

**City of Leawood  
Planning Commission Minutes**

**March 23, 2004  
Meeting - 6:00 p.m.  
Leawood City Hall Council Chambers  
4800 Town Center Drive**

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

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

**APPROVAL OF THE MINUTES:** Approval of the minutes from the February 24, 2004 meeting.

Munson stated on the first page of the minutes, where he makes a correction, he was referring to a 500 ft. cul-de-sac length.

Henderson stated on page 10 the motion to approve should read, "The amended motion was approved unanimously."

Duffendack stated it might be a good future practice to try to write the amendment rather than referring to previous discussion, as done on page 8. Binckley suggested continuing the approval of the minutes to the next meeting to allow them to be re-written. **A motion to table the approval of the February 24, 2004 minutes was made by Henderson and seconded by Rohlf. Motion approved unanimously.**

**CONTINUED TO THE APRIL 27, 2004 MEETING:**

**CASE 03-04 NEXTEL ANTENNA SITE - 5200 W. 135TH STREET** Request for approval of a special use permit to allow the continued use of an existing wireless communications antenna. Located at 5200 W. 135th Street. **Public hearing**

**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.

**CASE 24-04 SBC PRONTO/DSL - 3950 W. 119TH STREET** Request for approval of a special use permit to allow a DSL cabinet. Located at 3950 W. 119th Street. **Public hearing**

**CASE 25-04 SBC PRONTO/DSL - 9613 LEE BOULEVARD** Request for approval of a special use permit to allow a DSL cabinet. Located at 9613 Lee Boulevard. **Public hearing**

**CASE 26-04 TOWN CENTER PLAZA** Request for approval of a preliminary site plan. Located north of 119th Street, between Nall Avenue and Roe Avenue. **Public hearing**

**CONSENT AGENDA:**

**CASE 23-04c VILLAGE OF CAMDEN WOODS, 59TH PLAT** Request for approval of a final plat. Located south of 143rd Street and west of Kenneth Road.

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

**OLD BUSINESS:**

**CASE 22-04 CAPITAL IMPROVEMENTS PROGRAM 2005-2009** Request for approval of the 2005-2009 Capital Improvements Program.

**Staff presentation:** Presentation by Diane Binckley. A public hearing was held at the last Commission meeting. The entire document is before the Commission for review and approval. The Director of Finance, Kathy Rogers, and the Director of Public Works, Joe Johnson, are available if the Commission has any questions.

Duffendack reminded the Commission that their role is to approve the CIP as it relates to the Comprehensive Plan.

Williams asked if there is a proposed site for the new police station at this time. Binckley stated staff is working on that and will bring it to the Commission in the future. Henderson asked if this year's proposal would be to spend money to acquire the site, then three years later to build the building. Binckley stated that is correct.

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

Henderson stated he would like to make a commendation to Ms. Rogers and her staff for writing the CIP, as he could not find any errors in it. On page 40 there is a reference to the golf course creek problem and then there is another reference on page 74. He asked how staff decides where things go in the book. Rogers stated page 40 is a project that would be bonded. The SMAC project is pay-as-you-go, so the City sets aside 25% of the project and then SMAC (Stormwater Management Awareness Council for Johnson County) will fund 75% of it. The City will not issue long-term debt. The projects further back in the book in the categories behind each year, are going to general long-term bonds and will be paid over time either by the citizens or from a special benefit district. Henderson asked if an emergency flooding would cause her office to move up severe erosion and danger from a subsequent year. Rogers stated it depends on its ranking with Johnson County, but Joe Johnson could better answer that question. Johnson stated page 40 refers to work that is being done by the golf course to stabilize the channel on the golf course to keep the golf course from having any more of a negative impact from erosion. The other stormwater project is a project for flood control. The timing for that project coincides with the time the City receives funding from the County with their SMAC program. Right now, the City is expecting the funding to be available between 2005 and 2006.

Henderson stated one of the residents has raised a concern about Negro Creek and the erosion problems on his and his neighbor's yards. Henderson then asked if the City has the leeway to address that issue as an emergency issue. Rogers stated the City always has emergency funds set aside that are not budgeted.

The Council would need to consider that separately. The City is currently organizing this process with the criteria that has been set. Council always has the opportunity to consider those situations.

Munson stated that it seems that the City has a considerable gap between their limitations and what is outstanding. He then asked if that is correct. Rogers stated that is correct as far as the State's limits go. On page 64 of the CIP, the City has imposed its own limits that are recommended more as an industry standard from the rating agency. The City tries to stay in the 80/20 balance.

Henderson commended Mr. Johnson and his staff on the 80% for roads and then asked how it is measured. Johnson stated his department evaluates every street. Each street is broken up between intersections. His department looks at the types of distresses in order to calculate the criteria of the street. Since 1989 the City has funded the reconstructive program at a pretty aggressive pace and over the last four or five years it has been accelerated. The City will spend \$10.5 million over the next five years to try to reduce the backlog. With new construction and reconstruction coming in as it has in the last 10 years, the conditions for streets have gone up considerably. His department looks at breakpoints in their analysis on mill and overlay and tries to focus most of the money on preventative maintenance. They will spend \$2.5 million on reconstruction and will spend \$1 million for mill and overlay and slurry seal. The streets are budgeted through the accelerated program.

Henderson asked if the shift in appraisals would have an effect on the City's availability of funds. Rogers stated they model and forecast for five years and one of the assumptions used is to assess value growth with a conservative 4.5%. When the Council reviews the budget, everything is linked together when they make the decisions on how to proceed. Henderson asked when LeaBrooke would show up on the CIP. Rogers stated LeaBrooke would go into the computation on pages 5 and 6 in order to get to the average. The City is putting on a lot of new streets which is offsetting the effect of some streets that are very deteriorated, so the approach is going to change and they are going to focus on the worse streets with the \$1.5 million program. That, plus new streets, should increase that average quickly. Instead of being 80%, in five years, that number will be much higher.

Henderson asked what is the toughest problem Rogers and Johnson see facing Leawood when planning the next CIP. Rogers stated the last big cornerstone for building is the Justice Center and then beyond that scope is the Community Center. With those two last pieces, along with the regular reconstructions, maintenance, and storm water, Leawood should be closer to being a mature city.

Conrad asked if the Commission would see the main entry water feature at Cornerstone for any type of review before it is built. Binckley stated, yes, the landscape architects are working on it now. There was a meeting with staff about a month ago and it should be back for review in the near future. Conrad asked if the City would own and maintain that feature. Johnson stated the developer would pay for the maintenance. Conrad stated it seems odd that it would be listed in the CIP. Rogers stated it is the City's asset, since the City will be paying to build it, but then the developer will maintain it.

*Brain arrived.*

Conrad asked if there has been any discussion about the storm water on Dyke's Branch. Binckley stated she recalls that the Commission agreed that it was not within the Commission's purview. She believes that Public Works is working towards making sure those designs are appropriate. Johnson stated the State would not allow it to be concrete lined. They are looking at bioengineering so that it will look more like

natural vegetation and not concrete lined. Duffendack stated it might be appropriate for the Commission to at least be aware of what the plans are for the waterways, particularly if they have to do with trails or other public amenities. It may be something to consider, at least at an informational session in the future.

Rogers stated she would like to thank Binckley for her help in providing information to put these things together in an organized fashion and communicating them to the Council, the Commission and the public.

Henderson asked how accessible the CIP is to the public. Rogers stated the document is always available to the public and is regularly given to financial advisors and contractors. Duffendack asked if it is on the City's web site. Rogers stated it is not, but she will look into that.

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

#### **NEW BUSINESS:**

**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.

**Staff presentation:** Presentation by Jeff Joseph. The applicant is Mike Brunsky with Sport Court of Overland Park. The applicant is requesting approval of a Special Use Permit to allow lighting on a sport court located at 11541 Cherokee Court. This sport court is 36 ft. wide, 90 ft. long and is located on the west side of the property. This sport court has been administratively approved. This application is for the lighting only. The sport court is surrounded by a significant amount of landscaping and natural vegetation. The applicant is proposing 12 additional 10 ft.-tall Evergreen trees and other plantings along the west side of the sport court. There are two light poles proposed on the west side of the court. These light poles are 17-½ ft. tall. Staff is recommending approval of this case with the stipulations stated in the staff report.

Conrad asked if the Commission is looking at the pavilion. Joseph stated the pavilion was approved administratively with the approval of the sport court. Conrad asked how that fits with the City's detached structure ordinance. Joseph stated it meets all of the requirements. Conrad asked if the pedestrian bridge is built. Joseph stated, yes. Conrad asked if there is any concern about flooding with this site. Joseph stated the City Engineer looked at and approved the plan. Binckley stated the City Engineer reviews the storm water report in addition to the flood plain and that should have been taken care of when it was reviewed. She does not believe it is in the flood plain. Conrad asked if the sport court is wide enough for a doubles tennis court. Joseph stated the applicant could better answer that question. Conrad then asked if the court could be lighted well enough for tennis if the lights are just on one side.

Brain asked if this application was a result of the applicant acting proactively, or if there was a complaint from a neighbor. Binckley stated there was nothing constructed prior to the applicant coming to staff with an application.

**Applicant presentation:** Presentation by Mike Brunsky of Sport Court of Overland Park. Mr. Bartimus is proposing a 36 x 90 tennis court/sport court. Play lines for singles tennis courts are 27 ft. by 78 ft. This is the smallest court to allow his wife to play tennis and his son to play basketball. The play lines are 27 ft. for the width, 4 ½ feet on each side, and 11 feet behind the base line. A regulation tennis court is 60 x 120, and this is quite a bit smaller than that. The applicant will pour a 4-inch concrete slab with a one half

percent slope for minimal drainage. The sport court material will be over the top, which will act as a suspended surface. The homeowner is asking for lights to allow use of the court in the evening. The lighting proposed is the minimum that would be needed for a court of this size. This is a minimum size court with minimum lighting to still allow the Bartimus family what they want.

**Public hearing:** Dave Ruf, 11716 Canterbury in Hallbrook. He lives due east from this project, across the golf course. His view is across the back of Mr. Bartimus' house. He and his wife bought the house two years ago and one of the reasons they bought the house was because of the view, which is across the golf course. The evenings are beautiful. There is no light pollution at all. He cannot see Mr. Bartimus' house when the foliage is full. He paid a premium for that view. The ordinance says the sport court should not diminish the property value of the surrounding neighbors and he believes it would. He is an engineer by trade and has been in the business for 43 years. He has built a lot of projects with lights in them and light pollution is a problem. He does not know Mr. Bartimus and has nothing personal against him. He has no objections to the sport court itself, just the lighting. He would like to know how late at night they would be using the court. He believes it would be a mistake for the City of Leawood to allow lighting of these types of facilities because of the light pollution and the effect it has on the neighbors. He was not able to go to the preliminary hearing on the 23<sup>rd</sup>. He tried to drive to look at the house, but it is a gated community and he could not get in. He does not know what is down there. He asked if there would be a roof over the lights. Duffendack stated no, the pavilion is a separate structure. Ruf stated with lights only on one side, one side of the ball would be dark. He believes the applicant will be back to request more lighting. He suggested the City should not allow for this type of facility to be lighted. He knows that there is nothing that can be done to hide the light, other than putting it in a building. He invited the Commission to come to his house and look at it in the evening. Mrs. Ruf asked the Commission to consider the risk of setting a precedent. She is also concerned that it might remove some of the value of their home by allowing the distortion of the view. The view was a major part of their decision in selecting their home.

Conrad asked if the Ruf house is east or west of the applicant's home. Binckley showed the Ruf house in relation to the Bartimus house on the overhead projector. Binckley also pointed out the distance of the Ruf house from the sport court, which was about 800 ft.

Kathy Byrnes, 11720 Canterbury. She lives on the south side of the Rufs. Her concern is with the noise level. She would like to know what would protect the others from noise late at night.

Binckley stated, based on stipulations, the lighting will only be allowed until 10 p.m. and the earliest is 7 a.m. The City has a noise ordinance and if the sport court was being used at late hours, then the police could be notified. Byrnes stated the police have been notified before. Her concern is that if there is a sport court and the parents are not home, there would be no one to control what happens on this property. Brain asked if the court has been built. Binckley stated, no. Brain then asked if there have been any notifications of noise with this property. Byrnes stated, not on this property, but there are noise issues in the area. She then asked again what assurances would be given that noise would not be a factor with this sport court. Duffendack stated the ordinances that Binckley spoke about protect everyone in the City the same way. That is a separate issue from the lighting. He is not sure why her concerns have not been answered, but that is beyond the scope of the Commission. Byrnes asked whom she should go to about noise issues. Duffendack stated the police department. Byrnes stated she is also concerned that the applicant would eventually ask for lighting on both sides and that would definitely be a detriment to all of the properties on that Hallbrook side. She then asked if there is any kind of assurance that it would not happen in the future. Duffendack stated the Commission is looking at the case that is before them tonight and any future

requests would be handled at that time. Byrnes stated she believes there could be a lot of problems down the road.

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

Conrad asked why there is a foot-candle on the west side that seems to be about 10 times greater than the others. Brunsky stated that is the closest corner of the court to any property line and he chose that at the maximum, while the others disperse rather quickly. Duffendack asked if the lights are cut-off fixtures. Brunsky stated they are very directional. The foot-candles are at the maximum 45-degree angle. The calculations were done without any shields. There is an option to put shields on these light fixtures, but he chose to do calculations without the shields. Duffendack stated there is a glare issue. He then asked Binckley if the ordinance restricts glare to adjacent properties so that they cannot see the light source from a horizontal direction. Binckley stated, yes, that is correct. Duffendack stated there are fixtures available that cut off the light from one view. He feels that is an important feature for this type of lighting scheme. He suggested the Commission take that into account when making the motion for this case.

Henderson asked if the other sport courts were approved with special use permits. Binckley stated sport courts have been approved with Special Use Permits in the past. Within the last year and a half, sport courts have been approved administratively unless there is lighting proposed and they would then come before the Commission for approval. Henderson asked if any owner of a sport court has come back to ask for additional lighting. Binckley stated, no. Brain asked how many have been approved with lighting. Binckley stated there are some in the older areas that were placed before the requirement of approval. The residence at 8845 Mission Road was approved for lighting of their sport court about six months ago. Also, the Illig property has a sport court with lighting.

Duffendack asked if anyone has looked at the new Spruce trees and how they would affect the lighting and light pollution. Binckley stated there are a substantial number of trees in this area. As far as light pollution, she would not expect that there would be any additional light pollution than what is already there. Duffendack asked if they are deciduous trees. Binckley stated, yes, mostly. Duffendack stated that could pose a problem in the winter. Binckley stated staff feels the Bartimus home will shield anything from the east. The sport court sits lower than the home.

Henderson stated this site seems to have the most foliage of almost any other sport court the Commission has approved. Duffendack stated he finds it difficult to look at a two-dimensional plan and a contour map and decide how that would work horizontally. He then suggested the Commission considering approval based upon the contingency of the scheme working.

Munson stated he would like to suggest that if the applicant is going to have a sport court, then they couldn't have the lighting. He has concerns with sport courts anyway, because of their potential for causing problems for neighbors.

Brain asked if the case before the Commission is just for the lighting. Duffendack stated that is correct.

Conrad stated although the end result may end up being more lights, he is concerned that lighting from one side would be difficult for playing tennis. Although he thinks the ordinance should cover the issues of foot-candles, he would hope the applicant has studied what needs to be provided for this sport court and they

would not need to come back for more lights. Duffendack stated he feels the message the Commission is giving is that more lights would be extremely difficult to get approved.

Brain stated he feels the presentation by the applicant and the people who spoke was very tempered. He is not opposed to sport courts. It is a different situation when they are lighted. Most of the tennis season, which is the stated primary reason for the lighting, one could play outdoors until 8 or 9 o'clock in the evening. He thinks the potential for pitting neighbor against neighbor, and the shields getting taken off, is too potentially damaging. He is not supportive of lights for sport courts.

Williams stated he does not believe it will create a lot of noise. He then asked what regulations the City has for the lighting of swimming pools. He can hear the pool activity two blocks away from his house. A neighbor much closer has a tennis court and he never hears activity from the tennis court. It is a minor use, with the possibility of lights being on for a short period of time. There are other homes allowed to have security lighting on with no time restrictions. He does not have a problem with this application.

Rohlf stated she agrees with Williams. She does not have a problem with this application.

Henderson stated all of the people who have lived in Leawood the past 30 years have had their views altered. That is a price to pay in living in a City that is progressing and growing.

**A motion to deny was made by Munson and seconded by Brain. Motion to deny failed. (Munson and Brain for denial. Henderson, Rohlf, Conrad and Williams against denial.)**

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

Duffendack suggested adding an amendment to the motion to include wording to change the light fixture to allow for cut-off. Williams stated he believes that there is some cut-off with this particular light fixture, much like any other light fixture. With the position to light the sport court, the light is going to the ground, and based on the applicant's foot-candle rating at the property lines, he is not sure how much more could be cut off from that.

**Motion approved 4-2. (Henderson, Rohlf, Conrad and Williams for approval. Brain and Munson against approval.)**

**CASE 27-04 LEAWOOD FOUNTAIN PLAZA** Request for approval of final site plan. Located at the southeast corner of College Boulevard and Nall Avenue.

**Staff presentation:** Presentation by Jeff Joseph. The applicant is Dev Anand with Peters and Associates. The applicant is requesting approval to replace the roof, windows and doors and to repaint the existing EIFS and other features within the existing building. This building is located at the southeast corner of College and Nall. The existing roof of the building consists of standing seam metal roof and wood. The standing seam portion of the roof will be replaced with Hemlock Green colored standing seam metal roof and the wooden portion will be replaced with concrete slate. The doors and windows will also be replaced. The existing EIFS and other features will be repainted. Staff is recommending approval of this case with the stipulations stated in the staff report.

Brain asked why the Commission is seeing this case, since it is not new construction. Joseph stated because the applicant is changing the exterior. Brain stated he does not remember seeing this type of application before.

Munson asked the extent of the requested changes. Binckley stated the applicant is not changing the size and is maintaining the brick. The windows are currently single-pane, residential type windows and the applicant is requesting a change to what is typically seen in office buildings. The windows will not be able to be opened. Munson asked what type of materials would be used for the windows. Binckley stated she would like to let the applicant give those details.

**Applicant presentation:** Presentation by Chuck Peters of Peters and Associates. This is a substantial change. The derelict and neglect of the buildings at Fountain Plaza have gone on for the last 15 years. The building is all stucco, not EIFS. This process was started when a new owner purchased the property. The new owner requested the applicant get involved to enhance the exterior façade of the building along with ridding the building of the moisture content problems. The windows are in disrepair. The wood has been long neglected. The wood roof will be replaced with a concrete tile. The windows will be Hemlock Green frame with one inch insulated glass. The applicant would also like to add a treatment that would be superficially placed on the face of the glass. The applicant made a mock-up of one unit and put it in place for Binckley and then made some adjustments on the color based on that meeting. There will be aluminum cladding around all of the ornamental pieces along the top that have dry rot. The stucco would be refinished with a finish to help re-seal the building. All of the joints will be recaulked. There are windows on the second floor that open up to elevated deck areas and those will be changed to fixed windows. The applicant would also like to eliminate the wood shutters.

Munson asked for a description of the materials board. Peters described the materials board.

Henderson asked when the buildings were built. Peters stated they are 15-17 years old. When these buildings were constructed, they were constructed under residential construction code. There are a lot of violations in the buildings. Most of the tenants of this building are agreeable to staying in the building during the remodel process. It is his expectation that by enhancing the building it will help protect and enhance the building. The rent right now is \$15-18 per square foot, which is well below standard. If this works for this building, then the applicant would be before the Commission again for the other buildings to be changed in the same fashion.

Munson asked what this would look like with standing seam metal roofing. Peters stated the Headache and Pain Center and Gold Bank have the same type of standing seam. Joseph stated Plaza Pointe has the standing seam roofing mixed with the slate. Munson asked if there are other reasons to do it this way, other than to make it more attractive. Peters stated wood is not a good solution. They wanted the same texture as the wood, which the concrete slate provides. The standing seam is what has been done along College and Nall and he feels it makes sense to stay with that. He believes it will be an enhancement to the community.

Conrad asked who makes the lightweight concrete tile. Anand stated VOS tile is the manufacturer. Conrad asked if freeze/thaw or absorption would be an issue. Peters stated, no. This is the product used on the Hallbrook Country Club.

Williams asked for a description of the current windows. Peters stated they are double hung windows. Williams asked for a description of the style of the window. Peters showed a drawing of the window they are proposing.

Munson asked if the windows would be flush. Peters stated they would be set back.

Henderson stated he likes what is being proposed.

**A motion to approve was made by Brain, with the elimination of the shutters. Motion seconded by Henderson. Motion approved unanimously.**

Meeting adjourned.

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J. Paul Duffendack, Chair