

**City of Leawood  
Planning Commission Minutes**

January 27, 2004  
Meeting - 6:00 p.m.  
Leawood City Hall Council Chambers  
4800 Town Center Drive

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

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

**APPROVAL OF THE MINUTES:** Approval of the minutes from the November 11, 2003 meeting and the November 25, 2003 meeting.

A motion to approve the minutes from the November 11, 2003 meeting was made by Henderson and seconded by Carper. Motion approved unanimously.

A motion to approve the minutes from the November 25, 2003 meeting was made by Henderson and seconded by Carper. Motion approved unanimously.

*Commissioner Conrad arrived.*

**CONTINUED TO THE FEBRUARY 24, 2004 MEETING:**

**CASE 79-03 SPORT COURT LIGHTING - BARTIMUS RESIDENCE** Request for approval of a special use permit to allow lighting of a sport court. Located at 11541 Cherokee Court. **Public hearing**

**CASE 02-04 LEAWOOD MARKET CENTER** Request for approval of a final plat and final site plan. Located at the southwest corner of 135th Street and Kenneth Road.

**CASE 14-04 VILLAS OF WHITEHORSE, 3RD PLAT** Request for approval of a final plat. Located north of 151st Street and east of Nall Avenue.

**CONSENT AGENDA:**

**CASE 04-04 HEADACHE AND PAIN CENTER** Request for approval of a final site plan. Located at 11120 Tomahawk Creek Parkway.

**CASE 05-04 HIGHLANDS CREEK, 4TH PLAT** Request for approval of a final site plan and final plat. Located south of 143rd Street and east of Nall Avenue.

**CASE 12-04a VILLAGE OF CAMDEN WOODS, 54TH PLAT** Request for approval of a final plat. Located south of 143rd Street and west of Kenneth Road.

**CASE 12-04b VILLAGE OF CAMDEN WOODS, 55TH PLAT** Request for approval of a final plat. Located south of 143rd Street and west of Kenneth Road.

**CASE 12-04c VILLAGE OF CAMDEN WOODS, 56TH PLAT** Request for approval of a final plat. Located south of 143rd Street and west of Kenneth Road.

**CASE 13-04 VILLAS OF WHITEHORSE, 2<sup>ND</sup> PLAT** Request for approval of a final plat. Located north of 151<sup>st</sup> Street and east of Nall Avenue.

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

**OLD BUSINESS:**

**CASE 70-03 LEABROOKE** Request for approval of rezoning from AG (Agriculture) to RP-1 (Planned Single Family Low-Density), RP-2 (Planned Cluster Detached Residential), RP-3 (Planned Cluster Attached Residential), and SD-NCR (Planned Neighborhood Retail), preliminary plat and preliminary plan. Located at 145th Street and Kenneth Road.

**Staff presentation:** Presentation by Mark Klein. The applicant is requesting approval from AG to RP-1, RP-2, RP-3 and SD-NCR, preliminary plat and preliminary site plan on 158.24 acres. The development will consist of 116 single-family lots on 52.67 acres zoned RP-1, 70 single-family villa style lots on 27.60 acres zoned RP-2, 165 triplex units on 27.89 acres zoned RP-3, and 1 lot containing 34,500 sq. ft. of neighborhood retail on 7.68 acres zoned SD-NCR. The Planning Commission last saw this case at the November 25, 2003 meeting. At that time the Commission stated a couple of concerns. One of those was density. In response to that the applicant has proposed a different mix. Within the RP-1 section of the development they were proposing 82 single-family lots and are now proposing 116 single-family lots. Within the RP-2 section they were proposing 62 single-family villa style lots and are now proposing 79. Within the RP-3 section they were proposing 226 attached units and they have decreased that by 61 units and are now proposing 165 attached units. Overall, the new plan is proposing 10 fewer lots than what was previously proposed. The other concern of the Commission was regarding the amount of traffic that would be generated from this development that flows into the adjacent subdivisions of Camden Woods and Steeplechase. A traffic study was received addressing those concerns. Staff is recommending approval of this case with the stipulations stated in a staff report.

Conrad asked if staff looked at putting together numbers of residential units using one collector street, or if they relied on the traffic study. Klein stated staff relied on the traffic study.

Williams asked for a summary of the traffic study. Ley asked if he was talking about the traffic study submitted in October, or the new traffic study. Williams stated the most recent one. Ley stated the recent traffic study shows the traffic flowing through the existing subdivisions would remain within a collector street standard. It did not determine the number of cut-through traffic.

**Applicant presentation:** Presentation by Phil Owens of SO3 Architecture Design Planning, representing the applicant, David McIntyre. This project was continued from the November meeting to address the expressed concerns of the Commission and the public. The applicant has made changes and has come back with a better project, which they feel addresses the issues raised. The first issue was density. The original plan had 370 total units. 144 were single-family lots and 226 were attached units. The new plan now has 360 lots of which 195 are single-family lots and 165 are attached units. In total, the applicant has eliminated 41 duplex units, 18 attached villas and one triple villa and added 51 single-family lots. The other question that was brought up was the viability of the project. The funds for Phase 1 and 2 are committed. JS Robinson has committed to take 41 lots immediately. David McIntyre and his builder, Brad Applebom, are committed to doing the 165 triple villa units. Out of the 360, that leaves 153 lots that are not committed to sale yet. Camden Woods has been averaging 62 sales a year, so there should not be any question of viability. TransSystems undertook a separate analysis of the in-flow and out-flow in conjunction with two adjacent developments and the collector streets. They concluded that, overall, it would be a wash, although they can not say on this day, at this time, what the traffic flow would be. The most important part of the report states, "Even with some mixing of traffic from all of the other neighborhoods, the volume of traffic is projected to stay within the range of a typical collector street. It is unlikely, with the current street configuration, that external traffic will use

the neighborhood streets to travel through this area." The applicant was also asked how LeaBrooke would affect the schools. McIntyre contacted the Director of Facilities for the school system and he said this project is well within their comprehensive growth. There was talk at the last meeting about how the railroad noise would adversely affect the project. The applicant has done some follow-up research and found that during the last 2 years there have 88 sales in Camden Woods and Steeplechase and not one of those sales listed any noise pollution. The only problems he foresees from the railroad are landscaping and design problems. The applicant does not feel the noise will be a problem.

Presentation by David McIntyre, developer of LeaBrooke. He and his development team listened to the Commission and the public's concerns and made changes accordingly. He feels the plan turned out to be a better project. There are some huge lots in the southwest corner. They were able to eliminate the duplexes entirely. The big triplexes were eliminated entirely. JF Robinson is committed to take all 41 of the RP-1 lots. Dusty Rhodes has committed to take the lots along the north and west sides. The applicant has interest from Lambie-Geer, B.L. Rieke, and Custom Homes of Kansas City. It is not a question of if they can get builders; it is just a question of whom they want. The economics will not be a problem, as some people have worried about. He will be building his own home at the northeast corner of this development. He will be the closest person to the railroad. In order to address the noise problem, the applicant will be suggesting that their builders build with 2x6 pieces of wood. When building with 2x6 pieces of wood, there will be 2 more inches of insulation. The applicant looked into the sound deadening properties of cocoon insulation, which is a blown-in insulation, rather than batt insulation. The applicant also looked at Polyboard on the exterior walls instead of plywood and orienting garages and walk-in closets on the east walls of the house. The townhouses will not be changing the footprint, but they are going to rearrange the floor plan to take advantage of some of the things they have learned about construction engineering and sound control. He does not believe anyone should have concerns on the economic viability of this project.

Williams asked for a description of the courtyards in the RP-3 section and asked how the 15-ft. setback would help them with the courtyards. McIntyre stated they would be maintaining the 30-ft. setback on the property lines; the 15 ft. is between the two buildings. Williams asked if the driveways leading to the parking are part of the courtyards. McIntyre stated, yes. Williams then asked if they are actually courtyards or driveways. McIntyre stated they are driveways with landscaping. Williams asked how the elevations, other than the front, would be designed. McIntyre stated they would be similar to the front. They will have cast stone and stucco. Williams stated the back and the sides will be visible to the public and addressing those areas appropriately would add to the development. McIntyre stated he is aware of that and believes a blank slab would not be the best marketing tool.

Williams asked for a description of the phasing. McIntyre stated the phasing has been carefully planned. They are planning on doing the first two phases at the same time. McIntyre described the phasing on the site plan.

*Munson arrived.*

Henderson asked Williams if he knows the approximate time as to when the first phase would start. Williams stated he recalls reading in the staff report that the developer is hoping for the Spring Homes Tour. McIntyre stated he would hope to be ready by next Spring. If not, he would hope to be ready by the Fall Homes Tour. Williams asked when the development would be totally built out. McIntyre stated the development would be built out by 2010.

Henderson asked about the building and expanding of Kenneth Road. Ley stated the expansion of Kenneth Road would be done with Overland Park. Henderson asked if the hump by Camden Woods would be removed. Ley stated, yes, it is actually a requirement by the Public Works comments that it be completed with the first phase. Henderson asked if the lack of construction of Kenneth Road and the traffic related to the construction of LeaBrooke would make it more difficult for the development and the phasing of LeaBrooke. McIntyre stated he does not believe so. The developer is looking forward to having their two lanes built on Kenneth Road by the time they are ready to sell lots. Henderson asked if Ley believes it could cause difficulty from transit traffic from 135th Street to 151st

Street. Ley stated it would be difficult while Kenneth Road is closed during construction. Public Works is going to make a recommendation next year to Council to install signals at 143<sup>rd</sup> Street and Kenneth in early 2005.

**Public hearing:**

Tom Nocita, 14445 Meadow Court. Before he purchased his property a year ago he came to the City planners and asked what the current plan was for the property south of the Villas of Camden Woods. His lot is lot 166 and backs up to that piece of property. Nocita stated that he was advised at that time that while that property was zoned AG, if it did change in the future, it would change to single-family, low density. It was on that basis, along with other information, that he sold his home in the Estates of Ironhorse and came to the Villas of Camden Woods. He is very opposed to having multi-units in that piece of property. He believes it will create a very difficult situation for not only Steeplechase and Camden Woods, but for the Villas of Camden Woods. He asked the Commission to stand by what was told to him when he originally made the inquiry and that the piece of property continue as RP-1, or low density, single-family. He does not believe that 2 x 6 insulation will screen the railroad noise in the area by the creek, at the south end of the property. There is a huge difference in the sound from this property versus Steeplechase and Camden Woods. There is also a vibration in that area. He suggested conducting a noise pollution study to see just how noisy it would be for the multi-family units. He is concerned that those units will not be able to be sold as individual units, but will wind up being rental pieces of property for transitional people. He appreciates Mr. McIntyre's revision of the plan and thinks that reducing the number of units is great and increasing the number of single-family houses was a move in the right direction. He asked the Commission to abide by what was originally planned, which was to make that property as single-family.

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

Henderson stated the revised plan takes some pains to reduce the number of little pieces of water and also reduces the need for some of the standing ponds. He would like to know if that would make a difference on the sound. Duffendack stated there may not be anyone present that is qualified to answer that question.

Conrad asked what zoning is included in the low-density residential. Klein stated it would include R-1, RPA-5, and RP-1. RP-1 would be the lowest density residential at 12,000 sq. ft. lots, which would be a density of 3.63 dwelling units per acre and is still considered low density on the Comprehensive Plan. There is a deviation available that has been used in the past to allow the RP-1 to go down to 9,600 sq. ft. lots. That is the cut-off where it heads into the medium density residential. Conrad asked if the RP-3 portion would meet low-density residential. Klein stated the RP-3 would not, but the RP-1 and RP-2 would. Conrad asked if there would be a way to lay this out and not require the deviations, except for the deviations to create the courtyards. Owens stated the current leading edge in land planning is to preserve as much of the land as possible. This development has a large amount of land that is open and that derives from the form of the land in two ways: one in the tributary area, and one down in the flood plain. It is contiguous as a useable amenity. The applicant cannot build in the flood plain, but even if that land could be built on, it would be their preference to leave it as it is now in order to achieve as much openness as possible. Conrad asked if the amount of units could be reduced in order not to require the deviations. Owens stated they are standard deviations that have been approved in other developments. Duffendack stated that Conrad's question was not what has been done in the past, but what can be done in this project if there were no deviations. Owens stated they would lose a tremendous number of lots if they were not allowed the deviations. Duffendack asked how many homes would be lost. McIntyre stated the original fact sheet for this property showed 158 acres. A certain portion of that was in the road. There were approximately 9 acres under the power line. There were another 30 or more acres down in the flood plain. There were 41 acres that were unusable on this property, originally. They gained approximately 4 to 5 acres of that back in the multi-family area. The form of the property does not lay out very efficiently. There were originally huge lots in the southern end, but that changed after the public objected to the duplexes and triplexes. The development could change but it would become unfeasible because of the extreme amount of the property that is in the flood plain, water shed area, and power lines. Duffendack asked how it would affect the project if the applicant

did not receive the deviations from the setbacks. McIntyre stated it is not feasible, as it would kill the project. The project has been reduced to a minimum at this time.

Williams asked Conrad which deviations he has problems with. Conrad stated he thinks lot frontage sets the character of the neighborhood and when there are cul-de-sacs and curves there are non-rectangular lots that sometimes reduce the lot frontage. He does not like immediate deviations. Binckley suggested the applicant could show which lots are receiving deviations. Not all of the lots are receiving deviations. Staff believes the deviations make sense. Even though they are RP-1 lots, they are next to a villa. Rather than allowing the RP-2 zoning, staff pushed for the RP-1 as a protection measure to make a more comfortable feel and still a higher level of setbacks and requirements. Owens stated lots 1, 7, 8 and 9 have no variations and then described the lots with deviations requested. One of the principal things for this development is to stay away from front-entry garages. The applicant does not need the requested variation for the trash enclosure for the commercial portion. The applicant asked for a deviation on the 5-ft. cul-de-sac length because of the bridge going over the flood plain. The applicant is asking for a horse variance because the owner will still be living on 15 acres on the interior of the property for 30 months.

Williams asked if one of the deviations on the RP-1 is to go from 100 ft. to 80 ft. on lot frontage. Owens stated he believed that was allowed within the development procedure plan. Williams asked approximately how many homes would be affected by the 80-ft. setback. Owens stated he does not know. It was a blanket reduction and they used it only where it was needed.

Pilcher asked staff to explain why the City of Overland Park has concerns with the grade crossings and then asked if staff looked at any other alternatives for the grade crossing. Binckley stated there are a couple of things still going on. The applicant has made contact with the railroad company and they have not been very cooperative. The railroad company believes the entire railroad is outside of Leawood. Staff has double-checked the boundaries and does not agree with that. Staff believes that 50% of the railroad, as it angles at the southeast corner, is within the Leawood city limits. The applicant has agreed they will continue working with the City if we can come up with an agreement with the City of Overland Park to be able to curve Kenneth Road to the southwest to miss the railroad. If that were to happen, the Commission would see the plan as a revised plan. Pilcher asked if Kenneth Road would be a through street. Binckley stated it would become a curved road as it intersected with 151<sup>st</sup> Street. That would miss both crossings of the railroad. Pilcher stated it seems the worst scenario would be a \$5 million overpass that would shadow the commercial area. Binckley stated part of the reason that the commercial portion is the final phase is because the access to the south could change, but it would be a revised plan. Some of these things are so far out there that staff is asking the applicant to continue working with the City as we try to work with Overland Park and the railroad.

Munson asked which phase would include the commercial portion. Binckley stated, phase 10.

Henderson stated he would like to comment on the statement of the City always being set in concrete. About two or three years ago the City went through the process of updating the Comprehensive Plan by soliciting comments from people all over the City. The City is a growing, dynamic entity and we do update statements for preferences of certain types of developments. It is important, directionally, but it is not etched in concrete. He is amazed with what can be done with this lot because he has looked at this as nothing viable. The improvements they have come in with are very useful in meeting the comments of the Commission. He does not think one can hold City officials accountable for words that were said a number of years ago if there is good reason for the City to develop.

**A motion to approve was made by Williams and seconded by Pilcher.**

Carper stated he is concerned about not knowing what is going to happen with the east side of Kenneth Road in Overland Park. He is struggling with the impact on this development in regard to the train's noise and vibrations. He has been at that crossing many times and has heard the noise and felt the vibrations. He has some concern about residential, whether it be single-family or multi-family, being in close proximity to the railroad. He then asked the

applicant how they have satisfied themselves with Leawood's building standards that they will be able to sell the lots. McIntyre stated he has made an offer to buy the land to the east that is in Overland Park. Their engineers are conducting a study of how much of it would be able to come out of the flood plain. He does not believe much of it would be coming out of the flood plain. He has talked to Overland Park about the requirement for establishing a tree farm and retail nursery there, primarily to absorb some of the noise and vibrations from the railroad. There has been discussion of the realignment of the road. He supports the realignment. There was also talk of an automated horn system for the crossings at Kenneth Road and at 151<sup>st</sup> Street to direct the sound. When he talked to the railroad about this he was told that he did not have any standing as an individual and he would have to get the City to work with the railroad on the horn system. They will try to eliminate the noise and vibrations as much as they can. Carper asked what would be the alternative if the realignment of the road does not happen. McIntyre stated he would go broke. Carper stated that is a concern of his. One could argue that it is a nice buffer to the single-family, but he would like to have some feeling that it would not be an issue down the road. He would like some assurance that if there were a lack of ability to sell the units there would be no degradation of the units themselves. McIntyre stated he understands that Steeplechase is much farther away from the tracks, but the Villas in Camden Woods are right there, and he does not see the difference. They seem to be selling successfully. He would be glad to remove some of the multi-family and put in more single-family. Carper stated he is not used to having a problem like this facing the Commission and not knowing what will happen. Williams asked if Carper's concern is about having residential property being close to the railroad. The only other things that would be developed there would be commercial and he feels residential is much more compatible to Camden Woods and Steeplechase. Overall as a project, it is not too bad. He feels it is a pretty reasonable trade off, given where they are and the phasing they have shown. The question of if it does not sell potentially creates a problem for the developer, but if they were to request an all-commercial property, the Commission would more than likely turn them down.

McIntyre stated he offered to pay \$330,000 to \$400,000 towards the cost of installing the horns if the City would support him in the future. He has not experienced the trembling of the ground, but has heard the noise. Pilcher stated the horn problem would be resolved with the elimination of the grade crossing.

**Motion approved (4-2). Henderson, Carper, Williams and Pilcher for. Munson and Conrad against.**

**CASE 81-03 STATE LINE ANIMAL HOSPITAL** Request for approval of a preliminary site plan for an addition. Located at 2009 W. 104th Street. – **CASE WITHDRAWN BY APPLICANT**

**NEW BUSINESS:**

**CASE 01-04 LUKE PROFESSIONAL PARK** Request for approval of a preliminary plat, preliminary plan, final plat and final plan. Located at the southwest corner of Kenneth Road and Kenneth Parkway.

**Staff presentation:** Presentation by Mark Klein. The applicant is requesting approval of preliminary plat and preliminary site plan for an 11,109 sq. ft. doctor's office building on 1.56 acres for an FAR of 0.16. This piece of property is located to the south of a triangular piece of property located at the corner of 135<sup>th</sup> Street and Kenneth, which the Commission has previously seen before, called Leawood Market Center. That particular project has also filed an application with the City for final site plan and should be back before the Commission at the February meeting. That plan had preliminary approval for 116,400 sq. ft. of retail and 15.30 acres for an FAR of 0.17. This piece of property is part of the same ownership of that property but is divided by Kenneth Road. This owner has agreed to make this project match with the other project. The office building is single story. The entrance into the office is pointed towards the west with parking along the west parking line. By doing this, the applicant was able to get the building a little bit further away from the west property line; which is shown on the comprehensive plan as future residential, although it is currently zoned agricultural. They were also able to avoid having parking lined up and down Kenneth Road and Kenneth Parkway. The applicant is requesting a deviation along the west property line in which they would be allowed a 10-ft. parking setback, instead of a 25-ft. parking setback. There is some grade

change there, which should add to some of the buffer that primarily occurs at the southwest corner of the property. The applicant is also proposing landscaping along the west property line to further buffer, in the form of evergreens, ornamentals and a variety of landscaping. Staff is recommending approval of this case with the stipulations stated in the staff report.

Conrad asked if the property owner of the future development to the north has been contacted about coordinating with the materials of this project. Klein stated they have been contacted. Conrad then asked if they agreed to coordinate the materials. Binckley stated this applicant has agreed to match what Leawood Market Center is proposing. Both final applications will be heard together at the next meeting, provided this gets approved tonight, so the Commission can see them side-by-side.

Duffendack asked for clarification on what the Commission would be approving for this case tonight. Binckley stated it was originally set for preliminary and final plat and plan, but since the project to the north was continued, staff continued the final for this project. The Commission is only looking at preliminary approval tonight.

**Applicant presentation:** Presentation by Jay Lucas of Lucas Development. This property was originally part of the Fleming tract that was before the Commission a couple of years ago. Lucas introduced the development team. This is a planned use. The applicant believes they have enhanced the property, which is currently a collector for animals and standing water. They have been able to move the parking to the rear so the presentation of the building features landscaping and a park setting. The applicant has worked closely with staff and agrees to all of the stipulations. The applicant would like to discuss the stipulation regarding placing the power lines underground. They have discussed this with KCP&L and they do not want to do that for just this piece of land. There is about half a mile or so that KCP&L has said they would like to do at one time. The applicant is willing to escrow the funds for the placement of the power lines. The stipulation read that they would not get an occupancy permit without those power lines being placed underground, and that is not possible without KCP&L's cooperation. The applicant is agreeing to do that in the future when KCP&L allows it.

Presentation by Bill Woodhouse of ACI Boland Architects. The site is a one and a half acre triangular site and when you apply all of the requirements, you get a building that looks exactly like this one. It is a 10,000-sq. ft. building that will house three medical office suites of approximately 3-4,000 sq. ft. each. Woodhouse described the elevations. The applicant has worked with the architects for Leawood Market Center. They share the pallet of color and material as well as the architectural style and scale. Woodhouse described the materials. One of the design challenges was the trash enclosure. It has been attached to a corner of the building. It does not share a roof with the building, but it does share an exterior wall and gate. From Kenneth Road and Kenneth Drive, the trash enclosure will appear as part of the building. There will be landscaping around all three sides of the building with a buffer of landscaping along the back. The mechanical equipment will be screened with landscaping on the ground. There will be no rooftop mechanical equipment. There will be 45 parking spaces. There is need for a retaining wall on one corner. That wall will be built of large block stone to further enhance the landscaping of the area.

Munson asked where the retaining wall would be. Woodhouse described the location of the retaining wall on the model.

Duffendack asked what is located to the west of the property. Woodhouse stated it is currently zoned agricultural, but he believes it is planned to be single-family. Binckley stated it is proposed to be medium density residential. The owners have been contacted and are aware of this project. Duffendack stated he likes that there will be nothing located on the roof, because he believes it will be fairly visible from the west. He then asked where the mechanical equipment would be located. Pruitt stated they would be located on both sides along Kenneth Road, screened by shrubbery. Munson asked if there would be any rooftop units on the building. Woodhouse stated there would be none.

Henderson asked if Leawood Market Center's landscaping would complement this property. Pruitt stated, yes.

Munson asked where the existing power lines are located. Pruitt showed the location on the plan. Munson asked the length of the west part of the lot. Klein stated the plat shows 730 ft. Munson asked if the applicant has any problems with working with KCP&L. Woodhouse stated the applicant has agreed to work with the City on burying the power line. Henderson asked which area KCP&L wants to incorporate with this property. Binckley stated the area directly north of this project, west of Kenneth Road. Carper asked when that would occur. Binckley stated that would occur when there is development. The City does not currently have any plans for that area.

Henderson asked about the storm water plan. Ley stated the original proposal by Leawood Market Center was to make some modifications to the box culvert underneath Kenneth Parkway to give it a little more capacity. Since that time, there have been studies that show that even with those modifications Kenneth Parkway would flood by close to two feet. Since that would not meet APWA standards, the City is requiring everyone upstream of that to detain. Henderson asked for any comments of breakage in curbs and different access to this property when the closure of 137<sup>th</sup> Street begins to occur. Ley stated 137<sup>th</sup> Street would be relocated and the property owner to the west would hopefully work with this developer to provide an access easement so the driveways could connect to Kenneth Road. If that developer would not want to give an access easement, then they would need to move his driveway further west. Henderson asked when that would happen. Ley stated 137<sup>th</sup> Street would be built when the other developer comes in.

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

Duffendack asked Binckley if the City has ever had a situation like this when KCP&L has required our ordinance to be delayed until a later date. Binckley stated the only situation has been more of the City's decision to allow a developer to have more time to build up the funds to put the power lines underground. There has never been a situation where KCP&L has dictated that to us. Based on that, Binckley approached the City Administrator about escrowing the funds and he felt that would be appropriate. Duffendack stated he does not know when the lines would be buried and then asked what assurances the City has that it would ever happen. Binckley stated the money would be given to the City and the City would ensure the lines are buried. Carper asked what would happen if it does not occur for 10 years. Binckley stated those funds are put in an interest bearing account and hopefully that would increase at the same rate. Carper stated he does not have a problem with an escrow as long as sufficient funds cover it when it needs to be done. Binckley stated it could be taken to Council. The Commission could make a recommendation of a time frame. The City could contact KCP&L and make a final decision when the plan comes back for final site plan.

Pilcher asked if it makes sense to have a curb cut to the entrance off of Kenneth Road. Ley stated the applicant submitted a traffic study that addressed that issue. This development is in p.m. peak hour, which would be the most traffic going southbound. There would be a very small number of vehicles heading southbound and going into this development, therefore it met all of the requirements.

Henderson asked how staff feels about how this building fits on this lot and in relation to Leawood Market Center. Klein stated he feels the building fits very well. It is using the same materials and the same color scheme. He feels it is a good scale for this site.

Conrad asked if the EIFS would be addressed at final application. Klein stated it is typically looked at during final application. The applicant is proposing stucco around the entrances to the door. The majority of the building will be brick. Conrad asked if by approving this tonight they would be approving EIFS. Klein stated staff has made a comment that we would like the applicant to change it to stucco, but it is at final plan application when the Commission approves the materials.

A motion to approve was made by Carper, with stipulation 5 to be revised to state that the applicant will pay for the utility lines to be placed underground and the amount escrowed to cover such cost as agreed to by City Staff. Motion seconded by Munson. Motion approved unanimously.

**CASE 06-04 CINGULAR CELLULAR TOWER** Request for approval of a special use permit to allow the continued use of a cellular tower at 10515 Mission Road.

**CASE 07-04 AT&T CELLULAR ANTENNA** Request for approval of a special use permit to allow the continued use of a cellular antenna at 10515 Mission Road.

**CASE 08-04 SPRINT CELLULAR ANTENNA** Request for approval of a special use permit to allow the continued use of a cellular antenna at 10515 Mission Road.

**CASE 09-04 NEXTEL CELLULAR ANTENNA** Request for approval of a special use permit to allow the continued use of a cellular antenna at 10515 Mission Road.

Duffendack stated the Commission would hear all of the cellular cases at one time.

**Staff presentation:** Presentation by Jeff Joseph. This is a request for the renewal of a special use permit to allow the continued use of an existing cell tower and antennas. The applicant is Curtis Holland of Polsinelli Shalton and Welte, representing Cingular, AT&T and Sprint and Joe Dubinski of Bryan Cave, representing Nextel. This tower is located near I-435 and Mission Road. There are no changes proposed to the existing tower or antennas. The existing tower is 130-ft. high. Staff is recommending approval of this case with the stipulations stated in the staff report.

Conrad asked about the landscaping. Joseph stated there is a stipulation stating the applicant must maintain the existing landscaping. Conrad asked if staff has been trying to get the applicant to maintain the landscaping throughout the time the tower has been in place. Binckley stated staff is comfortable with the current landscaping. There is a single contact with Cingular and any time staff has had any issues with the landscaping, they are there within 48 hours to maintain it.

Duffendack asked if staff is comfortable with the maintenance of the fence around the site. Binckley stated staff has not had any issues with the fence.

**Applicant presentation:** Presentation by Curtis Holland of Polsinelli Shalton and Welte, representing Cingular, AT&T and Sprint. Cingular was known as SWB wireless when the special use permit was first approved. There are representatives from each of the companies available if the Commission has any questions. The tower is 130 ft. tall. In regard to the landscaping, Cingular built the facility and started it and then very shortly afterwards Nextel asked to locate their facilities on that tower. That had an impact on the initial construction. This particular facility was rather extensive with the berming and landscaping and Cingular was not thinking about the other carriers that would need access to the site. There was a lot of equipment that needed access and there was some issue with getting the landscaping finalized. He has not heard any issues for a couple of years. The applicant has addressed all of the requirements as set forth in the City's zoning ordinance. Nothing has changed. It is a heavily used site and it would be disastrous if a decision were made to remove the tower. The applicant is in agreement with staff's stipulations.

Presentation by Joe Dubinski of Bryan Cave, representing Nextel. There is a representative from Nextel in attendance if the Commission has any questions. Dubinski concurs with everything that Mr. Holland said. He then emphasized the severity of the harm that would be caused to Nextel if the site were to be removed. This covers the I-435 corridor. There was a dead spot there and this site has corrected that problem and allows Nextel to compete in this area.

Pilcher asked why Nextel is not using the low profile antenna. Dubinski stated that issue was addressed in 2000. A slim-line antenna would significantly degrade the propagation of the signal and would hinder the ability to serve their customer. Pilcher asked if a lower profile antenna used higher on the structure could achieve the same results. Mike Reed of Nextel Communications stated this issue was raised several years ago with the original application to co-locate on this existing tower. At that time Nextel's engineers had determined that the use of a slim-line antenna profile would significantly impact the propagation of their signal. The City suggested the applicant retain the services of Trak Communications to evaluate this situation. They concurred with Nextel that the slim-line antenna would significantly impact their propagation. Raising the antenna would not help in this case. Nextel's technology is a little different than their competitors. Pilcher stated it looks like Nextel's antenna is within 10 ft. of the Sprint antenna. Reed stated the issue is the horizontal separation of the antenna, not the vertical. Binckley stated what the applicant is stating is correct and all of the paperwork regarding that is on file with the City.

Henderson asked what the normal life is of a structure like this. Holland stated the structure could stay there indefinitely. There is a concrete pier drilled down into the bedrock. Henderson then asked if satellites could take away its function. Holland stated he does not think the satellite technology is any closer than when this tower was first built. Henderson then asked if there is any stress factor in monopoles like this. Holland stated the poles are designed to allow for the force of wind resistance so that it will not fall over. Henderson asked if the tower broke, would they be back with a new application to erect a new tower. Holland stated yes, the applicant would reapply if that were to happen.

Binckley requested that the Commission open and close the public hearing for each case.

**Public hearing: With no one present to speak at the public hearing for case 06-04, a motion to close was made by Henderson and seconded by Pilcher. Motion to close approved unanimously.**

**A motion to approve case 06-04 was made by Henderson and seconded by Carper. Motion approved unanimously.**

**Public hearing: With no one present to speak at the public hearing for case 07-04, a motion to close was made by Carper and seconded by Williams. Motion to close approved unanimously.**

**A motion to approve case 07-04 was made by Carper and seconded by Conrad. Motion approved unanimously.**

**Public hearing: With no one present to speak at the public hearing for case 08-04, a motion to close was made by Carper and seconded by Pilcher. Motion to close approved unanimously.**

**A motion to approve case 08-04 was made by Carper and seconded by Henderson. Motion approved unanimously.**

**Public hearing: With no one present to speak at the public hearing for case 09-04, a motion to close was made by Carper and seconded by Williams. Motion to close approved unanimously.**

**A motion to approve case 09-04 was made by Henderson and seconded by Carper. Motion approved 5-1. Pilcher opposed.**

**CASE 10-04 135TH AND ROE OFFICE RETAIL** Request for approval of a rezoning from SD-0 (Planned Office) to SD-CR (Planned General Retail) and SD-CR (Planned General Retail) to SD-O (Planned Office), preliminary plat and preliminary plan. Located at the northeast corner of 135th Street and Roe Avenue.

Duffendack stated because of the late start of the meeting, it will continue until 9:30 p.m.

**Staff presentation:** Presentation by Mark Klein. The applicant is requesting approval of a rezoning, preliminary plat and preliminary site plan for the construction of a 313,365 sq. ft. retail and office development on 34.3 acres for an overall FAR of 0.21. The development will be made up of 112,365 sq. ft. of retail space on 13.7 acres for an FAR of 0.18 and 201,000 sq. ft. of office space on 20.6 acres for an FAR 0.23. This property is located at the northeast corner of 135<sup>th</sup> Street and Roe Avenue, adjacent to Parkway Plaza. The property has an office component and a retail component. Approximately the northern third of the property is zoned SD-O and the southern two-thirds is zoned SD-CR. The applicant is requesting to rezone the proportions of those. They are requesting to zone more of it the SD-O and less of the SD-CR. The retail portion is located in the center of the project and at the southeast corner. To give an example, this project would be similar to Hawthorne Plaza. Hawthorne Plaza stretches out in more of an L-shape and has the backs of the buildings that face to the south. This project will be more like Town Center Plaza where the internal service areas will be located in the middle, so they will not be visible. The office space will be located primarily along the west and the north property lines. There is a track of land on the north side of 133<sup>rd</sup> Street, a little more than 3 acres, that the applicant has stated they will leave that as a no-cut, no-build zone and will continue to act as a buffer for the residential area to the north. Staff is recommending approval of this case with the stipulations stated in the staff report.

Henderson asked how many square feet of office space would be along 135<sup>th</sup> Street, including this project. Klein stated he does not know. Henderson stated he would like to know if having that much office space is working. Klein stated he could get that information at a later time.

Munson stated he does not see anything in the stipulations regarding matching all four sides of the buildings. Klein stated that would be addressed at final application.

**Applicant presentation:** Presentation by Chuck Peters of Peters and Associates. The applicant feels it is important to take the office along Roe Avenue and to the north and follow the parkway along 133<sup>rd</sup> Street and then take the retail to the other side. Peters described the site plan, elevations and proposed materials. The applicant has concerns with four of the 53 staff stipulations. One of them deals with the three acres to the north of 133<sup>rd</sup> Street. At the Interact meeting, the people abutting that property brought up a concern about the maintenance of that property. The applicant's understanding from the Jameson Group was that they are to accept and take over the maintenance upon closure of this property. The resident's concern was that it has not been maintained. Peters took some pictures of the property and there are some dead evergreens. The applicant's concern is that they have no problem taking care of the property, but would like some base point to start from. If the City put in the trees, the applicant is asking they be replaced and then they will maintain them. Another stipulation deals with the out lots on the retail side. It has been asked in stipulation number 31 that no construction is to take place on the entire park unless the retail has been started. Peters talked to Binckley earlier and she concurred that the office could be completed prior to the retail main building core, but she did not relinquish the issue of the retail out lot pads. The applicant has concerns with two of the comments in the Public Works memo. One deals with two access points on Roe. There were also some issues on Fontana. Peters believes that those issues have been resolved with the discussion he had with Ley today. The applicant will continue to work with Public Works on those issues. Peters introduced the development team.

Binckley stated the intent of stipulation number 11 is that, at final application, staff would evaluate the landscaping that is out on the site north of 133<sup>rd</sup> Street and if there are areas that need to be modified in order to buffer the homes to the north, then staff would like to be able to work with the applicant in the future. The rest of the stipulation identifies that the development south of 133<sup>rd</sup> Street will meet the LDO requirements. In regard to stipulation number 31, in retail developments, Leawood does not allow pad sites to be constructed prior to the main center, or at least 50% of the main center is to be under construction prior to a pad site being started. Staff is comfortable with the office continuing forward. The design will sit well on its own if the retail comes in at a later date.

Ley stated the developer is going to construct northbound deceleration lanes, so that will help aid with the two right-in and right-outs on Roe. Additionally, that does meet the City's minimum separation requirements. On Fontana, it will be two lanes, northbound, from 135<sup>th</sup> to the north entrance. The developer will construct Fontana a little wider. Duffendack asked if Ley is in agreement with what the applicant has proposed in regard to Public Works' stipulations. Ley stated he would like to strike stipulation 1B from the Public Works memo, regarding the access on Roe. Duffendack asked if Fontana is referenced anywhere in the Public Works memo. Henderson stated it is in 1C ii. Peters stated that he and Ley have had a conversation about stipulation number 10 and Ley concurred that they would prorate that based on the offset; how the traffic study affected that area. The applicant agrees with that as well. Ley stated his comments were written as if this was being built in one phase. Since the developer wants to come in with the office sites first, PublicWorks staff is willing to work with them to phase the public improvements. Binckley stated the Commission would see each of the phases and the traffic study accordingly.

Henderson asked how this compares with waiting in the queue elsewhere. Ley stated he would like the traffic engineer to address that. Mike Kenna of Olsson and Associates asked Henderson to repeat the question. Henderson asked what the difference is between what is written in the traffic study and what is normal elsewhere. Ley stated the cycle length will be shorter and therefore the queue would be shorter than what typically happens elsewhere. Ley stated the traffic model would be updated before final.

Henderson asked about the storm water system. Peters described the drainage plan on the site plan. Henderson asked if the water would flow over the road. Peters stated it would be under the road. The applicant is providing both surface and underground detention for this entire site.

#### **Public hearing:**

Alec Weinberg, 13252 DelMar Court. His home is directly to the north of this development. He has several issues. The first issue is the lighting in this development. The Price Chopper development has a requirement for sloping lights and he would hope that would continue with this development and be even more elaborate so that they are not seeing a bright sunlight 24 hours a day. What little privacy he has will disappear as this site develops. The second issue is that some of the residents are concerned about the four pad sites. He hopes that those would not be fast food restaurants. Peters has told him that there is some limited drive-through access for these pad sites. He hopes there is some control from the Commission to keep that from happening. His third concern is about the unanchored retail center they are proposing. The design is good because it shields the neighborhood from the back of the center so they do not have to look at trashcans and back doors. The concern he has is where they will come up with tenants for that. The Price Chopper development is virtually vacant and has been since it was built. As retail continues to go to 135<sup>th</sup> Street, he thinks this site would be less attractive to retail tenants than property along 135<sup>th</sup> Street. Another concern is where Fontana borders on the east side of the property and how 133<sup>rd</sup> Street starts to bend to the south and east. That street will be along the back of his house. The way the property is designed, the street will go downgrade and then upgrade to reach 133<sup>rd</sup> Street. As the cars come to that intersection, the headlights would reach his second story, right into his bedroom. He asked that those plans be altered so that those lights would not be intruding on his privacy. He had hoped that when this property was developed it would shield the residents away from the development with berming and landscaping. This development does not address anything as far as landscaping to the north of the property that would help isolate him from this retail development. He would like to see more landscaping. He would like to know what happens to the storm water once it gets to 133<sup>rd</sup> Street. He believes there is an open channel as you go north, down past Roe into Normandy. He believes there are already water problems in Normandy. He is concerned about how much surface water runoff would occur and feels it should be investigated before this plan is approved.

Ron Browne, 13217 El Monte Street. His home will be about 150 ft. north of the building in the middle of this project. He is concerned about berming. He is also concerned about the feeling that 133<sup>rd</sup> Street would be an access to this property in regard to the trucks. Council assured him that 132<sup>nd</sup> and 133<sup>rd</sup> Street would be "no truck access" streets. He would like reassurance that those promises that were made are going to be kept. He has seen no signs put up

that say "no trucks allowed". The watershed leads directly into his backyard. There is a storm sewer of about 4 ft. and he was told by City Engineers that this would be adequate. After the Price Chopper was built, he had a flood in his basement for the first time in 9 years, which cost him \$11,000. He would like to know if this new development is going to empty their storm water into his back yard. He would also like to know who would be responsible if he has more flooding. He is concerned with the headlights coming off of Fontana. He believes berming or landscaping would help. When he built his home and discussed it with the City he was told it would be zoned as office with no retail. He would like to know when the zoning changed to allow retail.

Binckley stated the property was zoned in 1993. The north third of this property was zoned office and the southern two-third was zoned retail.

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

Conrad stated he has been struggling with how to address this plan. The pad site layout along 135<sup>th</sup> Street was acknowledged and would be dealt with later. He feels there were numerous issues in the staff report. He concurs with the pedestrian amenities and the corner feature. He understands the rezoning, but is struggling with the layout and some of the items that are stipulations that he would like seen taken a step further to assure that the reapportionment would work. He feels the Commission needs to maintain the City's position and keep stipulation number 31. He is supportive of the concept, but still has a lot of questions, such as how the pad sites will be addressed. There seems to be an extensive amount of parking. The applicant has taken the maximum number of stalls. He would like to know if any that can be landbanked. He then asked if staff and the applicant could work towards resolving some of the issues. Binckley stated the only area that might be difficult to lock down are the pad sites. The applicant does not know what they are putting in there. They looked at generalities and agreed to meet the ordinance when it is looked at in the future. It is difficult to look at some of the areas at this level. Conrad stated there is very little green space along Fontana. Binckley asked if he would like more information on the corner feature and the pedestrian amenities. Conrad stated he agrees with staff's stipulations that some of these things do not meet certain ordinances. He would like to see as much of that ironed out as possible for an understanding of what they are going to end up with.

Carper asked about the property to the north of 133<sup>rd</sup> Street as it goes from Roe to the east. He asked who owns the property and what is the intent as far as what is going to be done with not only the thin strip, but as 133<sup>rd</sup> Street meanders to the south. Binckley stated the thin strip directly north would be owned by this development, that is why staff tied in stipulation number 11. Everything east of Fontana will continue to be owned by the Jameson Trust. The property north of 133<sup>rd</sup> Street and east of the school is zoned as office. Carper asked if the landscaping would include some significant berming. Binckley stated there is already berming there. If there were to be a larger berm, all of the existing trees would need to be moved. When 133<sup>rd</sup> Street was put in, the City negotiated a berm that is installed at this time as well as the hike/bike trail. There has been a dispute as to who was supposed to maintain that, but the City has been watering it in the meantime. The berm is about 3 to 4 ft. high. Carper asked if staff believes it is sufficiently landscaped in regard to the questions of the headlights. Binckley stated, yes. Carper asked staff's opinion of the storm water runoff. Ley stated the requirement is to provide detention. The City's policy is to look at the 100-year storm to see the existing flow off that site. When the developer gets done, the peak flow should match that flow. There will be additional flow, but the peak flow will remain the same.

Henderson asked how the water would be handled before getting to 133<sup>rd</sup> Street. Ley stated the water would be captured by the storm water drainage in the parking lots and would be collected before getting to 133<sup>rd</sup> Street.

Duffendack asked for any specific questions from the Commission on this project. Pilcher stated staff has done a good job in addressing any of his questions. Henderson asked if the Commission should be concerned about the feasibility of the vacant retail locations in the area. Duffendack stated it is not the Commission's place to look at the economic viability of future development.

Conrad stated that many of the retail parking spaces exceed the maximum number required. He would like to work with the pedestrian amenities. He would like to see those issues addressed a little more than "will comply at final". Peters stated the applicant has laid out access points to this property that deal with those four pads in the front. There is no way to tie those pads down. The applicant is willing to work with staff on the green space. Almost all of the stipulations have been addressed with the plan that is before the Commission tonight. Most of the stipulations refer to the four island pad sites. Conrad asked if the parking space numbers in the staff report are correct. Peters stated the numbers are correct in the staff report. He has spoken with Binckley about this and understands that those numbers must change at final and the applicant agrees with that.

Brick Owens of HNTB described the landscaping plan.

Conrad asked if the buildings are all one-story. Peters stated they would be two-story.

**Motion to extend the meeting until 9:45 made by Munson. Motion seconded by Carper. Motion to extend approved unanimously.**

A motion to approve case 10-04 was made by Pilcher with three modifications; 1) Stipulation number 11 be modified to include that the applicant will work with staff to agree upon a landscaping plan 2) Stipulation number 27 be amended to say "per the Public Works memo, as amended" 3) Modify stipulation number 12 to state that they should landbank parking spaces wherever possible. Motion seconded by Carper.

Williams asked if all pad sites would need to wait until the main office center is built, or just the retail sites. Duffendack stated it would just be the retail sites.

**Motion approved 5-1. Conrad opposed.**

**CASE 11-04 LDO AMENDMENT - SECTION 16-2-10.3** Request for an amendment to the Leawood Development Ordinance Section 16-2-10.3, Architecture/Construction Standards, Materials and Colors.

**Staff presentation:** Presentation by Diane Binckley. This item is a request to amend the LDO as identified on the agenda. There was a request from a resident of Leawood to amend the LDO to allow for standing seam metal roofing on residential homes beyond just an accent material. The Gilmores were not able to attend tonight's meeting. They understood the Commission's position on this matter but would like it to go forward to be on the record.

Henderson asked if this is the same metal as under letter "g" in the ordinance. Binckley stated the standing seam is a different product than the metal referred to under letter "g".

Duffendack reminded the Commission that when this was discussed at the work session no one was in favor of the standing seam. He also reminded the Commission that if this amendment were approved it would be allowing standing seam metal roofing for the entire roof, not just an accent material.

Carper stated that the standing seam is allowed as an accent feature currently, but this request is to allow it for the entire roof. Binckley stated staff's concern with approving this amendment is that while it might be appropriate on some types of roofs, there are others that it would not be appropriate on.

Carper asked if one letter precipitated this amendment. Binckley stated, yes, it is based on roofing and roofing has been a controversial issue as to whether or not the City is allowing enough options. She feels that it is important enough to get it on the record and to make a clear statement to take care of this situation.

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 deny was made by Pilcher and seconded by Munson. Motion to deny approved unanimously.

Meeting adjourned.

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J. Paul Duffendack, Chair