



**MINUTES
CITY OF CREVE COEUR
CITY COUNCIL
300 NORTH NEW BALLAS RD
APRIL 13, 2015
7:00 PM**

CALL TO ORDER

A regular meeting of the City Council of the City of Creve Coeur was called to order by Council Mayor Glantz at the Creve Coeur Government Center, 300 N. New Ballas Road on Monday, April 13, 2015 at 7:00 p.m.

PLEDGE OF ALLEGIANCE

Mayor Glantz led the Pledge of Allegiance.

INVOCATION

Mayor Glantz gave an invocation.

ROLL CALL

Mayor Glantz	
Mr. Kreuter	Council Member Ward I
Ms. Kramer	Council Member Ward I
Mrs. Lawrence	Council Member Ward II
Mr. Wang	Council Member Ward II
Mrs. D'Alfonso	Council Member Ward III
Mr. Hoffman	Council Member Ward III
Mr. Saunders	Council Member Ward IV
Mr. Kent	Council Member Ward IV

COMMENTS FROM THE GENERAL PUBLIC

(Citizens are asked to limit comments to three minutes and to complete a speaker card)

No one requested to speak.

ACCEPTANCE OF THE AGENDA

Council Member Saunders moved, seconded by Council Member Hoffman to accept the agenda as presented, with the vote upon such motion, as follows:

Council Member Kramer – Aye
Council Member Lawrence – Aye
Council Member Hoffman – Aye
Council Member D'Alfonso – Aye
Council Member Saunders – Aye
Council Member Kent – Aye
Council Member Wang – Aye
Council Member Kreuter – Aye

The vote on the motion being 8 ayes and 0 nays, motion carried.



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ANNOUNCEMENTS

*The City Council meets the 2nd and 4th Monday of each month
6:00 p.m. - 7:00 p.m. - Work Session
7:00 p.m. - Regular Meeting of the City Council*

PRESENTATION - TREE INVENTORY UPDATE

Josh Behounek of the Davey Resource Group explained that this project was funded in part by an urban forestry grant from MDC cost-share program. Program was broken into three Phases each completed in a different year. He discussed the benefits trees provide to the city and the threat of the Emerald Ash Borer. He reviewed the recommendations from the group and how the City can move in the future to maintain public trees. He indicated the City's trees are one of the best he has ever inventoried.

Fran Canter HEB Chair stated the HEB Committee needs the Council/city to allocate funds for this effort to manage the trees properly. Linda Rezny commented that trees near Panera need protection.

CONSENT AGENDA

Council Member Hoffman moved, seconded by Council Member Wang to accept the consent agenda as presented.

1. Council Minutes Dated March 23, 2015

Mayor Glantz called the question for the approval of the consent agenda as presented, with the vote upon such motion as follows, to-wit:

Council Member D'Alfonso – Aye
Council Member Hoffman – Aye
Council Member Lawrence – Aye
Council Member Kramer – Aye
Council Member Kreuter – Aye
Council Member Wang – Aye
Council Member Kent – Aye
Council Member Saunders – Aye

The vote on the motion being 8 ayes and 0 nays, motion carried.

BILLS PAYABLE REPORT

For Information Only

Summary: A report of bills payable dated April 9, 2015 in the amount of \$381,656.80 has been provided for Council review. No vote is required.

UNFINISHED BUSINESS



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2. Amended Bill No. 5532 - an Ordinance Authorizing a Master Sign Plan for DeSmet Jesuit High School Located at 233 N. New Ballas Road and Zoned "B" Single Family Residential. Applicant Has Requested Withdrawal.

City Clerk read Amended Bill No. 5532 and indicated that the applicant has requested to withdraw.

Council Member Wang stated that his wife is a part time teacher at DeSmet and recused himself from the dais.

Council Member Hoffman moved, seconded by Council Member D'Alfonso to accept the withdrawal request from the applicant, with the vote upon such motion being, as follows:

Council Member Kreuter – Aye
Council Member Kent – Aye
Council Member Saunders – Aye
Council Member D'Alfonso – Aye
Council Member Hoffman – Aye
Council Member Lawrence – Aye
Council Member Kramer – Aye

The vote on the motion being 7 ayes and 0 nays, motion carried.

Council Member Wang returned to the dais.

3. Bill No. 5542 - an Ordinance Amending the Residential Code for One- and Two-Family Dwellings of the City of Creve Coeur. Final Reading and Passage

City Clerk read Bill No. 5542 for the final time.

Council Member Saunders moved, seconded by Council Member Lawrence to approve Bill No. 5542, with the vote upon such motion being, as follows:

Council Member Saunders – Aye
Council Member Kent – Aye
Council Member Wang – Aye
Council Member Kreuter – Aye
Council Member Kramer – Aye
Council Member Lawrence – Aye
Council Member Hoffman – Aye
Council Member D'Alfonso – Aye

The vote on the motion being 8 ayes and 0 nays, motion carried. Bill No. 5542 becomes Ordinance No. 5420.

4. Bill No. 5543 - an Ordinance Amending the Plumbing Code of the City of Creve Coeur, Missouri. Final Reading and Passage

City Clerk read Bill No. 5543 for the final time.

Council Member Hoffman moved, seconded by Council Member Kramer to approve Bill No. 5543, with the vote upon such motion being, as follows:



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Council Member D'Alfonso – Aye
Council Member Hoffman – Aye
Council Member Lawrence – Aye
Council Member Kramer – Aye
Council Member Kreuter – Aye
Council Member Wang – Aye
Council Member Kent – Aye
Council Member Saunders – Aye

The vote on the motion being 8 ayes and 0 nays, motion carried. Bill No. 5543 becomes Ordinance No. 5421.

5. Resolution No. 1158 - a Resolution of the City Council of the City of Creve Coeur, Missouri, Authorizing the Execution of a Contract with N. B. West Contracting Company for a Thin Asphalt Overlay in the Belle Coeur Neighborhood as Part of the Street Repair Program for the 2015 Fiscal Year for \$98,920.00.

City Clerk read Resolution No. 1158.

Council Member Wang moved, seconded by Council Member Kramer to approve Resolution No. 1158.

Matt Wohlberg made a presentation regarding this contract and an update from last meeting.

Council Member D'Alfonso asked how long is this overlay expected to last.

Matt Wohlberg stated eight to ten years.

Council Member D'Alfonso stated she doesn't feel that this is necessary right now due to unpredictability of estimates for combination streets.

Council Member Kent asked what will happen if we wait a year.

Matt Wohlberg stated it will deteriorate but not beyond repair.

Council Member Kent stated he is concerned if we are getting the best use of funds at this time and is this the most deserving street.

Council Member Hoffman stated we are planning to spend \$100,000 on a street that doesn't need immediate repair.

Jim Heines stated the pavement program employs the best practices used from the APWA (American Public Works Association) and each year funding is placed in several categories and placed on streets that have been identified by staff.

Council Member D'Alfonso stated if this is voted up or down, that doesn't mean that Laduemont is going to get the funding that isn't used for this project.



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Michael Thomas resident of Laduemont stated he wants to see funds used prudently. Funds could be used in other places in the city.

David Hilton resident of 323 Laduemont stated the long range plan of pavement preservation needs to be created and implemented.

George Andrea resident of 12802 Oak Stone Lane stated after the Mayor, staff and Council Members met to view the physical street, within 24 hours the street crews were out patching the worst holes. Street still needs to be repaired and wants tax dollars being used in the best places.

Ryan Madden resident of 324 Laduemont stated the residents are asking that Laduemont gets attention soon as it is one of the highest traveled streets in the city.

Council Member Kent stated he would like to have more context in the street program and would like to see values of other streets.

Mark Perkins stated the street preservation program is part of the street maintenance program, and it is not strictly a "worst first" program.

Mayor Glantz called the question to approve Resolution No. 1158, with the vote upon such motion as follows, to-wit:

Council Member Kramer – Nay
Council Member Lawrence – Nay
Council Member Hoffman – Aye
Council Member D'Alfonso – Nay
Council Member Kreuter – Aye
Council Member Wang – Aye
Council Member Kent – Nay
Council Member Saunders – Nay

The vote on the motion being 3 ayes and 5 nays, motion failed.

NEW BUSINESS

**6. Bill No. 5544 - an Ordinance Authorizing the Issuance of a New Conditional Use Permit for Used-Only Automotive Dealer at 10640 Gateway Boulevard.
First Reading**

City Clerk read Bill No. 5544 for the first time.

Michael Bower applicant made a presentation regarding the application.

Council Member Wang asked if there were other businesses in the area similar to this.

Paul Langdon stated there is another business that is sales and a private collection.



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7. Bill No. 5545 - an Ordinance Authorizing the Issuance of a New Conditional Use Permit for an Outpatient Psychiatric Center Located at 10199 Woodfield Lane in the "GC" General Commercial District. First Reading

City Clerk read Bill No. 5545 for the first time.

Franco Sicuro, M.D. or 10199 Woodfield Lane made a presentation regarding this application.

Paul Langdon made a presentation regarding this application.

Carl Lumley stated that he and staff have included an additional condition in the ordinance to address the lighting and landscaping on the site consistent with the applicant's representations to Planning and Zoning.

8. Bill No. 5546 - an Ordinance Repealing Ordinance Nos. 1454, 1487 and 2083 and Authorizing the Issuance of a New Conditional Use Permit for a 5,162 Square-Foot Eating and Drinking Establishment with Drive-Thru Facilities Located at 447 North New Ballas Road Within the Balmoral Plaza Shopping Center. First Reading

City Clerk read Bill No. 5546.

David Hutkin made a presentation regarding this application.

Patrick Bennett made a presentation regarding this application.

Council Member D'Alfonso submitted an email for the record. (Exhibit A)

Council Member Wang submitted a letter from Mr. Flaherty for the record. (Exhibit B)

Doug Shatto made a presentation for this application regarding the traffic study.

Phil Wentz made a presentation for this application regarding the sound study.

Mike Turnquest owner/operator of the Panera stated this would increase employees during peak times by three to five people.

Council Member Wang asked if the drive thru would increase traffic by fifteen percent.

Mike Turnquest stated the fifteen percent increase would be in sales when adding a drive thru. Mr. Turnquest stated the addition of the drive thru we are trying to address the change in the use in business trends.

Council Member Wang stated he feels the increase in traffic generated is going to be greater than fifteen percent.

Stephen Kling, Jr. attorney for the applicant made a presentation regarding this application.

Paul Langdon made a presentation regarding this application.

Carl Lumley asked if the plan dated in the packet is the correct date as discussed at P & Z and the new updated plans.



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Paul Langdon stated some dates may still need correction.

Scott Sanders resident of 508 Randy Drive stated he has concerns with the increase in noise, traffic, trash, etc and the residents are feeling as if it is the citizens against the city. There are no city residents that are for this drive thru change. There have been no discussions regarding sight lines and there are too many unanswered questions.

Jack Trout resident of 11955 Randy Drive read the letter from Mr. Flaherty as submitted to the record by Council Member Wang. (Exhibit B)

Mayor Glantz stated he would like to make it clear that the text amendment is city wide and for any commercial property that could install a drive thru near a residential area. The text amendment was not written specifically for this site.

Linda Rezny resident of Graeser Acres stated more studies need to be completed as this site has more of a canyon effect opposed to the other sites that have been examined. More meetings with residents and the applicant are needed to answer more questions.

Mel Klearman resident of 739 Bergerac Drive stated drive thrus are the trend and Hutkin is a valued commercial citizen for Creve Coeur.

David Hutkin stated he did not go out and solicit approval of residents but referenced recent survey results.

Council Member Lawrence thanked Mr. Hutkin for his very thorough presentations regarding this application.

Council Member Lawrence moved, seconded by Council Member Kramer to amend the drive thru time to begin at 7:00 a.m. instead of 6:00 a.m.

Council Member Lawrence also stated she would like to propose that the screen sound wall cover all three homes to accurately cover the 200ft requirement in Section 405.070. Mr. Langdon and Mr. Lumley stated that the code does not require a 200 feet long wall.

David Hutkin stated the sound wall is not required but a promise was made to erect it as shown in the plans.

Council Member Kramer asked if Mr. Hutkin could review the honeysuckle issue.

David Hutkin stated the city has a honeysuckle eradication program and will remove if the city wishes but if it is removed then the Mr. Flaherty will have a clear view of the back of the building during the winter months with low foliage. Mr. Hutkin indicated that he would not go on private property and remove it so Mr. Flaherty would be responsible for removing from his own property.

Paul Langdon stated any removal will increase view of the site and the areas that have been removed will grow back quickly.

Council Member Hoffman asked if the city is forcing removal.



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Paul Langdon stated the city is not forcing Mr. Flaherty.

Council Member D'Alfonso stated she would like the city and the applicant to have a discussion with Mr. Flaherty regarding the honeysuckle removal.

Mayor Glantz called the question to amend the drive thru time to begin at 7:00 a.m. instead of 6:00 a.m., with the vote upon such motion as follows, to-wit:

Council Member Kreuter – Aye
Council Member Wang – Aye
Council Member Kent- Aye
Council Member Saunders – Aye
Council Member Kramer – Aye
Council Member Lawrence – Aye
Council Member Hoffman – Aye
Council Member D'Alfonso – Aye

The vote on the motion being 8 ayes and 0 nays, motion carried.

9. Resolution No. 1161 - a Resolution of the City Council of the City of Creve Coeur, Missouri, Authorizing the Execution of a Contract Increase with M&H Concrete Contractors, Inc., for the 2015 Roadway Reconstruction Project for the Amount of \$97,459.20.

City Clerk read Resolution No. 1161.

Council Member Wang moved, seconded by Council Member Hoffman to approve Resolution No. 1161.

Matt Wohlberg, City Engineer, explained how the conditions along the two streets involved with the project (Spoede Woods Drive and Chalet Court) were worse than expected once the surface asphalt was removed. City staff reviewed the situation and recommended the full replacement of the streets with concrete, rather than repairing the concrete base and repaving with asphalt. Although staff estimated that the full replacement of the streets would save the City money in future repairs, the change in the scope of the project resulted in an increase of \$97,459.20 in the project. City staff recommended full reconstruction and the resulting change order.

Councilwoman D'Alfonso and Councilman Kent expressed their concern that the decision to pursue full reconstruction had already been made and that this request follows a pattern of staff asking for additional funds during the course of the project. Both asked staff to consider additional planning so to avoid this situation in the future.

Mayor Glantz called the question the question to approve Resolution No. 1161, with the vote upon such motion as follows, to-wit:

Council Member Kreuter – Aye
Council Member Wang – Aye
Council Member Kent – Aye
Council Member Saunders – Aye



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Council Member D'Alfonso – Aye
Council Member Hoffman – Aye
Council Member Lawrence – Aye
Council Member Kramer – Aye

The vote on the motion being 8 ayes and 0 nays, motion carried.

APPOINTMENTS

J. Director of Recreation

Mark Perkins stated that the city received over 100 applications for the position of Director of Recreation. Mark Perkins stated after several interviews he is recommending Jason Valvero for the position of Director of Recreation whom is currently employed with the City of Kirkwood. Mr. Valvero is scheduled to begin work here on May 1st.

Council Member Wang moved, seconded by Council Member D'Alfonso to approve Jason Valvero as the new Director of Recreation, with the vote upon such motion, as follows:

Council Member Saunders – Aye
Council Member Kent – Aye
Council Member Wang – Aye
Council Member Kreuter – Aye
Council Member Kramer – Aye
Council Member Lawrence – Aye
Council Member Hoffman – Aye
Council Member D'Alfonso – Aye

The vote on the motion being 8 ayes and 0 nays, motion carried.

BUSINESS FROM MAYOR AND CITY COUNCIL

11. Council Liaison Reports

Council Member Kent stated the Storm Water Committee met on April 8 and reviewed flooding and erosion driveway/bridge damage at 6 Windrush Creek which is worsening. The committee reviewed other city residential storm water regulations and will email the staff those items that need to be used in the Creve Coeur draft revision by May 8th. Council Member Kent stated Sunswep Drive has a problem and will be reviewed on the tour, which will be on June 10th at 4 p.m. Council Member Kent stated staff has indicated that MSD is receptive to working together on the sanitary sewer project in conjunction with the city's culvert project to accomplish a hopefully, one-time cost for both parties.

Council Member Kent stated Parks and Historic Preservation Committee met on April 1st. Tour of the historic cabins is scheduled for June 13th. Plans have been discussed regarding the Tappmeyer House and a \$50,000 annual budget to cover repairs. Arbor Day events are scheduled for April 26 and the Annual Heart to Heart run is scheduled for June 6.

Council Member Wang stated the subcommittee of the Arts Committee picked the winners of the art competition for the children's Arbor Day.



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12. Street Program

Council Member Kent read and presented for the record his proposal on the street program.
(Exhibit C)

Tim Madden resident of 324 Laduemont stated he feels the city needs to look at this plan and the plan needs to have examples of the ratings. There needs to be a set plan and schedule so that the residents understand where their streets stand in the program.

BUSINESS FROM CITY ADMINISTRATOR

13. Trash Schedule

Mark Perkins stated the city has an agreement with Allied/Republic requiring a schedule change. Republic has indicated now that making the change presents a man power issue. Discussions will continue to resolve the issue.

Council Member Hoffman stated there shouldn't be any issues, but the public has to be educated on the changes.

Council Member D'Alfonso stated education is the key to a successful program.

Mark Perkins stated he is working on a concession on yard waste bag/tag fee increases also.

Council Member Wang moved, seconded by Council Member Kramer to adjourn at 10:23 p.m., with the vote upon such motion begin as follows:

Council Member Kreuter – Aye
Council Member Wang - Aye
Council Member Kent – Aye
Council Member Saunders – Aye
Council Member D'Alfonso – Aye
Council Member Hoffman – Aye
Council Member Lawrence – Aye
Council Member Kramer – Aye

The vote on the motion being 8 ayes and 0 nays, motion carried.

Submitted by:

Deborah Ryan
City Clerk

Barry Glantz
Mayor

Ryan, Deborah

From: Charlotte Dalfonso [charlottedalfonso@gmail.com]
Sent: Friday, April 10, 2015 4:13 PM
To: Ryan, Deborah
Subject: Fwd: ward 3 update

Debby,
I will ask on Monday to add this email to the record.
Thanks,
Charlotte

Sent from my iPhone

Begin forwarded message:

From: Bob Gale <rpgale@sbcglobal.net>
Date: April 10, 2015 at 12:17:02 PM CDT
To: "hoddman@aol.com" <hoddman@aol.com>, Charlotte Dalfonso <charlottedalfonso@gmail.com>
Subject: Re: ward 3 update
Reply-To: Bob Gale <rpgale@sbcglobal.net>

Bob & Charlotte,

As a constituent, I wish to go on record as being against the addition of a Drive Thru for the Bread Company on Ballas Road. The parking lot is already too congested in its current configured and adding more traffic will only cause more problems. The proposed configuration has the handicap parking on the same side as the proposed lane for the traffic.

Bob Gale
161 Royal Manor Ct.

From: "hoddman@aol.com" <hoddman@aol.com>
To: hoddman@aol.com
Sent: Thursday, April 9, 2015 5:41 PM
Subject: ward 3 update

Ward 3 Update

April 9, 2015

Bob Hoffman Council Member

Dear Neighbors,

Our meeting Monday is scheduled to begin at 7pm. As always, the complete agenda and packet are available at the city's web site www.creve-coeur.org.

Unfinished business:

- 1) Amended bill 5532 authorizing a master sign plan for DeSmet is being withdrawn at the applicant's request.
- 2) Bill 5542 amending the residential code to allow for wireless interconnection of smoke detectors and changes to gasketed fireplace doors.
- 3) Bill 5543 amending the plumbing code to ease conditions on required venting.
- 4) Resolution 1158 authorizing a contract for a thin asphalt overlay in the Belle Coeur neighborhood for \$98,920.00

New Business:

- 1) Bill 5544 authorizing a new conditional use permit for a used car dealership at 10640 Gateway Blvd.
- 2) Bill 5545 authorizing a conditional use permit for a psychiatric center at 10199 Woodfield Lane.
- 3) Bill 5546 authorizing a conditional use permit for a drive thru at 447 North Ballas Rd. for the Bread Company.
- 4) Resolution 1161 authorizing a contract increase of \$97,459.20 for roadway reconstruction.

I know you may be tired of hearing about trash but Republic is requesting that we retain the present schedule for ward 3 and ward 4 pickups on Thursday and Friday respectively. Stay tuned.

Charlotte and I will be hosting a ward3 town hall meeting on May 20th at 7pm. All are welcome.

As always please call or email.576-4885.

Bob Hoffman

April 10, 2015

City Council
City of Creve Coeur Missouri
300 North Ballas Road 63141

RE: Application for Conditional Use Permit for St. Louis Bread Company at 447 N. New Ballas Road and site development plan to allow for Drive-Thru Services

Hello, my name is Joe Flaherty and I live at 11921 Rocky Drive. This is the first home on the right when entering BALMORAL subdivision from Ballas or the home that is immediately behind the current PANERA location and the home that is most impacted due to the pending Conditional Use Permit being contemplated on Monday April 13, 2015. Unfortunately I cannot attend the meeting so I am sending a letter in regards to my thoughts and input on this proposal.

I did show up at the Planning Commission meeting on Monday April 6, 2015 and I have to admit that I am very disappointed with how quickly this was moved forward by the commission. There were many open questions that were not addressed and at the end of the day the applicant received everything they asked for with the residents of BALMORAL being totally dismissed in all of their concerns. Actually there was a some outright rude responses from the commission to residents of BALMORAL and every representative from the applicant was awarded as much time as they wanted (over 1 hour and 20 minutes) to present while the most impacted people were only allowed 3 minutes and cut off if they exceeded that time frame. People in our subdivision are upset and honestly are losing faith in their elected officials to protect their rights. I need to remind all that BALMORAL Subdivision was here quite a while before PANERA was here and the investment into our residential homes is substantial.

I have spent some time reading the draft ordinance on this application and I want to point out some very specific items in this draft ordinance that lead anyone to believe that this application does conflict with the ordinance that is being presented with these highlights:

- **“will not cause substantial injury to the value of neighboring property”**
- **“will be comparable with the surrounding area and thus will not impose an excessive burden or have a substantial negative impact on surrounding or adjacent users or on community facilities or services”**
- **“drive thru operations 7:00 am to 9:00 pm”**
- **“An underground irrigation system shall be installed and maintained to serve all new landscaped areas”**

A drive thru will impact the value of not only my home value but the other 3 residential homes in BALMORAL that border the shopping center. Any refuting evidence or comments from the applicant that this is NOT true cannot be believed as they are only self serving to the applicant and PANERA.

4/13/15
Exhibit B

A drive thru is NOT comparable to the surrounding residential homes and it does impose an excessive burden with a negative impact (noise, emissions, traffic, construction etc...) on adjacent users.

The original text amendment approved last year calls for operating hours of all drive-thru's to be 7am to 9pm so why will PANERA be exempt from what the city worked so hard to draft and accomplish?

In the new plan that was introduced to the planning commission more green space is going away, trees are proposed along Rocky Drive but no mention of an irrigation system was every mentioned. While not a huge issue this should be included as per the new city ordinance on drive thru users as BALMORAL residents don't want dead foliage at the edge of the subdivision.

In reviewing the approved drive thru ordinance that the City passed there are also some striking phrases that I would like to point out:

Section 405.470 Conditional Uses #8 b. shall provide landscaping to screen the view of drive up waiting spaces from surrounding properties. Currently there is some foliage between the proposed drive thru area and BALMORAL but that is located on OUR PROPERTIES. The applicant needs to PROVIDE LANDSCAPING TO SCREEN THE VIEW as written in the ordinance. Mr. Langdon said in planning commission that there really isn't enough room for landscaping here which to me is an excuse and it allows the applicant to skirt this requirement totally. Six months of the year the residents of BALMORAL will always see the drive thru cars due to the winter months therefore the applicant building a 6 foot sound wall is NOT ADEQUATE for his proposed plan. Using what is already in existence and not located on the applicants property does not excuse him from creating this buffer that was drafted into the ordinance by the City Council in order to protect the home owners.

Section 405.470 #14 C 4. The drive thru order facility and service window shall be no less than 50 feet from any property line of residential use. When this was being considered it was originally 75 feet and changed to 50 feet. My property line is 78 feet from the proposed order box. That seems to close and also makes me believe there is too much impact for BALMORAL.

Section 405.470 #14 D 6. Any service areas including, but not limited to trash receptacles, compactors, transformers, outdoor cooking or refrigeration equipment and utility connections, must be fully enclosed. Such enclosures shall appear as a part of the restaurant BUILDING to the maximum extent as found to be practicable by the city. Currently there are 2 trash dumpsters pushed against my property line and the current retaining wall. The applicants plan calls for another dumpster to be pushed against my property line. The current dumpster is fenced in with no top to the dumpster. My property sits above the shopping center and I can see into the dumpster. Animals can access the dumpster and now a new dumpster will be added here. As written above the trash receptacles need to appear as part of the restaurant building which they currently do

not and the City should not allow trash dumpsters to be shoved against a residential property line.

In these sections an acoustical study is repeatedly asked for under the approved ordinance which the applicant has provided. One of the biggest concerns BALMORAL has on the drive thru request is the noise pollution as business increases, more traffic is pushed to the back to the restaurant, more deliveries will be needed to service this increased business and trash pickups will increase on a daily and weekly basis due to the increased volume that is expected. The sound engineers admitted during the planning commission hearing that he has no idea what happens to the noise created by all this new activity once the noise level escapes the sound wall that is being proposed by the applicant. Mr. Langdon did a "FIELD TEST" that was like comparing apples to oranges as the acoustics of BALMORAL are far different based on a canyon effect at PANERA.

PANERA sits over 10-15 feet below the main level of the homes in BALMORAL. The building is a brick building. Currently there is a concrete retaining wall between BALMORAL and the shopping center which does nothing to abate the sound. Anything from deliveries to employees talking to general sounds from a commercial building during business hours are heard clearly in BALMORAL. Sound rises and sound bounces which are what happens here. By increasing the daily trips behind the building, daily deliveries, trash pickups, speaker boxes, order windows and daily activity in a commercial shopping center how is anyone to believe that building a sound wall will actually make it more peaceful than it is today? Especially when the paid consultant for the applicant admitted in planning commission that he doesn't know where the noise goes and how it affects the surrounding properties as it escapes the sound wall. A sound wall doesn't eat sound or make it go away, it contains it and attempt to mitigate by redirecting it which this will redirect the sound back to the commercial building which is also brick and then it bounces again above the sound wall height into BALMORAL.

Mr. Langdon flippantly states that the DB level on noise that is allowed as per the ordinance is that of a normal conversation. I sit on my deck with my wife on the weekend and have coffee during the nicer months of the year. While sitting on my deck I should not have to hear what a woman in a white SUV is ordering for her family and have my rights to quiet enjoyment of my property interrupted. In Mr. Langdon's explanation and his field test that he will so willingly show you he will make you believe that I should have to put up with this because "it's acceptable as per the city ordinance." I made this same point during these hearings last year and they were ignored that any additional noise and aggravation caused by a neighbor should never be allowed.

I am appealing to you as a council since I cannot be there personally on Monday evening. Even if I could be there I would not be given the same courtesy extended to the applicant and all of his paid consultants. If you move forward to approve this CUP and my points are not enough to sway you then please do my family and BALMORAL a favor and make the applicant adhere to the ordinance you approved:

- Applicant needs to screen the property as per the ordinance and not use any existing buffer because it's convenient but use his own square footage and create his own green space as per the ordinance.
- Applicant needs to relocate those dumpsters away from any residential property lines and put those enclosures against his commercial building as stated in the ordinance. If the dumpsters remain on the edge of the property then there should be a green space buffer between the property lines and the dumpsters.
- Applicant needs to make sure new landscaping installed as buffer between residential property, as per ordinance, as well as along Rocky Drive are properly irrigated and watered.
- Applicant should have to adhere to the operating hours approved by the City Council and not be allowed their request of 6am to 10pm.
- Applicant's new site plan calls for the removal of more of the green space and a large mature tree that site off of Rocky Drive to increase the asphalt area and create a truck parking area for deliveries. Why is more asphalt needed and does the site adhere to the green space requirements with this new plan?

I feel that Hutkin Development and PANERA are both good companies and BALMORAL residents have a long standing relationship with both of those companies. Today we live in relative peace and harmony but that is tempered by a majority of the business done in the PANERA is done through their current front door. The application and CUP changes the entire dynamics of the relationship taking PANERA from a neighborhood Café which is walking friendly to a Quick Serve Restaurant. The business model changes from the front door orientation to a larger portion of the business going out the back door which just so happens to face BALMORAL residents and is very close in proximity. All aspects of "quiet enjoyment" are threatened by this application and if the City Council will not out right reject this CUP then please think hard on the bullet points that I have made in this letter. There are many other items that need to also be addressed that I am sure my neighbors will bring to your attention during the hearing on Monday night. Thank you for your time and any consideration given to this letter.

Sincerely,

Joseph Flaherty
11921 Rocky Drive