

**City of Leawood
Planning Commission Minutes
August 12, 2003
Leawood City Hall
4800 Town Center Drive**

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

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

NEW BUSINESS:

CASE 63-03 LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT Request for approval of an amendment to the Leawood Development Ordinance on section 16-4-5.10, Registration of Recreational Vehicles.

Staff presentation: Presentation by Diane Binckley. This item is before the Commission by direction of the Governing Body. About a year ago, the City reviewed the recreational vehicle ordinance and with that review there was a deadline set of July 1st for registration. That day came and went and although there were a number of people that did register, there were a substantial number of people who did not. Based on comments by several residents, there was a request to the Governing Body to extend that timeframe and this amendment is to honor that request. The Governing Body directed staff to bring this amendment before the Commission then back to them. This amendment is to extend the registration deadline from July 1, 2003 to September 30, 2003.

Public hearing: Robert Sjolín, 3217 W. 82nd Terrace. Recreational vehicles add nothing to the aesthetic value of Leawood. He has one on his block and although it is parked back so that it does not extend further than the house, the whole street would look better if it disappeared. He was at the Council meeting and he does not understand why they feel the need to extend the deadline for registering the vehicles. As the Mayor pointed out, it had been in the papers for over a year. The owners all received notices about the deadline. If they ignore the deadlines, they should pay a fee. A notice that is a little stronger should be sent out. Those people all knew they had to register.

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

Henderson stated he agrees with the resident.

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

REMANDED FROM COUNCIL:

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

Staff presentation: Presentation by Diane Binckley. This item was before the Governing Body on May 12th, after leaving this body on April 22nd with a recommendation for denial. The Governing Body listened to the public comment on a plan that included 20 single-family homes on 16 acres and included the removal of the club that is currently on the property. The Governing Body remanded this case back to the Planning Commission with eight items, which were given to the Commission in a memo a few weeks back. One of the reasons for the remand is that the applicant had submitted a substantial document to the Council the night before the hearing of this case and there was some concern there was information in that document the Commission did not have available when the decision was made to recommend denial. At this time staff is requesting the Commission to review those eight items and make a recommendation to the Council.

Duffendack stated this case has been heard and the Commission's approach tonight should be based on the new information given. He asked everyone to try to focus on new information and reduce redundancy.

Robert Sjolin asked if this meeting will be the same as the last meeting, where the applicant had two hours to speak and only a short amount of time allowed for the public hearing. Duffendack stated the Commission would follow normal procedure, which is to allow the applicant to speak, then open it for public comment. The Commission is requesting that all information given tonight be only new information, or information relevant to the new material handed out.

Applicant presentation: Presentation by Doug Patterson. In April, the applicant did not do the job that should have been done before the Commission. Based on the comments that were made at the public hearing, the question from the Commission was, "We have 20 lots, R-1, a use that is compatible with the general makeup of the ordinances of Leawood, but should it be here because we have a club that has been here for 50 years? Prove to us that it's time to make a change in the use." The applicant's job after April 22nd was to collect a very large amount of material to address the Commission's concerns raised in April. That process involved the completion of a highest and best use study. It was received shortly before the City Council meeting and they did not have much of a chance to review it, therefore they remanded it back to the Commission consistent with certain issues that were raised. Patterson stated he would address the issues as to why the club or a recreational use in this area is no longer viable. The issues of public safety, changing times, improving density, compatible density, and a facility that is not economically viable, improving runoff, improving utility functions of this area are matters all of which go into whether the recreational use needs to change, the club should be removed and whether 20 houses, zoned R-1, approaching 18,00 sq. ft. per lot is appropriate. The pervious area right now is 9.13 acres of 16 acres. Under the proposed plan it will go up to 13.15 acres, which leaves the impervious surfaces at less than 3 acres. The current impervious surfaces are 6.27 acres and that will go down to 2.92 acres. The impact of flooding runoff is obvious. Right now, 8.3 acres are in the 100-year flood plain. Under the proposed plan the area within the flood plain will be reduced to 6.21 acres. Most importantly, the buildings are in the flood plain. Under the new plan no homes or single-family lots will be under the flood plain. Currently, there is no public park to be used for the community. With this plan, 6.21 acres of open space will be made available for the community. Under the existing recreational plan there are buildings in excess of an acre and a half under roof, pools, essentially quasi-commercial areas and no single-family on this tract. With

this plan, all the quasi-commercial buildings will go away and there will be 20 houses. The current percentage of improvements in the 100-year flood plain is 51.1%. No improvements will be in the flood plain under this plan. The new plan will reduce the flood flow somewhat in the big picture of things. The first criterion of the Golden standards is the character of the neighborhood. To the north, south and west of the site there is single-family, to the east, one can see villas, Continental Engineering, and the Sprint buildings. As far as Leawood is concerned, this site is surrounded by single-family homes, not a country club, but single-family homes, which is what is being proposed. In terms of the criterion that Council has asked the Commission to review in regard to density per lot disproportionate to surrounding areas, that is not the case. (Patterson showed an aerial photo of the proposed site and the surrounding lots.) It is compatible. There are some existing lots that are an acre or two, but they are long lots. In terms of the immediate lots to the west, it is compatible. The proposed lots are slightly under an average of 18,000 sq. ft. per lot. This use is compatible as R-1. The second Golden criterion is the zoning and uses of properties nearby. Where there are four houses on the west, the applicant has provided four lots. The applicant has tried to make it "apples to apples". The third criterion is the suitability of the subject property for the uses to which it has been restricted. The authorized nonconforming uses of the recreational zoning are not in keeping with an R-1 community. If this club were turned into the type of club that it would need to be, it would have 2,500 members with 400 cars going up these streets between 5:30 in the morning and 11:00 at night. There would be 1,000 vehicles there all day with 2,500 members. That is not what the applicant is proposing. The applicant is proposing 20 lots. The master plan calls for recreational. That might be the only area where the applicant is not keeping with the Golden criteria. The master plan was never intended, nor was it created, to be cast in stone. It is an evolving document. When a property's highest and best use changes, that is when the master plan is amended. The Golden case says no one set of criteria is to be controlling, but it is to be considered overall. To address the issue that the Commission asked as to "why not a club" the applicant engaged the firm of Integra Realty who are experts in their area of appraisal, land use, and economic development. Integra was asked to prepare a highest and best use study. The conclusion of their report is that the highest and best use of the subject property as vacant land is for development of single-family residential. It states, "given the poor operating performance of the subject property as a club, the highest and best use to the subject property as improved is for the demolition of the existing club facilities and redevelopment of the site for single-family residential development. We believe that the redevelopment of the site for single-family residential development would have a positive impact on the neighborhood." There is a current facility that has more than 67,000 sq. ft. under roof, it is in the flood plain, indoor tennis facilities, 9 outdoor tennis courts, 2 outdoor swimming pools and 300 parking spaces. It is not appropriate for an R-1 area; it is not the highest and best use for the area now. A lot of the criteria that goes into the highest and best use are based on an economic study. Our constitution gives us the ability to have a reasonable use of the property. There are many cases seen by the Supreme Court that say the City has the absolute right to control land uses, but when their restrictions prohibit any effective or economical use of the property, the City has gone too far. As of right now, the authorized uses are a private park and all of the other uses are public. It could not even be used for what the applicant is proposing. Council might be in the process of adopting a "safety valve" which allows application for a special use permit. Over his 30 years of law practice in the zoning area he has never seen a special use for 20 houses, that is not what a special use permit is for. Currently, 51% of this property is under the 100-year flood plain. The applicant is proposing a development that will take all of the improvements and lots out of the flood plain and will relegate the potential risk of a 100-year flood within the 6-acre area on the east side of the site. It is not a detention basin; it is not going to be a lake. The developer is not going to touch 30 ft. from the creek to the west, but will grade 30 ft. from the west to the wall. In a 100-year flood plain this 6-acre park area will be wet at most 24 hours out of 100 years. It is not going to be the detention

pond that people perceive. This is the open space for this community and the applicant would not do that. The past failures prove this club is not for today. In 1991 this club was foreclosed for a total debt of \$3.2 million. Some club members tried to keep it going by taking out a loan, then in 2001 it foreclosed again for a total debt of \$2.7 million. Since that time in 2001 when the bank had it, the debt continued to rise. There were judgments and lawsuits filed equaling \$308,000. There were sales taxes, IRS withholding taxes, and unpaid sales taxes. The club could not make it. The highest and best use study's conclusion is that for a private club to be viable it has to have members, it will have bills, mortgage, and taxes. The people who want to keep the club are saying that it had money in its account, but it wasn't paying its taxes. Integra has said, and is backed up by one of the owner's partners, that in order to have a club with monthly dues of \$50, it would require 2,500 members in order to turn a profit of \$128,000 in a year. That would be a lot of cars, traffic, density, lights and parking. The applicant undertook a study to see what it would take to keep the club running in light of past failures. The applicant went through the records of the Country Club and found a membership activity roster for the month of December. In December alone there were three pages of people dropping their memberships. Some of the reasons for dropping were cost increases, impending assessment, joined another club, lack of use, too expensive and limited use. One of the owners is in the construction business and in order to tell Integra what it would take to make a club run, the question was, "how much would it cost to repair it or tear it down and build it all over again?" The estimate to cure the flood problem, alteration, and remediation and rehabilitate the club is \$2.3 million. That is the total cost of fixing the basic infrastructure of the club, not putting a facelift on it, tied in with the debt that the developer has on it, which is \$1.75 million. The club would need 2,500 members in order to turn a \$138,000 profit, which is not a very significant profit on that type of investment. In order to rebuild the club the way it should be built, it would cost \$5.5 million. The feasibility of this club and where it has been in the last 50 years is over. If the applicant were before the Commission today requesting to tear down 20 houses and build a 68,000 sq. ft. two-story commercial building, a 300-space parking lot, pools, lights, and a commercial facility with 2,500 members, there would be many more people opposing that project than are here today. It is not right for this area. The applicant has submitted information to City Council, which has asked the Commission to review the information. The applicant has approached Johnson County Parks and Recreation and talked to Michael Meaders about this. Meaders has basically said they do not have the ability to take over this type of club. They do not have that type of money, and no governmental entity has that type of money. The applicant has asked for a meeting with them, but they stated there would not be much to talk about. Patterson believes the absolute test of whether this club is appropriate is to say, "What if the houses were already there and an applicant came in to request such a commercial facility?" It is not appropriate in this area. The highest and best use of this land is not a continuation of a club; it is not the continuation of any other recreational use, because there can be none. The only other allowed recreational use is a public or private park. There are not very many people who will pay a membership to be in a private park. The applicant asked the Commission to consider that the highest and best use is R-1, compatible with the lots within the vicinity. The architect is available to describe what type of homes would be placed. The applicant is open to the consideration in regard to "apples to apples". The impact on the neighborhood would be supplemented by an R-1 in an R-1 area.

Williams asked if any architectural standards have been established for the project. Patterson stated there are none written as of yet, but there will be. They will be focused on height limitations where the buildings back up to surrounding properties. There will be a homes association and an architectural review board. The developers have talked about having some neighbors within the community on the architectural review board. If it were the Commission's suggestion to see the architectural standards, then it could be prepared.

Williams stated it is his understanding that a few of the neighbors were concerned about not seeing any architectural standards. Patterson suggested having the architect describe the types of homes.

Ron Stallbaumer presented some photos to give an example of the style of houses for this particular project. The homes would be well-designed and made of stone, timber, and/or stucco with concrete tile roofs. Stallbaumer showed a project in Prairie Village and one in The Woods as examples. There would be an integration of the site. The project is designed specifically for the client and site.

Munson asked the estimated cost of the retaining wall. Jim Garbeff responded the anticipated cost of the wall would be around \$500,000.

Munson asked how many houses were in the originally proposed high-rise buildings. William Whitaker stated the original plan contained 17 patio homes and 2 two-story buildings, which consisted of 26 condos homes.

Munson asked how an emergency vehicle would access the site. Mike Sherk responded there is an access drive off of 89th Street and a 10-ft. wide sidewalk that is wide enough for emergency or maintenance vehicles.

Pilcher asked if the highest and best use study is normally used as a tool for land use. Ken Jaegers, of Integra Realty Resources, stated he is not the author of the review, but he will try to answer any questions. Pilcher asked if the report is meant to be used as a tool for land valuation. Jaegers stated in order to value real estate; it needs to be concluded to a highest and best use. Pilcher asked if the highest and best use is defined as "to get the best return on the investment". Jaegers stated it would be a combination of return on investment and a feasible use. Pilcher asked if the current zoning is considered when deciding the highest and best use. Jaegers stated it is not necessary to consider current zoning, as long as the other questions are answered appropriately. It was Integra Realty Resources' experience when talking with Leawood and other cities that they are willing to rezone tracts for a higher use if they are vacant or have older or unused improvements on them. Pilcher asked if parkland is ever considered the highest and best use in the real estate industry. Jaegers stated, yes, but typically for land that cannot be used for anything else. In relation to this property, the parkland is what is in the flood plain and most often a flood plain ground is used for a park.

Conrad asked if there were any other types of facilities that could fit into the recreational zoning and still be viable. Jaegers stated the recreational uses did not meet a financially feasible situation. It is his firm's belief when there is a tract surrounded by residential on three sides, segregated from commercial use by a floodway, there is not a significant reason to go well beyond residential for the likely use.

Williams asked what the impact would be on property value that is adjacent to parkland or recreational land. Jaegers stated he does not know. It would require another study to answer that question.

Duffendack asked about the wording in item number 7 in the memo given to the Commission. Binckley stated the majority of the existing structures are currently in the flood plain. Based on the City's flood plain ordinance, if the property is damaged beyond 50% of the worth then it would no longer be able to be used as such unless it was brought up to FEMA's level of standards. Another part of the City's ordinance states if a property is vacant or left unused for 12 consecutive months, then if it were a lawful nonconforming use,

which this one is because it does not meet the FEMA standards for construction, then it would need to be brought up to that level. Duffendack suggested a better way to describe that might be to say, "improved to a level required by the City's ordinance", rather than "confiscated". Binckley stated there is the ability to use the property; it would just need to be brought up to FEMA's standards. Pilcher asked if it is in the 100 or 50-year flood plain. Binckley stated it is in the 100-year flood plain.

Munson asked for clarification of number six of the memo. Binckley stated she believes the councilman had a question on whether the pedestrian access from the southern end of the property it is still accessible and whether or not there is an easement. There is not an easement and it is no longer accessible because the current landowner of that property has cut that access off.

Henderson asked if "current plan" in number five of the memo refers to the applicant's plan. Binckley stated that is correct. Henderson asked if the statement, "does not look into other recreational options" suggests that if it were to remain recreational and remain private, theoretically that person could entertain other things such as skate board tournaments. Binckley stated she would not want to assume what that councilman was thinking when they were stating their direction. Henderson asked if there are other recreational options. Binckley stated, yes.

Williams asked what the intended use would be and also what the maintenance and upkeep plan would be for the 6.2 acres of public land. Patterson stated it would be at least a common area, maintained by the homes association dues. There was some initial discussion that perhaps the immediate community would want to have access to this area and that is acceptable to the owners. Williams asked if the area could potentially become private. Patterson stated, yes, unless it was added as a stipulation for approval to make it public.

Patterson stated the law that was in place at the time of application limited the use of this area to a private park, which could include trails for bicycling, walking, jogging and playgrounds. That was the only use the owner could make of the property at the time of application. Binckley stated that is not true. This application was made prior to December of 2002, which is when the City made the amendment to the ordinance. At that time, there were a number of uses that were allowed. At this point, the Commission is aware there has been an amendment made to the recreational zoning that allows all of the same uses as when the applicant purchased the property and when they made application.

Rohlf asked if the applicant has agreed to the stipulations stated in the staff report. Patterson stated, yes. Henderson asked if the public hearing continues to 9:00 p.m., would the meeting end and the case be continued. Duffendack stated the meeting would continue as long as required to finish the case. Henderson stated he wanted to get it on the record that this meeting could go on for a very long time.

Duffendack asked any speakers to limit redundancy.

Public hearing: Dick Wetzler, 3000 W. 121st Place. He is representing a number of the former members of Leawood Country Club. He hopes to be more diligent of abiding to the time recommended than he was at the last hearing. His purpose in making the presentation last time was to lay out the planning basis, the points that would justify to the Planning Commission and Council in concluding, as a matter of law, that there are good and sound reasons that support the zoning of the current classification. He does not intend to go through that presentation point by point, but hopes those that were not there have had a chance to

review the comments made by him and the others who spoke at that hearing. His group continues to believe there are good reasons to support denial of this plan, but more generally of the zoning request. At this point in time, most people appearing tonight are more than likely going to talk about the site plan as proposed. The Commission should look at the real issue, which is the zoning. This property should continue to be zoned as recreational property. The use has been a semi-public use for many years. It has a value to the community, probably more particularly to those properties that directly abut it and whose property values would be impacted by the changing of the zoning, but it would also have an impact to the community as a whole. The Council sent this matter back to the Commission with specific directions that Ms. Binckley stated. There are multiple varieties of recreational uses. The best use for this property is the one that currently exists. The highest and best issue should not necessarily be a factor when determining whether or not to rezone a property. The current owners should have taken into account that this property was zoned for an existing use of recreational. If they did not feel the existing use as a club would work, they should not have paid too much for it. It is a problem for them to deal with, not the residents or the City. The proposed lots are not "apples to apples" as Mr. Patterson suggested. The owners have not considered the alternative recreational uses of the property. The original proposed plan was a plan that would have been inadequate to serve the members and the residential component would have been totally unacceptable to the adjoining residents. The City Council suggested to the owners to look into recreational options that would be suitable for this property. Wetzler feels the applicant is not wanting or will not consider those other options until the Commission and the Council denies the proposed rezoning. A significant portion of Patterson's proposal was referring to the significant floods in the past. When those storms occurred this club was shut down one day on each of those 20-year occasions. The odds that this club will be destroyed by an event of nature are extremely remote. If this property were vacant today and someone asked the City to develop this it would have much more open space. The master plan is a vision that was established by the Planning Commission and approved by Council as a vision of what this City should be. If the zoning were to be changed it should have a very good reason and he feels the owners have not demonstrated that. From a planning standpoint it does not make a difference as to whether the club would be successful or if this newly proposed development would be successful. It should be based on the use of the land alone. The City and the Commission should not bail out the investors who paid too much for the property. They have failed to take the steps necessary to protect and preserve the use of this property, failed to take the steps to enhance the value of this property and have failed to offer any plan that would be consistent with the current zoning.

Debra Filla, 8505 Belinder Rd., speaking on her own behalf as well as on behalf of Lee Kester and Beth Fields. None of the owners of the property are residents of Leawood. She hopes the binder provided to the Commission helped them understand the resident's views on the Council's comments. She hopes the Commission will deny the request. The first issue was the use of green space. Whether by the City's own master plan, by the Leawood Development Ordinance, by the County's map 2020, or by national standards of 40 acres/thousand residents, there is not have enough green space in northern Leawood. In regard to the density issue, the LDO requires the average house of such a development to be sized according to the average of the homes within 300 yards, which would be double the space of what the developers have allocated. The merit of the plan is not the issue. The issue is the rezoning. She has a letter from Les Kessler from Indoor Courts of America who made an offer to the bank of \$1.5 million and the current owners outbid that at \$1.75 million, but that should speak to the viability to use this for the purposes for which it is zoned. The interact process first began in April of 2002 when speculators contacted the neighbors at 7:00 p.m. and asked them for a meeting at 10:00 the next morning. In April, their initial offer of 16 condos and 19 homes was immediately met with concerns of density. In the month of May the Leawood

Homes Association and the neighbors under the organization of Friends of Old Leawood (FOOL) met and expressed their desire to keep this zoned recreational, as in green space. The owners came back with a second plan in June, which increased the density from 16 to 24 condos and dropped the homes from 19 to 16. They then came back in October with the next plan of 36 villas and there would be no recreational at all, then in November came back with the current plan of 20 homes, and no recreational. The developer has offered no negotiation, and feels no fewer homes could be placed on this property to make it work. During this process the neighbors repeatedly asked and were given assurances by the landowners that they would contact Johnson County Parks and Recreation to see their interest in buying the extra land. To the date of July 19th, the County has yet to be contacted by the owners. The Save the Club group was meanwhile negotiating with the owners and held a meeting in December of 2002 and it was found that 300 residents would join if the club would reopen. Attempts were made to contact the owners and to share this information to develop a plan to reopen the land. The owners temporized. Within 30 days of those attempts by Save the Club, in late January, the owners began to strip the club even while they were supposedly negotiating on reopening the club. After the Commission denied the rezoning in April, the landowners contacted the Save the Club group on May 3rd and made a hand-shake agreement to reopen the club this summer while they continue to seek rezoning and plan approval for development around the club. Mr. Patterson and the attorney for the Save the Club group were supposed to meet on May 5th to finalize the details. Mr. Patterson failed to call, and the group's calls were unanswered until May 9th when the group received a fax from Mr. Patterson stating the owners were not interested in leasing the land back to the Save the Club group. The owners have offered an alternate plan that if the Save the Club group (now called LCC Founders) agrees to get the neighbors to withdraw the protest petition and if they will get everyone organized and support an interact meeting, then the owners will come back with a scaled-down club and 30 villas. The owners did not honor the integrity of the interact process of working with the neighbors. They failed to present even one use of the land as its current zoning. The current owners have posted a "no trespassing" zone, which completely cuts off the neighborhood from Ward Parkway and the ability to walk to the shopping center. This property should stay zoned recreational and only when such direction has been given to the owners by the City, will a recreational use be looked at by the owners.

Henderson asked to whom Mr. Patterson's letter was addressed. Douglas Carter responded the letter was written to his attention.

Mark Curfman, 2812 W. 90th Street, about 3 blocks west of the Country Club property. He has been a resident of Old Leawood for over 12 years and a member of the club. The issue before the Commission is of land use and zoning. The highest and best use is an economic analysis of land use. The viability of the country club is also an economic issue. The issue before the Commission is land use and zoning. The regulations of the LDO have 10 criteria governing the establishment of a subdivision that can be looked as three broad categories. The first category is the compatibility of the surrounding neighborhood. This plan should be separated as two distinct areas: the area of the houses and the area of the detention basin. The wall separates those areas. The density in the proposal is over two units per acre. The median lot size of the adjoining neighborhood is 24,000 sq. ft. The median lot size of the proposed subdivision is about 16,000 sq. ft. It's a much denser subdivision than the surrounding neighborhood. It meets the bare minimum standards of the R-1 zoning requirements. It does not meet the criterion of matching the standard size of the adjoining lots. Another important issue is open space. Open space is land that is designated for public areas, parklands, and/or recreational use for the citizens of Leawood. In previous ordinances the City could require up to 10% of land to be set aside for open space dedication. In just the original Leawood subdivision, the 1,100 homes would have equated to more than 50 acres of green space. If the Kroh

brothers were developing the land today as new, more than 50 acres could have been required to be set aside for green space. The last issue is the City's comprehensive plan. The comprehensive plan recognizes the importance of open green space. The purpose of the comprehensive plan is to provide a framework to guide development. Mistakes can be made from looking at the individual circumstances versus the overall community. The Commission should look at this as a land use and zoning issue.

Gordon Henke, 8901 High Drive, has lived at that address for 35 years. An example of open space is the Ike Davis Park, between the Kansas City, Missouri City Hall and the new Federal building. Another example is the Alexander Majors home at 83rd and State Line. Part of the front of that home is in Leawood. Yellow Freight donated the land to the City and now there is a wonderful open space view to the south. It is hard to put a value on those kinds of things. He is very proud of that corner. As far as the club needing 2,500 members, the Country Club never had that kind of membership. There were 550 at the end before the demise of the club. He would think maybe if they had 700 members they might be able to take care of the debt of almost \$3,000,000. When the opportunity came and someone offered \$1,500,000, rather than having a total debt of \$3,000,000. they missed a golden opportunity. The people bought it knowing the current zoning and had a different plan for it. Some of the things the Commission has heard are just a little bit exaggerated.

Douglas Carter, 2512 W. 88th Street. This case reminds him of the myth of Sisyphus, doomed for eternity to roll a large stone up a hill only to have it roll back down by the hand of Zeus, then roll it back up again. Nothing has changed with this case since it was before the City Council. The thing that needs to change is for the land speculators to understand that this club is an important part of the community. The owners are not going to get their rezoning and they are going to have to make a realistic decision regarding what will become the next phase of the use of this property, consistent with its current zoning. He has a letter from Les Kessler, president and founder of Indoor Courts of America, one of the largest operators of private tennis facilities in the country. Kessler grew up in Leawood and played tennis at the Leawood Country Club as a child. Kessler told Industrial State Bank he was happy with the current zoning and would pay \$1.5 million and run the club. Carter was on the board when the club ended and he knows that the membership was increasing. The one problem was that they paid too much for the club. The performers are sound. Les Kessler is sound. It is important practically and legally. Practically, it can and will be a club again as soon as the land speculators wake up and understand the reality. Legally, it is the bottom line of any Golden Factor discussion. Mr. Patterson put forth the study of highest and best use. The law does not require that just because someone has their name on the title to real estate, that under the due process clause of our constitution they are entitled to make the maximum amount of dollars possible under any construction. If that were true, Carter could do the same with his residence. He could board it up for a year, call it vacant, and then turn it into a Quick Trip. He might be able to make more money as a Quick Trip, but that doesn't mean the Commission would approve it, nor should they. The highest and best use is irrelevant. Whether or not there is an economically viable use is obvious, it can and will be a club again. It does not need 2,500 members. A reasonable use is a recreational facility consistent with the overall ordinance. The owners made a bad deal and it is not the Commission's responsibility to get them out of it.

Robert Sjolín, 3217 W. 82nd Terrace. Sjolín stated if he takes a chance and makes the wrong decision it would be his fault, not the Commission's. There would not be a need for the Commission if the City didn't have some regard for zoning and what people can build on property. He does not believe Representative Patterson understands what "apples to apples" means. Sjolín has a one-and-a-half story home with a 200-ft. frontage. He would not want someone to buy four of those houses, tear them down and put in seven

houses. That would make his street look bad. The Commission and Council should redress how they treat the property owners and developers. He has been to some Council meetings where the property owners get the least amount of attention of anybody in the room. Leawood is still on the kick of putting more homes on the property, getting more tax revenue and raising the mill levy and that is not the way it should be. The highest and best use of this property is recreational. In the case of Ironhorse Golf Course, the developer would not waste their time putting it in if it were not beneficial. It is an amenity to get their houses sold. This property has been in motion as recreational for 50 years or so. It is not right to change it now. The property owners in Leawood should have more say in this than the owners. The owners have made such little effort and are poor at public relations.

Connie Cardell, 8915 High Drive. Her house backs up to the Country Club land. She displayed the Leawood zoning map. She and the group of citizens at this meeting have poured thousands of their own dollars and hours into this issue. They do not stand to make a profit from this and will not make a killing in the real estate market. Her group has come together to fight the rezoning of the land. There should be no rezoning; not because they do not want houses in their back yards and not because they want the club back, but simply because it is only piece of recreational land north of I-435. Since April of last year, hundreds of letters and e-mails have been given to the City regarding the rezoning. Dozens of yards signs and bumper stickers have been placed and the citizens have not changed their message to the City. Nothing has changed since April of 2003 when the Commission denied this case. Nothing has changed in the 50-year history with the conditions of the land. There is still a rock quarry under that land. The flood plain, although it has been reclassified recently, is exactly the same. The wildlife and plant life is all the same. The property is not in the path of development, it is not blocking off development. The surrounding properties have not been rezoned, thereby leaving this property not developable as zoned. The club was merely an improvement upon the dirt. The dirt has not changed. If this land gets rezoned, north Leawood will have a half-acre park at 85th & Meadow Lane and it is so small that it does not even show up as a tiny speck of green on the zoning map. Open space is so important that government agencies look ahead to set aside green space and some government agencies solely exist to remedy situations where adequate green space does not exist. Open space enhances the quality of life. Community leaders believe that open space costs and does not pay. That is not true. There are good reasons to secure open space for the citizens. Open space offers a mechanism for remedying contaminated vacant land; land that is not suitable. That was the case 50 years ago when the Kroh Brothers decided not to develop this land. It was not suitable for development at that time, or it would have been developed. There are proven statistics that show that homes that are close to open space enjoy a higher property value. Right now there are people in her neighborhood that are having a terrible time and are having to accept less for their homes because of the uncertainty of what is happening in their backyards. The Commission should not have the right to transfer the wealth from her and her neighbors to four partners in a risky development scheme. If there is a 6% in reduction of value for the 16 surrounding homes, it would equal about \$250,000. in a transfer of wealth. The highest and best use from the citizen's standpoint is what the highest and best use has been. The value of the homes around there will go down if the zoning is changed to residential. There is no recreational space in that part of town. The highest and best use must not be considered just for a special interest group, but for the interest of all citizens. By today's standards the City should have 50 acres of green space north of I-435. She does not believe the owners have proven that they cannot make it as recreational. Rezoning was always a part of the equation. The owners have never shown a plan with all of the land used as recreational. The City should not be in the habit of getting the current owners out of the hole they dug themselves in. They chose to close on this property without rezoning it first or coming up with a plan to have the neighbors speak on their behalf. This is not the time for rezoning.

Mary Franklin, 8425 Meadow Lane, president of Leawood Homes Association. This property should remain zoned as recreational. If it were to be changed to residential, she would hope the Commission would see to it that it is actually "apples to apples". The types of homes they are proposing are not the same as ranch and one-and-a-half stories.

Doug Liljegren, 9312 High Drive. There will be no recreational space in north Leawood if this gets rezoned. The access to that space is now gone.

Steve Stechschulte, 9026 High Drive. It is very clear the citizens do not want this land rezoned. These 16 acres are the last and only recreational space in north Leawood. It functions as a park and is a precious resource to this City that should not be lost. The City Council has listened to proposals that are riddled with inaccuracies. Mr. Patterson has said there was no dedicated open space in the club property and that is not true. For 50 years this entire area (*pointed to the green space on an aerial photo he brought*) functioned as a public park, irrespective of club membership. That area is high above the flood plain. What is proposed is to create a park in the flood plain, which is a detention basin. Patterson stated this new plan has 13 acres of pervious space, compared to the 10 acres presently in existence. His figure comes from 6 acres in the detention basin and 7 acres in people's yards. Those 7 acres are not open space. Patterson has twice suggested this plan would make Dyke's Branch safer and both times referenced the deaths in 1977. Patterson has stated that, "presently during high flow there is 9,100 cubic feet of water that flows through this area." Under their new development, that goes down from 9,100 to 9,091. That is a 0.1% reduction. Agrees with Mr. Patterson that, "The Leawood Country Club contributes an insignificant amount to the entire flooding problem". That statement means that all of the issues of flooding and safety are irrelevant. The owners have done nothing but denigrate the land. The wrought iron furniture and exercise equipment have been removed, making this property less valuable. The owners are obligated to use it as recreational land. The citizens rely on the Commission to plan for the next 50 years. Please do not rezone this land.

Amy Griffith, 8930 Sagamore, asked the Commission to deny the case. She used the land a lot and was a member of the club. It is zoned recreational and should remain recreational. A change in zoning like this is unprecedented.

Patricia Shoff, her home backs up immediately to the property (*no address given*). One of the Council members told the owners to talk to the neighbors. The owners have never approached her. The property has not been maintained and there were multiple complaints to the City to have the owners maintain it. Nothing has changed with the proposed plan since the Commission last saw it. There is still a mammoth retention wall, a detention basin, and they will still need to drill or possibly blast. She is concerned about how that will affect her property. The owners are trying to biopsy this development in. It does not fit. Once the green space is gone, the City will never get this green space back. It is vital to the community, and it should not be treated as something for speculators to make a lot of money off of.

Bill Lowe, 9107 Lee Blvd. He is opposed to the rezoning. He asked for a show of hands as to how many people present are against the rezoning.

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

Duffendack asked the Commission to go over the eight issues pointed out by Council. Pilcher suggested the Commission could go through each of the criteria individually, but the final vote will actually be on approval or denial of the case. Duffendack asked the Commission to discuss whether the property should be rezoned and also to provide guidance to staff and Council on how the new information received affects the Commission's decision.

To review the document provided by the applicant. Munson stated the highest and best use given in the report might be best for the developer, but not for the City of Leawood. Pilcher agreed with Munson. Rohlf agreed the report was written as a response as to why the City should change the rezoning, not what is currently in place. Williams agrees with the other Commissioner's comments. He is also taken by the appraiser's comments that he himself would consider property next to open space as valuable property. If this open space area is rezoned, the adjacent property owners potentially run the risk of devaluation of their property and that is not what the Commission needs to do here. Henderson stated he understands the rezoning is reasonably comprehensive from the owner's point of view.

To consider the entire area around the property and look at the big picture. Henderson stated the report was centered largely on the property at hand and the value of recreational land in north Leawood was not considered much in the document, therefore the absence of it helped him to see the big picture. Pilcher stated he is not sure if "apples to apples" is the best comparison. The character should not be about more of the same. Taking this away now would be a huge mistake. There are some decisions that cannot be made twice. It would be a mistake at this point to look for more of the same. Munson stated although the City of Leawood has parkland that meets acceptable planning standards, the problem is that the area north of I-435 has little or no public space. That is not acceptable to him. Williams agreed with Munson. As the City has grown we have been able to allow for parkland and public spaces. As developments have come before the Commission we have made a big issue of having open space. When this area was developed the attitude by the developers was quite a bit different, but yet the desire and need by the residents to have the open space or opportunity for recreational space is as strong today as it has ever been. If we lose this, there is not a chance to get it back. For the City of Leawood, the big picture should be to try to maintain recreational space of value for the residents north of I-435.

To review evidence that the density per lot was disproportionate to the surrounding area. Pilcher stated the density is a moot point; the zoning is the number one issue. The developer could fix the density issue, but that would not fix the problem. Conrad stated he is concerned with the visual density of this layout. There are not very many cul-de-sacs that have six homes coming off of a short cul-de-sac in north Leawood. He is not satisfied with the street layout and the perceived visual density, especially if the developer will need to build two-story homes to meet the market demands that might be required to sell the lots.

A motion to conduct an executive session was made by Munson and seconded by Pilcher to reconvene at 9:00. Motion approved unanimously.

Duffendack reconvened the meeting at 9:00 and stated that no action was taken during the executive session.

Conrad stated the visual part of it should be a distribution of development and open space. In this plan the developers have taken the open space and pushed it to one side of the site, which may be the place it needs to be, but it is on the backside of the property with a wall that is fairly visible. It should be divided as much as possible to break up the visual density. There are more than just the numbers for density. Williams stated it is important for the continuity and appearance of the neighborhood to maintain that visual density. The way the property is set up now, square footage becomes less relevant than what is visible from the street, both in terms of the lots and the placement of the homes upon those lots to be compatible with the neighborhood.

To review the use issue (green space). Pilcher stated even though this recreational area is private, it is there, it is visible, it is open, it is green, you may not be able to walk on it, but you can see it, smell it, hear it and feel it. He feels strongly that this is the essence; that even though it is private recreational, it is there and it has a presence. Munson stated the amount of usable green space would be reduced with the proposed plan. Williams stated concern with the issue of liability and if this were private property controlled by a 20-home homes association, would the owners allow traffic. He suggested the Commission could create a stipulation that this be made available to the adjacent property owners. Henderson stated the immediate surrounding vicinity are single-family houses, so it would seem the plan fits reasonably well. With respect to green space, he is concerned that most of the green space that is not connected to house lots may be space that would be under water or difficult to cultivate, or difficult to handle with safety. That green space is somewhat peripheral to most of the residents who will not go down behind the wall to use the green space.

To consider that the current plan does not look into other REC options. Pilcher stated he would appreciate having other options to look at, but he is not sure what action the Commission could take on that, or what the Council expects. Duffendack asked if the Commission generally feels there should be recreational activities on this property. Henderson stated the country club permitted neighbors to come on to some parts of the land and they were not trespassers. Not all private owners will permit that. Some options for REC use would be social activities for young people, a center for older adults and/or programs for senior citizens. If it is going to be recreational on private property then that becomes a serious issue for the Planning Commission because the current plan does not take that into account.

Rohlf asked where the 100-year flood plain would come into the other recreational options. Duffendack stated the existing club would not meet some of the requirements if were being requested now. If the recreational zoning requires that some changes be made, then the site would need to be revised in some manner to make it comply.

Pilcher asked if the applicant had ever submitted a plan with part of the property as recreational and part condominiums. Binckley stated there was never a formal application for that plan. Pilcher stated he believes there were some discussions with recreational options, but it was not taken very far.

To review the compromised access to the property over the years by the neighbors. Duffendack stated he believes the councilman was speaking about the access from the south. Binckley stated staff has looked into it and there is no public easement or public access at that location. There was a trail and a small bridge at one time, but there is no access now. Munson asked if that would interfere with emergency vehicle traffic. Binckley stated there is emergency access on the north end of the property, but there is no access to the south. Henderson asked if the country club property owners closed the access from the

south. Binckley stated, no, the homeowner who purchased the home in recent years did it. Duffendack stated Binckley has answered the councilman's question as to whether or not a public access easement exists and the answer is no. Binckley responded, that is correct.

To consider the applicant's position was based on an assumption that should a hazardous event occur, his property would be confiscated. Duffendack stated the Commission has reworded this issue to state, "property would be unable to meet current ordinance", rather than confiscated.

To review comments on Mr. Curfman's comments on density and open area requirements by today's standards. Henderson stated Mr. Curfman should not be able to superimpose today's regulations on history, it seems to be a non sequitur altogether. Duffendack stated it might have just been his reference. Pilcher stated he felt the third issue discussed the same issue as this one.

Duffendack asked staff if the Commission has addressed the questions of the Council. Binckley responded, yes.

Conrad stated he is concerned with the significant amount of topographic change to this piece of property. The developer is filling in the land in order to get out of the flood plain. It is uncharacteristic of any development in and around north Leawood, and probably even south Leawood. In residential areas, the City tends to follow the topography. There have been some discussions of some areas in north Leawood that may come before the Commission to be replatted and subdivided and the changes in topography may come up in those instances. The Commission should be careful as to not build a wall in order to create a flatter surface to make it more conducive to construction. Duffendack asked if Conrad's comments were based on a structural engineering standpoint. Conrad stated it could be done correctly. He is talking about the visual aspect of the environment.

Duffendack asked the Commissioners to speak about the issue of rezoning.

Pilcher stated there is the argument about the neighbors around the property and what their reasonable expectations were for this property down the road. There is also the argument about the current owners of the property and what their reasonable expectations are as to whether rezoning this property would legitimize their investment. This property should remain recreational, even if it is private. Munson stated he agrees with Conrad's statement in regard to the street layouts of the plan, but he is concerned with the comprehensive plan showing this land as recreational and no discussions have been made to change that. He has problems with the wall and feels the money could be better spent on improvements to the club property. He is generally dissatisfied with the rezoning approach. Williams stated the plan as proposed creates a very different area within this part of Leawood; it is not in keeping with the surrounding areas as some of our criteria for rezoning require. One issue we have not talked about is the issue of fences and signage. The developers are proposing a monument sign that further identifies this particular development as different and separate from the surrounding neighborhood and he does not see that as being positive or meeting the requirements for providing a compatible development. Rohlf stated she is having trouble separating the issues of rezoning from the actual plan. If this plan were being looked at without the zoning issue, there would be all of these comments and maybe more to make it more viable for the neighborhood. She is concerned that this land could continue to remain vacant, which could cause a problem to the surrounding homes and how one would characterize that neighborhood. There could be some viability in some of the other recreational options. Some of the open green space that has been used by default might

not even be there with some other type of plan. It is still difficult to make that distinction. Henderson stated he might be able to support the plan in and of itself, but not when combined with the issue of rezoning. The City has as much park space as the City is going to provide. The City even resisted land being given to it for a public park. If the area were to be used for private club, horseback riding, skating rink, or racquetball by private groups then they may have different guidelines as to who can be on the land and who cannot. If this property is not used within a year it could become a place for any person to congregate. There are no fences around it and "no trespassing" signs will not keep people out.

A motion to deny was made by Munson based on the fact that the plan does not meet the guidelines of the master plan. Seconded by Pilcher.

Conrad asked if any additional wording needs to be added to the motion to explain the other issues discussed. Pilcher stated all of the comments made on the Council's eight issues were taken into account when voting to recommend denial of the case. Conrad stated some of the issues were visual density, the character of north Leawood, and the topography. Pilcher stated the Golden criteria discussions in the past have helped to contribute to this also. They are just factors that need to be considered, but not necessarily followed. Henderson stated he will vote against the motion because it does not define strongly enough the need for public recreational space in north Leawood. To leave it as it is, owned by a private corporation, does not guarantee access for any recreational green space for the citizens of Leawood.

Motion to deny approved 4-2. (Conrad, Williams, Munson and Pilcher for. Henderson and Rohlf against.)

Binckley stated this case would be seen before the City Council at their next meeting, which is Monday, August 18, 2003.

Meeting adjourned.

J. Paul Duffendack, Chair