

City of Leawood  
Planning Commission Minutes

September 23, 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 (absent), Williams, Munson, Pilcher

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

**APPROVAL OF THE MINUTES:** Approval of the minutes from the August 12, 2003 and August 26, 2003 meetings.

A motion to approve the minutes from the August 12, 2003 meeting was made by Henderson and seconded by Williams. Motion approved unanimously.

A motion to approve the minutes from the August 26, 2003 meeting was made by Henderson and seconded by Rohlf. Motion approved unanimously.

**CONSENT AGENDA:**

**CASE 64-03 HALLBROOK COUNTRY CLUB RENOVATION & ADDITIONS** Request for approval of a final site plan. Located at 11300 Overbrook Road.

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

*Carper arrived.*

**NEW BUSINESS:**

**CASE 47-03 ST. MICHAEL THE ARCHANGEL - RECTORY** Request for approval of a preliminary site plan and final site plan. Located approximately north of 143rd Street and east of Nall Avenue.

Klein asked for case 47-03 to be moved to the end of the agenda, since the applicant was not present. Duffendack approved of moving case 47-03 to the end of the agenda.

**CASE 59-03 CORNERSTONE OF LEAWOOD, LOT 7 - ECKERD'S DRUG STORE** Request for approval of a special use permit and preliminary plan. Located at the southwest corner of 135th Street and Briar.

**Staff presentation:** Presentation by Mark Klein. The applicant is requesting approval of a special use permit and preliminary site plan for a 15,051 sq. ft. drug store with drive through within the Cornerstone shopping center. This parcel is located at the northeastern portion of the site, at the intersection of 135<sup>th</sup> Street and Briar. The building is oriented so that it faces towards the west and has a drive through that is located on the east side of the building. The drive through lane circulates around the south side, goes along the east, where the drive through window is located and circulates on the north side as a kind of exit lane. The majority of parking is located on the west side of the building. Staff has placed a memo on the dais regarding modification to stipulation number six. After discussions

with the applicant, staff is recommending that stipulation number six be modified to remove "on lot 6 to the east" and replace it with "within the Cornerstone development along 135<sup>th</sup> Street". Staff believes in this way the open space that is shown in preliminary plan would be maintained. The most important part to maintain is along 135<sup>th</sup> Street and by requiring that on lot 6, to the west, the applicant has indicated it would make that lot almost unbuildable. This case has a number of deviation requests. Primarily, in terms of open space, the Leawood Development Ordinance requires a minimum of 30% open space; the applicant is providing about 23% open space. The LDO requires 8% interior landscaping; the applicant is proposing 7.21%. The LDO requires a minimum of 10 ft. of landscaping to be provided around the perimeter of the building. The applicant has worked with staff to provide more landscaping around the corner to soften the corner of the building, particularly the southeast corner. The applicant has also narrowed the lane that runs along the south side of the building and to put that into open space. Staff is comfortable with the stipulation regarding the reduction in open space, that this open space be placed along 135<sup>th</sup> Street, as long as that stipulation remains. Staff is recommending approval of this case with the stipulations listed in the staff report and the modification to stipulation number six as stated.

Duffendack asked what would happen if the open space were provided on lot 6 to the east. Klein stated the applicant feels they would not have enough parking for the building on lot 6 if they were to provide more open space. The applicant has also indicated the building on lot 6 could be used as a restaurant, in which case they would need the extra parking.

Williams asked how staff would expect the applicant to make the open space adjustment. Klein responded staff has requested the applicant to provide a table for the open space on all of the lots that were approved with the preliminary plan. From this point forward, staff will keep a table of the open space provided for each one according to what was approved with the preliminary plan, so that staff will have a running balance to tell if the development is going under or over and by how much. Staff is trying to avoid getting behind at some point and coming up significantly short at the end of the project. Staff also wants to ensure that the development does not end up with a lot of open space in one corner that does not make sense. Staff will be looking along 135<sup>th</sup> Street to ensure the open space is there. Williams asked where staff is suggesting the applicant make up the required open space for lot 7, if lot 6 would be unbuildable. Klein stated if all of the open space were put on lot 6, it would make the lot unbuildable. Staff is suggesting moving a portion of the required open space percentage for lot 7 to lot 6 and the other two lots along 135<sup>th</sup> Street.

Rohlf asked if there are any other developments where this has occurred. Klein stated Plaza Pointe has changed their open space requirements per lot and staff has kept a record to ensure the open space requirements are maintained.

Carper stated concern with giving up open space along 135<sup>th</sup> Street. Klein stated the applicant could not make it up with just lot 6. There is probably enough room to make it up to the west of lot 6. Another area where lot 7 is falling short is up around the building. The applicant has increased the landscaping along 135<sup>th</sup> Street. Staff is suggesting taking some of the open space around the building and ensuring that it be incorporated along the other pad sites along 135<sup>th</sup> Street.

Henderson asked if there would be no green space and more parking lots. He then asked if the Commission would be able to see this down the road to ensure the open space is there.

Conrad asked if there is any feeling of good, better or best for the drive isle access onto the street. Klein stated staff has raised that concern and the applicant has indicated they need the parking oriented in that way. Initially, the applicant had the easternmost drive isle going into the site. Staff has worked with the applicant to push it away to provide a little more separation. Staff recommended going back to the original plan as far as the parking, but the applicant stated they need the parking oriented that way. Staff tried to make sure that at least the drive isles line up with the drive isle directly across. There is a situation on the westernmost drive isle where that is not the case.

Conrad asked for staff's opinion on the multiple entrances. Klein stated staff has raised those concerns and has expressed with the applicant that the future drives should line up. Duffendack stated the alignment of the curb cuts could cause a problem. He suggested that not lining the entrances up or maybe eliminating them and going with the other orientation would be a better solution. Klein stated staff was concerned if the drives are not lined up the cars would need to make an odd angle as they go across and it would add to the confusion. Duffendack stated the safety issue is more the cross-traffic than it is the alignment.

**Applicant presentation:** Presentation by Henry Klover of Klover Architects. The applicant has worked with staff and has looked at some alternatives. The intent of the plan that was originally approved was to take  $\frac{3}{4}$  of an acre and put it on the corner, which took a lot of mass land. Elevation-wise, the Eckerd's site is down. A person on the street will not be looking up at it and will not be able to see much of it because it is actually tucked down in. As you go down 135<sup>th</sup> the building actually starts to come out of the ground, which is where the two corner buildings will be above the grade. The applicant has agreed to maintain the same amount of landscaping as approved previously along 135<sup>th</sup> Street. The applicant believes they are within a couple percentage points, which is a couple of thousand sq. ft. The concern is that the applicant will not be able to see which ones have some flexibility until they get the opportunity to work on the adjacent pads. The applicant has agreed to maintain what was previously approved along 135<sup>th</sup> Street. The applicant has agreed that they would indicate that in writing as well as the additional square footage.

Conrad asked for clarification on the orientation of parking. Klover stated the applicant has looked at the alignment. The only area that will be difficult is where the wide isle is located. It will not allow a car to go directly through. Conrad stated concern with the numerous accesses and that a driver would need to come back out on the interior circulation road. Klover stated it is fairly common in these types of shopping centers. The primary reason for doing this is because the applicant is demanding it.

Henderson stated concern that it would be fairly easy to trade off the open space from one lot to another. The Commission has stated they do not want to see just the backside of buildings along 135<sup>th</sup> Street. If the Commission were to grant flexibility for the open space requirements, they would like to see what the flexibility would look like before it is put in the ground. Klover stated the building locations and their size are basically the same. By rotating the parking, there would be a 12 ft.-wide median and a row of trees down the middle. If the applicant has the flexibility when the other building goes in and they have the room they will make it even wider. The goal is to get it in that area. Until the next tenant comes in, there is no way to know where the open space will go. Henderson stated the applicant's concern is that they would like some flexibility to fit the pieces on the landscape and that the Commission's concern is to be sure that there is some balance as those pieces are fitted together. Klover stated staff has said they do not want the applicant to take the open space and move it back behind the corner. The open space will be in the strip along 135<sup>th</sup> Street.

Presentation by Schexnayder Shecnighter with Genesis Design Group, representing Eckerd's. Schexnayder showed and described the elevations. The applicant has converted a typical prototype store to a prairie style building to match the rest of the center. Eckerd's feels it is important to have the front-row isle with the parking straight through. This helps to keep some of the drive through traffic from going down that long isle, as it would have when it was oriented with the other direction.

Henderson asked how the drive-through would function. Schexnayder described and showed on the site plan how the drive through traffic would circulate.

Carper asked what the maximum anticipated number of cars would be in the drive-through. Schexnayder stated the normal maximum stack-up for Eckerd's is two cars. There is a good stacking back lane if more than that would occur. Carper asked if there is a materials board. Klein stated a materials board is not required until the final plan application.

Conrad asked if the materials on the south elevation would be similar to the other elevations. Schexnayder stated the building would be consistent on all sides.

Pilcher stated he sees three stark walls in the plan. He then asked if there is another way to create better landscaping around the building. Schexnayder stated the applicant had the option of doing more landscaping along Briar, or leaving the area straight and putting more landscaping against the building. The applicant felt it was better to get more landscaping along Briar, and it also works better for circulation. Pilcher asked about the façade on the north side of the building. Schexnayder decried the brickwork and layout of the other façades.

Williams asked how this design begins to be prairie style architecture and complements the designs the Commission has seen so far. Schexnayder stated the normal Eckerd's has a pediment roof, this building has clear-story windows up top and columns and other designs from the rest of the center. Williams asked if the north side is the same as the typical Eckerd's building, with the exception of the tower. Schexnayder stated a typical Eckerd's building would have arches along that side that are laid into the face of the building and would not have some of the stonework and brickwork that this building will have. Williams asked Klover how he feels about this proposal melding with the rest of the development. Klover stated he is very pleased with it. He is happy that the drive through came around the back corner, because part of prairie style architecture has a lot of low roofs and low lines. With all of the landscaping and the big monument signs on that corner, he feels the additional roof element coming around the corner helps. The applicant has added a lot of towers and put in a lot of lines and masses. He feels they did a good job and is very pleased. Williams asked if it does justice to the street side, as an introduction to Cornerstone. Klover stated, yes, because of how much landscaping there would be along that side. The clearstories and the bigger elements will be the only ones seen from the street. The building is a few feet below grade. Klover is not sure the building will be seen because of the planting requirements. The drive lane will not be visible.

Pilcher asked the height of the towers. Schexnayder responded about 30 ft. at the top of the peak.

Munson asked how the north side would be finished. Schexnayder stated it would be the same as the other sides. Munson clarified that it would not be white, blue and yellow. Schexnayder stated that is correct. He also pointed out that the sign Eckerd's is requesting would have white channel letters, not the normal blue.

Rohlf asked if the applicant has complied with the 135<sup>th</sup> Street guidelines and the nonconformities pointed out in the staff report. Klein stated the applicant is demarking the pedestrian crossings. The trash enclosure is attached to the south side of the building. They are not providing direct access to the exterior sidewalk. As far as the pedestrian amenities, staff is looking at that requirement for the entire development, and not specifically at this site.

Carper asked what materials would be used for the trash enclosures. Schexnayder stated they would be using the same materials as used for the building and it would be integrated into the building. Carper asked what materials would be used for the trash enclosure doors. Schexnayder stated they would probably be metal. Carper stated he does not believe the trash enclosure is at a good location.

Henderson asked if the vista across the street would be higher or lower buildings. Klein stated they would be similar, single-story buildings.

Williams asked if the trash pickup, deliveries and drive through traffic would be using the same entrance. Schexnayder stated, yes. Williams asked when the stores typically receive deliveries, trash pick-up or drive through customers. Schexnayder stated the store could coordinate the delivery schedule so as to not create any conflicts. Williams asked when Schexnayder thinks deliveries would be done. Schexnayder stated he would anticipate deliveries being done in the early morning, before the store opens.

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

Duffendack stated he does not see anything that is prairie style in the design shown. The design is better than the typical Eckerd's, but there are some serious design issues. He sees nothing in this project that addresses the 135<sup>th</sup> Street Guidelines except for trees to hide the building, which may be the best solution. He believes there are many issues and would like to hear the other Commissioner's opinions. Munson stated he agrees with Duffendack particularly in the mass of the building and how it has not been oriented towards the public streets. It is not in keeping with the work that has been done with the surrounding developments which has resulted in a much better product. The elevations need to have considerable work done to make them more intriguing. The little roofs on the top of the buildings are silly. The applicant needs to try harder to make it look less like a box. Henderson stated it does not meet the prairie style architecture the City has seen at the development at 151<sup>st</sup> and Nall Avenue. Rohlf stated concern with not meeting the 135<sup>th</sup> Street guidelines and the open space deviation requested. Carper asked for a comparison of the original footprint for lot 7 versus what is now proposed. Klein stated the original square footage was 14,282 sq. ft.; the applicant is now proposing 15,051 sq. ft. Staff raised that concern when the plan was first shown. The applicant has indicated the footprint of this building is the same; the difference is that this building contains a mezzanine and that is where it picks up the additional square feet. Carper stated concern with the way it is laid out and feels it is similarly reminiscent of the McDonald's at 95<sup>th</sup> and Roe in Ranchmart, which continues to be a problem in terms of traffic flow. This results when a building is too large for a postage stamp piece of property. There is just too much for the lot that it is on. Conrad stated concerns with the parking orientation. He is not comfortable with the layout and would like someone to investigate it further to see if there is a better way to lay it out. Pilcher stated the stark nature of the building is bothering him. He feels the applicant has tried to cover it up with landscaping, and that is not the way to do things in Leawood. Williams stated it is not prairie style architecture. The circulation for the traffic appears to be a problem. He would like to see more evidence that this would not become a bottleneck.

Duffendack asked the applicant if they would like to request a continuance. Schexnayder requested a continuance on behalf of the applicant.

**A motion to continue this case to the Oct. 28<sup>th</sup> meeting was made by Carper and seconded by Williams.**

Conrad suggested making the applicant aware of all of the concerns then restated all of the Commission's concerns. Pilcher suggested hearing this case at the work session. Binckley stated she would work with the applicant to see if they would be prepared at that time.

**Motion to continue approved unanimously.**

**CASE 65-03 SIENA OF LEAWOOD - TEMPORARY TRAILER** Request for approval of a special use permit for a temporary sales trailer. Located at 140<sup>th</sup> Street and Mission Road.

**Staff presentation:** Presentation by Jeff Joseph. The applicant is Rick Oddo. The applicant is requesting approval of a one-year special use permit for a temporary sales trailer on lot 2 of the Siena of Leawood subdivision. This property is located at 140<sup>th</sup> Street and Mission Road. The building is single-story with pre-finished wood siding. The main entrance to the building is on the north side, facing 140<sup>th</sup> Street. Staff is recommending approval of this case with the stipulations stated in the staff report.

Conrad asked if a site plan was submitted. Joseph stated it was included in the half-size plans given to the Commission.

Henderson asked if staff has a preference on the material of the drive. Joseph stated the applicant is proposing asphalt. Henderson asked if asphalt is allowed. Joseph stated, yes.

Pilcher asked if there is a proposed landscape plan. Joseph stated the applicant has proposed a significant amount of landscaping on the north side of the building, facing the street.

**Applicant presentation:** Presentation by Rick Oddo, president of Oddo Development. The applicant needs a place to work out of before the model home is built, which will be about one year. The applicant needs this for this development to be successful. The building will have a skirt, will be painted and will be landscaped. The applicant is trying to sell million-dollar homes and would like the trailer to look as nice as a trailer can.

Henderson asked if it would be reasonably safe for the people who work there. Oddo stated there would not be sprinklers, as they are not required, but there will be fire extinguishers. Henderson asked how many doors there would be in the building. Oddo stated he believes there is a one-door entry, but there are windows that will act as secondary fire escapes. He does not know the code enough to really speak about it. Duffendack stated the size of the building should dictate those standards and the fire marshal has issued a memo regarding those issues. Oddo added it would meet all ADA requirements.

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

**A motion to approve made by Carper and seconded by Conrad.**

Pilcher asked if there should be some kind of assurance that this would be one year or less. Binckley stated the applicant has stated it would not be needed for longer than a year, but if it were needed for longer than a year, the applicant would have to apply again for a special use permit.

**Motion approved 6-1. Munson against.**

**CASE 66-03 CHURCH OF THE RESURRECTION - PRIVATE DRIVE** Request for approval of a final site plan. Located at 13720 Roe Avenue.

*Commissioners Rohlf and Conrad recused themselves.*

**Staff presentation:** Presentation by Mark Klein. The applicant is requesting approval of a final site plan to allow construction of a driveway extending from Nall Avenue that was part of the preliminary approval of the Church of the Resurrection expansion. Staff is recommending that stipulation number one be replaced with a stipulation to read, "All stipulations from case 71-02, Church of the Resurrection – 1<sup>st</sup> Phase, shall be incorporated into the approval of this case." The stipulation regarding the power lines was included in the original approval, this was just a more broad stipulation that would ensure that all the agreements would be continued on to this case and there would not be any misunderstanding that this would override or change those in any way. The other stipulation staff is recommending to change is stipulation number seven. The applicant has indicated that the landscaping that is there is about 3½ in. caliper instead of the 4 in. The ornamental trees are already about 2½ in. caliper. The applicant has requested that they be allowed to continue those same sizes throughout the rest of the site to maintain continuity. Staff is in agreement with and recommending approval of that change.

Henderson stated the City generally likes the larger trees at planting, but it may be more important to have good root systems than have the larger caliper trees.

Carper asked how many trees have been planted and how many additional trees would need to be planted where they are requesting the 3½ in. caliper. Klein stated the applicant has brought a landscaping plan and could better answer that question. Carper stated he wants to be sure that the neighboring residents' concerns would still be addressed with this landscaping. Klein described the landscaping plan. He stated there will be good-sized trees, but there will be spaces in between. The applicant is proposing berms and additional plantings that will actually shield the residences from the parking lot. There is one low area that is there for drainage purposes. Staff is concerned about that area not having the benefit of the larger berms. Staff requested the applicant to put in more landscaping in that area and they have shown that with the revised landscape plan. Carper asked if staff is satisfied the neighbors will not have headlights on their patios. Klein stated yes, because of the berms and the hedgerow that will be there.

Duffendack asked if there has been a test of the screening with the existing berm and hedgerow. Klein stated staff has heard from some of the neighbors in regard to the landscaping. The prairie grass that will be on the top of the berm should take about two to three years to fully develop. Duffendack asked if the City has received any complaints. Klein stated there have been a few residents that have expressed concerns. Binckley stated staff has worked with Dick Cooper and he has sent surveys to the neighboring residents asking for input and has provided those to staff for review. Cooper has been keeping in close contact with the homes association president of Quail Crest and working with those homeowners who have had some concern with those areas. A lot of the problems are because of the extra two ft. of grass that will be there through time, but is not there now, but none of them have headlights shining directly into their homes. It's more of the fact that they can see cars parked or can see asphalt. She believes any of the other problems they have had in these areas are just kids at night, so they have chained that off. They are continuing to work with the neighbors and staff has been involved as well. As far as the height of the berms and the landscaping, everything has been done. Duffendack stated he was not aware that the applicant is relying on grass to shield the headlights. Binckley stated there have not been any complaints of headlights into the homes. The issues have been that the residents can still see some asphalt or some cars in the distance. The berms take care of that height. Duffendack stated the condition of the height of the grass would not be year-round. Binckley stated it is staff's understanding the grass will be its tallest during the same time of the year that the residents will be using their backyards.

Carper stated he would hope the Church would keep an open dialogue if the neighbors continue to have issues. Binckley stated the planning staff, as well as the public works staff, has continued to remain in an open dialogue and everyone knows the end product has not been reached. The water that would run between the two homes at the southeast corner no longer does and those residents have been very pleased after these last heavy rains. It has been an improvement.

**Applicant presentation:** Presentation by Dick Cooper, on staff with the United Methodist Church of the Resurrection. Cooper described the site plan with the proposed changes. Part of the special benefit district is to widen Roe Avenue and to complete 137<sup>th</sup> Street. It is under construction currently. Cooper described the site plan while Nall Avenue is under construction. It is the applicant's understanding that when Nall Avenue is closed for construction it will be closed to 139<sup>th</sup> Street, which would cut off the west drive and the 137<sup>th</sup> Street entrance to the church. The applicant has committed to the City to build a dogleg drive to the south to lead to Nall Avenue. In looking at that, the applicant feels it would be better served by investing in the permanent drive; the drive that was ultimately proposed in the plan. This will accomplish two things. The biggest challenges for traffic are the overlapping services on Sunday mornings. The applicant is proposing a south drive and then connecting to the backsides of the parking lots. This will allow them to better utilize the south parking by back loading the lots; meaning people will enter the lots from the south and exit to the north. When Roe Avenue gets widened, those drives will be temporarily unavailable to the church and this will give them another way to better manage traffic on the site. The drive is part of the master plan and it will help the church to better utilize the parking.

Presentation by Scott Bingham of HOK. The 70 ft. landscape buffer that borders the site dictates the layout of the proposed roadway. The exception to that is where it is aligning with the open road across Nall Avenue to make those

intersections line up. The width has changed from 23 ft. to 36 ft. This gives the applicant the capability to have two lanes in before the service and possibly two lanes out and also a left-hand turn lane to ease the traffic flow. There is also a concrete curb on the outside of the entire roadway system. It is curbless on the inside. The site will be using much of the same drainage system as used on the parking lots in a more passive way. There are two detention basins and a swale. The drive will be using more of a passage drainage system. There are decorative cobbles along the edge for erosion purposes and to slow the water down. It gives that water the opportunity to infiltrate in the soil; a more natural system of what it did originally. The applicant is proposing some temporary lighting at the intersection, much like the lighting at the existing east-west drive. The applicant is also proposing some temporary signage at the entry. As the roadway gets improved, the signs would be improved as well. Another change is that the applicant is loading the parking lot from the south side and has loaded that isle with spaces on either side, totaling 38 spaces on either side. The applicant will be adding an access to that parking to ease the situation of the parking lot at that location. There will be temporary directional signs for circulation. The grading plan had very few changes made. The applicant will be adding to the existing berm. The applicant was able to eliminate the short retaining wall that was originally shown in the drawings. The detention area had to be extended around the roundabout. That configuration changed slightly from what was on the original plans. The applicant decided instead of making it an elongated elliptical shape, to make it more round as a traffic calming measure. There is an existing drain in the berm that dictates the height of it at that area. They are still able to get 2 to 3 ft. of finished grade elevation. The homes sit much lower there, probably 6 to 8 ft. at the property line in relation to the berm. In regard to landscaping, the applicant will be continuing the same type of landscaping along the berm.

Henderson asked if Roe Avenue continues to 151<sup>st</sup> Street. Binckley stated Roe Avenue stops at about 140<sup>th</sup> Street, which is the entrance into the Worthington subdivision. The City has right of way for half of the road going south to 143<sup>rd</sup> Street, and is waiting to gather the rest of the right of way to extend Roe. The farthest Roe Avenue will ever go south is 143<sup>rd</sup> Street.

Carper asked for a clarification of what the applicant is proposing to do versus what has been approved for the overall development in terms of driveways and ingress and egress off of Nall Avenue. Binckley stated the applicant is proposing exactly what was shown on the original plan for the overall development. If this drive is approved, it will be completed in enough time to allow the Church access during the widening of Nall Avenue. Carper asked what is on the west side of Nall Avenue. Binckley stated part of it is a golf course and some office. Carper asked if there are any issues in regard to curb cuts on the medians. Binckley stated the southern one will have a full curb cut, which aligns with a street going into Overland Park, north of there is a right-in, right-out and north of that is a full access. Carper stated concern with having all of the traffic dumped on the south driveway. Binckley stated the only time that would be a concern is during construction of Nall Avenue.

Henderson asked if the City of Overland Park was in agreement with the lights and intersections. Ley stated the City of Overland Park has reviewed the traffic study and has written a letter stating they agree with all of the access points to Nall Avenue.

Duffendack asked how the water gets to the low area on the south side of the site. Bingham stated there is an existing field inlet on the site that takes all of the water from the backside of the berm. Duffendack asked if there is anything that could be done to allow a higher berm but still allow the water to flow to that drain. Bingham stated the berm is so close to property line that a retaining wall would need to be built on the other side in order to get a higher elevation. A majority of the southern end traffic is going east and west and he does not believe it would be much of a problem. Duffendack stated there could be a potential for light spillage and would hope the applicant has a backup plan if there are complaints from neighbors. Henderson asked about the drainage since the most recent rainfall. Bingham stated drainage problems existed between two of the lots and since the construction of the berms they have not experienced those same problems. Henderson asked if the curbs on either side of the expanded roadway would help to diffuse the water. Bingham stated it would not have much of an impact on what is happening now.

Henderson asked if the buildings and roadways would create a problem for drainage after they are completed. Bingham stated the detention areas would be sized to accommodate the additional hard surface.

*Carper left the room.*

Williams stated what the applicant is showing at this meeting is different than what was given to the Commission in their packets. Klein stated some changes have occurred since the packets were sent out. Staff has had discussions with the applicant since that time and the modifications are: the roundabout is now more circular versus elliptical, the width of the drive has increased from 23 ft. to 36 ft., more landscaping has been added near the low area and the number of access points going into the parking lots have increased. Williams asked how the Commission differentiates between the two plans. Klein stated the Commission should be basing their opinion on the plan shown by the applicant at this meeting. Williams asked if the plans shown tonight have today's date. Bingham stated the drawings have today's date.

**A motion to approve was made by Pilcher with the stipulation changes made by staff and an amendment to stipulation number seven to read "3 ½ in. caliper trees". Seconded by Munson.**

*Carper returned.*

Williams suggested an amendment to read "Drawings dated Sept. 23, 2003 and as presented to the Commission". **Pilcher suggested, instead of adding another stipulation, to modify his motion to approve the plans as presented at the Sept. 23, 2003 meeting.**

**Motion approved unanimously. (5-0)**

**CASE 53-03 LDO AMENDMENT - SECTION 16-2-10.3, MATERIALS AND COLORS** Request for approval of an amendment to section 16-2-10.3 of the Leawood Development Ordinance regarding roofing.

**Staff presentation:** Presentation by Diane Binckley. This request is a staff-initiated request for an amendment to the Leawood Development Ordinance regarding materials and colors. The original request was to include an amendment to the weight requirement on the SBS modified composition shingle from 300 to 275 lbs. This is based on the makeup of this product. With staff's evaluation it appears a 275 lb. in SBS modified still provides for a quality product for roofing, as opposed to regular composition, which staff has identified 300 lbs. to be the minimum. Staff would like to continue discussion of the section regarding the color of slate to the next Planning Commission meeting. Since the time of discussion during the work session staff has had some discussions with some residents as well as other staff members and it appears that maybe we have a resolution as to how we could allow some of the slate colors, but being allowed to limit that. Staff would like to work a little further with that to be able to allow the residents some options there. Staff is requesting the Commission to modify the ordinance to allow the SBS modified composition shingle to 275 lbs minimum weight.

**Public hearing:** Jill Galbraith Smith, 4204 W. 124<sup>th</sup> Street. She and her husband are getting ready to put a new roof on their home and have been looking at Grand Manor and looking at Colonial Slate versus Gatehouse Slate. She has learned that Gatehouse Slate is not an approved color. She has talked to the City a number of times about it and is now requesting an amendment to the ordinance to allow for composition shingles that not only look like weathered wood, but could also look like slate. Her understanding is that staff's basis for denying the requests for Gatehouse Slate is because it looks too much like slate and therefore does not comply with the ordinance as written. The ordinance reads, "laminated composition shingles must have the appearance and color range of natural weathered cedar shingles or shakes". She is asking that the ordinance be amended to read, "or be within a similar color range of slate". She has given these comments to staff. The basis of this is a matter of taste, but by having the ordinance

amended aesthetically it would still be complying with the intent of the City. There are a number of these roofs available to be seen. She has provided staff with the addresses of these homes if they would like to drive by to see. The amendment would still comply with the intent of the City to keep everything aesthetically compatible with the existing roofs and have the look of natural materials. The ordinance does say slate. There are other portions of the ordinance that reference and talk about "within a similar color than slate" so she believes that approving this color in an artificial material would not be deviating from what the ordinance permits. The ordinance allows for stone coated steel and metal roofing and clay or concrete tiles in addition to the weathered shingles. Allowing Gatehouse Slate would not be a deviation from what exists, but would permit the City to more appropriately and consistently make decisions on this. Currently, the approved colors in Grand Manor are Brownstone, Stonegate Gray and Colonial Slate. A few addresses with the Gatehouse Slate are 3108 W. 71<sup>st</sup> Street in Prairie Village, 12602 Nieman Road in Overland Park and 1205 W. 61<sup>st</sup> Street in Kansas City, MO. A couple of addresses with Colonial Slate include 8606 Overhill Road in Leawood and 12327 El Monte in Leawood.

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

**A motion to approve the request for the weight requirement was made by Carper and seconded by Pilcher. Motion approved unanimously.**

**CASE 47-03 ST. MICHAEL THE ARCHANGEL - RECTORY** Request for approval of a preliminary site plan and final site plan. Located approximately north of 143rd Street and east of Nall Avenue.

*Conrad recused himself.*

**Staff presentation:** Presentation by Mark Klein. The applicant is requesting approval of a preliminary and final site plan for a 6,273 sq. ft. rectory to be located at the southeast corner of the site. The original preliminary plan that was approved showed a rectory at this location that was 4,650 sq. ft. The applicant is back with a preliminary and final plan application because of the increase in square footage. The LDO allows for a maximum of a 5% increase before it is required to go back to preliminary. This change is closer to a 35% increase. The applicant has arranged to move an existing house from the Highlands Creek subdivision to the church site to use as a rectory. It will be refaced with a brick blend to match the existing school and the proposed sanctuary that will be built in the next phase. The house will have a three-car garage that will be at the southeast end of the driveway. The driveway will line up with one of the existing drive isles and be at one end of the median so it will not interfere with the median. Staff is recommending approval of this case with the stipulations stated in the staff report.

Carper asked what "general compliance" means in the memo written by David Ley. Binckley stated she is assuming he is in general compliance with the plans and that he has not gone over them in detail. Carper stated that is not acceptable. The Commission is asking for a professional judgment. Ley should state if the applicant is in compliance or not. Klein stated he has spoken to Ley a number of times in regard to this case and his recommendations and concerns. The first was the traffic study. Ley has stated no additional improvements were needed due to the rectory going in. The second issue is that the drains coming off of the rectory would go into the storm water system, which the applicant has done. Carper asked if that is normally how Ley responds. Klein stated planning staff asked Ley to provide the memo. Pilcher stated concern that "generally compliant" insinuates that it is not fully compliant. Klein stated that was not the impression he received when talking with Ley. Binckley stated if Ley had any concerns they would be stated, otherwise he makes a general statement. Planning staff asked for a memo to state his satisfaction, similar for the Hallbrook Country Club case.

Henderson stated the City has allowed the move of a house in the past and the City has had problems making it fit. He then asked why the house is being moved. Klein stated it is his understanding that an opportunity came so that the church could acquire this house, the applicant could better answer that question.

**Applicant presentation:** Presentation by Dave Livingood of GLPM Architects, Inc. In 2001, when the final site plan was presented for St. Michael there was a parish located in this same area. That parish consisted of 4,650 sq. ft. That amount did not include a basement. This particular structure is a one-story building. It was a gift to the church. This house is the original concept for the area of the Highlands Creek subdivision, and was planned to be used as a clubhouse for the development. As the development has continued, it has been decided that it would not be an appropriate use for it as it does not fit the current character. The proposed location on the site plan is essentially the same as in 2001. The intent is to remove all of the brick from the sides of the building. Currently, the house has a two-car garage and the church will be adding a third garage to the structure. The main drive into the parish lines up to one of the drives. Since this change will be under the new landscaping requirements versus the 2001 approval, the applicant will be adding additional trees on the east property line. There are some small air conditioning pads which currently do not show screening. Staff has requested those to be screened and the applicant will comply. The intent of this building is to be used as a residence, there will be no meetings, it will be strictly housing for the priest and associate priest and maybe an intern on an infrequent basis. Livingood showed the materials board. The applicant will be using the same materials as used on the church building with the exception of the columns, which would be wood instead of cast stone.

Presentation by Chris Arth, parish administrator for St. Michael the Archangel. In June 2001 the final site plan for the school was approved with a stipulation number 10 that stated, "all utilities must be placed underground". Since that time the building has been built, and is fully completed. It was not until July of 2003 that a letter was sent from planning staff to Leon Roberts of the Archdiocese stating a reminder that all utilities must be placed underground including those along Nall Avenue. The letter went on to specify that the underground placement would not be required at that time, but until the development of the sanctuary with the next phase was completed. That letter was given to Arth in July. Since the requirement was not until the sanctuary was built, which is some time away that is where it ended up until tonight's meeting. Since that time a free house has been offered and the church jumped on the opportunity. The church did not plan on bringing in the rectory until the next phase, but this was an offer too good to pass up. It was not until very recently that staff's comments were brought forward that specified that both existing and proposed utilities be buried prior to the final occupancy of the sanctuary. To date, the church has not executed any kind of statement to agree to bury the existing power lines, and they are not prepared to do so at this time. Before too long, it will become impossible to move the house out of the subdivision. It will require an egress out of a lot as opposed to the main entry, given its size. The window is closing on the ability to move the house. Further delay may cause the church to lose this gift and may necessitate the destruction of that building. Arth asked the Commission to consider deferral of the issue of the power lines until such time as the applicant comes before the Commission for approval of the final phase. Stipulation number 4, as written, does not require the burial until that time, so it seems there is time to discuss that matter. Deferral of that issue will allow the applicant to go forward with the current project.

Duffendack asked staff if the stipulation, as written, would allow the applicant what they are requesting. Binckley stated this stipulation states that staff is not requiring the applicant to put the lines underground at this time. In the previous approval, it stated "all utilities to be underground". This stipulation is the same as in the Church of the Resurrection case. Staff is carrying the stipulation forward to this case and it will be forwarded on to the next phase. This stipulation is a little more clear than the one written in the previous approval, but the intent is the same. The City's position has been the same all along. Arth stated the prior approval stated, "all utilities will be buried". No contact was ever made, no efforts were ever taken to bury the power lines. It was not until July of this summer that the church received formal, specific detail regarding the fact that the power lines along Nall Avenue would need to be buried. The church feels that point is arguable and would like to discuss that issue further and have the chance to review it further. With this case, there is a stipulation stating the church will agree to bury the new power line, but the church challenges that at this time.

Carper stated he believes the applicant can move forward with the rectory the way the stipulation is stated now. The stipulation is still stating that all utilities will need to be put underground before the sanctuary is built. Arth stated he is asking to allow the applicant to not agree to that stipulation with this case. Duffendack stated by approving this case the Commission is not changing their position. The project would just be moving forward as before. The Commission cannot take any other stance until they know more about it and if the applicant wants to go forward with this case, they need to do that as stipulated by staff. He then asked counsel if the City is changing its position on this issue from the last approval. Marcano stated she agrees with Duffendack that the City is not changing its position.

Pilcher stated the applicant has stated the stipulation change will hinder their opportunity to move forward with this project. Arth stated he is asking for a bifurcation of the issue. The rectory has no bearing on the power lines. The applicant is not prepared to discuss that matter this evening. Given the timing involved with this, and that the window is closing on the ability to move the house, they would like to move forward with this project.

Duffendack asked Binckley's opinion with stipulation number 4 being applied only to this case that is being discussed tonight. Binckley stated staff is carrying forward with the same stipulations as in all previous cases. Carper stated he is not prepared to vote in favor of removing the stipulation. The applicant has already given agreement to this stipulation in a previous plan. The applicant's position would not be any worse off by agreeing to this stipulation. The only difference is that it is being tied to the proposed sanctuary versus just "it will be done". Arth stated the key argument is what the church actually agreed to with that last submittal. The church agreed to bury all power lines and the clarification did not come until June of this year. Carper asked what the original stipulation actually stated. Binckley stated the original stipulation stated "all utilities must be placed underground". The City's intent is "all". It did not list "new" or "existing", but "all". Arth stated the ordinance only refers to new construction for the burying of power lines. Binckley stated that is why there are stipulations. Staff does not stipulate everything that is in the ordinance, they stipulate requirements specific to each individual development.

Henderson asked if there is a timeline on the house as a gift. Arth stated, no, the only issue is that the lots near the entryway where they would need to get the house out have been sold and will be built on soon. After those are built, the house will be landlocked. Henderson asked if the applicant is in agreement with burying the existing power lines. Arth stated the applicant is not in agreement with that stipulation.

Duffendack asked for advice from staff or counsel on how to reword stipulation number 4 to allow this case to move forward without weakening the City's position on the intent of burying the cables on Nall Avenue.

Carper asked if the City could issue a special use permit to allow the house to be placed on the property. Arth suggested using the same language as what was in the original approval, which would allow for the issue to be resolved at the time of the final stage approval. Binckley stated it is up to the Commission on how to stand on this issue. The Commission could carry the same stipulation forward.

Henderson asked if this house is centrally air-conditioned. Arth stated there are two pad sites for air-conditioning units.

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

Pilcher stated he appreciates that the applicant is forthcoming, rather than just agreeing to the stipulation now and worrying about it later. Pilcher suggested removing stipulation number 4 and replacing it with the original stipulation, but reiterating the intention.

Henderson stated concern that whatever the Commission does could be interpreted by the church as a backing off from the intention of what is stated in stipulation number 4. The applicant has already indicated they are not

acknowledging stipulation number 4. He feels to delete that in any way would be to remove its force. Duffendack asked counsel if by changing the stipulation it would change the City's position in any way. Marcano stated it would be okay, as long as the Commission has made the City's intent clear on the record.

Henderson stated he would agree to an amendment to stipulation number 4 to read the same as the stipulation that was originally approved for the project.

Carper asked Binckley to remind the Commission how often in final site plans the City requires all utilities to be placed underground and how many other times this confusion has happened. Binckley stated the City has taken this change in the last two to three years. All new developments have been required of this via stipulations. To date, the City has received one letter from another group that has concern, but other than that, the developments have started putting the utilities underground. Carper asked if the concerns had to do with costs, or with their interpretation of the stipulation. Binckley stated a combination of both.

**A motion to approve was made by Pilcher with an amendment to stipulation number 4 to reflect the wording in the original final site plan, but to also reinforce staff and the Commission's intention as to that wording. Munson seconded.**

Henderson stated he would hope that the possibility of interpreting this differently by the church is not construed as an issue about which churches are not subject to all the laws of civil government. The reason he raised this concern is because another church came before the Commission for approval of a fence, which was already being constructed. There was inference given at that time that the church was not bound.

**Motion approved unanimously. (6-0)**

**Meeting adjourned.**

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J. Paul Duffendack, Chair