

**City of Leawood
Planning Commission Minutes**

September 27, 2005
Meeting - 6:00 p.m.
Leawood City Hall Council Chambers
4800 Town Center Drive

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

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

APPROVAL OF THE MINUTES: Approval of the minutes from the August 23, 2005 meeting and the September 6, 2005 work session.

A motion to approve the minutes from the August 23, 2005 meeting was made by Henderson and seconded by Rohlf. Motion approved unanimously.

A motion to approve the minutes from the September 6, 2005 work session was made by Williams and seconded by Azeltine. Motion approved unanimously.

CONTINUED TO THE OCTOBER 25, 2005 MEETING:

CASE 57-05 PLAZA POINTE - VINCE OFFICE BUILDING Request for approval of a final site plan. Located at the northeast corner of 137th Street and Briar.

CASE 64-05 COLTON CREEK ESTATES Request for approval of a rezoning from AG (Agriculture) to RP-1 (Planned Single Family Residential District) and RP-2 (Planned Cluster Detached Residential District), preliminary plat and preliminary plan. Located at 5000 and 5100 West 143rd Street. **Public hearing**

CONSENT AGENDA:

CASE 61-05 EJM ESTATE - OXFORD HILLS 3RD PLAT, LOT 152 & 153A Request for approval of a final plat. Located at 3712 W. 119th Terrace.

CASE 62-05 LEAWOOD PLAZA SHOPPING CENTER Request for approval of a final site plan for sign guidelines. Located at the northwest corner of 123rd Street and State Line Road.

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

NEW BUSINESS:

CASE 55-05 PARKWAY PLAZA - LOT 6 Request for approval of a final plat and final site plan. Located at the northwest corner of 135th Street and Roe Avenue.

Staff presentation: Presentation by Jeff Joseph. The applicant is requesting approval of a final plat and final site plan to allow the construction of a one-story, 12,035-sq.ft. retail building. The applicant is Michael Nigro. This

project is located within the Parkway Plaza development. The proposed building is located towards the south side of the lot, adjacent to 135th Street. The backside of the building faces towards 135th Street. Parking is located on the north side of the building. There are 48 parking spaces proposed for this project. The proposed building will be constructed of stone, stucco, glass and cast stone. The roof will be constructed of pre-cast concrete tile. The applicant has worked with staff on most of the issues and staff is supportive of this application, however, staff is recommending the applicant provide additional pedestrian plaza areas along the north side of the building. Staff is recommending approval of this case with the stipulations stated in the staff report.

Williams asked what staff is recommending. Joseph stated staff is recommending adding more brick pavers along the north side of the building and also adding more of a pedestrian area along the northeast corner of the building. Williams asked if they are asking for more glass. Joseph stated, no. This is for the plaza area with more brick pavers. Azeltine asked which stipulation that is tied to. Joseph stated it is referred to in stipulation number 6 and 7. Duffendack asked if that ties in with stipulation 13, where they have asked for changes in the elevations. Joseph stated the applicant needs to submit new plans to staff.

Rohlf asked what staff would like to be included in the revised elevations. Joseph stated that request is based on the recommendation of the architect consultant for the City. It is outlined in the second bullet point and also stipulation number 5. It reads, "The main roof on the east-west elevation should be raised slightly and connected to the tower to eliminate a disconnected appearance." Rohlf stated the architect's letter to the City states those have been incorporated into the plan. She then asked staff if the Commission has those plans. Joseph stated the revised plans do not reflect the changes.

Conrad asked which buildings have been approved for the overall development. Joseph stated Retail 1, Retail 9, Country Club Bank, and Retail 4 have been approved. Conrad asked if Retail 5 or 7 have been approved. Joseph stated, no.

Henderson stated stipulation numbers 5 through 13 seem to specify in a variety of ways additional information or clarity. He then asked if the applicant agreed with the stipulations. Joseph stated the applicant has not expressed any opposition to the stipulations.

Rohlf stated she feels that the buildings seem to be getting larger when they come back for final. She then asked if staff is tallying the square footage for the project. Joseph stated staff is keeping track of all of the buildings square footage and in the end if it is more than 5% then the development will not be able to build any more. Rohlf asked if that is for the individual lots or overall. Joseph stated, overall.

Williams stated there are spires on the towers, but he does not recall seeing spires on the design guidelines. Joseph stated the same type of spire is shown on Retail 9, which was approved, and this is a similar design.

Conrad asked if the Commission made some determination on the signage on the south façade of Retail 4. Joseph stated on all of the façades facing 135th Street, there are 12-inch letters, which is less than the other signs.

Applicant presentation: Presentation by Craig Lubbert of Lubbert and Associates Architects. Over the past several months the applicant has been working extensively with David Suttle and City staff to present a building that enhances Parkway Plaza and strengthens the 135th Street Corridor. Mike Nigro, the owner, is available for questions. Lot 12, Retail lot 6, is located at the intersection of the main right-in, right-out drive between Briar Street and Roe Avenue. The owner's goal is to make this a luxury retail space by attracting more upscale tenants and they feel with its predominant location and its visibility amenities that can easily be accomplished. The

applicant agrees with all of staff's stipulations except items number 5 and 6. The developer is bringing forth two more materials for the stone. One is a cultured stone and the other is a simulated stone. The proposal tonight came with the simulated stone, but the applicant will conform with staff and the Commission if the other materials were to be approved. Lubbert described the site plan. There is pedestrian circulation adjacent to the building leading internally to the development. On the west side that borders lot 5, there is a proposed plaza that will be brought to the Commission when lot 5 comes in for approval. To the north of that they are proposing a future patio. The owners hope to get a tenant that would justify using that outdoor space and taking advantage of an outdoor area. At this time its banding would be concrete, similar to the scored and hatched that is presently shown. The areas at the southeast and southwest corners are the utilities that are screened with a low wall and shrubs in front to further break up the view of the utilities. To the north is the trash enclosure that is engaged into the building utilizing the same materials for the building. The north end of the building is the patron access to the shops. There is the parking lot, then the pedestrian plaza between the parking and the entrance to the building. Along that plaza they are proposing landscaping, benches and planters that will enhance and attract people to sit along there. In regard to stipulation number 6, staff wants a plaza developed at the northeast corner. It is the applicant's opinion that with the entry coming in, that access could create a hazard if they were trying to get people to congregate in that area. The applicant would want people to move into the plaza area in front of the building. Lubbert described the elevations. There will be gabled fronts to break up the façade. At a smaller scale, they have the shutters and awnings to break the scale down to human scale to relate to the pedestrian sidewalk in front. In regard to the separate towers, they wanted to keep the symmetry but yet identify the center as larger. In lieu of it being all stone, they articulated the top with stucco. It is wider and taller to break up the roof line on the front. They wanted to bring down the scale on the north side. They created a porch and then the plaza area in front. The towers at the end are proportioned and articulated with stone for the legs, stucco and then an accent of stucco as a lintel over the entry. It brings the scale down, even though they are 40-ft. tall. They want the height to give the building identity. The east and west elevations introduce a pop-out bay with a pediment and gabled end in front of that. The applicant does not agree with stipulation number 5. The applicant worked with David Suttle on this elevation. It was their intent to keep the tower element as an element of its own. The tower is an element and the architecture of the building behind would be its own element. It creates shadow and adds more interest to that elevation.

Williams asked if the towers are separate from the main building or attached. Lubbert stated they are attached to the main building. The roof line comes down and there is a little jog in it. The City architect wanted that to extend over and physically tie. But when one looks in perspective, one would perceive the tower element because on the backside it is going to feel as its own element. The tower is going to appear as an element. Williams asked what the circular forms are that are shown on the plans. Lubbert stated it is a stucco built-out. Williams asked what kind of glass there would be on the south side and what the intended use would be for those windows. Lubbert stated it will be darkened out so one could not see through. Williams asked if all of the glass would be opaque. Lubbert stated there would be a spandrel and one could not see anything through it. Williams asked if he is talking about all of the windows on that elevation. Lubbert stated, yes. Williams stated he believes the design for this development was to have real windows, possibly for display. Binckley stated that she agrees with Williams. That information was never identified on the plans. It was always discussed that the windows be a clear glass that was usable, even if it was for display. Williams stated there has always been discussion of making it a four-sided building. Nigro stated it has always been their intention, with the bottom windows particularly, that if the tenant wants a full display along that, then they could do that. If the tenant wanted to use it as storage then they would need to come up with some other solution so as to not show storeroom to 135th Street. The windows would depend on the tenant use. Williams asked if they could do a display window. Nigro stated they could do that. Williams asked what the walls are made out of. Lubbert stated it would be large natural rock, not a modular block. The wall is approximately 30 inches at the highest point and then it will die into the grade as it goes west. Williams asked if the grade on the south side of the wall is flat or if it has some pitch. Lubbert stated it would have

some pitch. Williams asked the distance between the sidewalk and the wall. Lubbert stated 15 ft. at its greatest. Williams asked if from the top of the wall to the sidewalk next to the building would be sloping up. Lubbert stated that is sloping down.

Henderson asked if the towers contain shops on the ground level. Lubbert stated there are entries at that point. Henderson asked if they are entries into a single shop in the tower. Lubbert stated that as one enters the towers it would be more like a porch. Henderson asked what the spire would be made of. Lubbert stated it would be a copper, patina finish. Henderson asked if the towers on each end serve as definitions for the shops between them. Lubbert stated they are bookends for the shops in between. The main circulation comes through the towers. The intent is that people will enter the tower then go into the porch area. Henderson asked if it is constructed in such a way that at some subsequent time if there were a full bloom of shops, they could turn those towers into shops. Lubbert stated, no.

Rohlf asked for a description of the pedestrian amenities for this lot and also any that are known about the neighboring lot. Lubbert stated it is their intent that the southwest plaza area be development when the adjacent lot is developed. Rohlf asked what would be in that area until the plaza is developed. Lubbert stated there would be landscaping and benches. The north plaza will have landscaped islands. In between those islands there will be benches and planters.

Henderson asked if the benches would have backs. Lubbert stated that has not been decided. Henderson stated he believes most pedestrians would prefer to have backs on benches.

Rohlf asked Lubbert why he believes staff requested more pedestrian amenities at the northeast corner. Lubbert stated there was no plaza there for the initial concept during the preliminary and final site plan approval. Having a plaza at that intersection could possibly be dangerous. It is their intention to pull the pedestrians into the north area. They created sitting areas in the front to pull them more up to the front of the stores. Azeltine asked why they think it could be dangerous to have a plaza at that corner. Lubbert stated because there is more traffic at the intersection. Azeltine asked why they want to wait on the southwest corner plaza. Lubbert stated they explained to staff that until they know what that use is, they would coordinate it with the adjacent property owners. Nigro stated the way Sailors set up this development is that they are all responsible for developing what they own. The lot line between lot 5 and lot 6 goes directly through the middle of that plaza area. If they were to develop their east side of that area without knowing what is going on with the west side it would become very disjointed. Azeltine asked if only half of the plaza is on their property. Nigro stated, yes. Azeltine stated that makes sense.

Henderson suggested the architect for the development give the Commission some insight or hold in abeyance the final intersections until they know who will be on the lots. Lubbert stated he has a letter from Suttle Mindlin in regard to the plaza area and what their intent was for that. Duffendack stated he believes that he remembers being able to obtain pledges for cross-design in terms of the entire development. Binckley stated that was done in Plaza Pointe. That makes sense with the grading. In regard to the corner plaza area, it was never staff's intent to take the plaza area all the way up to the intersection and the curb. Staff's intent was to expand on what they have already started and take it to the sidewalk area, the first one that ties to the back of their property, leave a green buffer, and still allow the sidewalk that comes off of 135th Street to still connect to that intersecting area. Staff was trying to provide another space there that could be larger as opposed to what is now shown on the north side underneath the porch area and sidewalks. She believes staff can work with the applicant to get something that will work for what staff is trying to accomplish. Azeltine asked what staff is proposing for distance between the end of the plaza and the intersection. Binckley stated it has not been measured out, but she would assume 10 to 15 ft. Azeltine stated it seems to him that the Commission has put a big premium on these types of areas being very pedestrian friendly, but we would not want to do that at the expense of safety. He then urged the applicant to

make that corner as pedestrian friendly as possible without sacrificing any safety. Duffendack asked if the applicant would be comfortable with stipulation number 6 as written. Lubbert stated he thinks what Binckley has suggested is reasonable.

Williams stated he is supportive of a type of plaza, but it does not need to be filled with dozens of benches. The spaghetti network of sidewalks that are moving through the area trying to create a point where they all merge to identify a main entrance could be a real plus. Paving, seating, landscaping and artwork would give more character to that spot and could be a real plus. It can be done without having a situation that is no more unsafe than what is there already. In regard to the glass on the south side, the design guidelines and all of the presentations for the development were for the side facing the street to connect to the street by way of real windows or display windows. He is in favor of providing more connection so that people using the sidewalks or driving by will have more connection with the shop instead of just a sign over the back end. He would like to propose an amendment for an additional stipulation that would require there to be transparent glass instead of opaque panels.

Nigro stated if the tenants would lend themselves to showcases, then he is okay, but if a tax preparation agency or a tenant that would not have things to display, he is not sure what they would put in those showcases. Williams stated that when this was presented it was presented as an upscale retail strip. Nigro stated he needs to have some lateral movement in the leasing and there could be some uses that would not have the requirement or the need for a showcase. He would not want to end up with glass and something displayed that no one wants displayed. He asked for some consideration in that regard. He is willing to work with staff to come up with a solution. If the stipulation is drafted in such a way to constrain them to only clear glass, then he is afraid they do not have any lateral movement at all.

Rohlf asked if there is anything in the design guidelines in regard to glass. Joseph stated the material that is approved for the development is clear glass. Rohlf asked if the applicant still has an issue with stipulation number 5 regarding the east-west elevation. Luppert stated, that is correct.

Conrad asked if the entire development falls under the 135th Street guidelines as far as amount of center retail building that needs to be developed prior to the outlots being built. Binckley stated the Commission allowed for an amendment on this project to not require the main center to be put in prior to the outlots.

A motion to approve was made by Azeltine with an additional stipulation requiring transparent glass on all elevations. Motion seconded by Williams. Henderson stated he understands the motion is very consistent and in compliance with the guidelines approved for the Parkway Plaza development. Duffendack stated, that is correct. **Motion approved unanimously.**

CASE 56-05 TOWN CENTER PLAZA - 810 ZONE Request for approval of a final site plan. Located at 4800 W. 119th Street.

Staff presentation: Presentation by Jeff Joseph. The applicant is requesting approval of a final site plan to extend the existing patio and to add signage on the existing building. This building is located on the south side of Town Center Plaza. This building was previously the Uptown Diner, then Fenton's and now it is called 810 Zone. The patio is currently located on the east side of the building with a 3-ft. wrought iron fence surrounding the patio area. The applicant is proposing to extend the patio to the north. Two new awnings and three trellis structures are proposed within the patio area. Television displays are proposed inside the awnings. The applicant is also proposing to expand the existing trash enclosure with an 8-ft. tall metal screen wall. Staff is recommending the

trash enclosure walls be constructed of stucco to match the existing walls and only the gates be constructed of metal. The applicant is proposing additional signage for the building. The proposed signage reads, "Sports Radio, 810 Zone, Game On." Per the Leawood Development Ordinance, any signs that identify a product or any other information other than the name of the establishment are not allowed. Staff is supportive of this application with the exception of the additional signage. Staff is recommending approval of this case with the stipulations stated in the staff report.

Azeltine asked if this would be protruding into the existing parking. Joseph stated, no. It would be in the existing landscaped open space.

Duffendack asked if there is currently signage on the canopy. Joseph stated, no.

Conrad asked the anticipated occupancy of the patio and if that would have an impact on other portions of the facility that should be addressed at this planning stage. Joseph stated the applicant could better answer that question.

Henderson asked what staff thinks about the feasibility of the noise staying within the patio. Joseph stated if the stipulation regarding the noise is approved, then the City's code enforcement officers could measure the noise to enforce it.

Williams asked why there is a concern with the noise, since there are only retail shops and other restaurants around this building. Joseph stated he believes the City has received complaints from other restaurants in regard to noise. Binckley stated the stipulation gives the City something to support us so that it can be regulated. Williams asked if the City has an ordinance for decibels rating. Binckley stated 60 decibels is what has been used in the past. Duffendack stated the other thing the stipulation does is to encourage the applicant to use technology that would make the noise sources directional and that can be done pretty easily.

Henderson asked the expected clientele age. He believes that if they are from 30 to 50 years old, then a 60 decibel rating containment is irrelevant. Binckley stated decibels are measured at the property line and not at the edge of the patio. The property line would be a minimum of 40 ft. away and possibly more from the patio. Duffendack stated it does not seem the City feels this would be a problem. Binckley stated she does not see it as being a big concern. The stipulation is included as a way for the City to regulate it in case it becomes a problem.

Applicant presentation: Presentation by George Lafferty, the architect representing the 810 Zone. Also present are Chad Boeger, the president of Union Broadcasting and Ed Nelson, the president and CEO of KC Hopps. The usage of the patio right now is difficult because of the south winds. The applicant is trying to create a barrier to block the wind from this area and also help with the sound issue. They also want to expand the size of it. Business has been very good and they expect it to remain that way. The applicant is also asking to include a small bar outside to help service the patio because of the distance the servers have to travel to get back and forth. They tried to keep everything consistent with the exterior. It has the same materials and colors. They are using the brick as a wainscot around the building. They are also using that on the screen walls and the stucco material will also be used on the outside bar that is visible from the exterior and the expansion of the outdoor storage space. They tried to make the patio pleasant, which is why they put in shade arbors. It will be much more usable at lunch. Fans will be inserted in there. They tried to maintain as much landscaping as possible. They would like to have trees inside that area as much as they can to help provide shade and warmth to the space.

Duffendack asked for the applicant to speak on the comments made by staff in regard to the signage. Tony Hermelink, with Art of Illumination, showed pictures of what the signage looked like with Uptown Diner. They are

proposing additional channel letters on the stainless steel band. Hermlink showed a rendering of what they are proposing. The sign would read, "Sports Radio, 810 Zone, Game On".

Conrad asked if the neon tubes are currently functional. Hermlink stated the neon tubes have all been removed.

Azeltine asked the materials of the proposed signage. Hermlink stated the face of the letters would be black translucent vinyl so that only a little edge of the letters would show up white at night.

Henderson asked if the patio is going to be sprinkled. Lafferty stated they are not planned on heating it. They are not expecting it to be open in the winter. They do not expect it to be air conditioned. Henderson asked if it is ventilated reasonably well. Lafferty stated, yes. Henderson stated concern that the fire marshal had not looked at any hazard concerns. Joseph stated the fire marshal will look at that during the time of building permit. Binckely stated the fire marshal did look at it during this stage but had no comments.

Henderson stated he is intrigued with the way they are going to use the unusual architecture of the building. It is a bit reminiscent of RCA Rockefeller Plaza. It is a neat use of the architecture.

Conrad asked for an explanation of the pedestrian circulation. He would like to know how one would get from the inside to the outside. Lafferty stated the access would be from the current door inside of the restaurant to the patio. The gates would not be used as entrance into the patio. They will probably only be used as emergency exits. Conrad asked if there is a step going from the inside to the outside. Lafferty stated, no. Conrad asked the anticipated occupancy for the patio. Lafferty stated it would be in the range of 75 to 80. Conrad asked if there is any anticipation to upgrade the restrooms in the facility. Lafferty stated they are not planning on it. They are only adding about 30 seats. They do not think it will have a major impact. They have not currently had any issues with the bathroom count. Duffendack reminded the Commission that the capacity questions would be dealt with by Building Codes at the time of building permit.

Azeltine asked if the proposed fence is different than the current fence. Lafferty stated the fence at the lower portion would be about 5 ft. It would be just high enough so that the people seated would get protection from the wind. Azeltine asked if the current fence would be replaced with this. Lafferty stated, yes.

Conrad asked why they are increasing the size of the trash enclosure. Lafferty stated due to the increased volume in the restaurant. In order to keep everything looking good from that angle they thought it would better to increase the size of the enclosure. Conrad asked about removing an existing sidewalk. Lafferty stated it is currently a sidewalk to nowhere. The original architect did not show it on the plans. It leads to the service drive. There is no reason for anyone to use it. Conrad asked if the walk-in cooler and freezer on the northeast corner currently exist. Lafferty stated, yes.

Munson arrived.

Henderson asked what times during the year they plan on using the patio. Lafferty stated it is his understanding that it would be like most other places in the City where it would be closed off during the cold months. There could be some times during those months when it is 50 degrees outside and they might have some outdoor heaters. Beyond that, he does not expect it to be open into the Christmas season.

Williams stated he is supportive of the idea of trying to contain the noise, but maybe it would be prudent to get some measurement type strength to the comments since it is virtually impossible to contain noise. He likes the way the sign looks, but the sign ordinance does not promote advertising what goes on inside. Although it looks

like it would be a nice fit, he would not want to open up the flood gates for what they could see, given some of the bad stuff the Commission has seen and rejected based on the ordinance. While it looks nice, he thinks this would not be a precedent they would want to set. He is supportive of the expansion of the development and thinks it will be a nice addition for that business and the area.

Azeltine asked why staff is not supportive of the additional sign. Joseph stated, per the Leawood Development Ordinance, the permanent sign can only be the name of the tenant and this is like a product name. Williams stated a similar situation would be for Bank of Blue Valley where they wanted to put the words, "internet banking", to their sign and the Commission looked at it as advertising instead of part of their name. Henderson asked if the objectionable part is the last two words. Joseph stated the name of the establishment is "810 Zone" and that has been identified. Duffendack stated another issue would also be the number of signs. Joseph stated, yes, only two signs are allowed per building. This would become four signs if it is allowed. Boeger stated the actual name of the restaurant is "Sports Radio 810 Zone". The applicant wants to clarify that for the patrons coming in. Duffendack asked if the sign that is currently there would come down in lieu of this sign. Boeger stated, no. Joseph showed the previously approved sign for Fenton's. Rohlf asked if Fenton's asked for any signage on the tiered portion that 810 Zone is now asking. Joseph stated, no.

Hermelink suggested the Commission could include a stipulation that it be approved because the building already had the neon on it where they removed it and would replace that with signage. Right now there is a lot of stainless steel, like a big bumper.

Munson stated he would go with staff's recommendation. The Commission has been consistent in the past with what is done with signs and should be in the future with what the City wants for signage and should go with the recommendations of staff. Williams asked if staff is looking at this as a form of advertising or looking at it as more than the two signs. Joseph stated the primary issue is that it is not the name of the tenant. The second issue would be the square footage of the sign. It is much more than the previously approved sign. The third thing is the number of signs. Williams asked if the "Game On" were taken off of the sign, would that take the advertising issue off the table. The Commission has had proposals before us recently with applications for four or five signs. The proposal has the potential for four signs.

Azeltine stated he is not comfortable granting a deviation given the depiction that is given. He is not sure exactly what it is going to look like. He would have to be shown a little more vivid of a depiction. He asked if the letters the applicant is proposing are removable. Joseph stated, no.

Williams stated the photo the applicant showed reads that it is a flat marquis-type sign board. He then asked if it is stepped back. Duffendack stated, yes. Williams stated the appearance would be different than the pictorial sample given tonight.

Rohlf asked if Williams suggested amending stipulation 6 in regard to the sound. Williams stated he would like it to read, "Not to exceed 60 decibels at the property line." Azeltine asked if that is within the Commission's purview to regulate. Binckley stated the development ordinance is not that specific. She thinks that adding a number to the noise level is helpful.

A motion to approve was made by Williams with an amendment to stipulation number 6 to be changed to read that the noise generated by televisions and outdoor speakers shall not exceed 60 decibels as measured at the property line. Motion seconded by Rohlf. Henderson made an amendment to the motion to change stipulation number 3 to allow for the signage on the stainless steel as proposed, but without the "Game On". Amendment died for lack of a second. Motion approved unanimously.

CASE 63-05 WIRELESS ANTENNAE - SPRINT Request for approval of a special use permit. Located at 129th and Mission.

Staff presentation: Presentation by Jeff Joseph. The applicant is Nicolette Zimmerman representing Sprint. The applicant is requesting approval for a special use permit to install two repeater antennae on top of two KCP&L power poles. The power poles are located near the intersection of 129th Street and Mission Road. This property is owned by the City of Leawood. It is within the right-of-way. The antennae are proposed on top of the existing power poles, approximately 20 ft. from the ground. A small equipment cabinet is also proposed near the power pole within the right-of-way. In reviewing this case, the City has the authority to look at three criteria. Those criteria are zoning, visual impact and land use. Staff has looked at these three criteria and this application does meet the requirements of the Leawood Development Ordinance. An interact meeting was held and a summary of the meeting is attached. The applicant has submitted a statement showing how this meets the federal guidelines or FCC regulations. The health issues and licensing requirement is looked at by the federal government and not by the City. Staff is recommending approval of this case with the stipulations stated in the staff report.

Rohlf asked what the Commission is looking at to approve. Joseph stated the Commission should be looking at how the property is zoned and how it fits in with the zoning, the visual impact and the land use.

Conrad asked where the box is located. Joseph stated the box is located 10 ft. to the north of the power pole. Joseph showed an aerial map of the location. He then stated the cabinet is 4-ft. tall.

Henderson stated near Alhambra and Mission Road, one would need to be looking for the box to see if it is different from other types of utility boxes. Joseph stated there are cable television boxes in that area, too.

Williams asked the size of the antennae. Joseph stated it is box. It is 14 in. by 14 in. Duffendack suggested the Commission ask the applicant that question.

Applicant presentation: Presentation by Alicia Martin, representing Sprint. Martin showed photographs of the power poles. The purpose of the technology is to improve the signal strengths of their existing customers. It does not replace a tower, but it supplements other towers in the area. The functionality of the system is to pick up a signal from an existing tower and transmit that signal to the other antenna that will then be transmitted into the area they are trying to improve the signal in. The purpose of the technology is to do a signal strength enhancement. These are not revenue generating. They are a bottom-line expense for Sprint. They are there to serve existing customers. The purpose is to improve the integrity of their network. In regard to the aesthetic impact, they tried to design it to be similar to what is currently in the right-of-ways of Leawood. Martin showed some pictures of existing utility boxes in the area. They had some restraints from KCP&L. Sprint first wanted to place the boxes on the power poles themselves, but KCP&L did not allow that and requires the box to be in the right-of-way. The topology demands this type of deployment. There are areas that have weaker signal strength because they cannot be reached by existing towers. There are small pockets of area where customers experience low signal strength. This type of deployment is all that they have to enhance that.

Munson asked how many weak spots they believe they have in Leawood. Martin stated those weak spots vary with the changes in topology. There are some areas where the leaves in trees can cause a difference in signal strength or large buildings. Munson asked if there could be future requests for more of these. Martin stated, yes. The goal is to improve service for as many customers as possible. Munson asked if any of this is covered by the FCC as far as what the City can regulate. Binckley stated without legal counsel present she does not know that answer. Staff is attempting to treat this user equal to all others in regard to cell towers. Staff has reviewed one

other repeater site on 119th Street a few years back. Munson asked if the applicant is proposing to place anything on the towers. Martin stated, no. Based on the topology, there are different types of antennae that could be used. They could vary slightly in size to maximize the benefit at any given site. Williams asked the approximate size. Martin stated the panel antenna is approximately 2 ft. tall and 8 inches wide. The server antenna is roughly 24 in. by 24 in. Williams asked how high off the ground they would be. Martin stated the FCC regulates where they are permitted to go. From an engineering standpoint they need to be at least 15 ft. and the FCC regulates that they need to be 18 ft. off the ground. They are able to utilize other parts of the pole if that is worked out with the pole owner. In their opinion, the higher, the better. All of those things are worked out and approved by KCP&L.

Munson asked if the guy wires are essential to this. Martin stated, yes. They are only essential because of a requirement from KCP&L. The purpose of the guy wire is to balance the tension created by the wire they have going across. That is purely a safety thing from the power company's standpoint. Sprint has been told that is a requirement of KCP&L.

Conrad asked if a messenger wire could be buried. Martin stated she believes that it can be done. It is her understanding that it creates much greater disturbance to the right-of-way. Another issue with that is that multiple utilities would be required to do cable-locates. The reason for the guy wire is that it was preferred by KCP&L and less obtrusive, aesthetically.

Martin showed pictures of existing guy wires in Leawood rights-of-way. The applicant is in agreement with all of the stipulations, although would like to request a waiver from the landscaping requirement. They are trying to remain consistent with what is already in Leawood. They are afraid that more landscaping would call attention to the box. There are so many that are already in the right-of-way that they do not feel one more would significantly affect the aesthetic appearance.

Conrad asked if the guy wires would require the yellow plastic sleeves around them. Martin stated she would assume that is a requirement for safety reasons.

Henderson asked what happens when a roadway is widened so that it intrudes on where this unit is located. Martin stated Sprint would pay to have those relocated. Henderson asked if KCP&L could change their approval of the box if the street were widened. Martin stated they would have that right.

Azeltine asked to see the photos of the existing poles they are requesting to attach to in order to see the existing landscaping. Martin showed pictures of the existing poles they are requesting to attach to.

Munson asked how far away the houses are from where this is going to be taking place. Joseph stated the closest house is 120 ft.

Azeltine asked if they have any of these currently installed. Martin stated they do not have any of these installed on wooden distribution poles. They do have some on transmission poles in Overland Park and elsewhere in the KC metro area. That is not governed by the FCC. It is not comparable. Rohlf asked how they decide where to place these. Martin stated they look at signal strength and the population and the number of people they are not serving as well as they could be. Rohlf asked what other areas they have identified. Martin stated there are five other sites they have been identified to make signal enhancements to, but they want to wait to see how this one works. Munson asked if the others would depend on a pole or structure. Martin stated this technology requires a vertical structure.

Public hearing:

John Kelly, 12800 Howe Drive. His first observation is that the use of the right-of-way was for a regulated public utility company like KCP&L and now we have an unregulated utility paying KCP&L to put the installation on their poles. This sets a precedent that could be followed later. He believes the applicant showed the only power pole with a guy wire on Mission Road between 119th Street to 135th Street. The zoning and planning ordinance has some emphasis on keeping it aesthetically pleasant. This installation is only going to serve a small amount of people and could set a precedent that they would want to put these in a lot of places. He does not completely agree with the statement that it is just a cost to Sprint. If they increase their signal, they will increase their business. From 127th Street to 135th Street, both neighborhoods on both sides maintain the grass. There is a whole line of landscaping both for Waterford and Cherry Creek. The applicant showed pictures of what it looks like in the wintertime, so they do not serve a purpose.

Kathy Kelly, 12800 Howe Drive. Her property is contiguous to this proposed antennae system. She is also the president of Waterford Homes Association. She requested the public be told the stipulations of the case. Binckley suggested waiting until after the public hearing. Kelly stated cell phone service is not an essential service like electricity. There are some questionable health issues that may affect the health and well being of residents. It may affect the property values of owners of properties contiguous to this because potential buyers may have issues with the health issues. Some housing is at a high level with these transmitters. Her property sits on a hill. A comment was made during the interact meeting that unless you are at eye level, it is not a problem. Her property is at eye level. Another concern is that this equipment detracts from the residential nature of the area. It is an eyesore. If mistakes have been made in the past with cable television, let's not continue with those mistakes. Her understanding is that all of this equipment including a very large box, about her height and wider, is only going to serve 300 to 1,000 ft. It is not going to be a direct benefit to the people who live there, but people who pass by there. As president of Waterford homes association she served on the Mission Road Landscape Committee, she lobbied very hard to improve the landscaping on Mission road and have invested in this area over the last 5 years. They have spent over \$150,000 for their entry monument and landscaping. Cherry Creek has invested a similar amount on their entry monument that is not 300 ft. from this box. They have tried very hard as existing neighborhoods to keep up with the new neighborhoods to the south and it seems pointless if they are going to have all of this visual litter in their area for a very small benefit. This equipment serves only Sprint carriers. It is not inconceivable to think that they might have before them within the next year all of the other carriers. There could be five or six boxes out there. She is not in favor of that. It is her understanding that a similar installation has been denied previously in the area of 119th Street near the Hallbrook community. She thinks the Commission should think about the reasons for that denial and see why we should go ahead at this time. She asked the Commission to give the Waterford homes association time to educate their residents on this application and give them time to respond as a homes association. They have not had a board meeting since the mailing went out. The mailing did not indicate any ground installation. It only said it was an antennae system. It is in fact a transmitting system. There will be ground installation that was not noted in the Sprint mailing. She asked the Commission to help to maintain the residential character along Mission Road. She does not want to see a proliferation of boxes along the road.

Azeltine asked when the Waterford homes association was notified. Kathy Kelly stated the subdivision was not notified. She was notified as a contiguous property owner. Azeltine asked when she received notification. Kelly stated it was shortly before the interact meeting. She also does not believe that all property owners that are within the required amount where notified. The applicant used the area of 129th Street and Mission as the site and it is really half-way between 129th Street and 127th Street.

Henderson asked staff what the distance requirement is for notification. Binckley stated by State statute and by City ordinance, they notify everyone within 200 ft. of the property and that is for protest petition purposes. By ordinance, the City also requires 1,000-ft. notification for anything related to cell towers or cell antennae, which was required in this instance. The notification time frame is a minimum of 20 days prior to the public hearing and that is not inclusive of the day of the public hearing. The City does not have a specific guideline for the notification of the interact meeting, but staff usually asks for it to be sent out 7 to 10 days prior to that meeting. The notice had to be sent 20 days prior to the hearing.

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

Binckley stated there was an application for a repeater site in about 1998 and the application was for a pole on 119th Street at approximately the Pawnee intersection. That application was approved. There was a protest petition, but she believes it was overruled. That facility was installed. She is not sure for how long. Azeltine asked if it was the same type of box. Binckley stated it was very similar. Azeltine asked if staff is comfortable with the definitions used here and if they are in compliance. Binckley stated staff feels they are meeting the ordinance.

Duffendack asked if the City has denied anything similar. Binckley stated the City has denied a couple of towers, but never a repeater site.

Azeltine asked if the 20-day requirement is a State statute. Binckley stated is a requirement by State and City. The applicant has indicated the mailing was sent out September 6th, and that is standard procedure. Azeltine stated he is not comfortable with that from the standpoint that even though they have fulfilled the statutory requirement from a practical standpoint, it is simply not enough time for the folks in the area to get a pulse on what people think. He thinks that this should either be continued to allow people time to do that or if he is forced to vote on it then he would have to be forced to vote to deny on that basis.

Conrad asked staff if Sprint's use of the right-of-way and poles is legal. Binckley stated Sprint is working with the City's legal department and there is a franchise agreement that will need to be agreed upon. That franchise agreement would be on the same City Council agenda as the approval for this case. Conrad asked if that means that this is a little out of the ordinary. Binckley stated there are a lot of franchise agreements with the City. It is not unusual. Conrad stated, in regard to aesthetics, he would like the messenger line to be buried. Martin stated that, as a mode of getting approval, it could be denied by Sprint, given the resources and the danger to other utilities. While it is possible, they have met the request of KCP&L with this application. Conrad stated the messenger line and tie-downs with yellow plastic sleeves are probably the biggest change to the landscape for this whole installation. He then asked if there is some way to encourage an investigation of burying the messenger line for the installation. There are three components that will be visually obvious; the box on the ground, the two guy wires and the messenger lines. It appears these poles are four or five feet off of the sidewalk. He would like to focus on aesthetics to investigate the burying of the messenger line. Azeltine asked if Conrad is suggesting a continuance. Conrad stated he could be, if a stipulation could not be written to incorporate it. Duffendack stated he is not sure how they could write a stipulation around approvals by the utilities on the investigations of sub-surface conditions. Conrad asked if any of the other Commissioners feel that is worth investigating. Munson stated his concern is trying to balance the needs of cellular phone users that may or may not live in the area with the preferences of the people who have purchased houses. Historically, he believes that the Commission has tended to have sided with the homeowners. He feels the improvement of cellular service has merit but he also thinks it should be done tastefully without the guy wires and such. The City could be faced with more of these around the City. Williams stated he is not as concerned about the appearance as much as the other Commissioners. He has looked at examples of similar boxes that serve the needs of utilities. It is a

necessary evil of society's desire to have these services available. As technology changes, some of these get smaller. He does not like seeing power transformers in the middle of the street which we routinely have everywhere. He is supportive of this. It is not a huge item out there. He does not see it as being abnormal to other portions of the street. He would feel differently if there were a half-dozen of these clustered together.

Henderson stated he agrees with Williams' sentiment because his concern is largely that the Commission does not have much of a voice in respect to public facilities. In earlier situations, that is what annoyed the Commission the most due to FCC regulations. The Commission could say that we do not like it. He tends to support the repeater site, though it does not mean that he is gung-ho that we keep doing it. Duffendack stated this Commission is on record in fairly recent past as objecting to the proliferation of more utility boxes. He believes they are the ugliest part of the landscaping around the City. These applicants rely on what's there as the gauge for what needs to be done in the future. That is the standard by which organizations proceed. To say that using what is there now will keep from aesthetically disrupting the landscaping of Leawood is not where this Commission has come down. Henderson agreed. He has always said that we should exclude SUVs from Leawood because they are tearing up our streets. It has not met with universal approval. He sees utilities somewhere in that line-up. People like transportation and they like communication.

Conrad stated he thinks the Commission is in favor of utilizing technology and making it all work the best it can. He thinks that if there was an opportunity to minimize the amount of visual clutter then he thinks the City should pursue it. If there is an opportunity to bury the messenger line and eliminate it and the two anchor cables then he would like to see the applicant address to the Commission why, either financially or from an engineering standpoint, that cannot be looked at. He then asked the applicant if there is a time frame for which they could look at that and answer back if that is a viable solution. Martin stated KCP&L is required to respond back to that request within 45 days by Federal law. The applicant would also need to add on the time it would take to internally work that scenario and see if it is feasible.

Azeltine stated he not only has a problem with the aesthetics surrounding this devise, but his biggest problem is the timeline and the amount of time given to the residents to communicate with one another to see how much resistance there is to this and what ideas people in the area might have, if it does go through, for making it more aesthetically pleasing for them. He believes this should be continued to allow the residents time to get a pulse on the neighborhood's view.

Henderson stated he understands Conrad's concern. He then asked if Azeltine is suggesting an amendment to the Development Ordinance. Azeltine stated he is suggesting a continuance until Commissioner Conrad's concerns can be met, the applicant can get with KCP&L and whatever needs to happen and in the meantime the people affected by this will have time to get a pulse on what the adjacent neighborhoods feel on this.

Conrad asked if the applicant would want to request a continuance to investigate the redesign to eliminate the messenger line and the anchor lines. Martin asked if the applicant needs to formally request a continuance. Duffendack stated the Commission can move for a continuance but would prefer the applicant request a continuance. Martin requested a continuance on behalf of the applicant. She is not sure what the response will be internally, whether it would be a go or not. Conrad stated his purpose is not to extend this a tremendous amount of time. It seems there are questions about existing utilities and how hard it is to put that in and some other issues. He feels they should investigate all of the options in order to implement the equipment needed. Martin asked if the Commission would stipulate a timeline in which Sprint has to respond. Duffendack stated the Commission does not need to stipulate a time frame. They could just say until practical. Binckley suggested stating October 25th just to give an exact date and if the applicant could not meet that then they could request a second continuance and then the City would show that on the agenda.

A motion to continue this case to the October 25th meeting was made by Azeltine and seconded by Munson. Motion to continue approved 5-1. Henderson opposed.

Duffendack stated this meeting would be Diane Binckley's last meeting. He appreciated working with Binckley and how much value she has given the Commission during the many years she has been in planning and how much that has met to them as far as their ability to do well. He is certainly going to miss her and wishes her well.

Meeting adjourned.

J. Paul Duffendack, Chair