

**City of Leawood
Planning Commission Minutes
February 26, 2002 Meeting – 6:00 p.m.
Leawood City Hall
4800 Town Center Drive**

CALL TO ORDER/ROLL CALL:

Colloton, Henderson, Carper (tardy), Conrad, Brain, Duffendack, Breneman, Munson, Pilcher

APPROVAL OF THE AGENDA: Case 71-01, Cornerstone Village was removed from the agenda by request of the applicant for a continuance to be seen on the 26th of March. Motion to approve the amended agenda made by Henderson and seconded by Pilcher. Motion approved unanimously.

CONTINUED TO MARCH 12, 2002:

CASE 06-02 MISSION RESERVE Request for approval of a preliminary plat and preliminary plan. Located at 151st Street and Mission Road. **Public Hearing**

CASE 07-02 RESERVE AT ST. MICHAEL Request for approval of a preliminary plat and preliminary plan. Located at 141st Street and Nall Avenue. **Public Hearing**

CASE 10-02 SPORT COURT – LEAWOOD ESTATES – TEAHAN Request for a Special Use Permit for a sport court. Located at 10111 Wenonga. **Public Hearing**

CASE 12-02 PRICE CHOPPER PARK Request for approval of a preliminary plat and preliminary plan. Located south of 132nd Street and east of Mission. **Public Hearing**

CASE 13-02 LDO AMENDMENT – ROOFING Request for an amendment to the Leawood Development Ordinance Section 3-1 RP-A (Planned Large Lot Single Family Residential District), Section 3-2 R-1 (Single Family Residential District), Section 3-3 RP-1 (Planned Single Family Residential District), Section 3-4 RP-2 (Planned Two Family Residential District), Section 3-5 RP-3 (Planned Apartment House Residential), Section 3-6 RP-4 (Planned Cluster Residential), Section 3-13 AG (Agricultural District) and Section 3-16 RP-A5 (Planned Rural Density Single Family Residential District) **Public Hearing**

CASE 16-02 SOUTHWESTERN BELL – UTILITY BOX Request for a Special Use Permit for a utility box. Located at approximately 129th Street and Roe Avenue. **Public Hearing**

NEW BUSINESS:

CASE 02-02 LDO AMENDMENT – ARTICLE 8 Request for an amendment to the definition of interior decorating service. **Public Hearing**

APPLICANT PRESENTATION: Presentation by Mark Klein. This amendment is being proposed to add a definition of interior decorating service. Staff is recommending this to make the ordinance more specific. Back in 1995, a piece of property was rezoned along State Line to allow a particular business to go in; this amendment is to clarify what was originally intended in allowing that business, an interior decorating service, to go in. This is to clarify the Leawood Development Ordinance (LDO) without opening it to a wide range of retail uses.

Duffendack asked for an explanation of the second sentence in the amendment. Klein responded the second sentence means the interior decorating services will have sales off of the floor that are not associated with the service, for example, some piece of furniture that the customer might want to buy, separate from the actual interior decorating services. Duffendack asked how that differs from on-site retail sales. Klein responded that the second sentence is trying to indicate how the sale is completely separate from the service itself. This amendment is trying to make clear that on-site, not secondary to the service itself, is also allowed. The customers will not have to actually contract with the interior decorating service to provide the service, they can actually walk into the store and purchase a piece of furniture. Duffendack suggested the amendment be more plainly written. Duffendack asked where the terminology for this amendment originated. Klein responded that Patty Bennett, City Attorney, wrote the amendment. Duffendack recommended that the second sentence read, "a business or establishment that provides designer decorating service and/or sales of furnishing and accessory items for interior building space either by off-site inventory purchase or on-site retail sales". Brain suggested taking the word "inventory" out because it would be "sales of services" or "inventory". Colloton suggested changing the second sentence so that it would be more specific to just independent retail sales by taking out the word "secondary" and taking out "of the same or similar character to those", so that it should read, "such business or establishment may include on-site independent retail sales associated with interior decorating". Brain asked if Colloton would recommend changing anything in the first sentence. Colloton responded that she would be okay with taking out the word "inventory" in the first sentence. Colloton asked Lisa Wetzler, Assistant City Attorney, her opinion of the Commission's changes. Wetzler responded that she did not work on the amendment, so she was not sure if the changes the Commission was proposing would change the meaning of the amendment. Klein stated that it was originally discussed to have incidental retail sales, but the applicant and the City did not feel comfortable with that terminology. Klein stated that Staff feels the word "secondary" in the second sentence is necessary. The point is to be able to make sure that a customer, as a secondary action, not associated with the service itself, can purchase a piece of furniture. Brain stated that he would like to take out the word "inventory" from the first sentence and take out the words "secondary and then separate of the same or similar character to those" from the entire ordinance. Brain suggested a continuance to place this case on the consent agenda for the next meeting. Klein stated that he would like to get this case approved tonight to finalize the development related to this amendment. Brain stated he would rather have the case continued and have it reviewed by the City Attorney before the Commission approves.

PUBLIC HEARING: Bernie Madden, owner of Madden McFarland Interiors, stated he would much rather have this approved tonight. He would like to continue operating his business just as he always has.

A motion was made to close the public hearing by Henderson and seconded by Pilcher. Motion to close approved unanimously.

Brain stated he didn't believe that the changes suggested by the Commission changed the definition as Bennett conceived it. Brain felt if Staff was comfortable with it, then he would approve, but if Staff is not comfortable with this, then the Commission would much rather have Bennett look at it before being approved. Pilcher asked if it would be possible to make a phone call to Bennett to get her opinion. Brain stated that this case would be tabled until the end of the meeting to allow Wetzler time to call Bennett.

Case 02-02 was tabled to the end of the agenda.

CASE 65-01a PLAZA POINTE Request for a preliminary plan and final plan. Located at 135th Street and Roe Avenue. **Public Hearing**

STAFF PRESENTATION: Presentation by Jeff Joseph. The applicant is Dan Foster. The applicant is requesting approval of a preliminary and final plat and plan to change the layout of the southeast quadrant to add one more lot and one additional building. This property is located on the southwest corner of 135th Street and Roe Avenue. This change will not increase or decrease the area of the overall development. This will allow an additional 475 sq.ft. of building area. Staff is recommending approval of case 65-01a with the 27 stipulations stated in the Staff Report.

Brain suggested opening the two 65-01 cases at the same time, since they are so closely related.

CASE 65-01b PLAZA POINTE, LOT 8 – CARPET CORNER Request for a preliminary plan. Located at 135th Street and Roe Avenue within the Plaza Pointe Development. **Public Hearing**

STAFF PRESENTATION: Presentation by Jeff Joseph. The applicant is Jack Shank. The applicant is requesting approval of a preliminary site plan for a 7,904 sq. ft. retail building. This property is located at the southwest corner of 135th and Roe Avenue. The applicant is proposing a one-story building on lot 8. This building is in the same location as approved for the overall Plaza Pointe development. The footprint and elevation of the building changed from a two-story to a one-story building. The trash enclosure is located at the west side of the building. The applicant is proposing to share this with the lot to the south, lot 7. Staff would like to add the following recommendation in addition to the already suggested 13 stipulations: "Benches or sitting areas shall be provided on the south side of the building. Plaza areas should be paved with pavers."

Brain suggested combining case 65-01a and 65-01b.

Conrad asked if the green space had decreased. Joseph responded that the impervious area has decreased for the overall development, which means that they have more open space than the previously approved plan. Brain asked for specific percentages. Joseph responded that the impervious area changed from 65.3% to 63.1%. Duffendack asked if it decreased because the parking space decreased. Joseph responded, yes, they eliminated some parking and also added more green space. Henderson asked if it was an office building when it was originally approved. Joseph responded it was approved as office/retail.

APPLICANT PRESENTATION: David Suttle of Suttle Midland Architects. Suttle stated, in a concept master plan, the owner is always building on the unknown. The thinking has to be revised with each individual site application. When the day care was going to go on the center circle, that was the orientation of this original plan. After discussion with the Planning Commission and the applicant, the day care was moved. This triggered the whole concept of the quadrant. Suttle described the proposed plan. The applicant has taken the two southeast buildings and changed them to face Roe and the internal street. These buildings now become a corner building with only a modest amount of parking on the edge. Regarding the bank building, the drive-through is now aligning the parking lots to have secondary grids, making the circulation work better than the originally proposed plan. The goal was to redistribute the allowable square footage. There will be a large amount of green space on the southeast corner. This will result in a quadrant that flows and circulates well, with the same square footage, and a sense of continuity with the courtyard area, the sidewalks that connect everything.

Henderson asked how much space lies between the parking stalls, facing east and west, on the east side where the parking has been changed. Suttle stated it is a standard 60 ft. from curb to curb. Henderson asked if the business on the north side would have the same space. Suttle responded, yes. Henderson asked if the 3-ft. berms would be sufficient and suggested that 4 ft. would be more appropriate because more people are buying sport utility vehicles. Brain responded that the berms are already constructed. Duffendack stated there is a good connection to the street, but when a person is driving down Roe, there is a breakdown in the relationship that you have between the building and the road. Suttle responded that the reason Roe is set back is because it is a preferable diagram (to see the shop and see some parking directly in front of the shop) for successful retail leasing. The previous plan had double width of parking, this one brings it back, trying to get it as close as possible, but still meeting the highly desirable requirement of retailers to have the feeling of actually parking in front of a store. Duffendack asked if there were a single-loaded drive aisle, would it decrease efficiency? Suttle responded that it would decrease the efficiency. Colloton stated that the original goal of 135th Street was to have offices with some occasional restaurant with some retail, to distinguish Leawood from the total onslaught of retail as you move into Overland Park or Missouri. Colloton asked if Suttle would describe to her what each building would be. Suttle walked over to the plan and described each building. Henderson asked if the 4.7 per 1000 would be adequate parking with the new configuration. Joseph responded that Staff is comfortable with the number of parking spaces because the usage will be at different times.

Presentation by Jack Shank. Jim Matthews is the president and owner of Carpet Corner, which is a family-owned business. They have been in town for over 35 years. They have six locations; this will be their seventh. Shank stated he believes this will be a benefit to Plaza Pointe and the City of Leawood. The design on the building is simple; it is retail space and a showroom. Shank described the floor plan. There will be window walls on the north, east and west sides. The plan does not include a loading dock. This is a facility where customers come in and look at samples, then order their carpet. The building sits in the southeast quadrant of the Plaza Pointe. There will be parking on the north and east sides. It will be completely landscaped. The front entrance will be from the north with considerable landscaping along Roe. The applicant is proposing a common dumpster to share with the building to the south. The materials for the enclosure will be the same as used for the building.

Suttle described more of the Carpet Corner plan. You will always get some kind of glimpse of large bay windows. There is architectural design on all four sides. The front entrance has large open bay windows that face the plaza. Makes a good presentation and is consistent with the other buildings in the Plaza Pointe development. Brain asked if the Commission had seen a previous rendering of this building. Suttle responded, no. Brain asked if all of the materials for the Carpet Corner are consistent with what was originally approved for Plaza Pointe. Suttle responded, yes. Colloton asked where the signs would be located and what the size would be. Shank responded they are proposing two signs: one facing north on the brick of the main entrance; the second sign would be on the east side in smaller letters. The signs will be internally illuminated letters in block form with bronze outline. Breneman asked what materials would be used for the sign. Shank responded there is nothing final right now. Carper clarified that the agenda stated it was "preliminary plan and final plan". Klein responded that was incorrect, it is just a preliminary plan. Conrad asked if the trash enclosure would be adequate if another business moved into this proposed building. Suttle responded it would be reviewed at that time, if it were to change. It is adequate for what the applicant is anticipating. Conrad asked if the trash enclosures would be attached to the other buildings. Suttle responded that not all of the trash enclosures would be attached. Some would be shared. Conrad discussed the central area (plaza). The space extends

to the northwest. The applicant has isolated the space between the two buildings. Suttle agreed. Conrad stated he would like to see that land developed; however, it's at the back of the Carpet Corner building. Suttle stated it's a very public area and will be seen. Conrad asked if there should be an entrance to that building from that area. Suttle stated that it wouldn't work. There has to be some front and back entrance. Suttle stated he believes the green area will be utilized as a garden area or resting area. Duffendack asked where the utility entrances would be to the buildings. What are the plans for roof drainage and the mechanical equipment screening on the roof, given that there is a two-story building nearby. Shank responded that the utility entrances are all underground. The electrical is the one item that has anything above ground. The electrical comes in on the southwest corner of the building, but it will be screened by landscaping. Roof drainage will be taken down inside, no gutter or downspouts visible. It will be below grade and evacuated from the building. It will have a mansard roof, approximately 4 ½ ft. tall. The building will have two rooftop mechanical units behind that mansard screen and some other vents, none of which will be seen from the ground. If a person were on the second floor of the adjacent building, the equipment would be visible. Duffendack recommended screening the equipment from the second-story office building.

Henderson asked if the applicant of Carpet Corner is prepared to add the benches on the south side as suggested by Staff's added stipulation. Shank responded that they will provide benches on the north plaza as shown in our drawing, but the west plaza area is on the other property which is a future development and will not be Carpet Corner's responsibility. Henderson asked how much space lies between the two buildings. Shank responded 50 ft. Breneman asked for clarification on the staff stipulation. Klein responded that Staff would like to change the stipulation to refer to 65-01a instead of 65-01b.

Shank requested to use stamped concrete instead of colored pavers. Klein stated that Staff can look at that at final plan, but would prefer pavers. Suttle stated that the owner of Plaza Pointe has agreed to all of Staff's stipulations.

PUBLIC HEARING: With no one present to speak at the public hearing, a motion was made by Henderson to close and seconded by Breneman. Motion to close the public hearing approved unanimously.

Duffendack stated that stamped concrete is a lesser quality than pavers. Brain stated the Carpet Corner building is fairly stark and needs some architectural design work, particularly the south elevation. Brain would also like to correct the issue of screening the rooftop mechanics from view.

A motion to approve case 65-01a was made by Duffendack and seconded by Breneman. Motion approved unanimously.

Conrad stated he would like to see the Carpet Corner building relate to the courtyard. He would also like to see an entrance off of the common space and more detailing of the architecture.

A motion to continue case 65-01b to the March 12, 2002 meeting was made by Conrad and seconded by Breneman. Motion to continue approved unanimously.

CASE 73-01 MISSION PRAIRIE – SALES TRAILER Request for approval of a Special Use Permit for a temporary sales trailer. Located at 141st Street and Mission Road. **Public Hearing**

STAFF PRESENTATION: Presentation made by Jeff Joseph. The applicant is Mission Prairie L.L.C. The applicant is requesting approval of a one-year Special Use Permit to allow a 517 sq. ft. temporary sales trailer on lot 48 of the Mission Prairie subdivision. This property is located at the southeast corner of 141st Street and Mission Road. The elevation of the building is single-story with pre-finished wood siding. The main entrance of the building is on the east side. Since this request is for one year, Staff is recommending additional landscaping around the trailer. Staff is also recommending a parking setback of 25 ft. from all property lines. Staff is recommending approval with the attached stipulations.

Brain asked if the setbacks would be sodded. Klein responded, yes. Henderson asked if one year is a reasonable amount of time for the sales trailer to be allowed. Joseph responded that it is what the applicant has requested and Staff is comfortable with this.

Breneman asked what kind of assurances the Commission would have that the trailer would only be there one year. The applicant stated there will be 49 lots and 20 lots are already sold. Within 6 months, there will be a model home, and the sales department will office out of there. Once in the model home, the temporary building will be removed. Munson asked if the trailer will be on a buildable lot. The applicant responded that they still need to sell the remaining 29 lots, in 4-6 months the sales department will vacate the sales trailer and move into the model home.

PUBLIC HEARING: With no one present to speak, a motion to close the public hearing was made by Colloton and seconded by Conrad. **Motion to close approved unanimously.**

A motion to approve was made by Henderson and seconded by Colloton. Motion approved unanimously.

CONTINUANCE OF CASE 02-02 – LDO AMENDMENT – ARTICLE 8

Wetzler stated the legal department recommended leaving the word “secondary” in the amendment. The intent behind the word “secondary” is that retail sales are not the primary aspect of this business and it needs to be made clear. Brain asked if it would be okay to omit “inventory” in the first sentence and to omit the words “of the same or similar character to those” in the second sentence, but leave the word “secondary” in the second sentence. Wetzler agreed. Carper asked to clarify the intent of the amendment. Is the intent of the amendment to define primary versus secondary so that if the initial owner ever sells his building, the City will need to make sure that another retail operation doesn’t operate as primary, instead of secondary? Duffendack questioned what would happen if, ten years from now, another situation comes up and the City is trying to define this. How would the City determine that the business is not making more money from secondary sales? Wetzler reminded Duffendack that this amendment is specific to interior design, not just other retail sales. Klein stated that the fear was that if Mr. Madden moved out and another business moved in, the City would not want a company that is primarily retail (like Benchmark) to move in. By incorporating the word “secondary”, the City is requiring that at least 51% of the business comes from the interior decorating portion of the business. Breneman suggested that the Commission use the advice of the City Attorney. Carper suggested approving a Special Use Permit instead of an amendment to the LDO.

A motion was made by Carper to approve Case 02-02 with the changes recommended by the City Attorney, and seconded by Breneman. Brain suggested that Council define the word “secondary”. Motion approved 8-1. Duffendack voted against.

CASE 01-02 SPORT COURT – BRITTANY WOODS – THORNTON Request for a Special Use Permit for a sport court. Located at 15320 Rosewood. **Public Hearing**

STAFF PRESENTATION: Presentation by Jeff Joseph. The applicant is requesting approval of a Special Use Permit for a sport court in their back yard. The sport court is 25 ft. wide and 40 ft. long and will be located on the west side of the lot. This property is located south of 153rd Terrace in Rosewood, which is in the Brittany Woods subdivision. Staff had several conversations with a number of residents in the area who had concerns with noise, screening, traffic, etc. Staff tried to address these issues by recommending several stipulations stated in the Staff Report. Staff is recommending approval of this case with the attached stipulations.

Colloton stated the job of the Commission is to look at the affect on the neighborhood, and then asked if Staff had addressed those issues. Joseph responded the distance from other lots is more than required and Staff has addressed the other concerns within the stipulations. Colloton asked how many other sport courts the City has reviewed. Joseph responded that there have been five sport courts within the last four years; one was denied and four were approved. Colloton asked what type of issues were raised with the other sport courts. Joseph responded most people were concerned with drainage, lighting and noise.

APPLICANT PRESENTATION: Curtis and Bridget Thornton, 15320 Rosewood. Mr. Thornton stated their lot is a unique lot. They are wanting to put the court in the back of their lot because their driveway is on a steep incline and that would be a danger to their children. Another reason that they chose to put a sport court in their backyard is because the area in the very back of their lot is not utilized. Prior to pouring the concrete, Mr. Thornton approached the home's association's president, Mark Bodean, and received a copy of the bylaws. Mr. Thornton saw nothing in the bylaws that would be in violation. Mr. Thornton then spoke with the initial owner, Mr. Patton, to see if he could gain access to Mr. Patton's lot to pour the concrete. Once the concrete was poured, a few of the Thornton's neighbors noticed and called City Hall to complain. Klein then called Mr. Thornton and asked if he had a special use permit. Mr. Thornton stated he did not know that was a requirement for a sport court. Mr. Thornton went to City Hall the next day to apply for a special use permit. The Thorntons had originally wanted lights, but did some research and found out that none of the other approved sport courts have lighting and he decided to conform with everyone else. The Thorntons hired a contractor, Bird Engineering, to do the drainage study to make sure there would not be any adverse affects to the surrounding properties. The Thorntons held an interact meeting with the neighbors and informed them of what their initial plans were and tried to address some of their concerns. The neighbors were concerned with the property value, noise and lighting. The Thorntons told them that they are not proposing any lighting, children will make noise in the back yard regardless if there is a sport court, as far as screening is concerned, they submitted a landscaping plan for visual and noise blockage as well. Both neighbors to their north and south have given support to this project as well as a couple of people across the street. There has been ongoing opposition from other neighbors. Mr. Thornton has tried to reach a compromise by introducing himself to each neighbor he did not know and asked for his or her concerns. A couple of the neighbors, The Pikeys and Mr. Lieberman, made it clear that they would not compromise. The Thorntons have gone through the process and are asking for it to be approved.

Breneman referred to the letter written by the Blakes. The Blakes stated in their letter that the sport court is 80 ft. from their house and 150 ft. from the Thornton residence. Breneman asked Mr. Thornton if he had spoken with the Blakes in regards to this. Thornton responded he did not

know if he had spoken to the Blakes, because he wasn't sure who the Blakes were. Breneman asked why the sport court would need to be put at the back of the lot instead of right next to the house. Thornton explained that the area directly behind the house is at a direct incline; the only level area is at the back of the lot. Breneman asked what type of landscaping would be proposed. Thornton explained that they have changed the proposed landscaping plan. He is now proposing white pines. He had an employee from Earl May look at his lot in regard to soil sample and what would provide a good visual screen as well as noise blockage. The trees that Staff has recommended in their stipulation would not be adequate because of the soil in the area. He is requesting that the number of trees recommended be reduced. Breneman asked how long it would take for the trees to mature. Thornton responded that it would take 5-15 years for the trees to mature. Breneman asked if the neighbors' lots set further up the hill and look down on the sport court. Thornton responded that the neighbors' back yards set level with the sport court. Breneman asked Staff if they have approved Thornton's revised landscaping plan. Joseph responded, no, because Thornton just brought it with him to the meeting. Brain stated that it is part of the stipulations that Staff approves the landscaping plan. Thornton stated the reason he chose the white pine is because the soil is rocky and it is not something that would take well to the initial trees that were suggested. Mr. Thornton has gone around to other neighborhoods to see what other people have used as screening and a couple things they have noticed are the arborvitae, white pines and the canary juniper. The canary juniper grows 20-30 ft. in height and grows 15-20 ft. in width and grows in the same rate as the white pine. Breneman asked if any of the neighbors who look out onto the sport court are in support of it. Thornton responded, no. Thornton also added that Mr. Lieberman has evergreens along his back south and north fence, which means he has about 90% blockage, so it really shouldn't affect him.

Pilcher asked if there is any type of architectural review committee as part of the homes association. Thornton responded, no. Pilcher asked if there was verbal approval from the homes association president. Thornton responded that he did not have verbal approval, just the copy of the bylaws from Mr. Bodean. Duffendack asked what the 7' x 10' concrete pad next to the sport court would be used for. Thornton responded it would be used as a sitting area.

Carper asked if there is any requirement on swimming pools in the homes associations' bylaws. Thornton responded that swimming pools are allowed as long as the homes association approves them. Carper stated that he doesn't see the difference between a sport court and a swimming pool. He believes if swimming pools are allowed, then a sport court should be allowed also.

Colloton asked if there would be someone home when the sport court is being used. Thornton responded, yes, Mrs. Thornton is a stay-at-home mother. Colloton asked what the sport court would be used for. Thornton responded that it would mainly be used for basketball. Colloton asked if it would be used when they are on vacation. Thornton responded, no, they have a locked gate and it will not be used for anyone other than family with friends. Mrs. Thornton stated that it would be used for many types of things such as a picnics, sidewalk chalk drawings, etc.

Henderson asked Staff if they have spoken with anyone in Brittany Woods to see if they have any covenants in regards to sport courts. Klein responded that Staff spoke with many residents and that they would be looking through the homes associations' covenants, codes and restrictions to determine. Henderson asked to see a copy of the deed restrictions. Staff received a copy of the deed restrictions during the meeting and made copies for each of the Commissioners.

PUBLIC HEARING: Lynn Frischer, 5445 W. 153rd Terrace. Frischer stated he believes that the Thorntons are in violation of sections 5 & 8 of the deed restrictions. The individual that Mr. Thornton spoke with was Mr. Bodean, who is not here tonight. Frischer stated he was told from

Bodean that he told Mr. Thornton he didn't know anything in regard to a basketball court in the deed restrictions, but that Mr. Thornton should contact his neighbors to get their thoughts on it. Frischer then stated that Mr. Thornton asked Mr. Bodean to provide him a copy of the deed restrictions. Time went by and the cement trucks were literally in his back yard before he got a copy of the deed restrictions and reviewed them. He did not go to the neighbors to ask their opinions. Section 8 prohibits detached structures. There has not been any official approval by the home's association. Frischer believes it has been built in violation of the deed restrictions.

Chris Rogers, 5452 W. 153rd Terrace, a member of the board of directors for the homes association. The board met last Saturday to review this situation. The board issued a letter to Mr. Frischer with a copy to Mr. Thornton that stated, "At this time the board is inclined not to issue a response to the current dispute and allow the matter to proceed through the normal course with the City of Leawood and the courts, if necessary". The reasoning behind that decision is because they are a minimal service homes association. The board believes that this matter will be litigated and they do not want to get into the fray. It's our understanding that this matter can be taken to court by any individual homeowner. Brain asked to clarify if Rogers was representing the homes association or as an individual. Rogers responded that he is representing himself as a homeowner, not as a member of the homes association board, because they have declined to make a response. Henderson stated that he found nothing in the deed restrictions in regards to sport courts in either section 5 or 8. Rogers stated, as a registered professional civil engineer, it is his opinion that this is a concrete pad and should be considered a structure.

Frischer stated it is a matter for the individual home's association to enforce, not a matter of interpretation for the Commission. Brain stated the deed restrictions are normally enforced by the homes association, but they have decided to not make a response. Duffendack asked what the difference would be between a patio and this, in regards to section 8. Frischer responded that it would be considered a structure, because a patio would have to be attached to the home.

Kevin and Trisha Pikey, 5341 W. 153rd Terrace. As a homeowner directly abutting this, the Pikeys were never approached. Mr. Pikey stated Thornton never spoke with them to ask if they had problems with this. Thornton approached the homeowners associations' treasurer, not the president. It wasn't until the Pikeys saw that Thornton was pouring the concrete that they realized what was going on. The sport court was constructed prior to getting a permit with no concern for surrounding neighbors. It is considered a nuisance by surrounding neighbors. Mr. Pikey stated he works long hours and wants to be able to relax in peace when he is at home. Trees will block it to a certain extent, but not fully. The land that Thornton is planning on planting on is solid rock. Mr. Pikey does not know how Thornton plans on keeping the trees alive. Mr. Pikey showed a copy of a petition signed by surrounding neighbors. The Pikeys approached 30 homes out of the 57 in the neighborhood; 23 signed in opposition, four were not at home, and only one refused to sign the petition. The Pikeys showed some pictures of the sport court from surrounding neighbors' homes. Mr. Pikey requested denial of the sport court.

Patricia Patton, 5320 W. 154th Street, in the Stone Ledge subdivision. Patton owns the lot that is for sale immediately adjacent to the Blakes. Patton also owns the spec home for sale adjacent to that. Patton is afraid that she will never sell her vacant lot because of the sport court. The homes in the Stone Ledge subdivision are for people whose children are grown and gone. This is not a community where people have built \$400,000 - \$600,000 homes so they can have a sport court in their backyards. Feels strongly that there has been massive deception by omission. When Thornton asked Mr. Patton permission to use the empty lot to gain access to his back yard, he did not explain what he was planning to put in.

Bud Lieberman, 5245 W. 153rd Terrace, showed a picture of the sport court to the Commission. Lieberman stated he was never contacted prior to the Thorntons putting in the concrete. Both Pikey's house and Liebermans house have higher elevations so their first floors look out onto the property. Lieberman stated he does have trees, but the sport court is still visible from many areas of his main floor. Lieberman is a real estate broker with Reece and Nichols and it would be his expert opinion that this would severely lower the property value of the Pikey's house and his house, and make it extremely difficult for the Patton's to sell any of their properties in Stone Ledge.

Dawn Frischer, 5445 W. 153rd Terrace, first learned of the 7:00 a.m. -10:00 p.m. time period tonight and does not believe that they are reasonable hours.

Patton stated Thornton told the Commission his two neighbors to each side have no problems with it, but that is because the court does not directly affect them.

Bill Anderson, 5344 W. 153rd Terrace. His main concern is noise. Anderson stated he and his wife office out of their homes and is concerned about noise issues during summertime and after school hours.

Marlene Wille, 5244 W. 153rd Terrace. Wille moved from Pembroke Court because of the noise from the soccer fields that were directly behind her house. Wille believes the homes that back up to the proposed sport court will have such terrible noise that it will drive them crazy. The Willes took a loss on their home in Pembroke Court to get away from the noise of the soccer fields.

A motion to close the public hearing was made by Henderson and seconded by Carper. Motion to close approved unanimously.

Henderson stated he is concerned about living in areas where there is no sound of children playing. There is the golden rule; people should respect each other.

Brain stated he couldn't remember a sport court application that the City has received where neighbors are in approval of it. He stated that the issue turns to the sport court's location on a lot. That's why you have a large lot, you can put it where you want to. There is nothing in the City Ordinance that states the sport court has to be next to the house. The major concerns are no lighting, hours of operation, and adequate landscaping.

Colloton stated that each sport court should be specific to each neighborhood and the neighbors. She believes that this case fails to meet the standard to fit in with this neighborhood. The Thorntons have satisfied the safety concern, but the sport court is not in character with the neighborhood.

Breneman stated agreement with Colloton. Breneman stated the noise would be a problem, along with the decrease in property value. The landscaping may or may not survive, plus the long time to maturity. The Commission needs to consider the right for you to use your property for what you wish, but also needs to consider the impact to the neighborhood, which she does not believe will be a positive impact. Breneman was also concerned about the fact that the sport court has been placed so far away from the house so that it's a problem for the neighbors and not for the Thorntons.

Pilcher stated it is unfortunate that it is not a stronger homes association to provide more direction. Pilcher believes that the deed restrictions do require approval for a swimming pool or

patio. Pilcher asked if it is the Commission's concern that the recommendation of the homes association president was not followed. Brain responded that it is not the Commission's job to interpret the bylaws.

Munson stated concern that Staff would recommend approval of this knowing that so many neighbors are opposed. Duffendack stated he is concerned with the Thornton's right to do what they want with their property. He doesn't see anything that would make him want to oppose it on any sort of legal ground. Pilcher disagreed with Duffendack. Pilcher believes that it does not fit in with this neighborhood. Conrad agreed that it's complicated by the fact that it is situated on a large piece of concrete, but children will gather and the problem of noise is speculative. Conrad stated the Commission should be concerned about the landscaping, but if this fits into the laws of the City, then why does the Commission need to be concerned? Pilcher, Colloton, and Breneman stated that it's an eye sore. Breneman stated it would definitely lower the value of the homes around the sport court. She also believes it is offensive because it will affect the neighbors more than it will affect the Thorntons. Colloton stated the job of the Commission is to decide if it fits into the character of the neighborhood. Carper asked, if the Thorntons wanted a cornfield of the same size instead of a sport court, would it be approved? Breneman stated that it still wouldn't fit in the neighborhood. The idea that there isn't a statute to prohibit it begs the question, because that is not the question that the Commission is here to discuss. Carper stated that whether or not it's noisy, that goes to the noise ordinance. Breneman repeated her concern for property value of the other homes. Carper responded there would need to be appropriate screening to satisfy both parties.

A motion to approve was made by Duffendack and seconded by Henderson.

Conrad asked how the landscaping plan would be decided. Klein stated that stipulation 3 has the landscaping requirements. Brain stated that the stipulation requires nine each white pines on the north and south sides, and six white pines on the west side, what about the east side? Joseph responded the east side faces the applicant's house, so Staff is not requiring them to screen that side. Henderson asked what the difference is between white pines and the canart juniper that Earl May suggested. Thornton responded they grow at about the same rate. Conrad suggested doubling the number of trees and putting them in an offset triangular manner. Duffendack stated he would like to rely on the landscape architecture expertise of our City Staff to come up with a plan that has the effect of screening as much as possible in the shortest amount of time as possible. Duffendack then proposed adding the sentence at the end of stipulation 3 that says, "or as directed by our Landscape Architect on staff". Klein stated approval of that addition. Klein also recommended adding a stipulation regarding the Public Works comments.

Breneman recommended an amendment to change the hours of use from 9:00 a.m. to 8:00 p.m., Colloton seconded. Duffendack questioned what "use" in "the hours of use" actually means. Breneman responded that "use" would mean the intended use, which is basketball. Motion to amend the hours denied. (Breneman and Colloton for)

Motion approved (Henderson, Carper, Conrad, Duffendack and Brain for, Breneman, Pilcher, Colloton and Munson against).

ADJOURN

Donald C. Brain, Jr.
Chairman