

# City of Leawood Planning Commission Minutes

January 10, 2006  
Meeting – 6:00 p.m.  
Leawood City Hall  
4800 Town Center Drive

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

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

**APPROVAL OF THE MINUTES:** Approval of the minutes from the October 25, 2005 and November 8, 2005 meetings.

Conrad stated on the October 25<sup>th</sup> minutes, page number 3, he believes Klein stated the City would "not" be supportive of making these permanent buildings. Klein agreed. **A motion to approve the revised minutes from the October 25, 2005 meeting was made by Azeltine and seconded by Rohlf. Motion approved unanimously.**

**A motion to approve the minutes from the November 8, 2005 meeting was made by Williams and seconded by Rohlf. Motion approved unanimously.**

## **NEW BUSINESS:**

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

**Staff presentation:** Presentation by Mark Klein. The applicant is requesting approval of a rezoning from AG (Agriculture) to RP-1 (Planned Single Family Residential District), preliminary plat and preliminary site plan for the development of 32 single-family lots on 19.26 acres, for a density of 1.66 dwelling units per acre. The applicant is requesting approval to develop a piece of property that consists of two, 10-acre pieces of property. These are directly east of the St. Michael's Church, which is located at about 143<sup>rd</sup> Street and Nall Avenue. The applicant is requesting several deviations. The first deviation is to cul-de-sac length. The standard for the Leawood Development Ordinance is that cul-de-sacs shall not exceed more than 500 ft. in length; however, staff has talked with the property owners to the east in regard to possible street connections and after several conversations with those property owners they indicated they were not amenable to having a street stub out onto their property. The applicant has been precluded from the street connection to the west where the Villas of Chapel Green is located. When that development came through they extended a cul-de-sac off of Nall Avenue that exceeds the 500 ft. as well. They provided an island, and as part of that development they developed lots at the end of that cul-de-sac that would preclude any kind of connection to the Villas of Chapel Green. On the west side is St. Michael's Church. They have preliminary approval for a church/school and ball fields. That precluded a connection through that piece of property. Another deviation the applicant is requesting is a deviation to corner lot side setbacks. The standard is 30 ft.; however, the ordinance allows a deviation up to 22.5 ft., which the applicant is requesting. They are only asking for this on three lots. These are lots 10, 11 and 16. In addition to that, the applicant is requesting a deviation for lot width. The standard for lot width within the RP-1 district is 100 ft. The applicant is requesting a deviation to allow 81 ft. lot width on a couple of lots. Those are lots 5, 6, 26 and 27. The LDO allows a deviation to go down to 80 ft. The LDO states they need to provide some common space/open area to make up for those deviations. In reality, the lots are quite a bit larger than required for RP-1 zoning. The minimum lot size is 12,000 sq. ft. The applicant has an average lot size of over 18,500 sq. ft. They have also provided a detention pond on the north side of the creek that bisects the property on the west side of the

street that they are turning into an amenity. They are creating a trail system that goes around the stream over to the north and west. They are creating a covered seating area against the detention pond. Staff is recommending approval of this case with the stipulations stated in the staff report.

Duffendack asked Klein for clarification on the lot numbers the applicant is requesting the deviation for lot width. Klein stated the lot numbers are 5, 6, 14, 15, 27 and 28.

Conrad asked the length of the cul-de-sac. Klein stated the cul-de-sac is approximately 1,416 ft. from the entrance off of 143<sup>rd</sup> Street. Conrad asked if safety is the basis for the ordinance listing 500 ft. for a cul-de-sac length. Klein stated, yes. Conrad stated the fire marshal felt this is acceptable. Klein stated he thinks that given the circumstances such as trying to work with the property owners to the east and the fact that the Villas of Chapel Green to the west was developed in such a way to preclude any connection to the west, this situation was acceptable to him given the number of lots that are there. Conrad stated he remembers something similar with Willow Creek. Klein stated that development was a little different where they had some cul-de-sacs extending off of Mission Road that were a little bit longer. In this case they wanted another cul-de-sac from the west. Klein showed an aerial of that situation. Conrad stated he understands it is a difficult tract of land and it may not be easy to accomplish what the City's philosophy has been with safety and connectivity. He is concerned about the safety issue of it. He wants to make sure there is a clear understanding the reason behind the 500 ft. cul-de-sac has been for access and safety. He would like to think that we have done everything possible to try to make a connection to alleviate the problem on the property. He then asked about the green access on Willow Creek. Klein stated it was a 12-ft. green access between the two cul-de-sacs.

Azeltine asked if there are any other cul-de-sacs in Leawood of this size. Klein stated he believes so, but he would need to research it. Azeltine stated he would like to know from the fire marshal what length it becomes a hazard that is not acceptable to him. It seems like a big deviation. Klein stated staff did not look at the length of the cul-de-sac lightly. Staff held meetings with each of the property owners to the east. Staff looked at a street layout and where some future connections could be. It is through those conversations where we ended up with what is now being presented. Part of the reason for that is the development to the west would have been an ideal connection. Azeltine asked again Klein knew if there are any other cul-de-sacs of this length in Leawood. Klein stated he believes there is a pretty good chance that there are, but he would have to research that.

Rohlf asked about the properties directly to the east. Klein showed an aerial view of the area. Rohlf stated she is concerned about the current drainage. Klein stated there are three 10-acre parcels to the east of this proposal. Rohlf asked if they could be developed on. Klein stated they could be sometime in the future. Staff spoke with those property owners. Rohlf asked what the detention is on the church property. Klein stated they have a dry detention basin.

Munson asked if there is any possibility that each of the parcels will come in separately and will not want any connections. Klein stated staff wanted to find a way to find future connections. Originally, the applicant showed a street extending over and a stub-out against the east property line to provide a future connection. Staff met with the property owners to the east about providing access; however, after speaking with the owners, especially the one directly to the east, they did not want to have the street stub out for the future connection. In regard to the other 10-acre parcels, they will probably not have as much trouble as far as creating connections. They do have to maintain some separations from the intersections, but they should be able to do that. Lambers stated the issue discussed with the property owner directly to the east was the possibility that if this project goes forward as envisioned, that when the 20 acres develops in its entirety that he, or a subsequent owner, could request an extension from their east property line to allow a cul-de-sac to go west and develop the north five acres and then we have the extension limit we have for cul-de-sacs coming back into play. At that point in time we advised him that it is possible that the extension would not be allowed even though we have these 20 acres before us tonight. Staff has met with the property owner to the east and they do not want the connection. Staff has looked at this area and believes it is taken care of. Villas of Chapel Green has gotten us into a corner. Staff should have taken the initiative and looked at it more comprehensively at that time and provided the connection to this project and not have the cul-de-sac off of Nall Avenue.

Reynolds asked if there are some concerns regarding the storm water study. Ley stated the applicant provided a storm water study as part of the preliminary plan submittal. As part of that, public works does a review and then prior to coming in for final plat they are required to have an approved stormwater plan. It is at that time when the applicant addresses any comments made by staff. Reynolds asked if Ley is confident that the issues will be dealt with in the process. Ley stated, yes.

Conrad asked if the current study includes the underground pipe system. Ley stated there are two detention ponds. There are the pipes on the west side and on the north and south sides of the creek there is an open retention pond.

Munson asked how the detention pipes work. Ley stated they are large buried pipes that have a small opening to control the amount of water released, so it backs up inside the pipe. Munson asked the capacity. Ley stated he is not sure. He knows there are four lines proposed. Munson asked the diameters. Ley stated about 5 or 7 ft. Munson asked if they would be concrete or metal. Ley stated they would be corrugated metal pipe.

**Applicant presentation:** Presentation by Jason Meyer with HNTB, standing in for Brick Owens. The applicant knows they are in the City of Leawood and will be building high quality homes on each of these lots. The market demands certain homes in Leawood. They are trying to incorporate the creek, turning it into an amenity. Water will be coming up through jets and it will be a park-like setting with natural stone and stucco for the gazebo structure. On a site such as this there are a lot of limiting factors. The applicant believes they are coming forward with a plan that exhibits the best use for the site and preserves as much of the existing vegetation as possible. They will be saving as many trees as possible. They have even talked about retaining wall wells if there is grading a foot above the existing grade now to be able to preserve the existing trees. There are two homes on the site. One will be moved to lot 25. It will be completely remodeled and renovated to bring it up to today's standards. A three-car garage will be added to that home. The applicant has extensively met with the surrounding property owners to try to work these issues out. They have been working at this since September to get to this stage. He has done a lot of research on cul-de-sacs and one of the things he has noted is that most of the standards for cul-de-sac length have been held over since the 1930's. They designed cul-de-sac lengths because fire trucks could not reverse. He has talked with many fire-fighters and asked them what they feel an acceptable cul-de-sac length is and they say they can back anywhere. It is a long road and it was not intended to be that way. This is how the property is laying out. The applicant agrees to all of the stipulations in the staff report. The applicant is asking for a couple of deviations. The deviation to the side yard on a few lots is to allow for side-entry garages. The lots they are asking for a width deviation are each almost half an acre in size.

Perkins asked if they are building spec homes. Meyer stated he believes it is going to be mostly spec homes and some custom homes. Perkins asked if the existing bridge would be reconstructed. Myer stated there will be a culvert that goes under the road. Perkins asked why they are requesting the deviations. He then suggested they could have made the house smaller. Myer stated the houses will fit on the lots. They are trying to create something a little different. If they receive the side yard deviations, those lots will have side-entry garages. The other lots where the dimensions are less than required, those are on cul-de-sacs and the homes will be able to be set back in order to fit the homes on the lots.

Munson asked what the side yard would be on lots 5 and 6. Myer stated it would be the Leawood standard side yard. Klein stated 12 ft., so 24 ft. between buildings. Munson asked if the fire marshal is requiring a specific roof due to the small side yards. Klein stated they are not requesting a deviation to side yard. Normally you see that when an applicant is requesting a 7 ft. side yard, 15 ft. between buildings. Meyer stated they are only requesting a deviation to side yard for three of the lots. Munson asked if the Villas of Chapel Green has been fully developed. Klein stated, yes. Munson asked if the development of the Villas of Chapel Green affected the drainage on this property in any way. Ley stated the existing channel went right through where Villas of Chapel Green is located. There is a detention pond on the southeast side of the Villas of Chapel Green and also on the northeast corner of the church that is required for controlling runoff for both of those properties. When the church comes in for final development plan, public works will have them adjust the pond because it is a little under size right now.

Duffendack asked for description of the monument signs. Meyer stated they are proposing to provide a small entry monument column in the center median as one enters the development and then there would be some very simple wrought iron wing walls outside of the sight distance triangles on either side of the entry.

**Public hearing:**

Jay Oltjen and his wife Rita live at 4900 W. 143<sup>rd</sup> Street, which is the 10-acre estate immediately east of this proposed development. He and his wife have lived there for approximately three years. They purchased the property due to its unique characteristics - the pond, the driveway leading to the house, the bridge, the creek, the expanse of 10 acres and privacy. They wanted to live in Leawood, close to their children's school and his office. They were informed in July that the two estates to his west had come under a contract with a developer. This developer has approached him more than once over the past six months in order to attempt to purchase his property. They cannot duplicate the unique character of what they have and they do not want to move. He has already spent a substantial sum to make improvements on his property. They spent quite a bit to work on storm water and siltation concerns. The character of the neighborhood will substantially change with the proposed development. His home is on the middle lot of five, 10-acre lots and they were designed as long rectangular lots, not to be developed. City Council has commented that the south side of 143<sup>rd</sup> Street cannot be developed to maintain the character of those lots. This development, if approved, would have 32 homes where there are now two. The Oltjen's privacy will suffer with this development in addition to the negative impact it will have on his estate with the increase in density next door. They have three primary concerns: storm water runoff with the development, velocity and volume, the siltation of his pond and fore-bay with the development, and the plan's density and design. In regard to storm water runoff, he inherited a significant storm water runoff problem when he purchased the property that was undisclosed from the previous owner. It has been litigated and is now settled. His driveway floods, as well as 143<sup>rd</sup> Street. *Oltjen showed a photo of 143<sup>rd</sup> Street at his entrance.* The photo showed one to one and a half feet of water standing on his driveway. The photo was taken in 2003. He has seen water over 143<sup>rd</sup> Street four or five times since then. He has worked with engineers to work on the problem but the problem has not been eliminated. 143<sup>rd</sup> Street improvements have been moved out of the five-year plan, as 151<sup>st</sup> Street now has precedence. It is his understanding that 143<sup>rd</sup> Street improvements are not even in the 10-year plan at this time. His downstream neighbors have experienced erosion problems, flooding problems and/or other storm water problems. He has spent a substantial amount of time, effort and money to improve their flooding and erosion problems and decrease the frequency of flooding events. He has worked with Phelps Engineering and the City on their storm water plan for which they received City approval and permit. Construction was completed in 2005. The developer is aware of the stormwater problems of the watershed and the storm water improvements the Oltjen's have recently completed. Oltjen explained the problems to the developer when he asked to purchase the property. This discussion took place before he closed on either of those properties that he is proposing to build on tonight. At the interact meeting, Brick Owens of HNTB, stated, "They will make every effort to design the detention basin and stormwater improvements so as to only help with the Oltjen's situation." To date, this has been inconsistent with their actions. At the meeting Oltjen showed Dave McClure of Apex Engineering the pictures of the significant flooding of his property. A majority of the concerns expressed at the interact meeting dealt specifically with storm water management. To date, the developer's engineer has submitted four incomplete and inaccurate storm water studies. None of these have been supported by the City's engineer and the developer's engineer continues to ignore staff's comment to properly do the studies. Given the myriad of problems highlighted by the independent Olsson review of the latest study and those which continue to be identified by the Phelps engineering reviews of the past four studies, he hopes the Commission can appreciate his concerns. He has been very clear to the developer from the beginning that it is his expectation that they provide adequate detention as to not make worse his stormwater problems. We have legal protection for this in Leawood. He wants the site of detention to be located where it would be most effective to control stormwater runoff and silt. Going ahead with the developer's plan without an accurate storm water study is unacceptable in light of the fact that the developer has no credible study on which to base the design of his plan. The size of the detention basin cannot be determined yet. A complete study may lead to a loss of lots, relocation of lots, relocation of the detention area and possibly even relocation of the road. His second concern is the siltation of the pond and fore-bay. The silt recently removed from his pond and fore-bay was a very expensive process. Phelps Engineering has recommended provisions to help with excessive siltation from the development. Beyond the personal damage to his pond and the potential expense to re-dredge, siltation exacerbates the stormwater problem. When the pond silts, it grows moss and algae and that plugs the tube that takes the water out of the pond. When that plugs up, it causes a backup and causes his driveway to flood which then causes 143<sup>rd</sup> Street to flood. It is all connected together as one big system. Attempts to get the developer to voluntarily agree to a pre and post-development silt study of his pond

and fore-bay have not been productive. This is not an unusual request. It has been done numerous in other municipalities. One example of this was just last year at 159<sup>th</sup> Street and Metcalf. He does not understand why the developer is reluctant to enter an agreement if the developer is not concerned about causing excessive siltation of his pond. Certainly the contractors would be more diligent with their silt control measures if they know there is some recourse with the excessive siltation of his pond. His third concern is plan density and design. The Oltjen's support the RP-1 zoning but they did not support the RP-2 zoning. As far as the cul-de-sac, the developer closed knowing that it was a potential problem. These are long rectangular lots that were designed to stay as estate lots. The long cul-de-sac problem should be reflected in the density of the plan. The nearest single family development right now is Highlands Creek to the south. The latest phase of Highlands Creek has a density per acre of 1.05 homes per acre and they have no long cul-de-sac problem there. He would like to see the density reduced from 32 lots. He could be persuaded to support the more than 900 ft. variance request if plan density is reduced. It seems counterintuitive to him to increase the density to the north side of the creek, towards the end of the long cul-de-sac, where emergency access would be most restrictive. The most important question is, what the highest and best use of this property is for the residents of Leawood. Not what the maximum density can be with RP-1 zoning to maximize profit for this developer. He would like to see bigger lots with four-sided architecture like Highlands Creek with nice developer amenities like Tuscany. With neighboring development, he wants to preserve the value of his property and estate as best as possible given the diminution in value that will happen with this subdivision abutment to his estate. Given the unusual circumstance of the subdivision neighboring his estate, he asked the Commission to consider an acceptable transition to his property. He is asking the developer to not to have lot sizes of less than a half acre along his property boundary. The presence of more half-acre lots will not kill this development. Changing lot sizes will only potentially change the price of the lots which would dictate nicer homes. This is one way to ensure the highest and best use of the property. The Oltjen's have modified the plan to create an acceptable transition to their property. He then asked Andy Schlagel to discuss the density design issues and Mr. Tucker to discuss the engineering issues in regard to siltation and storm water. Oltjen then thanked staff for being attentive to their concerns.

Presentation by Andy Schlagel, planning consultant, speaking for the Oltjens. He showed the plan as proposed by the Oltjens. The most comparable single-family subdivision out on 143rd Street is Highlands Creek, which is south of the proposed Colton Creek property and the Oltjen's property. The last phase of that project has a density of 1.05 lots per acre. The density proposed for this project is almost 50% higher than that at 1.66 lots per acre. A lot of cities in the metro area have formal policies on how to transition from these larger estate lots to more urban development. One example they looked at had a very clear cut policy that the lots immediately adjacent shall be no more than one quarter the size of the existing estate lot. There is a maximum cap of 1 acre. The Oltjens asked him consider some land planning principles and propose a transition for the layout that is being proposed this evening. *Schlagel showed a drawing.* Along the common east property line they have indicated that all of the lots that would abut the property would have a minimum size of a half-acre. He recognizes some of the other Cities policies might be going too far. Some of the lots proposed immediately adjacent to the Oltjens are close to approaching the half-acre size. A more appropriate location for the detention basin would be along the east property line, near the center of the lot. The plan that the Oltjens would consider supporting would contain three less lots than what has been submitted, one less than the previous plan submitted by this applicant. There needs to be consideration for transition, but first there is the question of how the can get approved for a RP-1 project without having adequate information on storm drainage. The volume, the capacity of the detention basin, and perhaps a location that is more apt to collect the water at its lowest point seem to be critical before we can proceed. He asked the Commission to consider continuing this item.

Presentation by Tim Tucker, with Phelps Engineering, speaking for the Oltjens. Two years ago the Oltjens contacted Phelps with their drainage concerns and they came up with a design to reduce the frequency of flooding on their driveway. The improvement they came up with was to put in 400 linear feet of storm sewer, they lowered the spill-out on the dam, they dredged out their pond and put up a silt basin on the west side of the drive in the creek channel where the pond backed up to catch the sediment. This improvement only provides protection for a 5-year storm, due to the severity of the flooding. He has reviewed all four of the storm water studies submitted by the applicant. He has made comments to City staff on all four accounts. There are several deficiencies where one cannot really verify whether or not the detention provided is adequate. The requirement for APWA would be that the 2, 10 and 100-year storms be detained. They have provided numbers for the 10 and 100, but not for the two-year storm. The two-year storm would happen to be the one most critical to the Oltjen's flooding condition. The volumes provided in the report seem to be substantially lower than what would be expected for

typical single-family residential developments. Typical values for residential development are 6,000 to 8,000 cubic feet per acre being provided for storage volume. According to the fourth report, the applicant has provided 4,200, which is substantially lower than what you should expect. Basically, Olsson has stated that it was not sufficient enough to do a complete review. Typically, most projects do not get to this stage, being heard by the Planning Commission, until the stormwater study shows that the volume and detention is adequate. Based on the findings of this study, he does not know how they could verify that.

Jay Oltjen asked his wife to pass out some handouts to the Commission. He would like the Commission to continue this application. It is critical that proper attention be spent on storm water now, prior to preliminary plan approval. He asked the Commission to give the applicant specific direction to address the concerns set forth and an adequate time to be thorough, which is not two weeks. He is not asking for the applicant to be denied. The developer can earn Oltjen's support. He wants the developer to be considerate to his neighbor. They do not want the development to have a negative impact on their storm water problems. They do not want the developer to silt in their pond and fore-bay and they want provisions to account for this if it occurs. They ask the developer for an acceptable transition to his property to minimize the devaluation of their estate. If this is continued he would like to ask for an adequate timeline to be given to allow time for an adequate storm water study to be evaluated.

Herb Sizemore, 5302 W. 141st Terrace. He lives at the west end of the proposed property. He has a very good view of what goes down the creek. He understands that it is a benefit to the City to develop this property and he does not have any objections to it but he feels it is important to have a proper drainage study performed prior to going forward. The letter from the public works department dated January 5th stated that the City's consultant concluded that the drainage study is incomplete. He and his wife have watched lot 23 of Colton Creek development flood from moderate rain. The basin of St. Michael's will fill up with a moderate rain. He has a 100-yard swale in his back yard and it starts to back up. There are other developments that have happened since Chapel Green was built. He does not feel these items have been taken into account on the storm water studies. Public works asked for swales on lots 23 and 24 so that water does not run back off onto the Villas of Chapel Green properties. He asked that be taken into consideration. The elevation for this project is not delineated right now. If they decide to make them higher lots then his subdivision would get runoff. He asked for a continuance.

Christopher Arth, parish administrator for the St. Michael the Archangel Parish, 14201 Nall Avenue. He does not object to the proposed project, but wanted to update the Commission on the status of the church. St. Michael's is moving forward with the sanctuary. They are approved by the City for approximately a 25,000 sq. ft. footprint sanctuary which includes a variance for a 94-ft. tower. They plan to move forward but do not know the exact date. They anticipate building what they were approved for by the City and that a future homeowner would not raise concerns with the tower. His bigger concern is the water issue. Going back to August of 2003, that event led to some tense times between the church and the prior property owner to the east. That event resulted in a foot bridge of his being washed out. The basin does fill. He has spoken with some of the residents of Chapel Green. Everything has been friendly so far. The church is trying to be a good neighbor. The most alarming thing he has heard is that there would be changes to St. Michael's detention basin. He has not heard anything about that. It sounds like there has not been a complete study of the water shed. He does not want to get into a situation where there is flooding due to this project and the church gets blamed for it because they are upstream. It looks like a beautiful development. He asked that the storm water study been taken very carefully and be acted on in an appropriate manner.

Azeltine asked if the parish was invited to the interact meeting. Arth stated he believes so. Azeltine asked if there was anyone representing the church in attendance at the interact meeting. Arth stated, no.

Keith Durwood, 14041 Juniper, part of Timber's Edge. He will be right behind lot number 25 in Colton Creek. He is not against the development. He has two concerns. Lot 25 will have a 30-ft. setback on the garage. The majority of his view will be a side view of a garage. His second concern is that the existing home that is being moved to lot 25 is in major need of repair. He feels that will affect his property value as well as the view that he has at the present time.

Chris Wally, 4501 W. 143<sup>rd</sup> Street. He receives water from three streams in the neighborhood. Worthington has ponds that create no detention whatsoever. Highlands Creek has a detention area that he and his neighbors had to fight twice to get it placed in the correct location. His concern with Colton Creek is that stormwater is being inadequately addressed. The deferral of detailed engineering is one that he experienced before with Highlands Creek. It has been described in detail by some of the experts. *He passed out booklets to each of the Commissioners with pictures of his lot.* There are 18 pictures taken on his property. When he bought his property in 1989 the stream was dry, except right after it rained. One of the things that attracted his family to the lot was the creeks with heavy timber. The timber is going away because of the increased water flows in the creek banks and the mature trees are being washed away. His resolution to this was to engage Terra Technologies to help with a remediation project to help stop the damage from getting worse. *He showed a picture of some work that was completed about a month ago.* His driveway was in danger of being undermined by the creek in two different places. He has planted fast-growing trees and replanted 100 trees in the first of three phases. They have lost more than that. His concern of stormwater and the deferral of resolving these issues in a detailed plan is that his situation will get worse and his neighbors will ultimately have to do what he has had to do. This is a great personal expense. He asked the Commission to require the developer to absolutely satisfy stormwater engineering requirements beginning tonight and that staff maintain those requirements all the way through City Council approval. As Ley said, the detention pond at the church is undersized. It sounds as though the City and the neighbors will have a chance to repair the size deficiency of that detention pond.

Patty Becka, 5314 W. 141<sup>st</sup> Terrace. Her lot backs up to the Timber's Edge subdivision. 12 ft. from her walk-out basement door is a storm sewer that collects water from Overland Park and everything upstream from her. Even during moderate rainfall there is a veritable river that runs through her back yard. At times the flow has actually lifted up the sod and rotted the grass. To alleviate the problem, last summer she and her husband purchased 7 tons of large river rock. They trenched it out and put the rocks in. That was done at a considerable expense. She asked that this case be continued until we know how this will impact her subdivision.

Joe Randa, 14512 Mission Road. He is downstream from Mr. Wally. The creek flows north to south. He has a 10-acre lot. The creek splits his lot down the center. He has a bridge. The creek has not been an issue since he lived there. The previous homeowner did state that water had gone over the bridge a couple of times. Since he moved in, when he was away on business and having the house remodeled, the remodeler took some pictures of the water. *He showed the picture of the water standing in his front yard.* His issue is with drainage. He has had issues and the creek is higher than it was when he moved there. He would like to preserve the look of that area of Leawood.

Jake Jacobsen, 5301 W. 141<sup>st</sup> Terrace, directly to the south of Mr. Sizemore. The eastern extremity of his lot abuts where the stream starts from the tributaries that come from the storm water that comes off of Chapel Green, Timbers Edge, St. Michaels and Lionsgate. There is a volume of water that is coming from several different areas. It is his understanding that Timbers Edge, in Overland Park, does not provide retention basins in order to slow the flow of water, so the amount of water that comes through there is very dramatic. His lot backs to the detention pond at St. Michael's. He has watched the water rise during substantial rains. He does not object to the development of the property. His concern is that if the proper consideration is not given to the storm water situation, and if there is a backup of water that comes back to the Village of Chapel Green because there is some obstruction or the retention areas are not of proper size in the new area being prepared, he could get backup. If one were to walk along the west side of the Villas of Chapel Green property, in all cases, they have walk-out lower areas. They do not have full basement walls to protect them from any water or runoff. There could be serious damage to many of these properties if the water situation is not handled up front to ensure that this would not happen in the future. He would like to have a continuance until the time that the water issues have been properly satisfied in regard to this new development.

Rick Moffit, 14034 Ash. He was happy to see Ley put swales in his recommendation for lot 24. He would like to have something underground rather than a ditch, but he would just prefer to have something so that there is not a problem with water. He is concerned about the length of the cul-de-sac for safety reasons. There may be a bunch of potential residents that cannot get out of their properties if it floods too much. Staff recognizes the two lots on the north side of the property are abnormal sized lots. He believes part of the issue is that the creek is too close to the northern part of the boundary and they are trying to fit lots back there. If the number of lots could be reduced, it would be safer and it would look more normal back

there. *He drew a sketch of what it would look like if they made the end of the cul-de-sac one long lot.* Some of the lots at the end of the cul-de-sac are in the 100-year flood plain.

Gary Wannamaker, 5305 W. 141<sup>st</sup> Terrace. He has been a resident of Leawood since 1969. It was noted earlier that the report from staff is dated Jan. 3rd and the report received from the City Engineer was dated Jan. 5th. He is sure staff has acted to do the right thing for Leawood to maintain the amenities of the City and its properties, but did not have the benefit of the report delivered by Olsson and Associates. One comment from the report asks the Commission or the developers to re-read APWA section 5600 with particular emphasis on subsections pertaining to storm water management requirements, especially section 5608, storm water detention and retention. It is clear that many of the provisions have been overlooked in this report. It has been indicated in the report that the developer has taken into account the detention upstream at St. Michaels and it indicates that it is improper to take into account that detention for solving some of the downstream problems. There is a comment on page three that states, "The requirement is that no more runoff may be released from the entire site, post-development, than was existing pre-development." He has heard some comments tonight about the significant runoff that occurs currently and it seems trying to maintain at that level would be a problem. He urged the Commission to give attention to this report.

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

Azeltine stated concern with the stormwater issues in the area. It makes no sense to move forward when the storm water study has not been completed. He is concerned with the Interact phase of this process and how it seems to him that it was handled. A passage from the Interact meeting notes states, "A citizen asked what the maximum length of the cul-de-sac was and if we met it." and then, "We stated that we couldn't remember what the distance was but we did meet it." The maximum is 500 ft. Colton Creek is proposing 1,500 ft., so they didn't meet it. That indicates to him that there was not a lot of communication going both ways at that meeting. There is a reason for the interact meetings. He gets the feeling that the applicant is just going through the motions and having the meeting because it is required. His second concern is in regard to the fire marshal's comments on the cul-de-sac. There is a statement that reads, "After consultation with senior staff, who elaborated the unavailability of the adjacent properties for connections, it is the judgment of the fire department the proposed arrangement does not constitute an unreasonable risk." There is the issue of safety and then there is the issue of the unavailability of connections to the other properties. He is not sure how one relates to the other. He cannot vote for this preliminary plan until he knows what length would make that unsafe or what role length plays in determining safety. What if there is flooding and then a lightning strike? He thinks that one paragraph does not cut it in terms of evaluation from the fire marshal. He thinks the developer needs to go back to the drawing board and work with the neighboring residents. There was a lot of compelling evidence given by the citizens and looking through the interact meeting notes and the plan; he is not sure how much of it was taken to heart. He feels like the Commission should not be seeing this case. It should not even be at the preliminary stage.

Henderson stated it seems the storm water flow seems to be a serious problem. He has heard suggestions that if it were addressed more completely we may have another way of perceiving how we handle this long cul-de-sac. He feels the Commission needs more information for their deliberation on the storm water flow and it may branch out to other issues.

Duffendack asked if Ley has any suggestions that would help them work through the storm water issues. Ley stated the City requirement is that the peak flow cannot increase from the existing peak flows, so the pictures that were seen and all of the issues shown tonight would not change once this development is constructed. We are not requiring this applicant to reduce the amount of flow coming off their site. He spoke with Planning staff about this and their position was that if the pond is not large enough, that it would only add to green space within this development so once we get to final plan, if the pond ended up being twice the size, then it would just reduce the lots, which would increase the green space for the entire subdivision. Duffendack asked for more details on how the storm water study was not complete. Ley stated Olsson and Associates performed the review for the City. Their comments are incorporated and included in the staff comments. Duffendack asked if Ley is in agreement with the Olsson Associates review. Ley stated, yes. In regard to the flow through the subdivision, there is a tract that follows the stream that the 100-year ultimate flow has to be contained within. The flow for the 100-year cannot be on any of the lots. Duffendack asked if that would be calculated as part of the final storm water study. Ley stated

that study was done by Johnson County. CDM Engineers provided that study and that is what staff told the applicant to use for their stream setback.

Conrad asked if Ley is saying that after this project is developed the same storm water situations will happen on the adjoining lots. Ley stated, yes. Conrad asked if a lot of the problem is due to the function of the culvert under 143rd Street. Ley stated most of the water from this water shed is coming from Overland Park, which does not have any detention. 143rd Street is scheduled for 2010 and once that street is improved, then they will look at the culverts underneath 143rd Street and increase the size as needed to convey the 100-year flow. Conrad asked if the flow is to the southeast. Ley stated, yes. Lambers stated the culvert improvement would simply preclude the blockage that may occur during an event. It would not do anything for the property owners to the south and east. In regard to Commissioner Azeltine's comment about the cul-de-sac, staff met with the property owner and his concern was what the City would do if they showed the stub-out and then he chose to not allow it to go through. Lambers told him that if the City felt it was in the public's interest, the City would condemn the land, put the road through, and connect it to the 20 acres to the east of him. That was met with a very chilled reaction. That is why staff went back to the applicant and said that we need to go in with just the long cul-de-sac and live with it. If the Commission wants a revised plan, then you would be forcing the fact that in order for that tie-in to go through with the owner unwilling, as part of that application the City would initiate condemnation proceedings. The property owner to the east of the Oltjens plans to develop something similar to this project. But in order to have a tie-in, we need to have a reasonable expectation that it is going occur and given the circumstances of the property owner, that would not be the case. It is staff's opinion that this is the best way to handle the situation. In regard to cul-de-sac length, just to the east of this project there is one that is very close to what is being proposed. Azeltine asked staff to look at the whole issue because he would like to know why the cul-de-sac length was set at 500 ft. in the LDO and why the deviation is acceptable and the fire marshal's comments do not explain that to him. Lambers stated the 500 ft. is a standard, but Hallbrook has a number of cul-de-sacs that exceed that standard. Azeltine asked why there is a recommended limit to the size of cul-de-sacs. Lambers stated the idea is to have a limited amount of dead-end land in case there are emergency vehicles trying to get in and other cars trying to get out. But at the same time it needs to be measured against the reality of the situation. In this case, the property owner to the east does not want a connection. Staff did not want the plan to come forward to the Commission showing the extension knowing that the property owner to the east would not agree to it. The City has not yet condemned land for a roadway for this purpose, so the idea was that we would live with this plan. If the Commission believes the connection should be made, then you need to let that position be known and then that would start another process. Azeltine stated he does not have enough information to make the determination in regard to the safety issue. Lambers stated the fire marshal has stated that he does not object to it, so it is okay. Azeltine stated he does not believe he was appointed to the Commission to follow the fire marshal. He thinks the Commission needs adequate information to make a decision and he gave a three-line paragraph that does not tell him anything except that he thinks it is okay. Lambers stated the fire marshal stated in his comments that he does not believe the length of the cul-de-sac is a reason to vote "no" on this project. Azeltine stated he needs reasons before he can be comfortable that it is safe. He wants to know at what point the length of the cul-de-sac becomes a hazard and why. Lambers stated it is not a problem at this point because if we were then the fire marshal would have stated in his memo that a second access must be provided. If that were the case then the plan before you would show that access and Lambers would be back to discussions with the property owner to the east telling them there would be a road through their property and deciding the best way to work that out.

Munson asked the characteristic of the land now in terms of runoff. Klein stated it is open land, other than the two homes. Munson asked how the water that will be running off from storms and rains would be carried out. Ley stated part of the property will drain into storm sewer systems which discharge directly into the detention pond and part of the property will drain directly into the creek. Williams asked if that includes all of the property at 143rd Street. Ley stated, yes, that water will flow down to 143rd Street and there will be roadside ditches for that water to flow to the east.

Henderson asked how the main road was handled in the 10-acre lot east of the Lutheran church, south of 135th Street. He then asked if they left open the possibilities of roadways into the eastern 10-acre lot. Klein stated that is Chadwick Place. As part of the final approval there are two private drives that stubbed out against their east property line so a connection could be made when the parcel to the east is developed, plus they would get access off of 137th Street as it continued to the east. Henderson asked if the Commission might have some kind of obligation to think similarly in this proposal.

Rohlf asked if they had to go east across the Oltjen property where the connection would be. Lambers stated it could go as far north of his property line to Timbers Edge, leaving room for green space which would then allow for his tract to remain as large as possible. The other option would be to have it further to the south so home lots could be built along the north side of the street. If the Commission feels the connection needs to be made in the public's interest, then it would be back to the original plan they submitted and it would put Lambers back into discussions with the property owner who does not want to have that connection made. The Oltjens were put in a situation they were not expecting, but in order to maximize their current estate lot they would need to put the road as far north as possible, put in extensive landscaping along the south side so they are protected from the street and have an 8 to 9 acre lot as opposed to the 10-acre lot they have now. Rohlf stated it looks like the City did not look far enough down the road with the development of the Villas of Chapel Green. Lambers stated that conversation should have happened then. That is why when the applicant came in with their tie-in and he saw the potential for a problem he did not want to put the City in the situation where it would cause even more angst with the property owners to the east. The applicant agreed to wait until the City met with the Oltjens and brought them into the process, and while they were not able to come to a mutually agreeable solution, at least everyone has been involved and is aware of the options that are before us. If the Commission wants to see the theoretical perfection of having the tie-in and the Oltjens do not wish to proceed then you are putting the City in a situation where it is likely we would need to take the land for road improvement to connect to the property owners to the east of him when that ultimately develops.

Reynolds stated he is not comfortable with what the applicant has submitted. It seems there have been some options pointed out in terms of reducing density north of the stream which reduces the potential negative impacts of a long cul-de-sac and he thinks that is worthy of study. A second crossing could be provided over the stream and not have a cul-de-sac at all. He feels the incomplete nature of the storm water study makes it difficult for him to support what he is seeing tonight. He finds it curious that there is not detention provided east or downstream of the stream crossing, which would seem to him to be a place you would want to control sediment and storm water runoff. There are too many unanswered questions so he has a hard time supporting this application.

Azeltine suggested asking the applicant if they would be agreeable to a continuance. Duffendack stated if that were to happen, he would like the Commission to give clear direction to the applicant on what we want to happen. Azeltine asked the applicant if they are agreeable to a continuance. Meyer stated he was hoping to have time to answer the questions raised by the Commission. Duffendack asked the Commission if they had any questions to ask the applicant that would help focus on what the issues are and what the Commission wants to see happen.

Reynolds asked if the applicant had any conversations with the residents regarding reducing density next to their property and reducing density north of the stream. Meyer stated, yes, the lots are not at the minimum lot size. They have expanded the lots in response to the residents' comments. They are trying to accommodate their concerns by increasing the lot sizes. The applicant is in complete compliance with the City's land use plan for this area. The applicant just received the comments from Olsson last Friday. The applicant has read the comments and is completely agreeable to Olsson's terms. They are not asking for any deviations from the regulations and ordinances, except for the three that are outlined. They are in complete compliance with the storm water issues through the City of Leawood's ordinance.

Azeltine asked if the applicant is agreeable to a continuance. Meyer asked to consult with his team. Dave McClure, Apex Engineers, asked if they would be allowed to address some of the storm water concerns before they answer that question. Azeltine stated there is a process outlined where the applicant speaks, then the public hearing, and then the Commission discusses it and decides. He then asked Duffendack if the Commission should allow the applicant to speak again. Duffendack stated he believes there were some questions asked about what needs to be determined and he believes that any additional information that would help us move forward would be good. Azeltine stated he would hope that it would not turn into a second presentation.

McClure stated a lot of the problems that have happened will continue. This property owner cannot be held liable to fix the problems that Overland Park has created. There are over 100 acres upstream that dump onto the northwest corner of this property. Of the 100 acres, about 80 acres is not detained. The applicant cannot be asked to detain all of that water. By Leawood standards and APWA they will detain what they are required to with their property and not increase the amount of flow. The applicant does not have a problem with Olsson's comments.

Reynolds asked why they do not show detention downstream of the roadway where it crosses the stream. McClure stated it is piped back, so it is not shown right at the creek, but anything in front of the house or building lines goes into the street, which goes into the street system, which goes back to the pond. The same thing happens south of the creek. Reynolds asked if he is saying there is virtually no water shed entering the stream east of the culvert crossing. McClure showed on the plan which homes would drain to pipes. They cannot contain behind the houses that back up to the creek so they are allowing that to go to the creeks as it is. Munson asked the size of the detention pond. McClure stated he believes it is about 8,000 or 9,000 sq. ft. for the wet part, then up to 12,000 sq. ft. for the dry part. The reason for so many reports is that they changed the layout so many times. Munson asked if the lots on the southeast portion of the development would not be detained and if so, where the water goes. McClure stated those would be contained in the front of the homes. CDM did the study for Johnson County and the applicant is using them to revise the study so that it can be more familiar with everybody. They are using them to update their report to show the increased use and increased density. Reynolds asked the size of the culvert under the roadway. McClure stated CDM would size that, too, but he would estimate it is currently 24 in. to 32 in. and he believes there are two of them. He would envision something like two 36 in. or 43 in. pipes. Reynolds asked if the applicant considered a second stream crossing. McClure stated he believes the applicant wanted to limit the amount of crossings over the stream to keep the trees and help isolate more people.

Munson stated he is concerned about the pictures showing the water on 143<sup>rd</sup> Street. He sees that as a safety issue. It is hard to tell if this project will exacerbate it or if it will be neutral. McClure stated he understands everyone's concerns, but those are existing problems. The applicant cannot be held responsible to fix the problems that everyone is having now. They are providing what the letter of the law requires, which is to not increase the amount of flow.

Henderson stated he would like to move for a continuance for three reasons. We have had information that the new project will not necessarily increase the problems of the storm water flow but he feels there is a problem that we need to deal with in terms of land use as a Commission. We have some concerns about the fact that the property owner has on either side two 10-acre lots, one of which that wants to be developed as two and two that also want to be developed, so the property owner in the middle has leverage for whether or not there will be effective use of land on either side of the single 10-acre lot including water flow and flow of traffic. It seems to him that the primary part of the Commission's task is to look at all five 10-acre lots and not just the application before us tonight. What we have heard is that we do not know if it will increase the problem of storm water flow, but we have one, we have to deal with that with the application. All of the people who spoke on behalf of the property owner asked for a continuance primarily based on the water problems.

**Henderson made a motion to continue and asked that all parties; the City of Leawood, Mr. Fuller and whoever the property owners to the east, get together. Perkins seconded.**

Azeltine asked if any stormwater projects are planned along 143<sup>rd</sup> Street. Lambers stated the street improvement will have an improvement to the box culvert under the street which will help to alleviate. If the street is creating an impediment to the flow then that will alleviate that. If that is the case, then the flooding upstream should be reduced. The urban stormwater systems tend to work better. In regard to this impact, if it does retain water then it will reduce the initial velocity but it will extend the life of the stream flow because it will be metering out the water. This is a small portion of the entire water shed area. Typically, in stormwater management the upper third of the water shed should be detained and the bottom third should get it into the stream system as soon as possible down stream and then the engineers decide how to deal with the middle third. Our requirements are that it will not add to the amount of water that is currently flowing at peak time. The 143<sup>rd</sup> Street improvement will help alleviate the upstream flooding that currently takes place to some extent. Munson asked the schedule for the 143<sup>rd</sup> Street improvement. Lambers stated 2010. Azeltine stated he is concerned with the stormwater study not being complete. He is also concerned with the issue of the long cul-de-sac. He needs to be educated on what makes it safe or unsafe in order for him to make an educated decision as to whether it is appropriate and what the other options are. When the applicant is using terms like, "top of my head" and "wild guess", he thinks it is time for a continuance. Lambers stated the details of the storm water plan are part of a final development plan. They are not typically part of a preliminary plan. A preliminary plan is intended to show the Commission the general understanding of land use and where the public facilities are going to be and storm water. There are stipulations that state they will meet the City's requirements. If the pond is not big enough, it will be made big enough. If, as some people have indicated, that would require a radical

change to the preliminary plan, then they would need to come back before the Commission through another preliminary process. To say that the engineering plan has not been done to the extent as expected for a final, that is correct. If the Commission wants to have a more detailed storm water plan submitted as a condition for a continuance, that would be legitimate, but you should not expect to get a storm water plan as complete as we would see for final because an applicant would not be spending that kind of money on a preliminary plan approval. This plan actually represents the rezoning and preliminary plan. Duffendack stated he believes what is bothering the Commission is that the plan, at whatever level, was incomplete.

Williams stated part of a rezoning process is looking at the Golden Criteria. There has been some discussion by some of the neighbors about the density and how this development relates to the density. There is quite a different mix. He does not believe this plan responds to this particular mix, particularly the 10-acre estate to the east and also the larger properties south of 143rd Street. It may meet the development ordinance in terms of proposed land use, but as proposed, he does not believe it is totally suitable for this location. One criterion is if it would be detrimental in character or a problem to surrounding properties if it is left unchanged. If it is unchanged, then it does not change anything for the neighborhood. If it does change to the proposed plan, he does not feel we have a comfort level that addresses whether or not it would change the detrimental character. He believes the stormwater study needs to be resolved in the preliminary. It does not need to be the detailed nature, but more complete than was provided. Other criterion is public health and safety issue. Flooding in and around the property is a major safety issue and as the property is developed as presented tonight he does not think it adequately addresses the issues. He would support a continuance until these issues can be addressed and satisfactorily resolved for preliminary purposes.

**Motion to continue the case for four weeks, to February 14, 2006, approved unanimously.**

**Meeting adjourned.**

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J. Paul Duffendack, Chair