

**MINUTES OF PLANNING COMMISSION MEETING
CITY OF KENNESAW
Council Chambers
(2529 J.O. Stephenson Avenue, Kennesaw, GA 30144)
March 4, 2026
6:30 PM**

1. Call to Order / Roll Call

Chairman Bodenhamer called the meeting to order at 6:31 p.m.

Roll Call: Trey Bodenhamer, Todd Vande Zande, Robert Trim, Douglas Butler

Absent: Carolyn Greenall and Rebecca Patterson

Staff Present: Chanelle Campbell (Director of Planning and Zoning), and Rebecca Goldstein (Community Development Administrative Assistant)

Speakers Present: Matt Teague (Applicant, Director of New Development at Walton Communities), Bill Daniel (Cobb County resident), Alexis Daniel (Cobb County resident), Jim Martin (Marietta resident), Stephen Snow (Attorney, Cedar Creek Professional Office Association), Charles Barge (Applicant, President of Cedar Creek Professional Office Association), Adam Rozen (Attorney, DRB Group)

2. Announcements

- A. All interested parties may attend the meeting at the City Hall Council Chambers. For those unable to attend in person, the meeting may be accessed using the following link: <https://www.kennesaw-ga.gov/publicmeetings/>. Please note that the Planning Commission serves as an advisory board that makes recommendations to the Mayor and Council unless otherwise noted.
- B. Pending zoning applications may be viewed on an interactive map via the Planning & Zoning webpage or using the following link: <https://arcg.is/1q1ubX0>.
- C. New business items on this agenda will be heard by the Mayor and Council on March 16, 2026.

3. Approval of the Meeting Minutes

- A. Approval of meeting minutes: February 4, 2026

Chairman Bodenhamer called for a motion.

Motion to approve by Commissioner Trim

Seconded by Vice Chair Vande Zande

Chairman Bodenhamer proceeded with a roll call for approval.

Vote taken, motion unanimously approved 3-0. Motion carried.

4. Old Business

- A. **RZ2026-01** - Consideration to rezone the properties located at 1600 Old 41 Hwy and 0 Old 41 Hwy (parcel #20021200130 & 20021201560) from General Commercial (GC) and RM-12, Multiple-Family District to RM-16, Multiple-Family District as submitted by Walton Communities, LLC. Said request is to rezone the property for the development of a multi-family residential community. Property consists of 11.44 +/- acres and lies in land lot 140, tax parcels 13 & 156.

Ms. Chanelle Campbell presented this agenda item. This is a rezoning request submitted by Walton Communities, LLC. This item was postponed from the February agenda and is now before the Planning Commission for consideration. The applicant is seeking to rezone approximately 11.44 +/- acres to RM-16, Multi-Family Residential to allow the development of a new multifamily residential community. In addition to the rezoning, the application is requesting a variance to reduce the parking ratio from 1.75 spaces per unit to 1.5 spaces per unit. Ms. Campbell noted that staff would present both items as a single presentation, but each item would need to be voted on separately.

The properties are currently zoned General Commercial (GC) and RM-12, Multi-family Residential. The applicant is seeking to consolidate the lots and rezone it to RM-16. The original submittal proposed 182 units, but the actual number of units will be less because Section 1.09.02 of the Unified Development Code (UDC), defines developable acreage as excluding rivers, streams, floodplains, and natural lakes not created by man-made dams, reduces the developable land on the lot. When the undevelopable acreage was removed from the 11.44 +/- acres, the number of allowable units was reduced. As part of the current proposal, access to the site will be limited to interparcel connectivity through Ridenour Boulevard. The existing curb cut on Old 41 Highway will be closed to improve pedestrian connectivity to the Legacy at Walton Kennesaw Mountain, 62+ community. The site is surrounded by a mix of commercial, retail, office, and residential uses, and the comprehensive plan designates the property as Community Activity Center (CAC). The site also lies within the Ridenour Area, which envisions a multi-use environment combining four-story multi-family houses, and retail. This area is characterized by high density development, elevated building pads along Barrett Parkway and distinctive colorful architecture and facades. The combination of steep terrain, floodplain impacts, and limited access creates unique and extraordinary physical conditions not commonly found on surrounding properties. This parcel has seen multiple unsuccessful developments over the years due to the challenges and constraints mentioned above. Staff finds the proposed multifamily development to be an appropriate use for the site given its future land use and surrounding context. The same constraints also impair the reasonable use of the property under standard zoning requirements meeting the threshold for consideration of a variance. For these reasons, staff recommends approval of the variance and approval of the rezoning request with eleven conditions.

Public Notice of the applications was provided by advertisement in the Marietta Daily Journal (MDJ), and postage of signage on the property. Ms. Campbell stated that staff received a letter of opposition to the case on February 6, 2026. She announced that the

attorney of record was unable to attend due to a scheduling conflict, but Matt Teague, with Walton Communities, would be available to answer any questions. Ms. Campbell also announced her availability to answer questions.

Chairman Bodenhamer invited the applicant to speak on the application.

Mr. Matt Teague introduced himself as affiliated with Walton Communities. He explained that Walton Communities has been in the community since 2004 with Walton Ridenour apartments, a 238 affordable apartment development adjacent to the site. Walton Communities also built the Legacy at Kennesaw Mountain, which is also adjacent to the site. Mr. Teague expressed that Walton Communities was committed to the area and was excited to complete a third phase in the area. He stated that he would be available to answer any questions.

Chairman Bodenhamer opened the floor for public comment.

Mr. Bill Daniel introduced himself as a resident of Kennesaw. He stated that he was in opposition to the plans presented by Walton. He stated his main objection is because he does not believe there is a shortage of apartment buildings. He provided the Commissioners with an aerial map of the area which indicated the location of the proposed rezoning, the Publix, which is the only grocery store servicing the nearby apartments, and fourteen apartment complexes. He argued that the number of apartment complexes on the map, the number of apartment complexes with "Now Leasing" signs and two recently built apartment complexes in downtown Kennesaw meant there is not a shortage of housing. He stated that he did not see a need for housing. Mr. Daniel also expressed concern that the apartment complex would bring approximately 341 new tenants to the area and would add to traffic. He cited current traffic problems on Barrett Parkway, Stilesboro Road, Old 41 Highway, and Cobb Parkway. He also expressed concern that additional traffic would increase travel time to Kennestone Hospital. He stated that it can take 30 to 40 minutes to get to Kennestone Hospital, which is 3.6 miles away. He acknowledged that the traffic study indicated that the traffic impacts of the new development would be minimal, but found the results hard to believe. Mr. Daniel expressed his belief that the development would have a negative impact on residents and businesses. He stated that the Publix serving the area already has insufficient parking. He asked how Publix and the surrounding restaurants would manage the additional residents. Mr. Daniel summarized that he was concerned about the impact on residents, the impact on traffic, and the strain on businesses.

Mrs. Alexis Daniel introduced herself as wife to Mr. Bill Daniel. She stated that they live in The Reserve off Old 41 Highway where the complex is slated to be built. She explained that they moved to Kennesaw less than four years ago for a quieter, suburban quality of life with more space, more trees, and a safer environment. She stated that she was opposed to the rezoning because of the negative impact on traffic, the area's infrastructure, and the character of the community. She explained that Old 41 Highway, Barrett Parkway, Highway 41, and Stilesboro Road, all major thoroughfares to access the interstate, saw significant traffic during the morning, evening, and school pick-up times. She expressed concern that the additional trips added by the apartment

complex would increase congestion, accident risk, and emergency response delays. Mrs. Daniels understood that the complex would be built by Walton and acknowledged that the developer had done a nice job on other developments in the area, but was concerned about the stress the apartments would place on existing infrastructure. She commented that in the last four years, two townhome complexes and three apartment complexes were built near their home without any new grocery stores, pharmacies, parks, or schools to help with the influx of residents. Mrs. Daniels again expressed concern that without plans to expand infrastructure, the apartments would strain existing resources and add more residents to an area she believed to be designed for a low-density, suburban lifestyle. Mrs. Daniels also commented that the development would bring environmental and character impacts. She stated that the vacant lot currently acts as a natural buffer that provides green character, absorbs noise, and manages stormwater runoff. She argued that clear-cutting for a dense, multifamily complex would remove the buffer, increase the environmental impact, increase the noise impact on nearby homes, and destroy the residential character of the area. She requested that the Planning Commission deny the rezoning request due to the increased traffic, strain on local services, and a permanent loss of character. She thanked the Commission for listening to the people the development would impact the most.

Mr. Jim Martin introduced himself as a local attorney with a Kennesaw address that lives in the Marietta city limits. He stated that his understanding of the proposed rezoning was that it was a request to change the density to a higher density. His understanding was that the apartments could currently be built at a lower density. He apologized if he was incorrect, stating that he was not a real estate attorney. Mr. Martin claimed that the proposed access to the property was through a property owned by Cobb County. He stated that his brief research indicated that the property had previously been owned by Walton Communities but was now a non-taxable area for the City of Kennesaw. He asked if the property would only be accessed through Ridenour Boulevard. He commented that several developments have been proposed for the location but never happened but assumed that mixed use was appropriate for the site. He expressed his opinion that the subject property was a terrible piece of property, in part because it is adjacent to a high voltage power line. He agreed with Mr. Daniels that there was not a shortage of apartment housing, explaining that few single-unit residential homes were visible from Old 41 Highway. He also claimed that the City of Kennesaw had just annexed thirty-two acres for an apartment complex. He urged the Planning Commission to deny the zoning request for the reasons expressed by Mr. Daniel and Mrs. Daniel.

Hearing no additional public comment, Chairman Bodenhamer closed the floor for public comment and opened the floor to Commissioner comments and questions.

Vice Chair Vande Zande asked staff if Mr. Martin's statement that the density would increase with the proposal was accurate. He asked if the number of units decreased but the density increased. Ms. Campbell responded that one of the properties the applicant is seeking to rezone is zoned RM-12, but that the larger property is zoned General

Commercial (GC). She stated that the applicant is requesting to combine the parcels and rezone them to RM-16, which allows for a higher density. She explained that the actual unit count on the property would be significantly lower due to topography and floodplain challenges.

Commissioner Trim asked if the future land use on the property was CAC. Ms. Campbell responded in the affirmative. Commissioner Trim asked if CAC called for mixed use. Ms. Campbell again responded in the affirmative. Commissioner Trim sought clarification as to whether the proposal included a commercial component. Ms. Campbell responded that the CAC calls for a collection of mixed use, commercial, and residential uses. She explained that Ridenour already has a commercial component that is adjacent to the west portion. She stated that additional commercial uses were located along Barrett Parkway.

Ms. Campbell addressed the concerns expressed during public comments about the potential strain on commercial properties. She was skeptical that the businesses would see additional customers as a strain. She stated that staff included requirements for pedestrian connectivity along Old 41 Highway in the conditions. She explained that the condition could potentially reduce traffic because individuals would utilize sidewalks to access the surrounding businesses.

Commissioner Trim asked how far Whole Foods was from the site. Ms. Campbell stated that the Whole Foods was along Barrett Parkway and was about half a mile from the property. Commissioner Trim asked if there were two grocery stores within half a mile. Ms. Campbell responded in the affirmative.

Commissioner Butler asked if access to the property was through Ridenour Boulevard. Ms. Campbell responded in the affirmative. Commissioner Butler asked if the stipulations included measures to prevent access from Old 41 and Barrett Parkway directly. Ms. Campbell responded in the affirmative. She explained that a curb cut had previously been built on Old 41 Highway with the intention of using it as an access point to the property. She stated that the curb cut would be closed off, and the sidewalks would be connected due to traffic concerns.

Commissioner Butler asked if the remaining, smaller parcel would remain undisturbed. Ms. Campbell responded in the affirmative. Ms. Campbell oriented the Commissioners to where on the site the apartment complex would be located due to the presence of the floodplain. She explained that the trees in the flood zone would remain in place and that the developed area would be outside the flood zone.

Chairman Bodenhamer commented that he appreciated the feedback on the case. He reminded the public that the Planning Commission's role was not to deny or approve applications. He clarified that the Commission makes recommendations to Mayor and City Council and stated that Mayor and Council would approve or deny the application. He explained that the Commission's decision was taken into consideration but was not the final word on the case.

Chairman Bodenhamer called for a motion.

Motion by Commissioner Trim to approve with the following conditions as outlined by staff:

1. The rezoning of the Subject Property to RM-16, Multifamily zoning district shall be in accordance with the technical and conceptual site plans submitted concurrently with the application and shall comply with the required front, side, and rear setbacks, as well as the overall density as outlined in the UDC for RM-16 zoning district.
2. The architectural style and composition of the buildings to be constructed on the Subject Property shall be in reasonable conformity to the architectural renderings/elevations submitted with the application and compatible with surrounding development with the Ridenour/ Walton development.
3. Landscaping for the entrance area, signage areas, amenity and courtyard areas and all other common areas immediately surrounding the proposed buildings shall be professionally designed, implemented and maintained, which shall include the installation of an irrigation system in areas where appropriate.
4. Compliance with the recommendations from the City Engineer and/or the City's Public Works Director regarding detention, water quality and stormwater management.
5. The applicant will be required to complete sidewalk connectivity along Old 41 Highway, extending the pedestrian network from the existing Legacy at Walton Kennesaw Mountain (62+) community.
6. The proposed community shall utilize the City or Cobb County; utility services as is typical for such residential development.
7. All utilities servicing the residences with the proposed community shall be underground.
8. The proposed development shall include amenities for use and enjoyment of its residents as follows:
 - a. A Clubhouse
 - b. Community courtyards, gathering places, outdoor amenity space
 - c. Pedestrian connectivity
9. Dumpsters will be positioned so as to prevent visual intrusion from streets, connection points to the community spaces and, wherever possible with screening by landscaping, walls and/or vegetation. Dumpsters shall have rubber lids and bumpers to minimize noise during their emptying.
10. Minor modifications to the within and foregoing stipulations/conditions, lighting, landscaping, signage, architecture, site fixtures and the like may be approved by the City's Planning and Zoning Administrator or staff designee as needed or necessary.
11. The applicant agrees that construction will begin in 24 months of the approval date of the rezoning. If no land development activity is initiated, then the subject property will automatically revert back to the original zoning.

Seconded by Vice Chair Vande Zande

Chairman Bodenhamer proceeded with a roll call for approval.

Vote taken. Vice Chair Vande Zande, Commissioner Trim, and Commissioner Butler voted in favor. Motion unanimously approved 3-0. Motion carried.

5. New Business

- A. **ZV2026-01** - Consideration of a variance application submitted by Walton

Communities LLC for the properties located at 1600 Old 41 Hwy and 0 Old 41 Hwy (parcel # 20021200130, 20021201560). Said variance request is to reduce the minimum parking requirement for multi-family dwelling units from 1.75 spaces per dwelling unit to 1.5 spaces per dwelling unit. Property consists of 11.44 +/- acres and lies in land lot 140, tax parcel 13 & 156.

Ms. Chanelle Campbell presented this agenda item. This is a variance request submitted by Walton Communities, LLC. The request is to reduce the parking ratio from 1.75 spaces per unit to 1.5 spaces per unit. Due to the challenges of the topography, the floodplain, and other constraints on the site, staff recommends approval of the variance as submitted. The application for the variance adheres to the stipulations and requirements as outlined in section 9 of the Unified Development Code (UDC).

Chairman Bodenhamer asked if the 1.75 ratio was based on the number of units on the parcel. Ms. Campbell responded that the requirement is 1.75 per unit per the UDC regardless of how many units are proposed. She stated that the ratio was the requirement for the number of parking spaces in a multifamily development. Chairman Bodenhamer asked for staff's recommendation for the variance. Ms. Campbell responded that staff recommended approval of the variance application. Chairman Bodenhamer asked if there were any stipulations. Ms. Campbell responded that there were no stipulations.

Chairman Bodenhamer invited the applicant to speak. Mr. Matt Teague stated that he had no further comments.

Chairman Bodenhamer opened the floor to public comment. Hearing no public comment, he closed the floor to public comment.

Chairman Bodenhamer opened the floor for Commissioner comments and questions.

Commissioner Butler commented that the applicant mentioned the project was an extension of The Walton at Ridenour. He asked the developer if the proposed development would have a similar mix of apartment styles targeting the same residential base as the adjacent development or if the anticipated clientele was different. Mr. Teague responded that it was undecided. He stated that the larger community of The Walton at Ridenour is an affordable community and that The Legacy is for active adults over 62. He stated that they were requesting zoning for multi-family with no stipulations on age or income. He also stated that the style of the buildings would be very similar to the other communities.

Hearing no additional Commissioner comments, Chairman Bodenhamer closed the floor to Commissioner comments.

Chairman Bodenhamer called for a motion
Motion to approve by Vice Chair Vande Zande
Seconded by Commissioner Butler
Chairman Bodenhamer proceeded with a roll call for approval.

Vote taken. Vice Chair Vande Zande, Commissioner Trim, and Commissioner Butler voted in favor. Motion unanimously approved 3-0. Motion carried.

- B. **RZ2026-03** - Consideration to amend the zoning conditions as outlined in Ordinance # 2006-20 as submitted by Cedar Creek Professional Office Association, Inc., - Alan Barge for the property located at 6095 Pine Mountain Rd (parcel # 20014001470). Said request is to amend the zoning conditions outlined in Ordinance # 2006-20 to eliminate stipulation #14. Property consists of 2.88 +/- acres and lies in land lot 140, tax parcel 147.

Ms. Chanelle Campbell presented this agenda item. This is a rezoning application submitted by Cedar Creek Professional Office Association Inc, in the care of Alan Barge, and their representative, attorney Stephen Snow. The application contains a request to amend the rezoning conditions approved under Ordinance # 2006-20, specifically eliminating condition number 14, which requires interparcel access and shared access drive. In 2006, Mayor and Council rezoned the 2.88 +/- acre parcel from General Commercial (GC) and R-20, Single Family, to Highway General Business to support the development of what is now known as the Cedar Creek Professional Center. At the time, the subject parcel and the adjacent 8.823+/- acre tract were under the same ownership with the intent to expand the office complex across both properties. The first office building was completed in 2008, and continues to operate with multiple professional tenants. On February 16, 2026, the Mayor and Council approved the rezoning of the 8.8 +/- acre tract from HGB to Planned Unit Development - Residential (PUD-R) submitted by DRB Group Georgia, LLC for the development of 89 for-sale townhomes. Mayor and Council added the condition that the development would provide two access points to the proposed subdivision. The applicant's request to remove or modify the required access point would limit the functional use of the parcel for future development, thus reducing opportunities for shared circulation. The applicant's request also runs counter to the established policy framework that encourages coordinated access management along the corridor. For these reasons, staff recommends denial of the request. On February 5, 2026, staff received a letter of opposition. On March 4, 2026, staff additionally received a constitutional challenge. Public notice was provided through an advertisement in the Marietta Daily Journal (MDJ) and postage of signage on the property. Ms. Campbell announced that staff and the attorney of record, Mr. Snow, would be available to answer any questions.

Mr. Stephen Snow asked for a moment to review the constitutional challenge.

Chairman Bodenhamer asked if the applicant was looking to remove one of the two points of entry into the area. Ms. Campbell responded that the condition explicitly states that interparcel access and shared access drive shall be designated with adjoining vacant property once future development of adjoining parcel is pursued. She stated that the applicant is requesting to remove access to Pine Mountain Road. Commissioner Trim explained that the office park is trying to stop a second point of entry. Ms. Campbell further explained that there are currently two points of entry to the property, one through King's Crossing and one through the shared access drive that leads onto Pine Mountain Road.

Mr. Stephen Snow stated that he had previously presented to the Planning Commission and Mayor and City Council on behalf of Cedar Creek Professional Office Association. He sought to clarify the applicant's position. Mr. Snow stated that the applicant was no longer seeking to eliminate access to Pine Mountain Road as the request was deemed moot by the decisions of the Planning Commission and City Council. Instead, the applicant is seeking a clarification that no further action is required to be taken of Cedar Creek Professional Office Association with respect to the access point. He explained that the access drive had already been designed and constructed per the requirements of stipulation fourteen. Mr. Snow requested a recommendation from the Planning Commission that no further action is going to be required for Cedar Creek to comply with stipulation fourteen.

Mr. Snow stated that at the prior City Council meeting, an additional stipulation was added that required the planned development by DRB to have two access points. He stated that the applicant agreed with City Council that two access points were necessary. He explained that the applicant did not want DRB to end up with only a single access point through their property to Pine Mountain Road. He stated that there had been numerous meetings on whether DRB's development needed one or two access points. He commented that it was not lost on him that a larger apartment complex was just recommended for approval with one access point when two access points were available. He stated that like the proposed townhomes, the traffic study for the proposed apartment complex at 1600 Old 41 Highway stated that the development would have no impact. He questioned the legitimacy of the traffic study. Mr. Snow explained that he made the comparison because the cases had similar concerns, but the City was taking opposite approaches in stating that DRB's development needed two access points but other developments only needed one access point despite being twice the size.

Mr. Snow argued that decisions made by the Planning Commission and City Council were decisions to selectively enforce or selectively not enforce the stipulations in Ordinance # 2006-20. He stated that the ordinance specifically places conditions and requirements on the subject property, which is the 2.8 +/- acres that Cedar Creek sits on, and then specifically talks about the development project as being the entire 11.78 +/- acres. He stated that the ordinance talks about the entire development as the "subject development", talks about the 2.8 +/- acres as the "subject property", and talks about the adjacent property to be developed as the "future development". He claimed that the ordinance places specific requirements on the future development that were disregarded by the Planning Commission and City Council to allow the rezoning and currently planned development for the site. Mr. Snow provided several examples of conditions in Ordinance # 2006-20 that were not applied to DRB's new development including architectural standards, a forty-foot buffer, themed lighting in line with the architecture, muted lighting at the back of the property, dumpster locations, and no overnight parking. He claimed that only stipulation 14 of the Ordinance, which states that interparcel access and shared access drive shall be designed with adjoining vacant property once future development of the adjoining vacant property is pursued, was being enforced. Mr. Snow requested the Planning Commission delete stipulation 14 or

provide a recommendation to City Council that the access drive has been built, and no further action is required of Cedar Creek in further assisting the proposed development. He stated that DRB could use the private drive, as they were required to have two access points, but that Cedar Creek Professional Office Association should not be required to take further action to comply with stipulation 14.

Chairman Bodenhamer opened the floor to public comment

Mr. Adam Rozen introduced himself as the representative for DRB Group and stated that he had represented them in their rezoning application last month and their opposition to the current rezoning application. Mr. Rozen stated that he wanted to address why the access requirement and the stipulations of Ordinance # 2026-20 are binding on the applicant's property but not on DRB's property. He stated he also wanted to address why they believe DRB's application was appropriately approved and why removing this stipulation from Ordinance # 2006-20 is not appropriate. Mr. Rozen stated that DRB Group submitted an objection letter that outlined their opposition and concerns with the request. He explained that their rezoning hearing last month involved discussions of traffic, circulation issues, and reasons why DRB felt two access points were appropriate. City Council took the recommendations of the Planning Commission and staff and approved the application while adding the condition that DRB would need two access points. He stated that one of the concerns raised by Cedar Creek was that they might be left as the only access point. He explained that when City Council mandated that DRB have two access points, they required DRB to prove to the city that they have both access points to develop the property, thereby addressing one of Cedar Creek's main concerns. He stated that they heard again from Cedar Creek the suggestion that DRB should be left with only one access point, despite City Council's decision. Mr. Rozen then asserted that the points being made by Cedar Creek and Cedar Creek's objection to DRB's rezoning application were inaccurate. He claimed that the conditions in Ordinance # 2006-20 were binding only on the two-acre property. He acknowledged that there was a plan in 2006 that showed the eight acres, but stated that City Council could only have taken legislative action on the two-acre parcel when the application was heard in 2006. Mr. Rozen claimed that it was not selective enforcement to enforce the conditions on the two-acre property regarding access requirements and that it was not selective enforcement to not enforce the Ordinance conditions on DRB's eight acre property. Mr. Rozen asserted that while the ordinance gave DRB the benefit of access by binding Cedar Creek's two acres, DRB was not bound by the prior case. Mr. Rozen then moved to Cedar Creek's claim that the language in the Ordinance required access per stipulation 14 only if the future development was an office complex. He commented that stipulation 14 did not specify that the future development had to be pursued for office. He stated that prior to the rezoning, the property had been zoned for HGB with no conditions, which would have allowed multiple different uses aside from office. Mr. Rozen shifted his comment to discuss traffic and circulation issues regarding the property's access. He stated that since 2006, City Council had the vision and wisdom to know access to Pine Mountain Road made sense for this property from a traffic perspective and to ensure the property was not landlocked. He stated that DRB believes that both access points benefit the

property. He also stated that having two access points helps with traffic on Pine Mountain Road and Highway 41, and that limiting or removing the second access point would create conflicting traffic movements.

Mr. Snow interrupted public comment to state that the applicant was not taking the position that they were trying to limit the proposed development to a single access point as it had been mooted by the City Council's decisions. He stated that they were not seeking to eliminate a second access point.

Mr. Rozen responded that he thought the application was to remove the condition. Ms. Campbell stated that the applicant's presentation conflicted with their zoning application, which was to strike condition 14 from Ordinance # 2006-20. She stated that staff made a presentation and analyzed the application based on the request to strike condition 14. She explained that what the attorney was presenting was not the implication of what was outlined in their application. Ms. Campbell stated that if it was no longer the applicant's intent to request the removal of stipulation 14, then the submitted application was invalid and would have to be resubmitted to align with the actual request.

Commissioner Trim asked if there was any reason to remove stipulation 14 if the requirements have been met. Ms. Campbell responded that there was not a reason to remove the stipulation. Commissioner Trim commented that if stipulation 14 was removed, the property owner would have the right to put up a gate or other obstructions because the road would then be private with no stipulations. He asked if removing stipulation fourteen would remove the applicant's responsibility to make sure that the access road is designed and in place a second access point. Ms. Campbell stated that removing the stipulation could potentially allow the applicant to remove or block access. Commissioner Trim stated that it would be a problem to remove stipulation 14 because access that has been granted cannot be taken away if it was active. He commented that the hearing felt like a waste of the Commission's time because it was clear the applicant was presenting the case because they lost the vote on the last zoning case.

Ms. Campbell requested to pause for ten minutes as the applicant's presentation was not in line with what staff prepared. She stated that staff did not know what the applicant current intent was and requested additional time to discuss with the applicant. Chairman Bodenhamer stated that it would a good time to pause public comment to understand what the applicant is trying to accomplish.

Mr. Snow clarified that they submitted their rezoning application prior to the Planning Commission meeting and City Council meeting when DRB's rezoning application was heard as part of their objection to the rezoning. He stated that in the intervening time, the Commission had made a recommendation to City Council that generally moots the underlying point of eliminating access. He explained that the applicant is not requesting to eliminate access as the City Council ruled that there needs to be two access points. Mr. Snow stated that the request was to remove stipulation 14 because it had already been satisfied. He expressed that the applicant does not want to be required to make

additional improvements and upgrades to the road. He reiterated that stipulation fourteen had been satisfied, is no longer necessary, and no longer needed to exist.

Chairman Bodenhamer announced that a ten-minute recess would be taken to figure out the situation and reconvene with the proper staff recommendation.

Following the recess, Chairman Bodenhamer asked where the application stands with staff. Ms. Campbell stated that based on their discussions, it is the applicant's request to move forward with the request to remove condition 14. She stated that if the request was denied, then the applicant would request a recommendation that they met their conditions for stipulation 14 and that nothing else is required on their part.

Chairman Bodenhamer asked if there were currently two points of entry to the property. Ms. Campbell responded that there were physically two points of entry but currently no official easements. She stated that DRB is now tasked with obtaining documentation to obtain easement access.

Chairman Bodenhamer reopened the floor to public comment and invited Mr. Adam Rozen to continue.

Mr. Rozen thanked the Commissioners for the additional time. He commented that Cedar Creek's view was that they fulfilled their responsibilities for stipulation 14 by building the road. He noted that private easement work still needed to be completed and that building a road was not the same as providing access. He stated that removing the condition because the road has already been built forgets that the purpose of the stipulation is interparcel access. Mr. Rozen acknowledged that there was a difference between the real estate and easement issues and requested that the issue not be made worse by removing the access condition. Mr. Rozen presented to the Planning Commission the Plan Review Committee checklist for 6205 and 6095 Pine Mountain Road that was discovered and presented to City Council but not the Planning Commission at last month's rezoning hearings. He directed the commissioners to signatures, notes, mark-ups, and stamps by staff that verified an access easement was in place, referenced recorded and unrecorded parking easements, identified the location of shared access, and approved Land Disturbance Permit plans. He explained that both properties came to the City and agreed to the access condition in order to build. He stated that now that the buildings were built and have earned income, Cedar Creek wants to deny DRB access use. He expressed that they wanted to get along with Cedar Creek but found it difficult to ignore that Cedar Creek does not want to grant access. Mr. Rozen stated that they wanted access to build what they think is a good development and get rid of what has been a blight for the City. He requested that the Planning Commission follow staff's recommendation and deny the application.

Chairman Bodenhamer asked if there was any additional public comment. Hearing no additional public comment, he closed the floor to public comment and opened the floor to Commissioner comment.

Chairman Bodenhamer asked who maintains the entrance road off of Pine Mountain

Road, if the road was maintained by any municipality, and if the road was going to remain private. Ms. Campbell responded that the road would remain a private road. She expressed the City's hope that the property owners will come up with an agreement for cost and maintenance of the easements.

Commissioner Trim asked if the stamped approved plans shown on screen gave the applicant the authority to start construction. Ms. Campbell responded that the document shown on screen was the site plan review process for Fivestar Building Solutions. Commissioner Trim asked if the documents were stamped, signed, and approved plans for the two existing office buildings. Ms. Campbell responded in the affirmative. Commissioner Trim asked if the plans allowed the applicant to move forward with building. Ms. Campbell responded that the document was a checklist of items from 2016 that needed to be fulfilled based on staff review. She explained that one of the requirements was access location that was met during the review process. Since those conditions were met, the developer was able to obtain the necessary documents to move forward with the development.

Commissioner Trim asked if it was Ms. Campbell's understanding that it was the intent of the city at the time to ensure access to the back parcel. Ms. Campbell stated that based on the notes and illustration, that intent was implied. Commissioner Trim asked what remedies were available if the applicant refused access to the back parcel. Ms. Campbell responded that the City had legal ramifications to go against the applicant for not fulfilling the requirements for condition 14 if they did not allow access. She noted that infrastructure for both the 2.88 +/- and 8.82 +/- acre properties, including sewer access and a detention pond, is shared and that not allowing access would negatively impact the property owner of the 2.88 +/- acres. Ms. Campbell expressed that the intent of the development and the site was for the properties to coexist with a shared access, detention pond, and sewer.

Commissioner Trim asked the applicant if he was the original builder or developer. Mr. Charles Barge responded that he was not. Commissioner Trim asked if the applicant researched the details prior to purchasing the property. He asked if the applicant was aware of the checklist and the sign-off. Mr. Barge responded that the drawing was for 6205 Pine Mountain Road, and it had nothing to do with 6095 Pine Mountain Road. He stated that he had never seen the drawing before and stated that the access easement for the rear of the property could be for Bank of America and did not know what verifying access easement to the rear property referred to. Commissioner Trim stated that the Commission was told a similar checklist goes with the applicant's property. Commissioner Trim asked the applicant if, during his research prior to purchasing the property, he learned about the document and expressed comments or concerns when it was discovered. Mr. Charles Barge responded that he did not research it.

Mr. Stephen Snow stated that the applicant would withdraw the rezoning application. Commissioner Trim asked staff if the applicant was allowed to withdraw or if the Commission needed to move forward. Ms. Campbell requested a five-minute recess. Chairman Bodenhamer stated that a five-minute recess would be permitted.

After returning from the five-minute recess, Ms. Campbell stated that since the applicant requested to withdraw the application, the Planning Commission would have to make a motion to recommend the withdrawal with or without prejudice and then vote on it. The recommendation would then continue to Mayor and Council. Commissioner Trim asked if the Planning Commission had to vote on the request to withdraw or if they could continue and deny the request. Ms. Campbell stated that the Commission could vote on either but that the applicant put in a request to withdraw and the Planning Commission would have to make a decision on the request.

Chairman Bodenhamer called for a motion to deny the request, approve the request, or approve the request to withdraw.

Motion to deny the rezoning request by Commissioner Trim

Motion dies for lack of a second. Chairman Bodenhamer called for a new motion.

Motion to approve the request to withdraw without prejudice by Vice Chair Vande Zande

Seconded by Commissioner Butler

Chairman Bodenhamer proceeded with a roll call for approval.

Vote taken. Vice Chair Vande Zande, Commissioner Trim, and Commissioner Butler voted in favor. Motion to approve the request to withdraw without prejudice unanimously approved 3-0. Motion carried.

Ms. Campbell stated that in their presentation to Mayor and Council, staff would note that the applicant requested the withdrawal of their application and that the Planning Commission recommended approval for the request for the application to be withdrawn.

6. Staff Comment

Ms. Campbell stated that staff had no additional comment. She welcomed Commissioner Butler to the Planning Commission, congratulated him on his new position, and thanked him for his time.

7. Adjourn

Chairman Bodenhamer called for a motion to adjourn.

Motion to adjourn by Vice Chair Vande Zande

Seconded by Commissioner Butler

Chairman Bodenhamer adjourned the meeting at 7:53 p.m.