying hole 11, to which Mr. Bylen disagreed. If he could take care of it short of making it a par 3, he hoped they were finding the means to do that.

Mr. Nunez said that if Mr. Bylen had quality trees on site, it would reduce the cost down from \$2,000. They had to be able to be accessed without destroying the golf course. If they were able to get additional trees within the \$40,000 budget, they would work with Mr. Bylen and try to achieve a better plan. Ms. Brnabic considered it, to some extent, a mutual responsibility. The applicants were making an effort to try to alleviate the safety concerns, but there might be other things that could be done. Mr. Bylen said that he could assure them that if the applicants were going to spend \$40,000, he would be making an effort. There would be a great deal of grading and irrigation movement, and he was confident that the cart path would have to be moved. There was also restoration involved. He would make the commitment to keep the property in excellent shape. Even with what the applicants were proposing, it would not be costless to the golf course. They had talked about \$60,000 and a four-foot fence, not a three-foot fence.

Mr. Kaltsounis mentioned that he was looking at a map on line of Pheasant Ridge, and he remarked that his golf balls had hit plenty of houses there. When he looked at the houses he hit, he saw dimples and marks, so he was not the first person that did that. He would probably not walk over there to get his ball - he commented that it would be embarrassing. Mr. Bylen had noted that there were organizations that proposed designs for courses, and Pine Trace could not be the only golf course that faced this problem. Mr. Kaltsounis was sure that there were agreements and proposals in the same types of situations, so Mr. Bylen was not alone. Mr. Bylen agreed he would not make the assertion that he was. Mr. Kaltsounis suggested that Mr. Bylen could reach out to those other groups and golf course architects to see how they handled it. Mr.

*Bylen said that he made a point in his most recent letter that there were many golf courses that had netting along their borders between the courses and residential. In fact, on the third hole at Pine Trace, there was netting and six telephone poles between that hole and the homes, because reality ended up being different than the design. Mr. Kaltsounis observed that living next to a golf course was like living next to a highway. People know what they would be dealing with, and he was sure that people that purchased in the subject development would know that, too.*

*Mr. Bylen thought that they might want to look beyond just the occurrence of the golf ball hitting a house or a person. They had to look at what would happen after that. Some people forgot very quickly that they bought a house on a golf course. His concern was the potential for confrontation. That was why he felt that it was critical that there was a barrier. He dealt with the public every day, and they were ever demanding. They oftentimes were very difficult and probably did not want to hear an attorney's response - they wanted a different type of response. That was the only reason he was concerned. He reiterated that he could not care less that the development was going in. Mr. Kaltsounis said that he applauded the two parties getting together and discussing it and coming up with a proposal he felt would definitely help. Mr. Bylen asserted that Mr. Polyzois was a very good man and very good to work with. They had competing interests, of course, but he felt that they were both sincere and did the best they could. Mr. Polyzois added that they would continue to work with each other throughout the whole process.*

*Mr. Staran said that in further answer to Mr. Kaltsounis' question and supplementing what Mr. Bylen said, it was not unusual to have golf courses adjacent to or aligned with homes along fairways. There were many people who considered that a very desirable situation. However, it was not something done randomly; it had to be done in a harmonious and safe way. He thought that it involved a number of components. It involved golf course design, design of the adjacent property, and it involved some thought to the building materials to prevent broken glass and dimples on a home. From a legal liability standpoint, it was certainly not unusual to have other provisions built in, such as easements to allow golfers to safely retrieve their golf balls. Sometimes hold harmless types of provisions were built into deeds and restrictions to make it crystal clear that people knew what they were in for. Actually, though, he considered that people always knew what they were in for until someone got bonked on the head with a golf ball and then all was forgotten, and the plaintiff's attorney would take a much different approach to the situation. There were a number of things on the front end with draftsmanship of*

documents, for example, that could help mitigate and protect everyone involved in the end. He thought that further discussion was needed, but it sounded as if there was a great deal of progress made so far toward the most important thing, i.e., working toward making it a safer situation. He stated that the safer the situation, the better the protection there would be against liability.

Mr. Bylen asked when the provisions would take place. He asked how that was done in the approval process, and if it was done prior to approval by Council. Mr. Staran noted that the PUD Agreement was still a work in progress, and he expected that they would be addressing the modifications in that. If they were addressed before the City Council meeting, Council would still have the final say.

Mr. Polyzois stated that he wanted to be clear that the provisions regarding assumption of risk, deed restrictions and indemnification were not things he was looking to incorporate into the PUD Agreement. He would be open to talking with his attorney about it, however. Mr. Staran said that he had never met the applicants before or had any discussions with them or their attorney; it was just a concept discussion. Obviously, the applicants needed to talk with their attorney. Mr. Polyzois said that he would talk with Mr. Bylen about whether there was some kind of language that could work for everyone. Mr. Staran said that it was not something that was novel or unique; he knew that there were a number of projects all over the country where those types of things had been done. Ultimately, it had to work for the developer, and they had to market a product that could be sold. Hopefully, they could try to craft many good ideas and work towards a solution together.

Chairperson Boswell said that he wondered about offering a condition for the PUD Agreement motion: "Re-write paragraph 6.h. to reflect this evening's discussion, as approved by Staff." He asked if that was appropriate. Mr. Staran thought that was fine. Staff (which included Mr. Staran) recognized that City Council would make the final decisions.

Ms. Brnabic said that due to the discussion, it sounded as if a four-foot fence would discourage people a little more. Mr. Nunez said that would be fine. Mr. Polyzois said that they would be landscaping the back property line with shrubs and trees also.

**David Ashland, 5378 Hertford Dr., Troy, MI 48085** Mr. Ashland advised that he was a resident of Troy. He stated that he had no interest in the construction of the project and no interest in managing the golf course.

*However, he was interested in becoming a resident of the development. When he heard the discussion, it left him with several concerns. The major one was that putting up trees 35 feet in height might, but might not, necessarily prevent the raining of golf balls on the condos. He commented that he had played the course many times, and he was a hacker. He had hit beautiful shots on the fairway, and he had also hit high shots which tended to slice and go to the right. He had hit balls that would well clear a 35-foot high tree, even if it was on a berm. He had heard no discussion about what the trees would do, in terms of prevention of the problem and the risk that Mr. Bylen referred to. He had also seen, on hole number three, balls bounce off the netting, which safely protected the property owners. On hole number three, an errant shot to the left could very easily go into a neighbor's property on the other side of the netting. He wondered if the golf course architects had taken a look, considering modern technology, at ball trajectories from a variety of golfers. He wondered if they were really addressing the problem with the proposed solutions. He would not be surprised if netting was required. He hoped that it was not, but he would like to see an analysis on a variety of golfers - how far into the development the netting would have to go and how might balls be at risk of clearing a 25-foot high tree. He noted that he was an engineer, and he would like to see an engineering architectural analysis of the problem. He stated that he really did not think that the problem had been addressed. He thought that Mr. Bylen's point was very well taken. The question of risk was still there, and he did not think that the question of risk had been addressed, except superficially. He said that he hoped he was wrong. If someone could present data that solved the problem, he maintained that he would be very happy. Someone had mentioned that there could be easements for golfers to retrieve their balls. He contended that no property owner would want an easement so a golfer could come onto his back yard. He reiterated that he did not think the questions had been addressed, except by a lot of words that might make some people feel better, but he did not feel better about it. If the questions could not be addressed at the meeting, he felt that they needed to be addressed before any final commitment was made on the project.*

*Chairperson Boswell explained to Mr. Ashland that at the last meeting, the Planning Commission had a review from a golf course architect, who said that by making certain modifications, the hole would be safe. They also had another golf course architect say that it would not really. The question about whether what was proposed would actually make things safe could perhaps not be answered. He thought that the closer the trees were to the tee, the more it would be forcing the driver to go to the left. One golf course architect showed a cone where the balls were supposed*

to land, and it did not involve the applicant's property. Mr. Bylen's architect said that was not exactly true. The Commissioners listened to experts, but they did not know the outcome exactly, and that was why Mr. Bylen was concerned. His architect said one thing, and the applicants' architect said something a little different. Chairperson Boswell did not think there would be an easement allowing someone to get a golf ball from someone else's property.

Mr. Staran said that he mentioned it as something that could be discussed, but he was not implying it would address any of the safety concerns that had been discussed.

Mr. Ashland said that a cone measuring where balls were supposed to land was a wonderful way to analyze something, but many golfers might not hit a ball within a cone. That was the crux of the problem. Sometimes people popped balls up, even 100 feet high, and those balls could come down very inappropriately. He knew that the architect said it was fine, and he acknowledged that he was not a golf course architect. He was a golfer who had played at the course for 15 years, and he knew hole 11 very well. He knew that there would very likely be a risk for people. He would hate to see the hole redesigned, but if it meant losing a stroke, he would not want that discarded when it could solve a lot of the risk issues. He mentioned again that he did not think the problem had been thoroughly addressed, and he said that he wanted to express that as a potential homeowner. He did not think that people moved on a golf course willingly taking on a certain amount of risk. He thought they moved there not realizing there might be a certain amount of risk. He felt that it was the responsibility of the builder, golf course owner and the City to come up with a good solution.

Hearing no further discussion, Mr. Kaltsounis moved the following motion, seconded by Mr. Dettloff.

**A motion was made by Kaltsounis, seconded by Dettloff, that this matter be Recommended for Approval to the City Council Regular Meeting,. The motion carried by the following vote:**

**Aye** 9 - Boswell, Brnabic, Dettloff, Hetrick, Hooper, Kaltsounis, Reece, Schroeder and Yukon

**MOTION** by Kaltsounis, seconded by Dettloff, in the matter of City File No. 13-009 (Villas at Shadow Pines PUD), the Planning Commission **recommends** that City Council **approves** the PUD Agreement with the following five (5) findings and four (4) conditions.

**Findings:**

1. *The proposed final PUD is consistent with the proposed intent and criteria of the PUD option.*
2. *The proposed final PUD is consistent with the approved PUD concept plan.*
3. *The PUD will not create an unacceptable impact on public utility and circulation systems, surrounding properties, or the environment.*
4. *The proposed PUD promotes the goals and objectives of the Master Plan as they relate to providing varied housing for the residents of the City.*
5. *The proposed plan provides appropriate transition between the existing land uses surrounding the property.*

Conditions:

1. *The revisions noted in item 1 under Review Considerations, above, be incorporated into the PUD Agreement prior to signing and executing the PUD Agreement.*
2. *The appropriate sheets from the approved final plan set shall be attached to the PUD agreement as exhibits, including the building elevations.*
3. *All other conditions specifically listed in the Agreement shall be met prior to final approval by Staff.*
4. *Revise paragraph 6H to reflect the discussion at tonight's (June 17, 2014) meeting, including the issue of trees, as approved by Staff and the City Attorney, prior to the City Council meeting. (Discussion can be read in the Minutes from this meeting).*

*Mr. Reece observed that if they were looking for 100% certainty in all of this, short of putting a fence up or short of making the hole a par 3, which he assumed had been discussed and found not to be a viable alternative, the netting seemed to be the only sure thing. Even with that, he was sure there would be the occasional golfers who could pop something over netting. He mentioned that he played with a guy the day before who, on occasion, could easily have done that. If making the hole a par 3 was out of the question, they had to take reasonable precautions to make sure*

*that what they did gave them a good opportunity. It would not prevent the most obscure, errant shot. It would be a challenging par 3 over the water, but it did not sound like it was an option, anyway.*

*Mr. Hetrick added that both the golf course operator and the developer seemed to agree that putting up trees, a fence and a berm would provide a level of mitigation, at least reasonable enough so that the safety of the people buying the condos along the course line would be safer in their purchase. The other piece was that Mr. Bylen said that there were trees on his property he could add to the 20. While they might not be 40 feet tall, they would certainly allow for additional mitigation of errant shots. He agreed with Mr. Reece that they could not stop someone from hitting the ball way up in the air and dropping it down by someone's condo. However, the things that had been discussed would, at least to the best of their ability, put something in place that the developer and the operator of the golf course agree would mitigate the risk of having golf balls land on people's decks.*

*Chairperson Boswell called for a Voice Vote, and stated for the record that the motion had passed unanimously.*

**2014-0180** Request for a Tree Removal Permit - City File No. 13-009 - Villas at Shadow Pines, to remove and replace as many as 138 regulated trees associated with the construction of a 28-unit residential development on 9.8 acres located on the north side of South Boulevard between Adams and Crooks, zoned R-4, One Family Residential, Parcel No. 15-31-400-018, Shadow Pines, LLC, Applicant

*Mr. Kaltsounis noted that 147 trees would be removed, and he suggested that perhaps they could find some homes for some of them. It was agreed to add conditions two and three to the pre-printed motion in the packet.*

**MOTION** by Kaltsounis, seconded by Yukon, in the matter of City File No. 13-009 (Villas at Shadow Pines PUD), the Planning Commission **grants a Tree Removal Permit**, based on plans dated received by the Planning Department on April 8, 2014, with the following three (3) findings and subject to the following three (3) conditions.

**Findings:**

- 1. The proposed removal and replacement of regulated trees on-site is in conformance with the Tree Conservation Ordinance.*
- 2. The applicant is removing up to 147 regulated trees from the site.*

3. *The applicant is proposing to provide 160 replacement credits.*

Conditions:

1. *All tree protective fencing must be installed, inspected and approved by City Staff, prior to issuance of a Land Improvement Permit.*
2. *That the applicant makes every effort to move viable trees to the golf course.*
3. *That the applicant is entitled to future credits for trees planted on the golf course.*

**A motion was made by Kaltsounis, seconded by Yukon, that this matter be Granted. The motion carried by the following vote:**

**Aye** 9 - Boswell, Brnabic, Dettloff, Hetrick, Hooper, Kaltsounis, Reece, Schroeder and Yukon

*Chairperson Boswell stated for the record that the motion had passed.*

**2014-0179**

Request for Recommendation of a Wetland Use Permit - City File No. 13-009 - Villas at Shadow Pines, for impacts to approximately .47 acres for a proposed 28-unit residential development on 9.8 acres located on the north side of South Boulevard between Adams and Crooks, zoned R-4, One Family Residential, Parcel No. 15-31-400-018, Shadow Pines, LLC, Applicant

***MOTION*** by Kaltsounis, seconded by Yukon, in the matter of City File No. 13-009 (Villas at Shadow Pines PUD), the Planning Commission **recommends** City Council **approve a Wetland Use Permit** to impact approximately .476 acre for the construction of several units, the detention pond and a portion of the roadway and its utilities, based on plans dated received by the Planning Department on April 8, 2014, with the following three (3) findings and subject to the following four (4) conditions.

Findings:

1. *Of the approximately 2.4 acres of City-regulated wetlands on site, the applicant is proposing to impact approximately .476 acres.*
2. *The impacted areas consist of two narrow fingers which extend off the main body of the wetland, and areas at the perimeter of the wetland. Wetland Fill Area 2 is proposed to accommodate a forebay, which is part of the stormwater management system.*



3. *The applicant has minimized potential wetland impact by incorporating a retaining wall to the north of units 9-11A and along the east side of Trace View Drive.*

Conditions:

1. *That the applicant receives all applicable DEQ permits prior to issuance of a Land Improvement Permit.*
2. *That the applicant provides a detailed soil erosion plan with measures sufficient to ensure ample protection of wetlands areas, prior to issuance of a Land Improvement Permit.*
3. *Investigate the possibility with Staff regarding further reduction of wetland impact by means of constructing a permanent barrier at the limits of the impacts, such as a fieldstone/boulder wall or other decorative and highly visible barrier, prior to Final Approval by Staff.*
4. *Verification by ASTI that conditions from the April 21, 2014 letter are addressed on revised site plans prior to final approval by Staff.*

**A motion was made by Kaltsounis, seconded by Yukon, that this matter be Recommended for Approval to the City Council Regular Meeting,. The motion carried by the following vote:**

**Aye** 9 - Boswell, Brnabic, Dettloff, Hetrick, Hooper, Kaltsounis, Reece, Schroeder and Yukon

**2014-0210** Request for Final Site Plan Approval Recommendation - City File No. 13-009 - Villas at Shadow Pines

***MOTION*** by Kaltsounis, seconded by Schroeder, in the matter of City File No. 13-009 (Villas at Shadow Pines PUD), the Planning Commission **recommends** that City Council **approve the Site Plans**, dated received April 8, 2014 by the Planning and Development Department, with the following five (5) findings and subject to the following four (4) conditions.

Findings:

1. *The site plan and supporting documents demonstrate that all applicable requirements of the Zoning Ordinance, as well as other City ordinances, standards and requirements can be met subject to the conditions noted below.*

2. *The location and design of driveways providing vehicular ingress to and egress from the site will promote safety and convenience of both vehicular and pedestrian traffic both within the site and on adjoining streets.*
3. *There will be a satisfactory and harmonious relationship between the development on the site and the existing and prospective development of contiguous land and adjacent neighborhoods.*
4. *The proposed development does not have an unreasonably detrimental, nor an injurious, effect upon the natural characteristics and features of the parcels being developed and the larger area of which the parcels are a part.*
5. *The proposed Final Site Plans promote the goals and objectives of the Master Plan that the City provides a variety of housing.*

Conditions:

1. *All remaining engineering issues identified in the memo dated April 28, 2014 be addressed prior to issuance of a Land Improvement Permit.*
2. *All comments from Fire Department memo dated April 23, 2014 to be addressed prior to final Staff approval of the plans.*
3. *Addressing all remaining site plan items in comments 1 and 3 under Review Considerations, above, in this letter prior to final site plan approval being granted.*
4. *Provision of a performance guarantee in the amount to be determined based on the landscaping cost estimate to be submitted, as adjusted if necessary by the City, to ensure the proper installation of trees and landscaping. Such guarantee to be provided by the applicant prior to issuance of a Land Improvement Permit.*

**A motion was made by Kaltsounis, seconded by Schroeder, that this matter be Recommended for Approval to the City Council Regular Meeting,. The motion carried by the following vote:**

**Aye** 9 - Boswell, Brnabic, Dettloff, Hetrick, Hooper, Kaltsounis, Reece, Schroeder and Yukon

*Chairperson Boswell stated for the record that both motions had passed unanimously, and he wished the applicants good luck.*