

City of Leawood
Planning Commission Minutes

March 22, 2005
Meeting - 6:00 p.m.
Leawood City Hall Council Chambers
4800 Town Center Drive

CALL TO ORDER/ROLL CALL: Henderson (absent), Perkins, Rohlf (absent), Conrad, Duffendack, Munson, Williams, Azeltine, Pilcher (tardy)

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

APPROVAL OF THE MINUTES: Approval of the minutes from the February 22, 2005 meeting.

Conrad stated on page 9, during the motion for the Town Center Plaza Outlot, the minutes should read, "he feels this Body should *not* be the jury on where that improvement is funded." **A motion to approve the amended minutes from the February 22, 2005 meeting was made by Munson and seconded by Williams. Motion approved unanimously.**

CONTINUED TO THE APRIL 26, 2005 MEETING:

CASE 12-05 ESTATES OF OLD LEAWOOD Request for approval of a final plat and final site plan. Located at 8901 Sagamore.

CASE 18-05 VILLAGGIO OF LEAWOOD - WEST Request for approval of a final plat and final site plan. Located at the southeast corner of 135th Street and Roe Avenue.

CONSENT AGENDA:

CASE 08-05e VILLAGE OF CAMDEN WOODS - 78TH PLAT Request for approval of a final plat. Located south of 143rd Street and west of Kenneth Road.

CASE 08-05f VILLAGE OF CAMDEN WOODS - 79TH PLAT Request for approval of a final plat. Located south of 143rd Street and west of Kenneth Road.

CASE 19-05 TOWN CENTER PLAZA - LOTS 10 AND 12 Request for approval of a final plat. Located at the northeast corner of 119th Street and Nall Avenue.

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

Commissioner Pilcher arrived.

NEW BUSINESS:

CASE 15-05 TOMAHAWK POINT Request for approval of a preliminary plat, preliminary site plan and rezoning from AG (Agriculture) to SD-O (Planned Office). Located at the northwest corner of Mission Road and College Boulevard.

Staff presentation: Presentation by Mark Klein. The applicant is requesting approval for a rezoning from AG (Agriculture) to SD-O (Planned Office), preliminary site plan and preliminary plat for the construction of four office buildings that will contain 60,000 sq. ft. of office space for an FAR of 0.24. The project is located at the northwest corner of Mission Road and College Boulevard. Longwood Forest, a residential subdivision zoned R-1, is to the west. The comprehensive plan designation for this property is low-density residential with continuum care. The Planning Commission heard this same

project about four or five months ago. The application was withdrawn at that time. This is a new application; therefore, there will be another public hearing. The plan shows four lots on 5.71 acres. There is a 75-ft. building setback shown along the west property line and a 50-ft. parking setback shown along the west property line. A 40-ft. building and 25-ft. parking setback are shown along the remaining sides of the property. Two of the proposed office buildings are 75 ft. directly to the east of the west property line, which is adjacent to Longwood Forest. These two buildings are one-story buildings. The other two office buildings are proposed to be two-story buildings. The main entrances to the buildings will face towards the interior of the site. A natural stone retaining wall is proposed to be located on the west sides of buildings 1 and 2. This is being done to keep the natural vegetation along the west property line undisturbed. This property is within the flood plain and will have quite a bit of fill in order to bring the site up. Staff is recommending denial of this case for the following reasons: this area was never shown on the comprehensive plan as office or a similar use; it is staff's opinion that a residential development is an appropriate use for this area. It is staff's opinion that office use north of College Boulevard, at this location, will have a negative impact on the adjacent residential neighborhoods, and the grading plan indicates approximately 7 to 8 ft. of fill will need to be brought in for some areas.

Duffendack asked when this project was first heard by the Planning Commission. Klein stated it has been a few months since it was heard by the Commission. The Commission recommended denial for this case and then the applicant withdrew the case prior to going to City Council. Duffendack asked what is different in this application. Klein stated it is his understanding that the plan is the same as it was before. There are still four office buildings and they are generally in the same place. Duffendack asked why the Commission is hearing the project again. Klein stated the applicant has the right to bring the project back.

Conrad asked for clarification of the statement made by the Longwood Forest subdivision that there is a technicality that would allow this project to go forward with the SD-O zoning. Klein stated there is no technicality as far as he is aware. The City has always been opposed to it. Residential has always been shown at this location. He does not know of anything in the ordinance that says that a piece of property would be better-suited for a certain type of zoning based on its size. There is a requirement of a minimum of 10-acres. The City has only waived the size requirement once that he is aware of and that was with Chadwick Place. Conrad asked if this should be a 10-acre piece of land in order for it to be developed. Klein stated technically this should be a 10-acre lot.

Perkins asked for history of the land swap. Klein stated he does not know any of the history of a land swap.

Conrad asked why this case is going forward, since it is a 7-acre tract. Klein stated, generally, the City would not consider this application due to it being too small of a piece of property. That does not mean that the applicant cannot file an application. The reason that it was waived for Chadwick Place was because they dedicated a lot of their property to right-of-way, thereby making it less than 10 acres. Conrad asked if there is a basis for the 10 acre threshold. Klein stated the only reason it has not been discussed with this application is because staff is recommending denial.

Duffendack stated a letter from Johnson County Wastewater District dated March 7, 2005 was included in the packets. The Board of County Commissioners has asked that the Commission read the contents of the letter into the meeting. "We are in receipt of the notice of the public hearing dated March 1, 2005, regarding the proposed rezoning to SD-O, in the vicinity of College and Mission Road. The Board of County Commissioners usually takes a neutral position on matters of this kind. However, we do take this opportunity to go on record that there is a wastewater treatment facility in this area and that you should take note of this fact." Signed by Douglas Smith, Wastewater Administrator. Duffendack then asked staff what this letter means. Klein stated he believes that they would just want any development in this area to know that there is a wastewater treatment plant there. Joe Johnson, Director of Public Works, stated he believes they want the applicant to understand that there could be foul odors from the water treatment plant. Azeltine asked how close the treatment plant is to this property. Johnson stated it is right across the street. Duffendack asked if there are plans to replace the plant. Johnson stated there has been talk of that, but he is not sure how far along they are.

Conrad asked the zoning of the property directly to the east, across Mission Road. Johnson stated it is a City Park.

Applicant presentation: Presentation by John Petersen of Polsinelli Shalton Welte Suelthaus, appearing on behalf of Tomahawk Point LLC. Also appearing is Jim O'Keefe, proposed owner and developer, Pat Beckner, who has been working to put together the real estate transaction, Chuck Peters, land planner and architect of Peters and Associates that has designed an excellent utilization for this very unique piece of property, and Harold Phelps with PEI who has served as their civil engineer and consultant. This matter was heard several months ago and it is essentially the same application in terms of its proposed uses and the site plan being advanced through the process. As staff indicated, the public hearing was held for that application and then they withdrew the application as it was pending with the Governing Body. That was done to make an attempt to utilize the process of the City of Leawood to clear away diversionary issues that have latched onto this application and he thinks prevented this Body and would have prevented the Governing Body from having a clear focus on the relevant issues of law and good land planning as they consider the proposal. The process that was used was the review of the City's master plan. They brought it back through the Planning Commission in the context of if this land is usable or developable. They moved it through the Commission and then the Governing Body with an ultimate decision. As they anticipated, that deliberation cleared away some fundamental issues that he feels confused the earlier evaluation. As part of staff's recommendation, they have taken the facts and the circumstances and presented those within the context of the Golden Criteria. The Golden Criteria is the legal framework and basis for the consideration of land use decisions in the state of Kansas. The Golden Criteria refers to Golden vs. the City of Overland Park, which is a 1978 decision of the Kansas Supreme Court that attempted to take what could be a very murky standard and attend to put some meat on the bones and have it make sense. Eight criteria came out of that case. Staff used seven of those criteria. The first issue is the issue of promises. He has heard the people say they were promised the ground was going to be a park, that it would just be residential, and that it wouldn't be developed at all. The master plan review process acknowledged and identified that is not the way to plan land in the City of Leawood or the State of Kansas. You do not do it with promises. You do it within procedural and legal context. Where the rights of not only those who may have an opinion of what somebody else's land should be used for, but also where the rights of the people who own the land under consideration are duly considered within the context of due process and formal decisions are made as a matter of record. Patterson has made many requests for copies of any written form of any promises. None could be found. What is before the Commission now is a determination that the land is developable. The issue of it being in the flood plain has been addressed. It has been addressed through the master plan process. The property is currently in the flood plain. Another issue is if the property can be engineered to be put in a productive state and can it be done so in accordance with state law, federal law and the rules and regulations of the City of Leawood. As part of that consideration is the determination that by bringing that property out of the flood plain, if it has a detrimental impact on property downstream in terms of storm water or any adjacent property. There is written testimony that this site can be engineered within all of the regulations to be brought out of the flood plain. That conclusion has also been supported by testimony of the City's engineering staff during the master plan process. Unless someone can speak tonight that has an engineering degree or bring engineering-based information to refute the conclusion of the prior testimony of not only his consultant but also the City's engineer, then that matter has been decided in terms of tonight's consideration. The next question is what it will be developed for. The master plan suggests either medium density residential or continuum care. He feels the Commission needs to take out of their minds' eye seven acres of tree property in order to reasonably evaluate this. It can be developed and it can be brought out of the flood plain. In order to bring it out of the flood plain, fill will need to be brought in. Most of those trees will be gone due to the fill. This property owner has the right to remove those trees. He could go out there today with no application and cut down all of those trees. This property will be developed and when it does, it will be brought out of the flood plain and those trees will be gone. His opinion, based on experience, is that although residential is possible, it is very unlikely. It is not possible to develop this site in an economically reasonable and sound manner. The cost is too great. He has done some estimates and to bring the property out of the flood plain and to meet all of the other requirements of the City of Leawood the cost to bring the lot to a point that someone could put homes on it would be about \$150,000.00 per lot. That would bring the cost into some of the choicest lots in Leawood. That is before any kind of profit, so it would probably be about \$175,000 to \$180,000 to sell those lots and make any sort of return of investment. The question is if someone would realistically develop it as residential. There is a thoroughfare on three of the four sides. The likelihood that anyone, given the road configurations, would buy a house in that location would be a bit of a challenge for any developer. Then factor in the issue that directly across from this property is an industrial facility that treats human waste 24 hours a day, 7 days a week. It stinks. People that have driven through there and the people who live near it can tell you that it stinks. The vast majority of the lots would back up to a major thoroughfare. There is the odor issue. There are offices directly to the south. He then asked the question, "Would you buy

a house there?" Continuum care is a 24-hour, 7-day business. That is probably a viable use. He would like to compare what they are proposing against a continuum care facility. Leawood Town Village is four stories in the back, with less than a 75-ft. setback from the homes in the Woods. There is nothing in the code that limits continuum care or assisted living facilities to a height. In his opinion, height is one way to make that use economically viable on this piece of property. Staff very appropriately put the facts and circumstance of this case into the context of the Golden Criteria. Staff has chosen to describe the area as primary arterial roads of College Boulevard and Mission Road. He would agree with that. Staff also says to the north and east of this property are Leawood greenway and parks. What was not referenced by staff was the water treatment plant that is across the street; a facility that is a considerable negative blight in terms of residential development. The character of this neighborhood is not just what is directly across the street. This neighborhood is Tomahawk Creek Parkway, starting in the vicinity of 115th Street north to I-435 and along College Boulevard over to Roe Avenue. One sees a band of office development along Tomahawk Creek Parkway from 115th Street up to College Boulevard. Along College Boulevard to the west there is some interfacing of office and residential. This represents the character of the neighborhood. Petersen pointed out on a site plan their property in relation to the water treatment facility and the City Park. Staff states that, based on the character of the surrounding area, the uses proposed are not suitable. Staff also states, "The proposed development is bounded by low-density residential to the west and planned recreation to the north and east with office to the south." Again, no mention of the wastewater treatment plant. If office is not suitable, then all of the office developments south of College between Tomahawk Creek Parkway and Roe Boulevard should not be there. It can be very suitable to have well-designed office parks interrelate very appropriately with single-family development. This property has been vacant forever. For over 20 years, this property was deed restricted for residential uses. Petersen doubts that the owner kept turning down offers to sell because he thought he could get an office development or a continuum care facility. The market made the decision because of the wastewater treatment facility across the street and because of the busy roads coming in over the years. There was about a four or five year lag where the City designated it as open space. The master plan review process cleaned that up. "The extent to which removal of the restrictions will detrimentally affect nearby property." The same kinds of issues were faced in other developments and other relationships within the neighborhood that he has previously discussed. "The recommendation of the permanent staff." That is within the comprehensive plan. "Conformance of the requested change to the adopted master plan of the City of Leawood." The applicant is asking the Commission to look at the continuum care use as compared to the proposed use.

Presentation by Chuck Peters of Peters and Associates. When he was here for the previously denied and then withdrawn case, he told this Body that there was no input from the adjacent neighbors. They did not come to the interact meetings. The applicant set up different meetings at different times that they could interact with them. Since that time, they did have a good interact meeting with the adjacent property owners. He took some of the issues that were brought up at the last meeting. One of the bigger issues was the property adjacent to residential property. He looked at the area they were planning to leave as undisturbed and readjusted the circular parking, moved it an additional 25 ft. to the east, reconfigured the landscaping, and also added a number of evergreen trees at a minimum of 12 ft. in height. They showed this to the neighbors to show they could create the density, leave the undisturbed area as it is. They would not leave it barren. They added a considerable amount of vegetation that would not be deciduous, but would be there year-round to provide a buffer. The original plan had 25 ft. of buffer and that have moved that to 50 ft. without detriment to the buildings. The buildings are fanned at an angle. The parking is circular so that the maximum impact to the property to the west is point of radius, versus having 20 parking spaces all facing the adjacent property. They asked the neighbors at the interact meeting if there was anything they could do to make the plan better for them and although there were some questions, there was a philosophical difference that was pointed out by Mr. Rufus at the end of the meeting. They do not want this property developed as office. They would like it as residential. This property will not work as residential. Harold Phelps has pointed out with the amount of fill that will be needed, basements would not be an option for residential or continuum care on this property. He cannot imagine having a home of any quality in Leawood that does not have a basement. This is a very unique site.

Petersen stated he would like to talk about how this site will be developed. It comes down to what is fair. The court articulated reasonableness and fairness as "The relative gain to the public health, safety, and welfare due to the denial of the application as compared to the hardship imposed, if any, as a result of denial of the application." He does not think anyone has suggested that if office buildings are put there the public health is going to be an issue or a safety issue. It comes down to what the impact is to the adjacent residents. He asked the Commission to look at the senior living facility on

115th Street in terms of its design, height and operation and in terms of its interrelation with single family homes directly to the north. Take that, and compare it to the proposed application. It would have the same impacts. The applicant feels this is a good alternative to senior living, which brings no more negative impact and probably more flexibility. They have attempted to lessen any negative impact, either real or perceived, and think this is a reasonable alternative under both the laws of Kansas and the City's regulations and requirements. He would like to allow Mr. Adams to comment on the question brought up earlier by Commissioner Conrad about the 10-acre rule. This piece was created at the request of the city, due to the City's desire to have Mission Road realigned. This remnant is what was left over.

Presentation by Steve Adams, an attorney with Blackwell Sanders Peper Martin, on behalf of the current property owner. This property and the adjoining property have been in the Long Family since the 1930's. In 1977 the Long family sold approximately 50 acres lying to the west to principals of Plaza Savings to develop Longwood Forest. At that time, the developer did not want this property. This property, plus about 25 acres to the north, was in the flood plain and they did not feel it was developable. Then approximately 5 years later the City came to his client and suggested they contribute most of the 35 acres they had left for a City Park. At that point, Mission Road was scheduled to be reconstructed from the west side of Longwood Forest, along the east side. It would have run directly against Longwood Forest property owners' back yards and would have required some land dedication. At that time, Mr. Long said he would give them approximately 35 acres provided that Mission Road be relocated away from Longwood Forest to the east. By the construction of Mission Road, at that point, it was contemplated that it would act as a dyke and take that remaining 6 acres or so out of the flood plain. The City came to his client with a plat suggesting how this property might be developed. When the property was sold in 1977, as part of the transaction, the Long's agreed to put a deed restriction upon their property limiting the development to single-family residential for 25 years. It was made clear that after 25 years there was no restriction on what it could be used for. That restriction expired in 2002. As part of the arrangement with the City, the Long family donated roughly 25 to 30 acres for park. Mission Road was to be relocated. It was originally proposed to be even further east of this. The only thing that could be developed at that time was residential because of the restriction. The plan shown by the City showed 9 residential lots. His client then negotiated with the City for approximately 10 years on where the street was going to go. Eventually Mission Road was determined west of where it was originally was designed, which cut two of the lots in half. As a result of the actual location of Mission Road there were small triangular pieces of land that the Long's owned that were on the north side of Mission Road, and some small odd-shaped triangular pieces owned by the City on the south side. It had always been understood that when Mission Road was finally located, that if that happened, then the City and the Longs would swap those pieces of property. That was finally accomplished in 1995. An agreement was executed in which it was stated and acknowledged by the City that one of the purposes of this agreement was to allow the Long's to develop this property. It was always contemplated that it would be developed. Since that time, the declaration of restriction has expired. Since the original construction, the waste water treatment plant has been constructed. Since that time, office development has occurred south of this property. During the 27 years it has been available for residential, there have been no takers to build single-family housing. There are so many negatives, aside from the cost, of building single-family houses on this site, that it cannot be done. There has been some mention of this property being less than 10 acres. At no time, in any of the discussions of the negotiations with the City and in the inducement to make the 30 acres or so contribution did the City ever say that it could not be developed if it were less than 10 acres. One reason this plan was originally withdrawn was because at the time the master plan had this property as open space or public space. That process that Mr. Petersen described clarified that it was not the intention of the City to be parkland. That is one of the reasons the City's master plan was changed in that respect. The Long's feel they have been good stewards with regard to this land. They have protected their neighbors in respect to the relocation of Mission Road. They have had other proposals submitted to them. In signing this contract, the Long's felt this is the lesser of many evils of what could go on this piece of land. There was some talk previously of low office buildings. There was some talk of an assisted living facility and the neighbors did not want it because there were complaints about shift changes, people being there at night, lights, a lot of traffic and commotion. Granted, there will be traffic with an office development, but it will be quieter, particularly at night and there will not be as many disturbances to the neighbors as an assisted living facility would. The owners support this application and believe it is very appropriate for the site.

Conrad asked if Harold Phelps could address some of the drainage areas and issues. He wants to make sure this is discussed to some extent and understand where the water goes when the natural detention basin is filled. Phelps stated

this is considered an ineffective flow area. Mission Road acts like a dike. Obviously, water does impound this property because it is in the 100-year flood plain, but, by his analysis, they can bring it out of the flood plain without having a negative impact upstream or downstream of the property. There is some detention capacity that does take effect there, but based on the models, there is no significant effect upstream or downstream by eliminating that storage area. Conrad stated he feels that it appears on the topography that a lot of the water on the western side goes into this area presently. Phelps stated the plan is to fill everything with the exception of what is shown as the undisturbed area. The parking lot will have a retaining wall but the green area stays in its natural condition and allows for the drainage that comes out of Longwood Forest to naturally drain back up to the north. Conrad asked if it would go under Mission Road and if a culvert would need to be constructed to get that water under Mission Road. Phelps stated there is an existing storm drainage structure and they would extend the storm drainage inlet over to that point. Munson asked what would happen when Tomahawk Creek floods. Phelps stated nothing would be different in the undisturbed area than what happens now. Conrad asked if there is enough volume to the west to take the backflow that is in the natural detention area. Phelps stated they are eliminating the storage capacity, but the elimination of that detention has no effect on the creek water service elevation. Conrad asked the height of the retaining wall. Phelps stated it is about 3 ½ to 4 ft. high.

Duffendack asked if any borings have been done on the site. Phelps stated, no. When a property is immediately adjacent to a FEMA designated flood plain, it is required to have the basement floor one foot above the 100-year flood elevation. Therefore a basement is not practical. Duffendack asked if those are FEMA requirements after the fill is in place. Phelps stated, yes. Duffendack asked what would be the highest elevation of a basement to meet the requirement. Phelps stated the 100-year elevation is about 944.5, so it would be about 945.5. Duffendack asked the proposed slab elevations. Phelps stated they vary slightly from 949 to 951.

Azeltine asked Petersen if he is implying that staff, the Commission or City Council made promises to the public. Petersen stated there was testimony at the public hearing and comments made at the interact meeting that the public was told certain things by the City.

Azeltine asked if the letter from Johnson County wastewater was sent during the first application also. Petersen stated, yes. Azeltine asked if his firm solicited these letters. Petersen stated, no. Azeltine asked if the letter was in the packet for the first application. (*Binckley arrived.*) Klein stated he did not believe so. Petersen stated the wastewater facility was notified of the hearing because they are within 200 ft. Azeltine asked for an explanation of the 10-acre minimum rule. Klein stated the 10-acre rule is something for all commercial development. There is a requirement in the ordinance that they have a minimum of 10 developable acres. The thought being that they have a large enough land area to have a comprehensive plan. Azeltine asked if the reason for the rule is an issue of density. Klein stated the reason for the rule is more for the actual planning of the site itself. Density is already limited by the floor area ratio that is allowed on the site. As far as the plans that he has, it is showing a net acres of 5.7 acres as far as what this site actually is. Pilcher asked if Klein is saying that this should be refused because of the size. Klein stated he does not know much of the history as far as the land swap. In the past, other developments have come up with less than 10 acres and normally they are not allowed to be developed unless there is good reason. Munson asked if that size is specified in the zoning regulations. Klein stated, yes, it is located within each of the zoning areas in the ordinance. Azeltine asked how often that has been waived in the past. Klein stated he has only seen it waived once, and that was for Chadwick Place. Binckley stated the 10-acre rule was developed to ensure that the City does not have corner pieces developed. That regulation has only been in effect for about 4 or 5 years and it was waived for Chadwick Place because a substantial piece of that land was donated to the City and by the time that right-of-way came out of the land it was less than 10 acres. Azeltine asked if this is an issue, since the entire surrounding area is developed. Binckley stated, no, it is not. The City cannot keep people from developing because they don't have 10 acres, if there is no other land to join with that piece. That is not an issue from the City's standpoint. Azeltine asked if the 10-acre issue was mentioned in the staff report. Klein stated, no, it was not brought up as an issue. Conrad stated he brought it up because the letter from the homes association mentioned it.

Petersen showed the Commission the original letter from Johnson County Wastewater. Conrad asked how bad the odor actually is. Peters stated it depends on which way the wind is blowing. Peters stated he owns the Merrill Lynch and there are a number of days that one would not go out onto the patio of building due to the smell. Conrad asked if there could be

anywhere from 200 to 400 office people that would be subject to the smell. Peters stated in today's office buildings, there are no operable windows. It has not been detrimental to Merrill Lynch. Conrad asked if office buildings have fresh air requirements. Petersen stated, yes, with filters and closed windows. Peters stated the Merrill Lynch building has been there for four years now and he has no complaints. There are seasonal times when the wind blows to the southwest and it is an obnoxious smell. That is different than going home and wanting to sit on your patio. On office use is very different than a residential use for this property.

Perkins asked the impact on College Boulevard and Mission Road at 4:30 p.m. if this becomes an office use with 205 vehicles. Petersen stated they were required to do a traffic evaluation and as a result of that is why some of the driveways were located in relation to the proximity to the intersection. They have reviewed the Public Works memo and staff is following their recommendations as far as the handling of the traffic. Perkins asked if there is turn lane there. Peters stated yes. The applicant has submitted a traffic report on this project. The only impact, which is negligible, would be to the traffic going westbound.

Williams asked the height of the building that would be on the west side related to the height of the homes on the west. Peters showed a sight line rendering. The home's roof elevation is at 8.52 ft. and the screening wall is at 8.75 ft.

Public hearing: Alan Antin, 11001 Delmar. The bottom line for this hearing is that the applicant contends they should be able to develop the property and the only way they can make enough money is if the City changes the rules and amend what the plan was. If that is the only consideration, then maybe we should look at developing the property as a dump for toxic waste, because they could get more money doing that. In that consideration, he would like to look at maybe developing his backyard, because everybody should be allowed to develop their property how they see fit. Just because a property is there and they have a right to develop it, if it is not economically feasible to develop it along the lines of which it was designed by the master plan, does not mean you have the right to change the plan.

Steward Stein, 4104 W. 110th Terrace. He was one of the first residents of Longwood Forest. It is a wooded area, just like the land being developed. Plaza Savings and Loan, Bob Simon, purchased this ground in 1978 and he has spoken with Mr. Simon and he has stated he wanted to buy as much land as possible, but this land was in the flood plain. The Longs had an opportunity. They could have raised their ground out of the flood plain prior to the development of Longwood Forest. They chose not to do that so the natural contours of the ground are such that Longwood Forest ends where the flood plain begins. If one were to come along today and raise the ground up, it will create a depression where the backyards of the adjacent homes will be lower than the office park. All of the asphalt for the 206 parking spaces will be higher. His subdivision has never been flooded. When they have had excessive rains, the water has, at times, overflowed Mission Road and then gone into this ground. If this ground were raised up it will serve as a dyke and all of that runoff will end up in the backyards or basements of the adjacent homes. In regard to a smell from the wastewater facility, he has been very fortunate because he does not have any smell. When he was one of the first owners in 1979, he had a condition in his contract that he could move out in 30 days if the smell was too bad. The wind blows the other direction. He has never had a smell at his lot. Contrary to what Mr. Adams said, that plant was there before Longwood Forest was developed. The vegetation blocks the view from his lot. If they clear all of the vegetation and in its place put not only buildings, but also an asphalt drive, he will be seeing that plant. He organized the Longwood Forest homes association. He was involved in the negotiations with the City at the time the Mission Road - Tomahawk Creek extension went through. They had long negotiations with the City regarding the trees and the vegetation that would remain and serve as a buffer and block the road from our neighbors. They relied upon the comprehensive plan for the City and it has never shown office development for this tract. Mr. Adams stated there was a deed restriction against commercial for 25 years, but he did not tell you that he informed the City there was an intention to build commercial property. This tract of ground was shown as green space and he always thought that was going to happen. The master plan was ultimately amended to say it would be residential or some type of continuum care. He has always relied upon the fact that it would not be commercial property.

Pat Turner, 11013 Buena Vista Street. She has not had any problems with bad odors. Before she purchased her home she did check the plan and she was confident that it would not be developed commercially. Her concern is safety. Longwood Forest is in a big "u" shape. There are two entrances and exits, both onto College. The easterly one is Buena Vista. She

needs to make a left turn out of Buena Vista in the mornings and it is sometimes three cars long of a wait. One can only do so when the traffic lights at Roe and Mission are timed properly and nobody turns left on red from Tomahawk. She is concerned that Mr. Petersen stated the only traffic flow that his development would affect is the westerly traffic flow. That is her neighborhood. It would be unsafe. They do not have the option during rush hour to take a different exit where things are not so congested. They are stuck with their only two entrances. They were told tonight that these are deciduous trees and that half of the year, when the leaves are gone, one cannot see. She does not agree. The woods are so dense that you cannot see the other side of Mission Road from College. She heard some very amazing things from Mr. Petersen tonight. She heard that promises don't matter, that she should not be talking because she does not have a degree in hydrology or mechanical engineering. She heard that the Commission had made a bad decision the first time and they are giving the Commission the option of correcting your error. She asked the Commission to pay attention to the professional staff and follow their recommendations.

Chug Tuttle, 5109 W. 111th Terrace. He is not acquainted with anyone who lives on the eastern side of Longwood Forest. He would like one of the Commissioners to ask where the trash will go. One of the big problems with this piece of property is the flooding. During the flood in May of 1990, before the bridge was put in, there was a lot of water running across the intersection of Tomahawk Creek and College Boulevard. He then asked where the water is going to go off of this site.

Martin Mainster, 11013 Buena Vista. There are a few facts that Petersen presented as such that are not the case. The wastewater facility has been described as being right across the street. If one walks across the street there is a green area, then a trail, then a creek, then the wastewater facility. It is very hard to see. On very rare circumstance does it ever give off a faint odor. People in Hallbrook Farms and Longwood Forest are exposed to it, but they haven't moved because of it. Petersen stated this arrangement is a similar situation to the one at The Woods. Mainster believes the setback in The Woods is comparable to the size of the entire property that is being talked about tonight. There is a considerable distance from the office buildings to the homes. The homes are in the same area as the office buildings, but the setbacks are substantially greater than in this proposed development. He has not had the chance to look at the 4-story nursing facility Mr. Petersen described, but he is guessing that it was not built within 50 or 75 ft. of the back yards of the adjacent single-story homes in the area. From his perspective, a zoning plan is a promise to people who build homes that this area has been zoned appropriately and they can count on the City to keep that commitment to the tax payers. Perhaps the commitment of the zoning commission is to maximize the profit from a developer of a particular piece of property, but if the goal is to look out for all of the citizens of Leawood, rather than merely the owners of this property, then it seems to him that it would be reasonable to look at the consequences to the people who live adjacent to this property and what it would do to the value of their homes and the quality of their lives in that circumstance.

Tom Flowers, 4313 W. 110th St. He is opposed to the development of this site as commercial. He has a 35 year career that is related to real estate; about 5 years in development and construction and the past 30 in the financing of real estate. He has made a career of looking at the feasibility of these projects. Once this use is approved, the character of this property and the surrounding properties is forever changed. The models have been run and things theoretically will fit. He wishes he could show the Commission the number of properties that he has been involved in that were engineered to the 500 year flood plain and even properties adjacent got destroyed or ruined by floods. The traffic flow has been spoken about by others, but for people who turn left out of this development they will have a lot of frustration and car damage, unless they are proposing new traffic lights. There will be some major traffic problems headed north on Mission and east on College that have not been dealt with and he does not think they can be dealt with for a commercial property. It may not be economically feasible for the development of low-density residential use. But simply because that use is not economically feasible, he does not believe that creates an obligation on the Commission's part to approve a change from what they all relied on with the land use plan, to a use that will impact them forever. The Commission is their last clear chance of avoiding a catastrophe that the Longwood Forest residents would have to live with daily. He has been in areas where the waters came back out of the storm sewers. He has seen floods at that intersection that were quite severe. The office development south along Tomahawk Creek is on a much larger site, or sites that can appear contiguous. This is a very small site, and not at all in the same character as the ones to the south. The Woods, which abuts much of the development to the south, is at a much higher elevation than those adjacent to it.

Bill Gist, 4101 W. 110th Street. Gist has been a resident of Leawood since 1976. One issue he has is the turn out for the entryway off of Mission Road into the proposed development. The road seems too narrow at that point. He would like the Commission to look at that issue. He feels there should be a turning lane going into the development along Mission Road and also exiting from the development along Mission Road. He agrees with the other issues of safety on College Boulevard. Going up to Delmar to get onto College Boulevard is not really an option. He and his wife have almost had numerous accidents at Buena Vista and College because people are coming at a fast pace down a hill.

Rod Richardson, an attorney with the Wallace Saunders law firm in Overland Park, speaking on behalf of Dottie Riley and Rufus Nye. Nobody drives a square peg into a round hole better than John Petersen. He tried to decide what three words might best provide the lubricant to remove the square peg. They are: "nothing has changed". This matter has been thoroughly considered by this Planning Commission the last time it was presented and given a unanimous recommendation for denial. The master plan took a specific look at this particular piece of property and after the applicant was present to try to convince that it should be changed, it wasn't changed. It is still residential. Mr. Petersen correctly admits there is no fundamental difference in the plans. Nothing has changed. There were many reasons the Commission recommended denial for change. Mr. Conrad said there was insufficient transition between the residential and the commercial. Mr. Henderson said the removal of the trees would be a detriment to the adjoining land because it would increase the impact of the sewage treatment facility. Williams said the lack of separation between commercial and residential was a great concern and it would be hard on the neighborhood and he was also concerned about traffic access problems. Azeltine said four buildings on six acres were too many. There were concerns about water. There were concerns of inconsistency with the master plan. There were concerns about the importance of being able to rely on the comprehensive plan. The denial was based on too much density, too much traffic, too much potential for flooding, inconsistency with the master plan and reliance on the comments of the professional staff. In regard to the Golden factors, it might be more expensive to develop residences. He cannot find a case that says if it costs more than "x" to build a house, then it is not suitable to build houses. As a practical matter, the time it has spent as vacant, he does not believe a bare piece of ground is negative. There is no evidence presented that suggested there were multiple applications that were denied on this particular tract. It would not be a detriment to the applicant to remove those restrictions. The only people it would be a detriment to are the adjoining land owners, many of whom have already spoken about their concerns. There are three Golden guidelines that were not mentioned. One is that all zoning in Kansas is supposed to be done in accordance with the Comprehensive plan. The City's comprehensive plan shows this property as residential. If the Commission changes the zoning to office, they are violating one of the Golden criteria. The second thing to consider is the recommendation of professional staff. Staff has considered this and have recommended for denial twice. Thirdly, it is important to consider the adjacent land owners. These folks have come here time and again to explain why they have relied on the comprehensive plan and why they think this is not a very good idea. There is nothing, other than the economic interest of the applicant, which mandates a change in this particular site from residential to this particular use. There is nothing wrong with a developer telling the City why they want to make money on the site. But ultimately the only thing that stands between the violation of the comprehensive plan, the destruction of the neighbors' interest in the comprehensive plan, and the protection of the neighbors' interest from the adverse effects of a misplaced spot zone is the Commission. The Commission makes the recommendation to the Council. He believes that if the Council had felt that the Commission made a mistake in the last ruling that would have impacted them when they changed the master plan. It is a land use issue. Either it will be a land use consistent with the comprehensive plan or the Commission is going to ignore the comprehensive plan and decide that it must be too expensive, too difficult, or require too much creativity to put residential along that corridor. It has been restricted for residential use by the property owner for the past 25 years. The issue is the land use for an area that the City has very recently considered and reconsidered and there is nothing new in this application to warrant a change from what the Commission decided last time.

Steve Bukaty, 3909 W. 110th Terrace. His property abuts the corner of the proposed project. Mr. Richardson has said most of the things that he had written down during the meeting. He does not understand Petersen stating there was no input from the neighbors. They attended many meetings last Fall. There were dozens of people giving input. Nothing has changed since last Fall. The Commission should follow the comprehensive plan and the Golden criteria. The Golden criteria talks about the character of the neighborhood. The office park at 115th Street and Tomahawk Creek is not his neighbor. It is indication that they realize that it will impact negatively on the neighbors that they are asking the Commission to look a mile away at what is going on there. He believes it will negatively impact Longwood Forest. He does not want this thing in his

neighborhood. The beautiful office buildings on Tomahawk Creek Parkway have vacancies. The buildings up the street on College Boulevard between Mission and Roe have numerous vacancies. From a community and public welfare standpoint, Leawood does not need another set of office buildings in this area. He agrees with everything that everyone has said previously. He believes in staff.

Dorothea Riley, 11013 Alhambra. She is speaking on behalf of the Longwood Forest homes association. They have voted to oppose this particular zoning request. When it rains heavily in the area she has a stream running in her back yard and that is where it goes. If that stream will be ending where the wall is, then she has concerns about the effect of that on the property that abuts that. In regard to the character of the neighborhood, they would have commercial property, with a parking lot 50 ft. from their back yards, where their children play. Visitors to a commercial property are not neighbors. It will affect the character of her neighborhood. They are the only property that abuts the property in question. Everything else is buffered by a street. On behalf of the homes association, they recommend that the Commission deny the zoning application.

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

Munson asked staff to review the allowed uses for the zoning as applied for tonight. Klein stated general office or medical office would be permitted. An assisted living facility, an art studio, or a bank facility with drive-thru would be allowed with a special use permit. Retail would not be permitted.

Pilcher asked if there are any improvements planned for Mission Road. Johnson stated, no. Pilcher asked if Johnson feels there is a need for a right-turn deceleration lane. Johnson stated, no. The reason they looked at the deceleration lane for westbound was due to the proximity to the intersection of Mission Road. That has been done with other developments along Roe Avenue, just south of College Boulevard.

Munson asked the maximum height allowed for an SD-O district. Klein stated 90 feet. Munson asked how many stories. Klein stated he believes six.

Azeltine made a motion to move to an executive session for a time not to exceed 5 minutes. Motion seconded by Munson. Motion approved unanimously.

The Commission reconvened at 8:20 p.m.

Pilcher stated he has concerns that the application does not conform to the master plan. He is not convinced that it provides adequate buffering for the neighboring community. He is not convinced that it conforms to the character of the neighborhood. The Golden criteria are not a "pass/fail" test. The applicant does not have to pass all of the criteria. They are just considerations for the Commission to review.

Perkins stated he has concerns with the water problems. He has looked at the buildings and tried to see if it would be a good development. It would be good in a different location. He has been chasing water around buildings for 30 years and no matter what he has done, sometimes it does not work.

Conrad stated there is a transition between R-1 and office. There is 150 ft. but he is not sure how the vegetation will end up being in that area. With respect to the overall character of the neighborhood, he feels there needs to be some demarcation of where that character changes and he feels that is College Boulevard. As one makes that turn and continues to go north, he feels the neighborhood changes. He is not in favor of this change. He is a little confused as to the real level of odor in the area. It sounded as if that was some reason as to why this would not be able to be residential, but the neighboring residents have stated it is occasionally a faint odor at times. He is not convinced it is an appropriate project at this location.

Munson stated he is concerned with the effect of the water, the amount of fill, the hydraulics of the creek and what it can do the land, and the traffic still bothers him. He is not in favor of a change in zoning.

Azeltine stated it seems like a good plan, but not in this area. It is not consistent with the comprehensive plan. This area has never been shown in the comprehensive plan as office or any similar use. He believes the office use north of College Boulevard at this location will have a negative impact on the adjacent residential neighborhood.

Williams stated he concurs with several of the comments that have been made in regard to the comprehensive master plan. As a plan in and of itself, the architects have attempted to do a good job in respecting a number of the concerns relating to the surrounding neighborhood. The height of the buildings themselves is not as much of a problem for him as the parking that would be associated with these properties and the flooding issues that have been discussed. He is concerned with the entrapment of water. He has not heard enough information tonight to relieve his concerns about the flooding on this small piece. It is very inappropriate to push the flooding off to adjacent neighbors. In regard to the issue of smell and land use, he uses the park and it stinks a couple of hundred feet from the water treatment facility. It does not keep him from using the park. The smell has not kept people from buying in the area. Either people have become accustomed to it or accepted it. It is not an everyday event, so he does not believe it is a big issue. He has concerns with the transition between this development as an office park to the adjacent neighbors and after hearing more about the accesses into the site and the traffic that brings to that corner, he has concerns. He travels that area daily and sees the traffic. He does not feel this is the right development at this location at this point in time.

Duffendack stated Petersen has asked for time to speak after the public hearing and Commission comments and he is welcome to speak.

Petersen stated in terms of the opinions about master planning and the transition, he would have the record reflect the exact type of transitions that have been approved in very close proximity to this property. In terms of traffic and flooding, this project cannot be built until the site is engineered both from the flooding standpoint and a full traffic analysis, which is typically done at final plan. If it proves that once a complete flood study is done and it is not signed off by City's professional staff, it cannot be built. That is done at a final plan stage. It is within the Commission's prerogative to raise the concern of flooding and traffic, but he submits that to deny the application at a preliminary zoning stage because of those issues, when the only testimony on record by certified professionals, both the applicant's and staff, is 100% contrary, he finds that questionable. One issue was raised in terms of land values and setbacks. Petersen showed an aerial view of The Woods and the adjacent office development. He has compared the property values for the ones that directly interface and the ones that are set off. They absolutely have minimal, if any, impact on property values. Petersen showed an aerial of the four-story assisted living facility and showed the value of the homes that are adjacent. That has shown no decrease in property values of the homes adjacent. There will be no outside trash containers. They have told staff the trash will all be internalized. What they are proposing is well within the transitional guidelines that have been set by the City of Leawood.

A motion to deny was made by Azeltine and seconded by Munson. Binckley asked Azeltine to list the reasons for denial. Azeltine stated it is a good plan, but in the wrong place. It is not consistent with the comprehensive plan and he believes the Commission should not take the changing of the comprehensive plan lightly. It should be part of a very deliberative process and not simply as a response to a request. He also feels that office use at this location will have a negative impact on the surrounding neighborhood. It has never been shown on the comprehensive plan as office use or any other similar use.

Motion to deny approved unanimously.

CASE 16-05 CORNERSTONE - WINSTEAD'S Request for approval of a preliminary site plan and special use permit. Located at southeast corner of 135th Street and Briar.

Commissioner Conrad recused himself from this case.

Staff presentation: Presentation by Mark Klein. The applicant is requesting approval of a preliminary site plan and special use permit for a 5,000 sq. ft. Winstead's restaurant with an attached drive-thru. This project is located on lot 8 of the Cornerstone development which is at the far northeast corner of the development. It is the only lot that is separated from the rest of the development by Briar. The drive-thru will be located on the east side of the building. The staff report states there is a 17 1/2 ft. setback from the east property line. That is the property line that is the common property line between this development and Plaza Pointe. There is also mention of a 5-ft. interior parking service area setback. That is the setback from the east property line, but that is from the service drive that goes through the drive-thru. Parking is located on the north, west and east sides of the property. There is a significant grade change from the Plaza Pointe development. As a result, a retaining wall will be constructed on the east property line of this project. The retaining wall will be approximately 5 ft. at the highest point. The architecture for this development is prairie style architecture. The applicant has indicated they have tried to incorporate some of the materials of the prairie style architecture into the prototype of the corporate Winstead's building, however, the result did not make it prairie style and according to the applicant, it made it look odd. The applicant has also wanted to point out that Winstead's is very locally known and has a strong identity in the Kansas City area. They also wanted to point out that this is one lot that is kind of separated from the rest of the development and may be a reason for them to not be required to meet the prairie style architecture. Staff is recommending approval of this case with the stipulations stated in the staff report.

Munson asked how wide the drive-thru lane is. Klein stated it is 10 ft. Munson asked how wide an SUV is. Klein stated about 6 ft. Munson stated he feels the prairie style architecture is already gone for this development, so he would not see a problem with allowing this request as proposed.

Perkins asked if a person could get out of the car while sitting in the drive-thru. Klein stated there is a building setback of 17.5 ft. so there would be room.

Munson asked the number of required parking spaces. Klein stated the ordinance requires one parking space per every two seats in the restaurant. This restaurant has about 124 seats, which would allow 62 parking spaces. The applicant is proposing 72 parking spaces. They have stated they based the 72 parking spaces off of other restaurants they have in other locations. Staff is recommending the two spaces on either side of the trash enclosure to be removed to allow better maneuverability of the cars and also to allow additional screening of that trash enclosure. Munson stated it seems particularly tight, especially with the retaining wall. Klein stated staff feels the retaining wall acts as a screen to the drive-thru, which is one of the reasons staff is supportive.

Pilcher asked the height of the retaining wall. Klein stated it is 5 ft. Pilcher suggested that it makes it feel like an alley. Klein stated if a person were driving along 135th Street headed west, it would act to screen the cars in the drive-thru. Pilcher stated he was thinking in terms of 3 o'clock in the morning and people hanging out there. He has a lot of confidence in Winstead's surviving, but as a Commissioner they are not concerned with the economic viability of the applicant. Having been burned by a similar art deco building they had problems with and still sits empty, he wants to know what the City can do to protect itself. He then asked if there should be escrow money. Duffendack stated that is out of the Commission's capability and it is not part of the Commission's charge.

Azeltine asked if the trash enclosure would be screened. Klein stated there will be walls that extend out, covered in the same material as the building. Azeltine stated he shares Munson's concerns with the width of the drive-thru.

Applicant presentation: Navil Haddad, owner of Winstead's, stated he has met with staff and has incorporated most of their comments. There are solutions that will work on these two parking spaces.

Presentation by Henry Klover of Klover Architects. It was requested by the community that a Winstead's and Plaza III come into this development. The architecture for Plaza III is going to be prairie style. He showed the approved site plan for Cornerstone. He explained the history of the alignment of Briar. They ended up with this odd shaped lot. The other complication was because of the placement of the detention, Plaza Pointe was allowed to build their site up 4 to 5 ft. above

natural grade which causes a little bit of a hole. Parking is important. Mark has said there are 124 seats, there are actually 210 seats. They do not want to lose parking. They have a fairly large trash enclosure and could reduce the size of it and put landscaping around it. This site is very well segregated from the rest of the property. They do not want people parking on the drive lanes or out on the street. The design was the biggest issue. There is a criterion which has to do with making everything prairie style. The difficulty was making an art deco building in a prairie style. They tried putting stone at the base and putting planters in front of them. It became very clear up front that it was not going to work. It is segregated and cut off from the rest of the development. The applicant is leaving it to the Commission's guidance on whether they feel it is appropriate or not.

Azeltine asked how this one would compare to the one on Metcalf. Haddad stated this one would seat 60 more. It is a 5,000 sq. ft. building, versus a 4,000 sq. ft. building. There was a request to have a small, private room to allow people to have meetings and they accommodated that request.

Haddad stated most drive-thrus are only 8 ft., so they made this one bigger. Klover stated most garage doors are 8 ft. wide. Most drive-thrus on facilities like this are 10 ft. The most important place for the size is at the turn. There is a foot to the building, and then four feet to the retaining wall, actually 16 ft. of clearance. He does not see it as being a problem. It will be visually tight primarily because of the retaining wall. There is room for planting there. The ordinance requires that it not be just a plain wall, so it will have landscaping. Duffendack stated the planting is a place to help gain some width.

Munson stated the size of the trash enclosure seems to be spacious. He then asked if they would be producing a lot of garbage. Klover stated the applicant has agreed to reduce the trash enclosure in order to get more green space.

A motion to extend the meeting until 9:15 p.m. was made by Perkins and seconded by Azeltine. Motion to extend the meeting approved unanimously.

Williams asked how many cars the drive-thru will be able to handle and what happens with overflow. Klover stated there is room for 10 cars, without even getting into the drives. It is above the City standards of 6 to 8 cars. Williams asked where they would stack up the overflow if there are more than 10 cars. Klover stated they would stack up into the connector street between Cornerstone and Plaza Pointe. He does not believe that will happen. The other part to that is operation. If cars are backing up they could have the cars that are waiting for food pull into a parking space and bring the food out to them.

Duffendack asked for any comments on the buildings. Williams stated he does not see art deco architecture as a liability. He agrees with Commissioner Munson that prairie style architecture on this property is somewhat gone. The design of the Winstead's buildings is a nice style and has been an icon of Kansas City for as long as he can remember. It does not fit with the surrounding elements, but it doesn't anywhere else you see them either. It is not that detractive. He then asked if approving this as proposed would further open the floodgates for other fast food restaurants that have corporate signature elements, such as McDonald's and their golden arches. He is concerned for what it is ultimately going to do to the development. He hears concerns from the Governing Body for more variety in architecture. He does not see this development as providing a lot of repeat architecture. He thinks that it had the opportunity for doing a lot of fun, exciting, and very different things for Leawood and feels we are losing some of that. He is disappointed.

Perkins stated he thinks this is the proper building for this site because it is not right in the middle. He thinks it is an icon of the City and he would like to approve it because he believes it is right for Leawood. He is afraid that if they do not get approved this way, then they may go somewhere else.

Azeltine stated he would vote for approval of this based only on its location. He would not be in approval of this if it were in the middle of the center. Duffendack agreed with Azeltine.

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

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

CASE 17-05 CORNERSTONE - PLAZA III Request for approval of a preliminary site plan. Located at the southwest corner of 135th Street and Briar.

Staff presentation: Presentation by Mark Klien. The applicant is requesting approval of a preliminary site plan for the construction of a 14,000 sq. ft. building to be located at the southeast end of the main center of the Cornerstone development. There is an internal corridor that runs down the center of the main center that is a pedestrian corridor. Just to the north of this building is Cheeseburger in Paradise and Bonefish Grill. That building is 12,333 sq. ft. The multi-tenant building to the south of that has been approved for 7,130 sq. ft. Staff is recommending approval of this case with the stipulations stated in the staff report. Some of staff's concerns with this site in general relate more to the Cornerstone development itself. When the development was originally approved, there was a pedestrian corridor that flowed through the center of the main center that was fairly wide and had some plaza areas and landscaping. Particularly at this eastern end of the corridor, there is a larger plaza area. Originally, there were three buildings that were oriented around the plaza area. Staff is concerned that this area is beginning to shrink a little bit and staff is becoming concerned that this building is starting to lock down that corridor at that end. Staff has included a stipulation that the applicant would need to work with Klover to try to reestablish the character of that plaza area at that location.

Williams asked how that space was proposed to be utilized. Klein stated the original concept was to have a plaza area with seating and landscaping. The original plan was to have the surrounding buildings open up and have entrances onto the plaza area. Klein then described what is now being proposed for that area. They have somewhat lost the connection that was originally going diagonally through there.

A motion was made by Williams to extend the meeting until 9:45 p.m. Azeltine seconded the motion. Motion to extend the meeting was approved 4-1. (Munson opposed.)

Perkins asked if the driveway that comes in on the side and curves around would become a traffic hazard. Klein stated it is staff's impression that a lot of the traffic would be along the loop road that goes along the side and the parking that serves the main center would be along the south side of that loop road, and not quite as much traffic would be circulating right adjacent to the main center itself. The parking is a little bit shallower at that location. Binckley stated she feels it would be similar to the south side of Town Center Plaza where there is a private drive within the development, then the parking across from the main drive.

Applicant presentation: Presentation by Navil Haddad, owner of Plaza III. There are 15 restaurant concepts in his family of restaurants and Plaza III and Winstead's are at the top of the line. They have hired HOK to design mainly the interior of the building in addition to Klover Architects.

Ed Coon with HOK in Kansas City showed and described the overall site plan. The site for Plaza III is about 0.8 acres. The building is 14,000 sq. ft. on one level with a basement level primarily for kitchen storage or preparation. Coon showed the floor plan. The main entry is on the east. It is a single-story with a high ceiling. There is an outdoor patio off of the bar. The staff report lists the patio as 150 ft. It is actually about 75 ft. Coon showed the elevations. They would eventually have some sidewalk dining. All of the materials are synthetic stone, brick, concrete tile roof and standing seam metal roof. There are areas in the high areas that are dryvet.

Pilcher asked if there is a walkway from the parking to the main entry. Coon stated there is a sidewalk that runs all the way around the east side and then a curb cut and paved area at the main entrance. Williams asked how large that area is. Coon stated it would be about 13 ft. deep and 30 ft. wide. Williams asked why they oriented the entrance to the restaurant along the east side and turn their back to the pedestrian courtyard. Coon stated he does not believe they have entirely. There is a reception area where people can be seated on the patio. The main point was control and the visibility off of the roadway. Williams asked if one can enter the restaurant from two entrances. Haddad stated there will be two main

entrances and French doors from the banquet areas. They would like to have the main entrance as close to the parking as possible. Williams asked how the sidewalk cafes would work. Haddad stated there would be tables and chairs for people to congregate outside while using the banquet rooms. Williams asked for a description of the decorative fencing around the sidewalk café and bar area. Coon stated part of the patio is covered by a trellis. There will be some type of prairie style fence to create some control around that area. There would be metal gates, but designed in a prairie or arts and craft style. Williams asked if there will be a fence around the café areas by the banquet rooms. Haddad stated if it were to be used for liquor consumption, then it would be required to have a fence, but they do not plan to do that. It would be a gathering area, not a serving area. Williams asked if this plan is a prototype. Haddad stated this plan is one of a kind. This is the first time a Plaza III has been done as a stand-alone building.

Duffendack stated it is ironic to him that a restaurant named Plaza III has chosen to ignore the plaza that was created for the development. The main entry is now totally vehicle oriented. The concept of the large internal pedestrian area originally showed as a place for people to gather is now shown as a back side of the building. He has a problem with this orientation and with the whole approach that goes away from the original concept of the development so drastically. Commissioners Pilcher, Williams and Munson agreed with Duffendack's concern.

Coon stated he feels it is a security issue on a facility like this. Haddad stated the Plaza III is a destination restaurant. People do not drive by and then decide to eat there. They call ahead and make reservations. If they arrive early, then they walk around the area. Duffendack stated he feels the plan is contrary to the concept that was sold to the Commission. Munson stated he feels the buildings do not have any synergy in reinforcing each other.

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

Azeltine asked for any suggestions from Duffendack on how this could be altered to remedy the lack of synergy and the fact that it does not seem to tie in to the plaza in order for the Commission to approve this and the applicant come back with a solution at final. Duffendack stated he does not think this can be approved tonight and then the orientation changed completely before final. Azeltine asked if the applicant would be willing to agree to a continuance in order to reevaluate the orientation.

Haddad stated he is considering the older customers so the entrance would be closest to where they park their cars. At the same time they have consideration for the people walking the promenade and opened a huge area for them to come into the bar area to wait for their table. There are two major entrances. He is very willing to listen to any positive ideas from staff and the Commission.

A motion to continue the case to a date set by staff in order to address the concerns regarding the orientation was made by Azeltine and seconded by Pilcher. Munson asked to make an amendment to the motion to take a look at the total development to see what can be done to get it back to the style and plan that was started out with. Motion maker and seconder accepted the friendly amendment. Motion approved unanimously.

Meeting adjourned.

J. Paul Duffendack, Chairman