

City of Leawood Planning Commission Minutes

July 12, 2005
Meeting – 6:00 p.m.
Leawood City Hall
4800 Town Center Drive

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

Commissioner Rohlf presided due to Duffendack's absence.

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

APPROVAL OF THE MINUTES: Approval of the minutes from the April 12, 2005 meeting. **A motion to approve the minutes from the April 12, 2005 meeting was made by Henderson and seconded by Azeltine.** Williams pointed out a typographical error on page six. He then stated that on page nine, the sixth paragraph down, it reads, "Estell Hipp, the architect/applicant." Williams asked if Hipp is the architect. Binckley stated he is not the architect, he is the applicant. Williams asked if that statement should be revised to read just, "the applicant". Binckley stated that the minutes' secretary has recorded what was actually spoken at the meeting, but if the Commission would like to change that to be more accurate, then that is fine. **Motion approved unanimously.**

NEW BUSINESS:

CASE 43-05 MISSION CORNER Request for approval of rezoning from AG (Agriculture) to SD-NCR (Planned Neighborhood Retail) and SD-O (Planned Office), preliminary plat and preliminary site plan. Located at southeast corner of 135th Street and Mission Road.

Applicant presentation: Presentation by Mark Klein. The applicant is requesting a rezoning from Agriculture to SD-NCR, and SD-O, preliminary plat and preliminary site plan for an office and retail development. The development will consist of 169,375 sq. ft. of construction to be divided between 91,550 sq. ft. of retail in the SD-NCR portion and 77,825 sq. ft. of office within the proposed SD-O district. This property is located at the southeast corner of Mission Road and 135th Street. The project consists of 10 buildings. Seven of the buildings are retail and are aligned along 135th Street, Pawnee and Mission Road with the exception of building F, which has about 9,900 sq. ft. of retail on the first floor and 9,900 sq. ft. of office on the second floor. The overall development has an FAR of 0.26. Within the SD-NCR portion of the development the FAR is 0.21 and within the SD-O portion the FAR is 0.34. The applicant is requesting bonuses and has provided several sheets attached to the plan indicating where they feel they have earned the bonuses to allow them to go in excess of the 0.25 that is allowed within the development ordinance. Staff is recommending a continuance of this case based on the fact that some of the numbers indicated in the traffic study are different than what the plan is indicating. In order to have the traffic study updated to reflect the current plan, staff is recommending this case to be continued, but would like the Planning Commission to hear the case in order to give staff input from the Commission.

Perkins asked if the traffic study would need to be of a certain count to take it to the year 2020. Ley stated they provided counts for the 2020, but when the traffic study was originally developed, it must have been developed off of a plan that was denser. The applicant has made the development less dense than the traffic study shows, but staff wants to have an updated traffic study prior to proceeding on to Council. Perkins asked when the last traffic count was done. Ley stated the

traffic study was done 6 weeks ago. Perkins asked if that is recent enough. Ley stated, no. Ley's comments in the staff report show the difference in sizes between what the traffic study indicated versus what the development actually submitted.

Rohlf asked if that is something the Commission could look at during the final application. Klein stated the traffic study has an impact as far as FAR and the amount of square footage they have in the buildings and how that affects traffic. It is typically done at the preliminary stage. Perkins asked if there would be a way to approve it with a stipulation stating the applicant would need to provide a traffic count to their liking. Klein stated staff typically requires the traffic be fairly accurate as far as reflecting the plan. Now it is up to the Commission on whether you would be amenable to allowing a stipulation to have the traffic study be updated, but go ahead and approve it with a stipulation that it be updated. Perkins suggested that if the applicant could not get it updated in a certain amount of time, then the Commission could continue it, in order to get what the City Engineer is wanting done. Klein stated the traffic engineer would have to answer that. It is his understanding that the applicant has already started working on an updated study. Perkins stated he would like the access off of Pawnee to be addressed. Ley stated he would like the developer to address that comment.

Conrad asked if Ley has a sense on how the detention issues would impact the overall site plan. Ley stated his third comment in the staff report requires the upstream water to be bypassed around the pond, which should help them. A lot of the water that is getting to that pond is coming from upstream. Everything upstream is already being detained, so it does not need to be funneled through their pond. Conrad asked if Ley feels some of the issues would not significantly affect the layout of the site. Ley stated, correct. He talked with the applicant's engineer about it and he is comfortable with it too.

Henderson stated this proposal has five pad sites along 135th Street. There are already three pad sites built along 135th Street. One of the things the City is trying not to do is to line up so many pad sites that the central part of the buildings is obscured. He then asked how many pad sites there will eventually be along 135th Street in Leawood. Klein stated there will be a lot of pad sites. Pad sites are something that is somewhat inevitable; however, staff has been trying to make the pad sites relate to one another by arranging them in such a way so that they have a relationship not just with themselves but also the main center. One of the things planning staff talked with the developer about was removing the access off of Mission Road and arranging the site in order to relate buildings A, B and K. However, with that drive there it was a little bit more difficult to do that because it separated out building K. The effort was to not only make those three relate but also related to the significant corner at 135th Street and Mission, within the Market Square district. It is an important corner to try to make them relate there and also have some sort of focus on the rest of the development as well. The reason why staff is willing to work with the applicant at that point is because one of Public Works' stipulations that the southeast entrance off of 137th Street be removed due to the close proximity of that driveway to another driveway that has already been approved across the street in the Pine Lake development. The distance is only about 155 ft. between those two. Typically, it should be 250 ft. Staff did not want to close down too many accesses into the site and restrict the egress and ingress into the site. Staff is willing to work with the developer to try to keep the access off of Mission Road. The applicant worked with staff and realigned a lot of the drives and parking areas within that northwest section of the site to make it work a little better than what was initially shown. Henderson stated it appears that some of the pad sites will get built first, rather than after the core building. Klein stated everything within the SD-NCR district is a pad site, and then there are three office buildings within the office portion of the development. Staff is recommending this case to be continued, however, staff did provide some stipulations in case the Commission wanted to approve it, also to give the Commission an idea of the stipulations that are being proposed for this development. Stipulation number 35 states, "No building permit or any construction on pad sites or outlots within the SD-NCR district shall be issued until a minimum of one of the buildings in the office district has been approved and their construction started."

Munson asked if the road below the driveway coming down between buildings K and J is part of the plat. Klein stated there is an approval just to the south of this property for apartments and duplexes. The accesses shown are the accesses that were approved with that development. That development has received preliminary approval, but still needs to come back for final. Munson stated it seems off-center. He then asked if there is any way to take care of that. Klein stated one of the things staff would want is to align the drives. Ley stated the entrance on the west side of the development is going to have to shift to the east due to the proximity to Mission Road.

Perkins asked how the applicant could move the drive between buildings G and F or remove it. Klein stated that is something the developer could address. It is currently about 195 to 200 ft. away from Pawnee Road. The way the City measures the distance between drives is from curb return to curb return. The typical standard is a 250-ft. separation. Ley stated the other option would be to widen the street in that location for four lanes of traffic. But that would be something that would need to be engineered.

Munson asked the proposed use for the property east of Pawnee Road. He also asked if there should be a connection to the east that would be settled once the other development comes in. Ley stated that is Tuscany office commercial and they do not have an access off of Pawnee. Their access is off of 137th Street. Munson asked who owns that land. Ley stated Ed Kennamore.

Applicant presentation: Presentation by Larry Winn. The applicant is very strongly opposed to a continuance on the traffic issue. The applicant does not have a problem with getting a traffic study that is consistent with the plan turned in before Council considers the matter, but this plan has been evolving for almost two months and every time staff wants them to change a driveway and remove square footage, that changes the traffic study. Every time they have the traffic engineer change the traffic study, it costs \$5,000. They were still changing entrances this week. They learned this week that staff wants them to remove the east entrance off of 137th Street, which the applicant is willing to do as part of the preliminary plan. The applicant has now learned they can do the drive off of Mission Road, so that changed. In terms of traffic numbers, they've lost a drug store with drive-thru and tens of thousands of sq. ft. of office. The level of traffic has substantially diminished. All the levels of service will now be as good as or better than there were before. Nothing is going to go up. Every intersection can only get better. If this is the plan tonight that the Commission approves, then the applicant can get the traffic study done to reflect that lesser density and reflect those precise points of ingress and egress. Staff has just indicated that maybe the west drive on 137th Street should move because it is too close to Mission Road. That is the exact location they were told that they had to put it in because there is a corresponding street to the south. That was done at staff's request. On the east drive, he feels it would be appropriate to delete that now. Rick Oddo is changing his concept. It was multi-family and he is now talking about some villa product. It is probably best to hold off on pinpointing an entrance there until they know what is happening to the south. There are two additional requirements of the applicant on the Public Works comments. One is a right-turn on Pawnee onto 135th Street that everyone agrees is not required by this project. Then there is a right-turn off of 137th Street onto Mission Road that is also not required by this project, nor are those road improvements matched on the mirror image of the same intersection. It is Winn's opinion that those are Public Works projects that the applicant is being asked to do. The applicant is not the precipitating cause of the need for those Public Works improvements. Those are some 2020 improvements that might be needed at full traffic 20 years down the road. That is why the City raises taxes and builds roads; to make Public Works improvements, not pass every one of them on to the developer. Other than those traffic issues, the applicant is in agreement with all of staff's stipulations. The applicant spent a lot of time with staff on this. He believes they are all very pleased with the results. The applicant fully expects that they might have to do a revised preliminary depending on what tenants come in. He feels it is important to establish the basic land use so that the project can go forward in the marketplace.

Presentation by Henry Klover. The west access off of Mission Road is very important. The other three developments on the opposite corners have access to Mission Road. It would be a competitive disadvantage to not have that access. The applicant has worked with staff on many changes to the plan, including zoning. The original traffic study was based on the original plan that was submitted. Subsequent to that, there were requests to change the zoning. The zoning was changed to SD-NCR and SD-O. It is a fairly small site. It was felt to be important to get a good central circulation and strong accesses. It was also felt to be important to have good central identification. On the SD-O part, there are elements such as the water feature, and then plazas on either side of the buildings. The site is a bowl shape. It is basically level and then a lower level in the center. It felt very logical to place the water at the back and then build a parking deck and put the office level on top, versus down. It creates a nice element and also helps to relate the other buildings to the water feature. One of staff's comments was to create a more undulating and more aesthetically pleasing water area. One of the comments had to do with the water and it going through. Klover has had conversations with the civil engineers and they have assured him that the water feature will not get bigger. They are taking 15 acres and replacing with 30 acres, so they should be fine. Part of the reason that they didn't have pathways originally along the buildings was because of the slope. Staff has requested there to be some seating areas. Klover believes that he could agree to put in some walls to level it out to create some

seating areas along the pathways to provide more architectural and pedestrian friendly areas to congregate around the water feature. When 137th Street is built, it will be a dip coming down into this area. The areas and bonuses the applicant is requesting are for the additional open space that is created. The SD-NCR has 39.8 percent open space. There is not as much in the office area, because of the density. The applicant has requested additional density in the back area by providing plazas, water features and underground parking garages integrating around the water feature and creating some architectural interest of the buildings relating to it. They have also expressed the need to have the ability to see buildings. They felt it was important to have the building be taller. The original plan was submitted with a three-story building in the back but that was changed due to the change in zoning and a comment that came in during the interact meeting to not have that tall of a building. The applicant has agreed to remove the entrance off of Pawnee and 137th Street. In regard to traffic, a drive-thru drug store was originally proposed in this development. That is not allowed within the SD-NCR zoning, so it was removed. Obviously, that would be a tremendous traffic generator that has gone away. There is close to 35,000 or 45,000 sq. ft. of office space that went away as well as additional retail. He spoke with the traffic engineer and he was very clear in stating that all of the improvements will be the same or better. All of the intersections worked, even with the higher density. There were no issues with continuing forward. It would be difficult to create a traffic study every time there is a change. Klover showed conceptual elevations. The applicant had received the adjacent properties and what they are doing. They are trying to create something of interest that is not exactly the same as Tuscany Reserve and Pawnee Place.

Azeltine asked how many times staff asked the applicant for changes that required a new traffic study to be done. Klover stated the applicant originally met with staff and agreed on a zoning, then there were additional comments to change the zoning, then there were comments to change the density, then there was a comment on Mission, then there was the entrance off of 137th Street. The applicant is not opposed to getting it revised and updated. Azeltine asked how long this has been going on. Klover stated they have been working with staff for a couple of months. Azeltine asked what the downside would be of not continuing the case. Klein stated the traffic study drives what the site is all about. It is also something that gets plugged into the City's overall traffic model. Ley stated by eliminating drive 3 on 137th Street, it may end up hurting them more than they think. That westbound, left-turn lane on 137th Street is not long enough. There could be some problems because they are eliminating some drives and moving traffic flow. He thinks they might be able to keep drive 3. They just might need to make 137th Street a little bit wider. Staff needs to have the traffic study prior to going to Council. Azeltine asked what the ordinance requires for submittal of the traffic study. Ley stated traffic and storm water are supposed to be approved with preliminary. Azeltine asked if the Commission could approve the plan without having the final traffic study. Binckley stated a traffic study has been submitted. If the Commission is comfortable with it, then the Commission has the right to approve it with the caveat that there are maybe some details the Commission would like to see at final, or prior to the project going to the Governing Body.

Winn stated the comments say the applicant is obligated to do 137th Street, but Mr. Oddo is obligated to do his half of 137th Street. He just wanted to clarify that no one has the impression that this developer is going to do all lanes of 137th Street, when the developer to the south is similarly obligated under his stipulations. Binckley stated this is not something in the Planning Commission's position. This is dealt with either via benefit district, if the City offers one. The applicant can work with the property owner to south. Outside of that, if this development comes in first and needs the access, then they are required to install it. They can work out a deal with the developer to the south. The City does not get involved. That is standard. The City has not had any problems with this type of situation to date.

Conrad asked if there is a phasing plan with this development. Winn stated there is no formal phasing plan. The applicant has agreed with the stipulations in terms of the construction of the office, vis-à-vis the construction of pad sites. Klein stated staff did ask for a phasing plan. That is one of the requirements for a preliminary plan application. The plans indicate that there is no phasing plan. Staff has always had the concern of the pad sites being built prior to the main center, or prior to some of the main buildings, which in this case is the office. Rohlf asked if one of the office buildings would need to be built first, what items would be built along with that. Ley stated the roads would need to be built prior to any certificate of occupancy of any of the buildings. Rohlf asked what would be built at the south end if they are planning on building office. Ley stated the pond would be required to be constructed prior to any occupancy, because it is detention. Rohlf asked the applicant which of those buildings would be put in first. Klover stated the applicant is working with potential tenants at this time, but this approval would help them market the development as a property that is zoned. Rohlf asked if Klover is comfortable with stipulation number 35. Klover stated, yes.

Perkins stated it does not look like the driveway between buildings K and J lines up with the one south of it. Ley stated it appears that it is offset by about 20 ft. Perkins asked the difference between the numbers being reflected in the traffic study versus the ones shown in the plan. Ley stated the traffic study is based off 131,000 sq. ft. of office space and the plan reflects 87,088 sq. ft. They need to update the numbers in the traffic study to reflect the decrease in entering and exiting vehicles. Perkins stated they are increasing their retail space. Ley stated they are decreasing traffic, but the City does not know by how much. We want an updated traffic study so that when the next development comes in then they would take this traffic study and build off of it. That is how all of the traffic studies on 135th Street are completed. Perkins suggested Ley stipulate that the applicant be in compliance with what the City wants. Ley stated that is what he did.

Klover stated the drive across the street is shown with a median in the center and it is their intent to get it to line up, but that will get worked out and is not an issue. They lost about 44,000 sq. ft. of office. The retail shows 40,000 versus 27,000 but that is a little bit deceiving because there was actually 27,000 plus 15,000, so there was actually 43,000 sq. ft. of retail. It went down 3,000 but of that 15,000 was a drug store with a drive-thru. The drug store was separated out in the traffic study because it is such a big traffic generator. That is why it was not listed together in the traffic study.

Henderson asked the proposed height of the two story building. Klover stated he believes it is about 30 to 33 ft. Henderson asked if that is the high point of the site. Klover showed an aerial photograph of the site. He then stated one of the reasons they decided to do the parking decks was because they needed to pick the buildings up anyway and there was going to be a tremendous amount of fill. It solved a problem in dealing with the existing grade and how it was coming down. Henderson asked if Klover is suggesting that a person driving by on 135th Street would only see the top story. Klover stated, no. It is only about a 6 ft. drop. The existing topography is very low. 137th Street will also drop significantly. Henderson asked the parking ratio and the number of spaces provided as opposed to that which is required. Klover stated they are in compliance. It is at a 4.5 for the overall. The SD-O portion is at 3.9. Overall, the project complies. Henderson asked if it is pedestrian friendly as a person walks from one parking lot to another building. Klover stated, yes. The typical rule of thumb is that people do not want to walk any more than 300 ft. The whole property is only about 560 ft. across. It is not real deep. Staff has requested some additional work on pedestrian access throughout the site and the applicant will work with staff on that. Henderson stated he wants to make sure that it is safe and secure for pedestrians. Klover stated there is about 180 ft. between the buildings at a maximum.

Conrad stated it seems the slope into the garages is fairly steep. Klover stated there is no access internal to the building. The actual ramp goes all the way in. Conrad asked how one would get under the floor of the first building. Klover stated there is a building in Lawrence that is similar to this. Conrad stated it looks like a real challenge. He then asked if the storm water basin is going to be rectangular, as shown on the site drawings. Klover stated staff expressed a concern with that. When the colored plans were put together there was a more undulating form. The intent is to work with the existing steep slopes. They are going to put in stone retaining walls to level that out. That would increase the volume. The intent is to work with some pedestrian areas and work with staff to make it more aesthetically pleasing.

Reynolds asked how much of the garage elevation would be visible from 137th Street on the south façade. Klover stated the garage will be exposed on that side. They cannot get below the level of detention. Their goal would be to make them blend in with fenestrated openings, architecturally screened so that one would hardly even know it was there. Reynolds asked if the first level of the south façade of building J and G would be open air. Klover stated, yes.

Conrad asked, in regard to bonus points for excess required open area for the SD-O district, where the excess is located. Klover stated the excess is included in the plaza areas on each corner and also along the southern portion of the detention pond. The applicant also wants to include the northwest and northeast corners of the detention pond when they get to it. The applicant is getting 5,700 sq. ft. for that element. They are getting 8,700 sq. ft. for the garage. They did not ask for anything for the amenities or plaza areas, so they are not trying to push the envelope. Conrad asked if they are planning on building the entire garage with the first phase. Klover stated it would depend on which building is built first. If it were a side building built first, then the garage would probably not be built with that phase, but they would have to do something. If the street were put in, then some grading would need to be done to accomplish it. Conrad stated he feels the bonus points should be the rewards of a total site plan. He feels the phasing should be discussed early on. He then suggested making

some additional stipulations in regard to the phasing and especially some of those elements that contribute to the bonus points as opposed to having a situation where it is not done in the initial phase of the project. Klover stated he is not sure that there is a project that the Commission has ever given bonuses to that could come in and build everything at one time. It would also be handled by the stipulations in the revised preliminary and final plans. This is a concept plan. The Commission has seen many plans that do not stay the same. He believes the Commission has the power to stipulate what building gets built first, since they are going to see it multiple times. It is the applicant's intent to get it done.

Williams stated, in regard to the bonuses for the SD-O portion, the requirement states "provide permanent natural open space in excess of the required minimums". He then asked where the excess natural open space is provided. The requirements also state "projects incorporating above-ground parking structures result in significant increases in landscaped open spaces" and therefore get the bonus. He then asked where the landscaped open space is located. He would like to know where the City is getting the benefit that justifies the bonuses. Klover stated the underground parking garage allows for 15% and that is provided. He believes that it ties into the development nicely. Williams stated he thinks the garage is a great idea, but for getting bonus points, the trade-off is to get additional permanent natural open space above and beyond the minimum required. He is asking where that additional open space is provided. Klover stated they have counted the plaza areas, which will be landscaped and detailed out. Those are permanent areas between the buildings. They have also counted the areas that would be along the water feature. There is an additional 8,700 sq. ft. They do not get credit for all of what is above the required. The applicant could have proposed smaller buildings, but chose larger buildings that are denser. The ordinance requires 30%. The applicant is providing more than that. There are dedicated plaza areas that are permanent around the buildings and staff has requested adding more around the water feature. The applicant has agreed to that. Williams asked, in terms of open space, if those areas would not be left open. He wants to know where the excess is located. Klover stated the building footprints could have been expanded. They could have taken another 8,700 sq. ft. of footprint and added it in, but they didn't. The bonus requirement is that excess open space be provided and it is accessible and he feels the applicant has provided that. Williams asked if staff feels the applicant has provided sufficient open space to receive the bonus points. Klein stated the developer can develop up to the full amount up to the 30% open space. In this case, they have provided more than required. However, they are not requesting that all of that excess open space be allowed for the bonuses requested. They have identified certain features within the site that are usable. The applicant is trying to indicate portions of that excess that would invite people in. Parts of those are the plaza areas along the front of the buildings and the spaces along 137th Street near the detention pond. By ordinance, the applicant is allowed up to a 15% increase. By providing underground parking, they have 270 sq. ft. per parking spot that is saved, rather than if it were on the surface. They are only asking for a portion of the excess open space and they have shown those on the plan and that is what staff evaluated. Williams stated he is hearing that the applicant could have paved a larger area. He then asked what could be paved more than it is now. Klein stated the original plan had larger footprints; therefore it had less open space than it does now. By providing underground parking, they have removed some of the space that would have been on the surface thus creating more open space. According to the ordinance, the applicant is exceeding the minimums required. Williams stated both of the provisions for allowing bonuses require natural, landscaped open space and he does not see where the applicant is getting that benefit.

Williams stated Winn used the word "unique" when describing this development earlier. He then asked what is unique about this development, versus everything else the Commission has seen along 135th Street. Winn stated he does not recall saying the development is unique. It seems to him that cities do not want projects that are not like the typical strip, or typical office. They want structured parking. They want buildings that have retail over office or vice versa. If the City wants people to think outside the box, there needs to be a joint effort to recognize it. They will need to go more vertical. In regard to where the open space is, this concept does not necessarily pick up substantially more open space. He knows the Commission is not supposed to be concerned with financing, but doing parking garages and going vertical is a much more expensive type of construction to do and the only place to pick it up is in density. Williams stated he is not seeing the additional green space above and beyond the minimum required. Winn stated Klein explained the ordinance. The applicant believes this is in compliance and staff also believes the applicant is in compliance. He is not sure what else they can do beyond what has been done. Williams stated there is terminology about abundant green and open spaces in the papers Klover submitted. In looking at the plans submitted, Williams sees a lot of parking and a lot of roadway. He is not seeing open green space, with exception to what is around the retention pond. There is a required 40-ft. setback, so that should not be considered excess open space. Winn stated they gave up right-of-way on Mission, Pawnee, 135th Street and 137th

Street. The project lost a lot of green space to right-of-way. The City is part of the issue. The project is losing tremendous amounts of land to perceived future traffic needs. Klover stated when the applicant met with staff one of the things they requested was to create plazas and areas for people to gather. The applicant could remove the plazas and lay ground cover there instead if the Commission wants even more green space than they are already in excess of. Williams asked how the applicant is going to design the space, provide the parking that is required, provide the circulation, meet the setback requirements and then come up with additional open space above and beyond what would be required for the development. Klover stated he does not understand what Williams is asking. The ordinance requires they be in excess of 30%. They created 8,700 sq. ft. They were asked by staff to create patios. They created patios with fountains.

Reynolds asked if staff feels that a lot of the design aspects and characteristics are such that the open space is broken into little parts and space. Klein stated staff looked primarily within the SD-O spaces since that is primarily where they are asking for the bonuses. There is actually quite a bit of open space around the buildings themselves. The north side of buildings J and G flows down around the detention pond which also goes along 137th Street. Most of the massing is within that area. A lot of the open space in almost all of the developments we have is spread up among landscaped islands. Conversely, though, when staff has looked at trying to eliminate some of those, there is always a trade-off. You could end up with open space that is together, but the trade-off is that a lot of times the parking fields get quite a bit broader and then there is a mass of concrete with nothing breaking it up. As the asphalt ages, they start looking pretty bad. This allows plantings to go within those islands and allows landscaping trees to break up those parking fields. He is not sure staff would look at totally eliminating those. Staff is here to listen to the Planning Commission's concerns and take those into account. Reynolds stated he believes the office development area with the garage is the strength of the plan. He thinks the water feature is a rather urban kind of setting and he does not have a problem with it being a geometric shape. He would not want the Commission to force a natural shape in what is a very urban setting. He then asked staff how far the west drive might have to move. Ley stated if they are able to keep the east drive on 137th Street open, the left into their west drive is okay. It is the westbound left on Mission that is the problem. He would imagine 30-50 ft. on the west drive. If it becomes a conflict they cannot move it too far to the east. They would need to create a right-in, right-out. Until the correct traffic study is submitted, he does not really know.

Binckley asked if Reynolds is comfortable with the geometric shape of the plaza areas, but also comfortable with the detention area being in a rectangular form. Reynolds stated, yes. He feels it would make it stronger and probably wind up with more green space as well.

Henderson concurred with Reynolds on the geometric shape of the detention. He then talked about how to measure quality.

Munson asked when the ordinance was re-written to allow for bonuses. Klein stated December of 2002. Munson stated from what he remembers the rationale was to give staff and the Commission some flexibility in working out these developments in order to get a better quality development. Klein stated it was to try to apply some numbers to it. Staff has to try to apply these criteria across many different projects that are completely different in a fair and consistent manner. That is where staff is coming in with calculations. Staff is willing to take the input given by the Commission, but staff needs to find a way to apply that in such a way that is fair and consistent to the applicants. The idea was that if they are getting something extra, then they should be supplying something above and beyond what is required. Munson asked if the bonuses under discussion apply only to the SD-O zoning part of it or to the whole project. Klein stated it is better to apply it to each individual zoning that the bonus is being requested. The SD-NCR portion has almost 40% open space. Munson asked if staff counts paved parking as open space. Klein stated, no, just green areas and plaza areas. In this case, if this had been applied to the entire development, they would have been able to take that 40% open space and apply it for the FAR bonuses within the office and gone up even higher in the office. By limiting it to the section where that zoning is, they can only use the excess open space that was within that zoning. Munson stated he would prefer a development along 135th Street that was not oriented so much towards pad sites. He feels the developers have done a good job working with staff. Overall, in terms with what they have seen along 135th Street, this is better than some that have been approved.

Williams asked if there are any projects that are currently constructed that have utilized the bonus points. Klein stated he believes Parkway Plaza has started. Park Place was the first development to get approved using bonus points. They have not started construction yet. Binckley stated the condominiums in Parkway Plaza have started construction and with that

some of the detention areas and space where they maintain the existing trees were given as bonuses. Park Place was required to have some of the bonus point improvements happen with the first phase, but based on the phasing and the project, there was only so much they could do per phase. For example, all of the storm water improvements will be part of the first phase.

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

Rohlf suggested discussing whether or not this should be continued based on the traffic study.

A motion to approve was made by Azeltine with the understanding that an updated traffic study be submitted prior to going to Governing Body. Henderson seconded. Perkins stated he likes the project and feels the traffic study is important, but the phasing of the project should also be included before it goes to Governing Body. **He then suggested an amendment to the motion to require a phasing plan and a plan showing which bonus items would be installed to be submitted prior to going to Governing Body. Azeltine accepted the friendly amendment. Munson suggested an amendment to stipulation number 25 to strike the words, "more curvilinear". Azeltine accepted the friendly amendment. Rohlf stated stipulation number 19 should read "137th Street" and not "133rd Street".**

Conrad stated he is supportive of the retail and the office and thinks the specifics can be worked out. He thinks there are numerous issues that have bearing on how the project is laid out. He thinks the phasing is important to that site layout. Although he is conceptually supportive of the zoning request from the applicant, he is not personally convinced that the information presented is sufficient. If the west drive on 137th Street moves significantly it could have a large impact on the site layout. Some of the topographic elevation issues are a question and he thinks it is important that information be a part of this plan. He respects staff's request for a continuance.

Azeltine asked if the current motion allows the Commission to do whatever needs to be done should that traffic study show that there are problems with the flow. Binckley stated the way the motion is worded, it would be a revision prior to going to Governing Body, and so it would be up to them to review at preliminary. Then at final, the Commission would look at it to see if it is in substantial compliance. If there were a change in information from what was presented tonight then staff would consider it to not be in substantial compliance and the Commission would have the opportunity to review it again prior to going to Governing Body. Azeltine stated he is not sure it is fair to the applicant to hold the project up. He then asked how long it takes to get a traffic study completed. Ley stated, about a week. Azeltine stated there is really no downside to approving a preliminary with a stipulation that the traffic study be taken care of before final.

Rohlf stated the retail meets the intent of the ordinance but she would like to see some true open space in the retail before the Commission sees this plan again.

Williams stated he is generally supportive of the rezoning on this project. The plan has some good flow of traffic compared to some other projects the Commission has seen in recent history. He appreciates the introduction of the underground parking. He thinks it is an appropriate use. He has a fundamental difference in his definition for the qualification for bonus points as related to the open space issues, with the exception of the underground parking. He does not see granting the bonus points, completely, as requested.

Motion approved 5-2. Conrad and Williams opposed.

CASE 46-05 CHADWICK PLACE Request for approval of a final plan to revise approved stipulations.

Staff presentation: Presentation by Mark Klein. The applicant is requesting approval of a final site plan to revise a stipulation regarding the undergrounding of utilities that was approved with the final site plan for Chadwick Place. With that case, there was a standard stipulation included that required the undergrounding of all utilities, including the ones adjacent to and abutting right-of-way, including 135th Street be placed underground prior to final occupancy of any of the buildings. The applicant has indicated

they have a concern with that due to the timing and due to the fact that Chadwick Place has such a short amount of frontage along 135th Street and have requested this application in order to change the timing of the undergrounding of the utilities to allow them to work with the adjacent properties to have longer stretches of utilities placed underground along 135th Street. Staff is recommending the language in stipulation number 2 be changed to the following, "In consideration of this plan approval, and in lieu of immediately burying the overhead lines abutting 135th Street, the applicant agrees that:

- All power lines, utility lines, etc. (both existing and proposed, including utilities and power lines adjacent to or within abutting right-of-way) with the exception of existing power and utility lines adjacent to 135th Street shall be placed underground prior to final occupancy of any building within the development.
- All pre-existing power lines, utility lines, etc. adjacent to 135th Street and/or its right-of-way shall be placed underground the earlier of October 8, 2009 or when either of the adjacent properties to the east or to the west underground their utilities adjacent to 135th Street or prior to the completion of the project, whichever is earlier.

These stipulations are intended to survive further plan amendments and should be appended to any such plan amendment. If applicant fails to meet either of these stipulations, then the applicant agrees that City may revoke applicant's certificates of occupancy and certificates of occupancy issued to any and all successors in interest of this land." Staff has discussed this with the applicant and they are aware of the changes. Staff is recommending approval of this case with the stipulations stated.

Conrad asked how many linear feet there are. Binckley stated about 400 ft. Conrad asked the parcel size of Chadwick Place. Klein stated about 8.43 with the right-of-way taken out of it. It is fairly long and narrow, with the narrow portion along 135th Street.

Henderson asked if staff has heard from the owner of the property to the east of this property. Klein stated, no.

Staff presentation: Presentation by Larry Winn. The applicant agrees with the stipulations including the one read into the record tonight. The Tuscany people, the church people, this applicant, the Mission Corner people, and the Leawood Market Place people are all trying to approach this as a joint project. Winn has spoken with the City Attorney about forming some type of transportation development district to get this done. The burial of these lines is a humongous expense. If it is just done by each property then there is no scale of economy. Once it gets to a half a mile at a time, then some progress begins.

Henderson stated the inclusion of this new clause suggests that they may be able to move forward to have it completed before the next decade. Winn stated he is hopeful that if everyone bands together they have a much better opportunity for doing it in a much more organized fashion. Henderson asked if this likely to bring forward the unnamed owner of the property to the east. Winn stated if they could do a benefit or transportation district, he feels it would be more appealing to the owner to the east to be able to spread those assessments. When Town Center Plaza was built, they did the whole half mile between Roe and Nall at once. It was done as part of a City improvement district. Henderson asked if staff feels this is likely to set a precedent. Binckley stated the City did this before with the Lord of Life Lutheran Church. It just makes more sense when there is a larger section to put underground.

A motion to approve was made by Williams with the revision to stipulation number 2 as stated. Motion seconded by Azeltine. Motion approved unanimously.

CASE 51-05 LDO AMENDMENT - SECTION 16-4-1, ACCESSORY USES Request for approval of an amendment to the Leawood Development Ordinance.

CASE 52-05 LDO AMENDMENT - SECTION 16-4-2, PROHIBITED USES Request for approval of an amendment to the Leawood Development Ordinance.

Binckley recommending hearing both cases together, but voting separately.

Staff presentation: Presentation by Diane Binckley. This amendment is being made to clarify the intent of the ordinance relating to accessory structures. Currently all accessory structures are required to be attached to the primary structure unless identified. Binckley's interpretation of the current ordinance is that it requires cabanas to be attached to the primary structure. A section was added to outline which accessory structures are exempt from the attachment requirement. Section 16-4-1.3

identifies all of the allowed accessory structures within each zoning category. The architecturally attached section, number 25, was removed and brought into section 16-4-1.4. The current section 16-4-1.4 was moved into the prohibited section in a location that makes more sense. Under section 16-4.2.5, No Building Materials Stored, Etc. the words "shall be prohibited" should be added to letters B and C to make them clearer.

Williams asked how that falls under a building material category. Binckley stated it would fall under "Etc." as opposed to any of the items under prohibited uses.

Rohlf asked if someone came asking for a pool cabana, where they would look in the LDO now. Binckley stated one would first look to make sure it is a permitted accessory use, which it is, then it would fall under section 16-1.4 where it identifies that it does not have to be attached. It does not have to be attached, but it does still have to meet the setbacks.

Azeltine asked how this change came about. Binckley stated when someone applied for a building permit she noticed the building department had interpreted the ordinance to not require the attachment. Therefore, the proposed amendment is to clarify which accessory uses are required to be attached and in what manner.

Henderson asked if the ordinance needs to be more specific in regard to dog houses and dog runs since people now own a variety of pets. Binckley stated the ordinance does allow for the Director of Planning to interpret the intent of the ordinance. Henderson asked about standing and parked advertising trailers and how they are enforced. Binckley stated City code enforcement officers enforce the ordinance. Henderson asked if that is being enforced because he sees a lot of trailers with signs on them. Binckley stated projects under development are allowed to have one trailer with the name of the builders on it.

Munson asked for clarification on the ordinance that limits construction to no more than 6 months from date of building permit issuance. Binckley stated there is a process within the building department where a building can extend that period of time as long as they pay their fee.

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

A motion to approve the LDO amendment to Section 16-4-2, Prohibited Uses was made by Williams and seconded by Azeltine. Motion approved unanimously.

A motion to approve the LDO amendment to Section 16-4-1, Accessory Uses was made by Williams and seconded by Azeltine. Motion approved unanimously.

Meeting adjourned.

Lisa Rohlf, Vice-Chair