

City of Leawood
Planning Commission Minutes

March 25, 2003
Meeting - 6:00 p.m.
Leawood City Hall Council Chambers
4800 Town Center Drive

CALL TO ORDER/ROLL CALL: Henderson, Rohlf, Carper (tardy), Conrad, Duffendack, Brain, Williams, Munson, Pilcher

APPROVAL OF THE AGENDA: A motion to approve the agenda was made by Brain and seconded by Henderson. Motion approved unanimously.

A motion to approve the consent agenda was made by Brain and seconded by Henderson. Motion approved unanimously.

APPROVAL OF THE MINUTES: Approval of the minutes from the February 11, 2003 work session and the February 25, 2003 meeting. A motion to approve the February 11, 2003 minutes was made by Brain and seconded by Henderson. Motion approved unanimously.

A motion to approve the February 25, 2003 minutes, with Henderson's changes, was made by Brain and seconded by Rohlf. Motion approved unanimously.

OLD BUSINESS:

CASE 12-03 CAPITAL IMPROVEMENTS PROGRAM 2004-2009 Request for approval of the Capital Improvements Program for 2004-2009.

Duffendack reminded the Commission of their duty in approving the CIP. It is the Commission's duty to approve the CIP's conformance to the Master Plan.

Staff presentation: Presentation by Diane Binckley. The proposed CIP is the same as last year, with no significant changes. The Roe Avenue improvements for 2004, Nall Avenue improvements from 135th Street to 143rd Street for 2005 and the remainder of Nall Avenue improvements for 2007 are identified. Staff is recommending approval.

Henderson reminded the Commission, if there were any major changes, they would be related to the financing structure as far as sources of funds from the City, State, and County. Binckley agreed.

Public hearing: With no one present to speak at the public hearing, a motion to close was made by Brain and seconded by Conrad. Motion approved unanimously.

A motion to approve was made by Brain and seconded by Rohlf. Motion approved unanimously.

CASE 03-03 PARK PLACE Request for approval of a rezoning from SD-O to MXD, preliminary site plan, and preliminary plat. Located at the northeast corner of 117th Street and Nall Avenue.

Carper arrived.

Staff presentation: Presentation by Mark Klein. The applicant is requesting approval of a rezoning from SD-O to MXD and construction of a mixed-use development consisting of 240,000 sq.ft. of retail space, 353,000 sq. ft. of office space, 350 residential units totaling 560,000 sq. ft., a 75,000 sq. ft. hotel and a 3,800 sq. ft. residential amenities building. The total development will consist of 1,231,800 sq. ft. of construction on 33.67 acres for an FAR of .84. The Commission reviewed and continued this case at the last meeting. Some changes have occurred since that time. The land area that the applicant owned

has changed. The area on which Town Center Drive is located was never dedicated to the City; therefore the City does not own that street. This increased the applicant's property from 29 acres to 33 acres, which changed the FAR from a .97 to a .84. The applicant has increased the building setback to 30 ft. and the parking lot setback is also 30 ft. When the applicant was requesting beyond 30 ft., the Commission and the Governing Body did not have the authority to approve that large a deviation. The LDO allows for a deviation that the Commission can recommend and the Governing Body can approve to allow the 30 ft. setback, instead of the 40 ft. allowed. During the previous meeting, the Commission asked the applicant to look at the height of the buildings. Klein outlined the changes in the memo given to the Commission regarding some of the stipulations in the staff report. Staff is recommending approval of this case with the revised stipulations given.

Rohlf asked for an explanation of stipulation number 22. Klein stated the City was in the process of hiring HNTB to confirm the storm water study that the applicant proposed. Staff has now determined the study should be done at final plan application. The only change to this stipulation is the addition of "upon acceptance and adoption by the City of the consultant's report". This was changed to make it clear it was whatever recommendation the City adopted from HNTB that would be followed.

Conrad asked if the applicant has read and generally agrees to the stipulation changes. Klein stated the applicant suggested some additional changes to the stipulations, one of which refers to the height of the buildings. Conrad stated storm water has always been an issue on this project, and not having the report could change the plan if detention was recommended later. Klein stated there is a stipulation which requires the applicant to work with staff in regard to the height of the buildings and there is also a stipulation regarding preserving all possible trees. Conrad asked if these plans represent all of the street changes recommended by the Public Works Department. Ley stated all of the street improvements are shown on the plans. Conrad asked if there is a summary position by staff on each of the bonuses requested.

Duffendack asked if staff or the applicant provided the deviation requests. Binckley stated the applicant. Binckley stated staff is in general agreement with the deviations requested by the applicant. Duffendack requested an explanation of the deviations. Klein stated the FAR bonus base limit is .25 in the MXD district and the applicant can qualify in various categories. The increased open space requested bonus is 15%, which is still greater than required. The open space would be 264,047 sq. ft., which is greater than the required of 293,629 sq. ft. increased open space. The current minimum open space requirement is 30%. The applicant has stated they are providing 50.05%, staff's calculations show 48.03%, but based on a one-to-one ratio, it is still in excess of what is needed for the bonus of 15%.

Conrad asked if staff believes the additional open space provides an additional benefit for the public. Klein stated, yes. Conrad then asked if parking lots are considered as open space. Klein stated parking lots are not included as open space. Williams asked if the spaces between the residential buildings and the street would be considered open space. Klein stated, yes.

Conrad asked to be shown where the new portion of land is located. Binckley showed it on the site plan.

Klein stated the next FAR bonus is for superior site planning. The maximum allowed is a 10% site bonus and that is what the applicant is requesting. The applicant's calculations are based on a comparison of what a piece of land at a base density of .25 would be a value to them, compared to the value of land zoned at a higher density. Staff does not completely agree with those numbers. The applicant is stating that most projects spend \$10,000 per acre, by their estimate. They are proposing \$117,000 per acre. Staff feels the \$10,000 amount is low, but the \$117,000 amount is excessive in regard to the amount of landscaping and Staff feels this bonus is justified. Some of the details of the landscaping will not be decided until final plan, Staff has included a stipulation requiring a maximum of .84 FAR assuming the applicant actually does the things they are proposing; if they don't, then the FAR is not applicable.

Henderson asked if Staff has any other way to evaluate these requests other than dollars per acre. Klein stated the ordinance leads one to a valuation of dollars per acre. Staff looked at other projects for comparison, and felt this was more significant. Duffendack stated he would like the applicant to address the areas of lighting and environmental features of the project.

Klein stated the next FAR bonus is for architectural significance. The applicant states for a typical retail building, it would be \$50 per sq. ft. The applicant will spend \$122 per sq. ft. Staff looked at it as if \$50 were typical, then the applicant would need to at least double that for a one-to-one ratio; it would need to be at least \$100, and they are above that figure. Staff feels the applicant has met the requirements for the bonus.

Klein stated another bonus area is pedestrian amenities. Staff looked at other projects, such as Town Center Plaza. Staff feels the applicant is going above and beyond other commercial developments of this scale. There are quite a few pedestrian connections and the sidewalks are much larger than normal. The LDO requires a minimum of 10 ft. from the storefronts, and they are proposing 20 ft., which will provide the opportunity for sidewalk cafes and other amenities.

Klien stated another bonus area is integrated storm water detention. The applicant calculated a bonus of 5.2%. The applicant is implying that if they improve the channel behind City Hall, that should qualify as the wet detention basin that is listed in the LDO. Since they are improving the channel, they should get the bonus. Staff had a hard time making that connection, especially when there is no study from HNTB to consider. They do not need this bonus to qualify for what they are requesting, so staff is disregarding this area.

Klein stated another bonus area is parking structures. The applicant has requested a 15% bonus. This development has 3 aboveground parking structures as well as some underground parking structures for the residential units. Staff is in favor of the parking garages and feels they have met this criterion. The applicant has done a calculation that if you spread out all of the parking spaces on surface level parking, it would cover 801,600 sq.ft. With the garages, they are only covering 106,907 sq. ft.

Brain asked what kind of precedent is being set if the Commission allows the calculations offered by the applicant. Duffendack stated he is assuming staff would be confirming the calculations in order for the applicant to qualify for the bonuses. Binckley stated Staff has done a comparison.

Conrad asked the total number of parking spaces on site and how many spaces would be in the garages. Klein stated there would be a total of 3,174 parking spaces of which 2,474 are for commercial. There will be three aboveground parking structures, two are seven levels and will hold 700 parking spaces each, and one is eight levels and will hold 1,000 parking spaces. Williams asked where the underground parking would be located. Klein stated the residential units would be along Town Center Drive, with the underground parking being beneath them. Williams asked if there would be landscaping above the underground parking. Klein stated the residential units would be above the underground parking, and he is not sure if the garages would span out further than the buildings. Williams asked for clarification on how the underground parking allows for more landscaped, green areas. Klein stated placing the parking garage below ground allows for more green space, versus having a parking lot above ground.

Rohlf asked if there is any information on the cultural use. Klein stated the applicant did not apply for that use.

Pilcher asked if the cost per sq. ft. includes the price of structured parking, even though the parking structures do not contribute towards the FAR. Klein stated he does not believe the price of the parking structures was included in the applicant's calculations. Pilcher stated he raised the question because he is concerned the applicant is getting double credit for the cost of the parking structures being included in the cost of the buildings. Binckley stated she does not believe it includes the cost of the parking, but would like the applicant to answer that question.

Applicant presentation: Presentation by John Peterson of Polsinelli Shalton and Welte, appearing on behalf of Park Place Partners LLC who is the proposed developer of this development. Also present are Jeff Alpert and Melanie Mann who are principals with Park Place LLC, Richard Heaps with Street Works serving as the planning and architectural consultant, Harold Phelps with Phelps Engineering serving as civil engineer, and Mike Walstef with Trans Systems serving as traffic consultant. John Rall with Terra technologies could not be here, but Mr. Phelps is prepared to answer any questions in regard to storm water. The applicant has worked with staff and the Commission over the past several months. One early area of concern from the Commission was the new MXD zoning which provides an opportunity to integrate commercial, retail and residential to be used by not only the residents, but also the public. In an effort to develop this property, the applicant has raised the possibility of moving away from the deviations into variations, which would require going before the BZA. It might be necessary to actually change the code in order to bring the project together the way the applicant has perceived. The application being proposed at this meeting is utilizes the Commission's suggestions and only requests the deviations allowed within the MXD zoning. The MXD zoning states that the deviations can be earned with increased quality of the project, expenditures, and capital improvements to make the project worthy to be considered for higher density, increased height, and somewhat diminished setbacks from residential. The applicant has to earn it at preliminary application and it must be confirmed at final plan application. Peterson reviewed the proposed items versus the required items, as stated in the staff report. The open space available has changed. The initial calculations were 50%. The applicant looked at it again and has now determined it is 43.82%, which is 13.82% greater than the 30% required.

Munson asked Peterson to review the height of the buildings. Peterson stated the maximum allowed height under the MXD zoning is 90 ft. with the ability of the Commission to grant any height. The applicant is asking for two buildings of 100 ft. in height, all other buildings would be at or below 90 ft. in height. Munson asked which two buildings would be 100 ft. Peterson replied the office building and the hotel.

Peterson reviewed the calculations stated in the staff report comparing Park Place with the previously proposed Town Center Park. The applicant is not proposing detention, as it is not required, subject to the analysis of outside consultants.

Peterson showed on the site plan the 12 different significant road improvements stated in the staff report. Peterson stated the engineers have come to the conclusion that on-site detention would be more harmful than helpful. It would be a more beneficial utilization of capital improvements by the developer to look at the creek behind City Hall to ensure that water being handled as runoff from this site will not degrade the stream any further in terms of erosion, but to also address existing conditions and help protect the property owned by Leawood as well as those living in the Edgewood community. The applicant understands that an outside consultant selected by the City, but paid for by the developer, to confirm the conclusions that have been reached by Mr. Phelps, will analyze the detention findings.

Munson asked if the storm water detention would be included in the bonus arrangement. Binckley stated the detention plan does not need to be included in the bonus requests, based on the numbers the applicant needs for the bonuses. The applicant is asking for .84, but with that it will allow up to a .9.

Peterson reviewed the requested deviations. The applicant is asking for more parking spaces than the maximum allowed in order to have adequate parking. Staff feels it is justified because the applicant is utilizing parking structures. Peterson stated the applicant is now requesting the residential buildings to be 90 ft. with the roof. The hotel and office buildings will be 100 ft. total, including the roof. This is the first time the City has attempted to take these new zoning and deviation bonuses and put them into a "real situation". The goal is to take several concepts that are rather subjective in nature and mold them into a very subjective analysis. The applicant believes they have done that as fairly as possible. Even with the decrease in open space, the applicant still meets the bonuses necessary to get to the requested .84. Three of the bonus items can only be analyzed by a comparison of value.

Peterson went over the stipulation changes made by staff and made the following requests. Remove stipulations number 4, 5, and 18. Stipulation number 11 to be changed to read, "treatment of downspouts shall be determined at the final plan stage for each building to determine whether they will be enclosed, utilized as a design element or screened by method other than enclosure". Stipulation number 22 to be changed to add, "upon acceptance and adoption by the City of the consultant's report". Stipulation number 23 to add, "March 19, 2003 public works memo". Stipulations number 24 and 28 with staff's changes. The applicant is in agreement with those changes.

Henderson asked how stipulation number 7 should change. Peterson stated it should read, "including the height of the roof or parapet".

Presentation by Richard Heaps, principal at Street Works. The applicant has decided to leave the height of the office and hotel buildings at 100 ft. total, with a 10 ft. deviation request. The residential buildings will be built as 90 ft. total. Heaps showed the view corridors from the Edgewood development. The three residential buildings are under the providence of the code as the applicant understands it. The residential buildings are stepped back from 50 ft. to 90 ft. away from the Edgewood development. There is only underground parking on that part of the site. There is garden plaza on top of the parking structures in addition to the buildings being over the parking garages. The applicant believes they need the height to create a prevalent place in the marketplace and to attract upscale residents.

Conrad asked if the parking for the residential occurs underneath the buildings. Heaps responded all of the residential parking would be directly beneath the residential building. The parking has a footprint of about double the building.

Williams asked if the Boca Raton building referred to in Heaps presentation is near another residential neighborhood. Heaps stated it is 90 ft. from the nearest residential area.

Presentation by Jeff Alpert with Park Place Partners, LLC. He and Melanie Mann have been working on this project for the past two years. They believe they have pulled in the best features of what was found around the country. They have brought some of the best creative talent to this project. The developer has a commitment to quality. In order to provide all of the amenities they would like to provide, it has to be done as proposed. Alpert requested approval of this project.

Public Hearing:

Dr. Morton Jacobs, residence directly across from the project. There will be a large mass of buildings, which is much too dense for the area. The original project as proposed appeared to be desirable, but perhaps too dense. As revised, it now appears to be much more dense and have more problems. The water drainage problem will need to be resolved. The original engineering that was done should not have allowed this problem to occur at all. The engineer needs to take into account the current problems of water drainage. A much lower density would be more feasible.

Albert Sinelli, 11509 Juniper, president of the Edgewood homes owner's association and authorized to speak on behalf of the entire board of directors and the residents of Edgewood. If the zoning laws are approved, the homes association is opposed to some of the exceptions requested by the applicant in this case. This proposed construction is totally out of character with everything in the neighborhood. If this project were to proceed, it would have a detrimental effect on the value of the homes in the area. The applicant is allowed an FAR of .25 and could get a bonus of .45, which comes out to a .7 and they are requesting an FAR of .84. The zoning laws say the applicant is entitled to some bonuses for up to a density of .7 of which a majority of the governing body can approve, but if it is above the .7, it would require 2/3^{ds} of the vote. The Edgewood homes association worked with the last developer and supported that development. At the first meeting with this developer, they showed a plan that looked pretty good, but that plan has changed and the Edgewood homes association is not in a position to support the revised plan. The developer is planning on putting in 350 residential units, which would mean over 1000 people into a small compact area in the neighborhood. The Edgewood homes association feels it is out of character with the neighborhood. There are very limited exceptions to the height restrictions. Deviations are allowed to allow construction of signature buildings and these do not come into that exception. The traffic would be high. Sinelli showed a couple of pictures of the creek between Edgewood and City Hall. There are two trees that are undercut, and those two trees will fall into the creek in a short amount of time. Sinelli has met with John Kahl of Tara Technologies and reviewed their proposal of the plans. Call has stated there is no need for retention because the water will flow into pipes that will go directly into the creek. Sinelli does not believe his findings and believes they are based on estimates. The development should require detention at least equal to what is there now, in order to not aggravate the situation with the creek. This project would have a negative effect on each of the City's objectives.

Chug Tuttle, 5109 W. 111th Terrace. In 1986 there were two detention ponds proposed for this area. In May of 1990, there was flooding on Tomahawk Creek and this was before Town Center was built. There was a great amount of water at College Blvd. and Mission Road. Tuttle showed a plan of Leawood Country Manor with two dry detention ponds, a 1991 proposal which had two detention areas, and a picture of the June, 1998 flooding. The developer is assuming it will rain equally throughout the watershed, and that will not happen. Tuttle showed a picture of a detention area in Leawood Commons. If it were not for this detention area, the streets would flood.

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

Binckley reminded the Commission of a letter that was given to them from Edgewood's homes association vice-chairman.

Brain asked if any of the land was a requirement for setbacks for Edgewood. Binckley stated, no. The plat has been fully recorded for Edgewood and they meet all of their standards, standing alone. Brain asked if it is fair to count the new land as part of this development even though it is on the other side of the street. Binckley stated the only property that they are including is the right-of-way. Brain stated it is difficult to hear our engineers giving us advice on detention, would like to go with the engineers we hired and are advising us. He believes it is a terrific project and well thought through, but has a concern with voting on this tonight and the granting of the FAR bonuses. While he supports the development, he feels very strongly that he would need staff to go through this submittal and advise through memorandum on what their conclusions are and the bonus awards that they would recommend to the Commission. This will have a profound effect on all future developments in Leawood. If the Commission were to vote thereby accepting the developer's submittal and the commentary given by staff, the commission would probably regret it. He believes the process for granting the bonuses needs to be refined.

Henderson stated he would support Brain's suggestion. He would like to have staff recommend to the commission what their recommendations specifically are in regard to the bonuses. Duffendack asked if staff has used their own calculations and come

up to their own conclusions. Binckley stated staff has analyzed the applicant's calculations and come up to their own, but did not provide it in writing in the staff report. Conrad stated he is in favor of this development, but would not want to have a benchmark that the commission would have problems with on other submittals. With the information provided, he has calculated a 30% bonus. He is not prepared to support full approval of all of the requested bonuses. Pilcher agreed with Conrad and stated the analysis bonus seems to be very subjective.

Munson asked what the ordinance states in regard to granting the deviations. Binckley stated any bonus beyond a .45 requires a super majority of the governing body, which is 7 of 9. Many of the calculations cannot be pinpointed, and rely on final application. The applicant has told us that they would meet these and if they do not, we have the right to remove it. Brain stated the new MXD zoning was written to promote this type of development, but it was not designed to offer bonuses based on what the developer could request. He feels the FAR is the most important aspect of this project and the Commission should be very careful through this process.

Peterson stated it would be at least a \$400,000 commitment on just the landscaping in order to get to the quality expected. The applicant will prove to the Commission at final application that they will meet the value, then will justify a building permit for that increased square footage.

Carper stated it is important that the commission approves a plan that has a solid base. He would like to take as much subjectivity out as possible in order to support the case and would support granting the applicant a continuance.

A motion to continue was made by Brain to allow staff to create a memorandum on the FAR bonus requests for the Commission to review at the next work session. Motion seconded by Henderson.

Carper stated he is concerned with the density. Pilcher stated concern with the height, density and bonuses. Williams stated concern with the height issues, the views that would be eliminated, and density. Duffendack stated the project as proposed is why the MXD zoning was created; if this becomes the baseline and the benchmark, it could be a lot worse. He believes it is a good example of MXD use, and a great deal of consideration has been given to this project, much more than is normally given from a development. He thinks it is a great project and a wonderful addition to this site. This is not a site that can be developed easily and leaving it as farmland is not an option. Munson stated he likes the project and agrees with Duffendack.

Motion to continue approved unanimously.

CASE 92-02 ESTATES AT OLD LEAWOOD Request for approval of rezoning from REC to R-1, preliminary plat and preliminary site plan. Located at 8901 Sagamore.

Staff presentation: Presentation by Mark Klein. This site is located at 8901 Sagamore. The applicant is requesting approval of a rezoning from REC, Planned Recreation to R-1, Planned Single Family Residential for a preliminary plat and preliminary site plan for 20 single family residential lots on 16.2 acres for a density of 1.23 units per acre. This is the site of the Leawood Country Club. This is the first time the Commission has seen this case. The applicant is proposing R-1, which is the same zoning as the adjacent neighborhoods of Leawood and Leawood Estates. The applicant is proposing 20 residential lots. The lots meet the requirement of a minimum of 15,000 sq. ft. The average square footage of the lots of this development are 17,724 sq. ft. with a median of 16,083 sq. ft. There is a detention area that wraps around the east side of the development of approximately 6.3 acres. The developer is proposing to grade this portion of the site to act as a detention basin. There would be a retaining wall along the east side of the development that would vary in size between about 5 and 8 ft. for each segment. The highest portion of the wall would be about 18 ft. from the base of the lowest retaining wall to the top of the highest retaining wall. The applicant is proposing to have a trail system with landscaping that would allow access to this area and allow it to be used as a natural area. There will also be access on the north of the trail to allow maintenance vehicles, then the trails would get more narrow for pedestrian paths. Staff is recommending approval of this case with the stipulations stated in the staff report.

Applicant presentation: Presentation by Doug Patterson. The staff report is comprehensive and considers more items than what would normally be seen in a 16 acre development with 20 lots, because it is an infill development. The applicant agrees to all of staff's recommendations stated in the staff report. The country club has been in foreclosure, it has been remodeled and has failed. Clients acquired the club and closed on it toward the end of last year. Patterson has had several discussions with the neighbors as to the type of development and has considered many options, some of which included keeping the club. When the application was filed, the applicant found out that Larkin and Associates had been retained by the County to implement further

upgrades of the program in terms of identifying flood area and flood lines. This was an area where people were killed in Leawood. The flooding issue is taken very seriously in this area. The applicant hired Genesis Engineering who coordinated their efforts with Larkin and Associates to develop a very comprehensive flood study. They came to only one conclusion of what could be done with this property.

Presentation by Mike Sherk of Genesis Engineering. The original intention of the developer was to keep the club house. After meeting with the City, they realized the County was in the process of updating the flood zone. The applicant then contacted the Larkin group and realized the new 100-year flood plain. The new flood zone goes directly through the clubhouse building. They then determined the building could not be kept as a viable option because it would be subject to the flood insurance rate and it would be repeatedly flooded as it is now. The applicant changed the plans to put in a retaining wall and offset the amount of fill put into the flood zone by doing an additional cut so as to not raise the 100-year flood elevation. They then compared the study from Larkin, adding the newly proposed grading on the site; they re-ran their model and determined the flood elevation is not increased, and identified a couple of alternatives to reduce it as well. The amount of runoff from this site is being reduced. As it exists today, there are 9.5 acres of impervious area and it will be reduced by about 40%, which will be reducing the amount of runoff to the creek. Currently, there is 110 CFS in a 100-year storm that goes into the creek, the proposed conditions will be reducing that to 91 CFS, a 10% reduction in the amount of water. While this is significant to this site, it is insignificant to the total drainage coming down Dike's Branch Creek. This project is not contributing or worsening anything on Dike's Branch. The developer is able to improve what is going on downstream while proposing a quality residential project.

Patterson stated, according to City policy, if a developer is going to propose a development next to an existing development, they must be of the same type development. Patterson showed an aerial view of the proposed site next to the existing neighborhood. The lots that are next to this development are compatible to what is being proposed. The applicant believes they have fulfilled the recommendation that the lots would be compatible with the neighboring property.

Sherk stated the applicant is proposing a three-tier retaining wall. The 100-year flood zone will be on the other side of the retaining wall. It will be developed into a common area. The private lots will all be behind the retaining wall, so that the 100-year and 500-year flood zones are not touching those residential lots and they will not be subject to flood insurance. The existing creek runs along the south and east property lines of the site. The creek will not be revised or re-routed. The existing 100-year flood elevation follows approximately 50 ft. to the west of the creek at an elevation of approximately 860 ft. The new study shows the 100-year elevation comes up to 874 ft., which takes out about half of the 16-acre site. In order to fill in a portion of the flood zone, the developer would need to excavate an equivalent amount for water storage so as to not raise the elevation of the 100-year flood zone. The lots themselves were based on R-1 zoning. Once they decided where the wall would be placed, they laid out the lots in order to maximize the space available to them, to get the most number of lots and still meet the R-1 zoning requirement.

Patterson stated the six acres along the eastern part of the property will have a 50 ft. preservation reserve area for which there will be no soil disturbance. There will be landscaping to the west of that area. The wall will be a 17 ft. rise over three steps. It will be stair-stepped, up 5 ft., then back. The wall will be stone, not the key-type lock stone. It will be natural stone and highly landscaped. It will be fenced at the top with a decorative fence to avoid accidents. Patterson stated the applicant has spoken with the neighbors and the City told the applicant they needed to go to Larkin to see if it's feasible to maintain the club, and it is not. The applicant is proposing an infill, residential development, not office or retail. They are trying to be as compatible with their neighbors as possible.

Presentation by Jim Garbeff, a partner in Barstow Construction Company. Working with staff is a pleasure, very confident, cordial and very professional. Garbeff has a background in upper level housing. He handed out an outline in regard to different issues lacking in a lot of structural buildings in the upper bracket market. The developer is planning to have an architectural review board for the aesthetics, colors and features, and quality of these homes.

Presentation by Audry Seely, the landscape architect for this project. The intent of retaining the natural vegetation along the creek line is for natural wildlife and to keep the existing area open. The additional plant material in the nature area would need to be plants, which like wet conditions. The path would meander around and the retaining wall area would have evergreens, spaced every 40 ft. along the street. All of the areas would be irrigated. The vegetation along the creek line would be maintained. The nature area would be in more of a natural setting with benches and an area that people could use and enjoy.

Conrad asked what triggered the change in the flood plain line. Ley stated it is the box culvert that is down stream, on the east side of State Line Road. Johnson County hired Larkin to do a new storm water study and that is what they put in their model. Staff talked with Phil Gibbs who has a building by State Line Road, and he said the flood plain is higher than he has ever seen it on his property. Conrad asked where the detention pond would be on this site. Ley stated the nature area, east of the retention wall. Sherk showed the Commission where the water would be detained. Conrad asked if the water flooding would be a result of what is now being proposed, or if it would happen regardless. Sherk stated the land is in a low area. Depending on the condition of the box culvert under State Line Road, that is what causes water to back-up on this site. Duffendack asked if the improvements that will happen to Dike's Branch have been taken into account with this study. Ley stated the improvements to Dike's Branch will not affect this development.

Henderson asked for someone to comment on the stone and what the base consists of. David Richardson with PSI responded. PSI performed the geotechnical investigation. Richardson showed the boring log and stated "C1" is where the core was taken. They did not start coring until the augers refused. There was some historical research completed that shows this area is not listed as a quarry, but listed as a sand gravel pit. Richardson stated it is weathered rock and they are anticipating zero blasting. They are assuming it will all come out with large ripping equipment. Henderson asked if these homes would be built on embedded rock. Richardson stated some would be on soil, some would be on rock. Blasting would not be anticipated. Henderson asked, if the developer later realizes they need to blast, would they need to reconfigure the lots. Richardson stated, no. It would just be an increase in cost for the foundation for that house.

A motion was made by Brain to extend the meeting in order to finish this case, but not past 10:00 p.m., seconded by Carper. Motion approved unanimously.

Public hearing : Dick Wetzler, representing a number of people in the audience. The Commission should deny this application. This is the first night this case has been heard by the Commission and the public has only recently seen these plans. This is an emotional issue for many people in the City. This is a site to which many residents have an attachment. This is not just an emotional setting, but there are reasons from a planning prospective as to why this proposal is not sound. The group of residents in attendance includes land planners, architects, CPAs and attorneys who are willing to give their professional opinions regarding the respective merits of this particular plan. Of the two people that are planning on speaking tonight, one is a CPA and the other is an architect. The staff report goes through the Golden factors. The whole focus of this plan is based on the assumption that this is a bare piece of ground that has never been used. That is not the case. We are dealing with one of the oldest properties in Leawood. Wetzler handed the Commission a report done by a geologist that is a historical analysis of this property. There was a reason this club was constructed at this location. Leawood was constructed after Prairie Village. The Kroh brothers wanted to have an amenity that would enhance the value of the surrounding property. The site was chosen to maximize the Kroh brothers' profits. This became the ideal site for a country club. That plan became a unique part of Leawood. In the early part of Leawood, only residents could become members. This was a rock quarry; many of the limestone foundations that we see in the north part of Leawood may have been quarried from that vicinity. This is a major drainage area. Wetzler is puzzled that some type of blockage that occurs under State Line Road causes the drainage problems. Drainage is one of the problems unique to this property. Over the years, the residents have come to rely on this property as a unique amenity. You will not find that the original owners and various entities who have owned this property have ever intended it to be something that would be held to generate income; it was a club that was meant to serve the surrounding community, an entity that, while privately owned, served the needs of the residences and enhanced the value of the surrounding properties. If you try to appraise this type of property, it will not appraise high, but the surrounding properties will. This property has never had any inter-relationship with the commercial property to the east and the north. It only serves as a buffer between those commercial properties along State Line Road. This property is zoned as recreational. It has been zoned that way for at least 25 years, if not longer. It could continue to be used as recreational. The history of this current ownership has not been one of preserving the value of the present economic use, but to destroy it. The current developers have owned the property for about 6 months. Before they took ownership, residents had proposals that showed this property could function as a viable economic entity. When the developer says, "This property could not continue to function as a recreational property", that is not true. No one would buy an entity that was a going economic concern, and then choose to ignore that entity. In this case, this developer has chosen to hold this property for 6 months and has stated this property will not function as a recreation property. The developer has not tried to see if a recreational use would be suitable or not. One of the things his clients have not tried to do at this time is to determine the loss that will be sustained to their property if it is rezoned. It functions much like a park or golf course would. There would be a diminishment of value to those surrounding the property. The amenity was created not just as an enhancement to those properties around it. It was created to benefit a much larger area of the City. One Golden factor is the relative gain to the public health and safety as a result of denial of the application, as compared to any hardship imposed as a

result of a denial of the application. The reason the economics are different than anyplace else in Leawood is that this is not a piece of ground that was purchased in an undeveloped area. It was never intended to generate substantial amounts of income. The current developer knew it was zoned recreational. The hardships on the public are greater than those of the owners of this property. If you look carefully through the comments made by staff, you will see staff has many of the same concerns raised by the residents. The difference is that they did not consider the past use. They looked at it as if it was an unused piece of land. This plan does not comply with the adopted master plan of the city. The master plan shows this property as recreational. It is different to join up to a piece of property that is a field, and then find out something is being built. These people bought their homes, knowing that piece of land was zoned and being used as recreational. There are a number of issues that need to be reviewed from a planning perspective; the impact of surrounding properties, economic standpoint, and drainage issues. The wall that they say steps back appears to be a unified wall. There is a question of whether the trail is safe, and how it benefits the public. There would be a significant loss of trees in the area. There are also questions about public works, and about who would maintain this area. The proposed development is different than anything that has been seen.

Bill O'Conner, 8029 Manor Road. He is the managing principal with O'Connor and Grant CPA and management consulting firm. The group asked the firm to perform some initial feasibility analysis in terms of keeping the club and continuing to keep this land as a recreational use.

Duffendack asked O'Conner to explain how this study relates to the plan that has been submitted. Bennett stated the Commission would need to make their decision based on any relevant factors. She advised the Commission to let O'Conner speak to be part of the record, even if it may not be relevant to their ultimate decision.

O'Conner stated one area explored was the feasibility of operating without the debt service that had accumulated from the purchase and over-development. The last full year of financial statements in 2001 showed the club had positive EBITDA of about \$170,000. At that time it was operating with a possible foreclosure. O'Conner has spoken with restaurant groups about the initial feasibility of reinvesting money into the club. They felt the demographics were very strong for a country club and a restaurant. A country club does not have shareholders to generate earnings. He looked at a few factors: can the club continue, is there interest in outside parties, and could it be restarted with some marketing efforts. All of the initial information found indicates there are positive factors in reopening it.

Mark Curfman, 2812 W. 90th Street. He addressed a couple of the land use issues, speaking as an architect and land planner. Staff has overlooked the definition of recreational zoning. The best way to look at the density calculation is to only look at the land that the houses would be on. The 16.2 acres minus the 6.3 acres of detention area, would end up with about 2 units per acre. The proposed development has about two-thirds the lot size of the surrounding developments; 13 or 14 lots would be more compatible. The staff report seems to suggest that 6 acres of a natural area/detention basin is an equivalent trade off with 16 acres of recreational zoned land that has been used as recreational property for 50 years. There is no comparison.

Rick Johnson, 8427 High Drive. He and his wife, Julie, purchased their house in 1972 and, have added on to their house twice rather than moving from the neighborhood. One of the principle reasons for the purchase was the beauty of the neighborhood. They have been members of the club since 1973. There is a parallel between the earlier case and the rezoning of the Country Club property. The absence of the recreational zoning will diminish the value of his property and other surrounding properties. There is precious little recreational property north of I 4-35. That recreational property is very valuable to the older part of Leawood. This development will detract from property values and the beauty to the city. The issue is to have a recreational zoned property in the older part of Leawood. There is more to look at than just the compatibility of the lot sizes. The developers bought the property as recreational and they should be here tonight proposing a new club that fits with the zoning currently in place.

Heather and Erin Whiteside, 2008 W. 85th Terrace. The proposed park area looks nice, and this development would only help to improve the area. This could only be a plus to build these wonderful homes.

Joe Zuback, 2500 W. 90th. He is a registered architect, member of the National Council of Architectural Registration Boards, AIA, and registered in Kansas and Missouri and has been a resident of Leawood since 1966. Zuback came to the meeting feeling neutral about this project, but has changed his mind. He remembers bodies being pulled out of the trees because of the culvert on State Line Road. The building he worked at was at 8900 State Line and it was flooded. They worked for weeks with no air conditioning and no windows to open. Zuback's father is a friend of John Kroh, along with George Mulbach, William Volker and he knows that Kroh would not have built the club without wanting to make money. The Kroh brothers came to Leawood to

make money and would not have put out money for nothing. It was a lovely country club, well maintained, and enough people belonged to it so it functioned properly. After Leawood South Country Club was built and the City built Leawood Park, the club slowly went into decline. There would be no case to discuss tonight if the club were functioning on its own and had enough money to stay open. As it is right now, it is a detriment to the neighborhood. The new development would be a lot better for the City, not only because there would be more tax revenue. Zuback raised four kids in this neighborhood and they never used this recreational park most of these people are talking about. Leawood has provided the residents with all of the amenities needed within the city park. He and his wife asked the City to not raise property taxes to save the club. There is nothing architecturally significant about the building. He showed on the flood plain map where the area flooded and people died. The proposal to have this green space to help reduce the flood waters would help a lot. Their proposal would be a lot better for the residents of Leawood. It has flooded in the past and it will flood again. The wall would be appropriate. Zuback worked for 22 years with Black and Veatch, has done work internationally, has worked for the government and had Federal clearance and what the developer is proposing is the same kind of stuff that he would have proposed.

Douglas Carter, 2512 W. 88th St., was a member of the Leawood Country Club members association, which was the last group that ran the club as a club. He is also an attorney and the Chairman of the Board of the Leawood Country Club Founders Association, Inc. Carter lives within about 2 blocks of the club. The founders association was formed for the purpose of reopening the club. The reason the club closed down was singular. It was not because of the flooding or because State Line had too small of a ditch. It was because a number of years ago an appraiser, dealing with the RTC, gave too high of an appraisal on it on which Industrial State Bank based a bad loan. The members association couldn't make the loan payments over time. The bank lost money, not as much money as they could have if this developer had not come in and probably paid them what was too much for this land. There is only one reason why the club cannot continue in its historical function and that reason is gone. It was a bad mortgage based on a bad economic analysis. Through Bill O'Connor's efforts, with business plans the developer has not asked us to see, we have an economically viable plan that needs 300 members. The founders association has them. They would like it to remain as recreational for the benefit of this City. It is not in the best interest of the City for this proposal to enrich these gentlemen.

Mark Lieb, 8914 High Drive, representing the Leawood homes association. Every time this issue has been discussed in the homes association meetings, an informal vote was taken and the majority of the members have voted to keep this land zoned as recreational. The reason is the lack of recreational space in north Leawood. According to the Johnson County parks and recreation map, the goal, countywide, is to have 40 acres per 1000 residents. Municipalities are designated to have 12 acres per 1000 residents. Even if the City Park is included as in the northern half, Leawood should have 120 acres of recreational opportunity in the northern half. Recreational space is a valuable asset to our community. The argument that it is not a viable use is not a valid argument. The watershed has been developed for 30 years, the club existed with the flooding, and it has never been that big of a problem. It is still a viable use. The developer is meeting the R-1 zoning with their proposal, but the average surrounding lot size is 26,000 sq. ft. Their lots average 17,724 sq. ft. It is not with the character of the neighborhood. Some of the very old trees should not be removed. The majority of the Leawood homes association is opposed to the rezoning from recreational. Lieb asked the Commission to just make a decision on the zoning at this meeting, as he would like to discuss other opportunities.

Mike Aurory, 9006 High Drive. Aurory's property backs up Dike's Creek Branch. The water that floods this property is not a function of a result of it backing up from the passage of State Line Road, it is more of a function of the water running down from the Ward Parkway parking area that is north on State Line. It flows through there within 5 minutes. Once there is 10 or 12 ft. of water running through there, it will sit there after any sizable rain. The wall will be 18 ft. tall regardless if there are steps. It is very important that the Commission look at this study regarding the amount of excavation that has to be done. There is only one paragraph in this study that describes the outcome. The study states, "underlying bedrocks may be rippable, jack hammers and hoe rams may be required if hard rock is encountered. Although not expected, if the encountered bedrock is too hard for the machine to tear out, it must be blasted. A detailed ripability study of the underlying bedrock across the entire site was beyond the scope of this work. The results are only applicable of the boring location where the core was attained." Only one of the 11 bores done actually got down to 15 ft. The report states it is on flat clay, which is not suitable for building. Aurory is also concerned that this is a landfill. The developers have not done a phase two study. They need to do a phase two environmental study in order to protect the adjoining landowners from what happens when land that has building material in it is disturbed. When Aurory asked the developer why there is a need to have 20 houses and a 15 ft. wall the developer answered because they can not make money with less. Aurory believes the neighbors should not have to suffer because of the developer overpaying. If this land is to be rezoned, it should be consistent with the neighborhood in terms with footprints of the house in relation to the size of the lots and there should not be any excavation without due diligence.

A motion to continue case 92-02 to the April 22nd meeting and continue cases 18-03, 19-03, and 20-03 to the April 8th meeting was made Brain and seconded by Munson. Motion to continue approved unanimously.

A motion to adjourn the meeting was made by Brain and seconded by Carper.

MEETING ADJOURNED

J. Paul Duffendack, Chair