

**City of Leawood
Planning Commission Minutes**

**August 22, 2006
Meeting - 6:00 p.m.
Leawood City Hall Council Chambers
4800 Town Center Drive**

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

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

APPROVAL OF THE MINUTES: Approval of the minutes from the July 18, 2006 meeting. A motion to approve the minutes from the July 18, 2006 meeting was made by Henderson and seconded by Elkins. Motion approved unanimously.

REMOVED FROM AGENDA:

CASE 61-06 SIENA – 2ND PHASE Request for approval of a preliminary site plan. Located approximately at the southeast corner of 137th and Mission. **Public hearing**

CONTINUED TO THE SEPTEMBER 26, 2006 MEETING:

CASE 08-06 LDO AMENDMENT - SECTION 16-2-9.2 NON-RESIDENTIAL USES Request for approval of an amendment to the Leawood Development Ordinance. **Public hearing**

CASE 09-06 LDO AMENDMENT - SECTION 16-3-9 DEVIATIONS Request for approval of an amendment to the Leawood Development Ordinance. **Public hearing**

CONSENT AGENDA:

CASE 51-06 LEABROOKE 8TH PLAT Request for approval of a final plat and final site plan. Located approximately at 145th Street and Kenneth Road.

CASE 63-06 I-LAN PARK Request for approval of a final site plan. Located at approximately 127th street and Nall Avenue.

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

NEW BUSINESS:

CASE 46-06 TUSCANY RESERVE VILLAGE Request for approval of a final plat and final site plan. Located at the northwest corner of 137th Street and Pawnee.

Staff presentation: Presentation by Mark Klein. The applicant is requesting approval of a final site plan and plat to allow construction of 8 condominium buildings to contain 30 dwelling units on 7.28 gross acres for a density of 4.1 dwelling units per acre. The Planning Commission heard the preliminary for this case in February of this year. This development is generally in the same configuration that it was at that time. There are two cul-de-sacs that are private coming off of 137th Street. Approximately four condominiums are grouped around each of those. There is a fence/wall that circumscribes the property. The solid portion of the wall is located along 137th Street and has a portion of aluminum black railing on top of that to take it to the height of 5 ft. There is a detention basin located at the southeast corner of the development that will provide detention for this development as well as the church to the north. There is a walking trail that meanders from the southeast

corner of the development through the development and provides a couple connections to a future office/retail development associated with this project. Staff is recommending approval of this case with the stipulations listed in the staff report.

Rohlf asked if the market portion was seen during preliminary. Klein stated that was not discussed with the preliminary and is not part of this application.

Perkins asked if the Governing Body would approve another plan after this to show the footprints of the building. Klein stated the condominium lines will actually be three-dimensional. They will not know that until it is actually constructed, because there might be a little variation in the field. What they are trying to do with this plat is to give a general idea of where that box is going to be, however, each of those exact lines would be designated at a later time. Lambers stated the Parkway Plaza residential condominiums had a similar situation. He had suggested to the Commission that those items be placed on the consent agenda when they come back through for final plat and the Commission agreed to that, since these types of situations will be occurring more frequently. Perkins asked if the bulk regulations would change. Klein stated he has included a stipulation stating they cannot deviate from the bulk regulations. Perkins suggested seeing a plan without the outlines. Klein stated stipulation number six indicates to remove those outlines.

Henderson asked for Ley to walk him through the detention pond as it relates to the Lord of Life church, this project and the pond just south of the street. Ley stated the detention pond is to replace the existing pond at Lord of Life. That pond will be removed and all of that water will be channeled down to this pond at 137th Street and Chadwick. That will detain just the Lord of Life water. The pond to the south is designed for the full development of Tuscany; both residential and commercial. Henderson asked if that would handle both the Lord of Life drainage and the Tuscany development. Ley stated the Lord of Life drainage will already be reduced by the pond. That pond has an emergency overflow so if a pond upstream were to fail the water would be able to get through that pond and not do any damage to the dam. Henderson asked why stipulation number 15 is included since there are no monument signs incorporated with this application. Klein stated that could be removed, since the signs are being incorporated on the fence/wall instead.

Rohlf asked if they have submitted a landscape plan that meets the requirements of the 135th Street Corridor Guidelines. Klein stated they are required to plant street trees at a rate of 35 ft. on center, ornamental trees to be planted one tree per 12 lineal ft., however, they can be clustered, and shrubs at a rate of one shrub per 5 lineal ft. and they can be clustered as well. The applicant has provided a landscape plan. They have provided extra ornamental trees and not very many shrubs. There are a few shrubs at each entrance off of 137th Street. There is a solid wall portion that goes along 137th Street, so if they put a lot of shrubs along 137th Street it would be on the interior of the wall, so you would not see those from the public right-of-way. Stipulation number 16 states they would need to provide a revised landscape plan to provide more shrubs. Staff is suggesting primarily along the Chadwick side since that would be fairly visible, since it is a fence at that point. Rohlf asked if that is the only portion of the 135th Street Guidelines that needs improvement. Klein stated, yes. Just to clarify, they are providing shrubs elsewhere within the development, but the 135th Street Guidelines require that they be along the public right-of-way.

Williams asked why stipulations 19 and 20, regarding providing a materials board, models and perspectives, is included with this application since this is a final application. Klein stated they have provided a perspective and materials boards. Williams asked, regarding stipulation number 9, if the applicant would need to stay with the 35 ft. if the Council does not approve the change. Lambers stated, yes. Williams asked if there has been any discussion with the applicant to see if they can do the 35 ft. Klein stated the applicant is aware of that stipulation.

Applicant presentation: Presentation by Chase Simmons with Polsinelli law firm. *Simmons introduced the development team.* This is simply a final plan. It is almost identical to what was shown during the preliminary stage that was unanimously approved by the Commission and the City Council. They have provided a materials board and perspective. They understand the discussion with the footprint of the buildings and it is their intent that the footprints would match exactly what the site plan shows. It is a Kansas legal requirement to come back for a condo plat later to set the internal boundaries. Regarding the detention pond, going back to the original approval of the Tuscany Reserve mixed-use development years ago, there were office buildings shown on a portion of the property under consideration tonight and a portion was shown as the church's detention pond. That church detention pond is not working. It has silted in and there are trees growing in it.

They felt, from a safety standpoint, they could not develop downstream of that and it needed to be cleaned up for the aesthetics of the area. That is why they worked with the church to relocate their detention pond down to the corner of 137th and Chadwick. It will be an amenity for this development as well as people driving by on Chadwick and 137th Street. They are aware of the 35-ft. height. They have some ideas on what they can do if Council does not pass the LDO amendment. They agree to all of staff's stipulations. In regard to the public works memo, item number 4 indicates they will extend Chadwick from its current terminus and will utilize some funds the City has in escrow for Chadwick. That contradicts the stipulation in the staff report that indicates they will pay a lineal foot fee. The lineal foot fee was part of the preliminary plan. They would like to get with staff before going to City Council to understand what it is that they need to build. In regard to items 5 and 9 of the public works memo, item 5 indicates they will build a 6-ft. sidewalk on the north side of 137th Street. Item 9 indicates sidewalks will be built along 137th Street, except where there is a hike-bike trail on one side. They constructed 137th Street as part of Tuscany Reserve and did the bike trail larger on the south side of 137th Street, so they would anticipate that would satisfy that requirement. That was the intent at that time. All of the requirements for 137th Street have been met. They will probably be relocating some trees to get the driveways in and he has spoken with staff about that.

Williams asked if they have already built the 10-ft. trail. Simmons stated, yes, on the south side of 137th Street. Ley stated for the development along 133rd and 137th it is required to have a 10-ft. hike-bike trail on one side and a 6-ft. sidewalk on the opposite side. Williams asked if the 10-ft. trail satisfies the requirement. Ley stated there needs to be a 6-ft. sidewalk on the other side of the street as well. Simmons stated that is new to the applicant. They already put in all of the street trees. He is not sure if that requirement has changed since 2001. Ley stated he believes that is a requirement from the original 135th Street Corridor Guidelines. Simmons stated the applicant will speak with staff about that requirement before going to the Governing Body.

Henderson asked if Ley agrees with what Simmons has said regarding Public Works' note 4 superseding stipulation number 4. Ley stated Public Works staff would like to have Chadwick extended and not the funds. The development to the east has already been approved and the City has already collected the funds and has the right-of-way. They want to see that street built. He believes that is different than the Planning department's stipulation, so Public Works would want our stipulation and it can be discussed further at City Council. Staff can also have further discussions with the applicant prior to City Council.

Marjorie Kennamore showed an overall perspective and described the material boards.

Munson asked what provisions they have made to prevent cars from backing into the fountains on the cul-de-sacs. Kennamore stated they looked very carefully at the cul-de-sac and there is generous space for turning. Also, the driveways will curve a little bit more than shown in the drawings. The fountains are in keeping with a round-a-bout cul-de-sac proportion.

Henderson stated when Tuscany Reserve first came through it was stated that there would be three different styles of housing architecture. This is the third of the three. He then asked if they have stayed with that, or if there will be a fourth. Kennamore stated it has remained, with just a variation of size. Henderson stated the color palette and scheme of keeping each of them balanced against the other but in some kind of family pattern is amazing. He then asked if these guidelines will be continued in some kind of homes association document. Kennamore stated they have carefully addressed the overall color scheme. That will not be changeable by an owner. That is addressed up front. They want them to look like nice big Italian homes. They made sure they were not all lined up with garage doors. They have a real feel of big Italian homes and not just industrial, boxy, generic buildings. Henderson asked how they plan to maintain the materials once they are sold. Kennamore stated they will address that with the design standards for the next piece. Simmons stated they have given City staff a draft of the condominium declarations and it would be difficult to change the color in the future. If everyone in a cul-de-sac got together and wanted to change a color, he does believe that there is a provision to allow that. They did not want to stop that level of involvement. It would, however, prevent one person from changing the color.

Perkins asked if the chimney would be included in the height measurement. Simmons stated ordinance measures height to the top of the pitch of the roof. Klein stated chimneys are excluded from the measurement of height within the LDO.

Henderson asked the function of the gazebo. Kennamore stated it would be a gathering space for the neighborhood to use the amenity of the lake and benches. It will have a grill and benches beside it. Henderson asked how many people could gather there. Kennamore stated maybe eight or so underneath the gazebo area and more could gather onto the adjoining patio.

A motion to approve was made by Williams and seconded by Perkins. Henderson asked if Williams would want to keep the stipulation regarding the monument sign. Williams stated he is okay leaving it in. **Motion approved 6-1. Elkins opposed.**

CASE 54-06 LDO AMENDMENT SECTION 16-2-10 ARCHITECTURAL STANDARDS Request for approval of an amendment to the Leawood Development Ordinance.

Staff presentation: Presentation by Mark Klein. This case is an LDO amendment regarding architectural standards listed in Article 2 of the LDO. The reason for this amendment is to clarify the architectural standards within the LDO. Currently, a lot of the criteria for architectural standards are located in one area. It lists prohibited materials and requirements such as four-sided architecture. Those are primarily meant for commercial development and as various projects move through the Planning Commission and City Council they are reviewed in regard to those architectural standards. This amendment is to clarify that these do not apply towards single-family homes. The Planning department does not see a single-family home as it is constructed, unless there is some sort of issue regarding setbacks and even at that point nothing is looked in regard to architecture. Staff is recommending approval of this case.

Rohlf stated she does not see all of the changes made in the working copy transferred into the final version. She also asked some history as to why this is being seen by the Commission. Lambers stated this is part of a bigger issue that is before the Governing Body. This goes back to the goals session the Governing Body had and part of that was the issue, primarily up north, where there are existing homes being removed and new homes built in place of those. The Council members wanted a better process to allow homeowners to know that changes are going to occur. However, there is a significant level of disagreement at the Council level as to the magnitude of involvement the City should be in that endeavor. It ranges from having the current process, which is simply approving permits, to establishing a City-sponsored architectural review board. The City Council has adopted an ordinance that will go into affect shortly where all homes that are proposed to be changed by more than 25% of their original square footage will be submitted to the home owners association. The preliminary or final building plans will be submitted and then the homes association will have an opportunity for review and once that time period has expired then the City will proceed with its normal review of an application. The current ordinance clearly delineates that there is some architectural review responsibility on the part of the City and residents brought that to Lambers' attention. He is proposing to clean the slate and delete any reference to this in the ordinance, taking it to the Council and let them decide what extent they want the City to be involved in architectural review. Because this is an LDO amendment it needs to come before the Commission first, but this is a policy decision for the Governing Body. Once a policy is implemented, then there may be a role for the Commission if they decide to go to that extent. Rohlf asked if there are some references to commercial buildings that could have been applied to residential. Lambers stated there was some specific reference to residential, but he is not sure whether it was intended to be there or not, but clearly some Council members felt it was not. The City does not have anything in place to review the architecture of single-family homes at the staff level. Rohlf asked if this could be revised again to include residential houses if Council chooses to go that route. Lambers stated, correct. That dialogue would happen at the Council level.

Henderson stated the Commission was told a few years ago that they would get the opportunity to look at ways to handle architectural style. He then asked if the Commission should expect to entertain discussion by the Commission about houses that are torn down and a larger house built or if they would let the Governing Body handle it. Lambers stated he believes the Governing Body will establish the policy and the procedures for review if they want to go beyond what is already approved. It may be that the Commission is designated to serve in a review capacity or maybe an appeal process if staff is given the authority to review. At this point, he cannot say something would definitely come back to the Commission because the Governing Body has not had that discussion yet, but it is possible. If the Governing Body decides to go that route then we would need to have an architect retained and legal counsel that specialize in those types of activities as well. If there is such

involvement it would be extremely formalized and structured. The issues are that the Homes Associations have their private deed restrictions which the City does not enforce and architecture is very subjective. When you get into subjectivity and disagreements about subjectivity you get into litigation. The concern is if the City wants to do that and if so, to what extent. Two meetings ago he suggested looking at setback issues, especially up north, because the lots are so large that people are able to move in and put much larger homes on the lots and still comply with the setbacks. If they wanted to do an overlay district and say setbacks need to be larger that is something to look into. The other thing they could do is if a home is replacing a ranch with a two-story then it could have greater setbacks based on the proposed building so you would have something that is measurable and calculable. The massing issue is a calculable issue. Architecture is subject to what is good and bad. We need to have very specific guidelines. Henderson stated he voted against the proposal on the 10-acre lot at 143rd Street because he was not happy to see us move from one residence on one lot to 25 or 30 lots because it changes the character of the neighborhood. He believes the role of government, at times, is to help citizens do that which they cannot do separately. He agrees that there could be a lot of ramifications if we go down that road.

Williams asked if the proposed change is largely just dealing with materials and nothing to do with architecture or design. Marcano stated they took the existing ordinance and split it out clearly. There was not a lot of substantive change to the ordinance. The things that were always looked at for commercial items were listed under commercial. The materials that were reviewed for residential were listed under residential. Williams asked if they are completely removing submission requirements from the ordinance. Marcano stated, no, we have removed the submission requirements from residential because we do not require submissions from residential. Williams asked if a residential home owner would be exempt from submitted roofing materials or master specifications. Klein stated there are submission requirements for residential under section B 3. It could be that those were removed from the commercial portion because those go through Planning Commission and that would be a different procedure for the commercial portion.

Rohlf stated it appears that the commercial and residential portions were already separated. Marcano stated they took out some of the overlap and separated it out further to make it clearer.

Conrad asked if, in the marked-up version, paragraph A regarding building massing and scale, was part of the residential requirement.

Klein stated there is another clarification staff would like from the Commission specifically to do with roofing material within the single-family residential and laminated composite materials. Laminated composite shingles are divided into two sections. It states you can have laminated composite shingles within single-family but they need to have the look of weathered cedar shingles or shakes. It goes on to state that you can have some laminated composite materials that have the look of slate, however, they need to have certain characteristics, such as a large shadow line that goes around the shingle. It indicates those having the look of slate can have a cold gray or a blending of materials up to three different blends, but black cannot be one of those. There is an application before us where a person has requested the approval of Black Pearl, which is in the Grand Manor. It meets the classification as far as the ones trying to imitate slate, but the question is if it is the Planning Commission's intent that even a solid black be eliminated from that category or is it simply stating that within that blend the black cannot be one of the three colors in a blend. *Klein showed a sample of the tile.* The City has not allowed a completely black roof on the regular laminated composite shingles; the ones that don't have the shadow line, such as Timberline and Elk. Those need to have the look of weathered wood shake. Staff is asking for clarification from the Commission if an all-black slate-look roof should be allowed.

Williams stated real slate can be all black. It could have some slight shading variations, as does this particular product. It does not come off as solid black, so he does not know why we wouldn't allow this product, which imitates a black slate.

Staff passed out copies of the current ordinance to the Commission.

Klein stated section 16-2-10 currently has no delineation as to what is commercial and what is residential. The section regarding materials and colors has no delineation between what is to be prohibited within residential versus commercial. Williams stated confusion with the way the amendment was presented with the changes. Marcano stated staff split out commercial and residential and put the appropriate considerations in each category. Williams stated he supports the idea of

separating them out. He then asked if by separating them out and by putting in the residential component the building mass and scale and so forth, if it gets to establishing more design standards that we have not been enforcing. Lambers stated that is correct. Williams asked if, with this draft, the City does not want to be in that position. Lambers stated the proposed changes include those things that we are currently doing in terms of reviewing. This proposal is setting up the document for the dialogue as to what the Governing Body is expecting in terms of residential review. Williams asked if staff is asking the Commission to approve this and by approving this to have design guidelines for commercial, but not for residential. Lambers stated, yes. Williams asked if part of the reason for doing that is that we do not have a mechanism in place to review residential design. Lambers stated, correct. The commercial comes through Planning Commission and City Council.

Henderson stated he likes the proposed change. It moves Leawood from where it used to be to where it now is.

Perkins asked if the architectural board would be City-sanctioned with elected people on it or if the homes associations would control their own architectural boards for their own area. Lambers stated the City is involved in this. The City will not enforce Homes Association's deed restrictions. If the City were to adopt an architectural review process it would be City-developed, City-administered City-wide. Perkins asked if a person could get a permit from the City even if it didn't meet the homes associations' deed restrictions. Lambers stated, yes. Lambers stated the homes associations were complaining that they had no notification until the bulldozer showed up to tear down a home and by then they claim it was too late. It could still happen because someone can get a demolition permit without a plan. After the new ordinance goes into affect, when the City receives a proposal that increases the square footage by more than 25% then those homes associations who have requested to receive plans will receive copies and have either 10 or 25 days to review those plans. Once that review process timeline has expired then the City will review the plans in accordance to our codes only. If the home owner and the homes association are in disagreement, the City will still issue the building permit and it would be up to the homes association to go to court and get an injunction against the property owner.

Elkins stated if the City gets into the business of establishing architectural standards, and the homes associations have their standards, it could cause many issues for our legal department when those standards conflict with each other. He then commended staff on the amendment to the ordinance. He believes it differentiates the standards for residential from the standards for commercial nicely.

Jackson asked if staff removed or added to the approved materials. Klein stated shake shingles were listed for commercial and that was removed from that part of the ordinance. There were also some architectural things that were not applied. For example, all commercial buildings must have the appearance of a two-story and we have not ever enforced that. Those types of changes were made.

Williams asked if this would be the time to amend the ordinance to allow the black slate. Lambers stated, yes.

Public hearing:

Meg Gilmore, 9010 High Drive, secretary of the Leawood Estates homes association and a member of the Mayor's task force that developed the ordinance allowing homes associations the opportunity to review plans prior to the City permitting process. The LDO section under review tonight currently contains language that clearly gives the City the power to regulate both commercial and residential architecture and construction standards. The proposal is somewhat different. The introductory paragraph sets the mission as the character of the architecture of Leawood shall be driven by the desire to create quality buildings of lasting beauty where in all cases buildings shall strive to be accurate and true to their particular style. It is not asking to make any delineation or definition of that style. It just says to remain in the style that it was originally designed. As far as she is concerned, that could mean when it is originally designed or if it is added on to. This is an excellent objective that we would all agree upon as far as having beautiful buildings and acceptable architecture. The following eight requirements of this ordinance detail how that might be accomplished. Each of these items seems to be straightforward and specific, not arbitrary, capricious or unreasonable. Letters B, D and E, are concerned with large commercial buildings. The others, letters A, C, F, G and H, could apply toward residential buildings as well as commercial. Letter A states, "Each building is to have a simple well-proportioned volumetric form. A simple form manipulated for relief." In other words, good design. "Roof forms and pitch shall be consistent for all roofs on the same building." That seems pretty straight forward. Building height is primarily the issue in letter F that would apply to residential. The rest are obviously

commercial issues, but the ordinance is designed to reduce visual conflicts between adjacent buildings and height is definitely an issue for residential. Letter G states, "Buildings shall avoid long monotonous uninterrupted walls or roof planes." That is something we see a lot of in new additions on old homes in Leawood. Letter H states, "All four sides of the building shall be constructed at the same standard of design and maintain consistency of architecture." There are five items only to ensure we have consistency in the new homes being built in established neighborhoods in Old Leawood. Five items to be checked off of the City staff's checklist when reviewing plans to a major addition to an Old Leawood home. Five items that may mean the difference in having a wonderful, new, well-designed house next door or a real dog that will dramatically reduce the pleasure of living next to it or the value of your home in Old Leawood. These standards were established to protect the commercial sections of Leawood where businesses invest millions in brick and mortar to put on their best face. The same standards were written to protect the individual homeowners in Leawood whose greatest asset and largest single investment is his or her home. The approximately 3,500 homes in Old Leawood, at an average value of \$300,000 a piece, represent \$10.5 billion in assets. The taxpaying citizens of Leawood depend on the City of Leawood and its staff to look out for their best interest; the public interest. Please consider carefully the changes to the LDO. Staff does not currently enforce these standards for residential building. These standards should be retained in the LDO and enforcement should be implemented immediately. The number of tear-downs and re-builds has increased dramatically as have the number of large additions throughout Old Leawood. This is no time to remove the only protective standards we have. If the language is changed to eliminate residential buildings a double standard will be created. Actually, only one standard for the face of Leawood and no standards for the most important part of the City. The citizens and their neighborhoods are the real reason we live in Leawood.

Rick Thompson, 9929 High Drive, in Old Leawood. He has had a fairly large expansion go on to the south of his home. He sent a letter to City Council and Mayor Dunn in July. *Thompson read the letter. (A copy of that letter is included at the end of the minutes.)* This has been a complete nightmare for him and for other people on the street. As taxpayers, everyone needs to be protected. He thinks the architectural and construction standards that are currently in place need to continue to apply to single-family dwellings and they need to be enforced. He would like to see the Planning Commission have more say in these matters.

Jenny Moore, 9006 High Drive. She understands the proposal would leave no regulation of building scale or massing to apply to residential property in Leawood. She finds this as a significant issue particularly in Old Leawood where there are a number of remodeling projects going on and a number of opportunities where houses are being sold, leveled and completely rebuilt. This seems to be occurring on small lots where very large houses are being built to replace small ranches. This is having a significant adverse impact on the character and integrity of the neighborhoods in Old Leawood and a negative value on the property values. It concerns her that the City would choose to hold commercial development to more stringent standards than they would hold residential developments. She moved to Leawood for the beautiful residential neighborhoods in the community. She believes that it is the residential neighborhoods in the community that support the economic and commercial development that the City has experienced in the past years. Property taxes and sales taxes support the economic future of the City of Leawood. She feels it is important for the Commission to consider the residential communities need to be protected in order to continue to attract residents to the area who are going to support the commercial and economic opportunities that we have. It does not make sense to her that the City would care so little about its neighborhoods that it would hold residential reconstruction to lower levels than commercial reconstruction. She understands that there is a lack of city staffing to review and enforce the kinds of ordinances relating to building mass and scale that are being applied towards commercial development. She believes that is a legitimate issue and probably an issue that the City would need to look at. These are issues facing many communities across the country. The Mid-America Regional Council has a task force that is addressing those kinds of issues in Kansas City first-ring suburbs. She recommended the City look at what is happening in other suburbs in the KC area and go to the Mid-America Regional Council's web site. The mayor of Leawood has appointed a task force that met earlier this summer to work on and make suggestions to an ordinance that allows homes associations to review plans. It seems to her that task force would be an appropriate body to now take up consideration on how to protect residential redevelopment and construction in the City of Leawood's neighborhoods. She proposed the Commission and City Council consider giving that issue to the task force. She believes that the proposed changes to the ordinance tonight are premature. She asked the Commission put off making any consideration until there has been an opportunity to look further into these pressing issues that will have a significant impact on the residential communities in Leawood.

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

Williams stated he supports the idea of having some language that addresses some of the comments that have been made; certainly the items in building massing and scale. In regard to linear massing and coherent architectural image, in virtually all areas of Leawood we have a variety of architecture. The exception to that might be the Leawood historic district, which does have a stronger coherent architectural theme. You can have a ranch house that has brick on the front façade and a different material for the sides. That is not what he would classify as four-sided architecture and not what the Commission has looked at as being four-sided architecture when looking at commercial developments. He then asked how we begin to address some of these concerns with residential when there is already a wide variety of style and detail. We may be able to address the percentage of mass or change to an existing home, maybe something that begins to limit the size of a tear down and rebuild. He then asked if we want to try to get into dictating the language of architectural style in a neighborhood that already has an architectural style. There are definitely some examples of bad remodels. There are also a lot of good examples of projects that have raised the roof on what was a ranch, changed the architectural style from what it was and what the neighbors are, but have still produced a very attractive house that complements the neighborhood and adds value to the neighborhood. It becomes a difficult task to begin to set criteria through that. He does not think we want our neighborhoods to be homogenous. That does not make for a very interesting community.

Rohlf stated while some of this could be a philosophical debate, the Commission is being asked tonight to approve a specific part of the ordinance, whether we want to make changes to it or not. City Council has already stepped into this issue and hopefully with the task force that is in place we will come up with a solution. She believes Lambers has made some suggestions as to what could be incorporated into such an ordinance if we decide to do that; things like lot lines and building heights. We need to keep in mind what we are being asked to do tonight.

Williams stated he sees two things that the Commission is being asked to do tonight. The first is to separate out the residential from the commercial, which he agrees with. The second is in the language that is in each of those components. In commercial there are references to the building and massing but we have nothing like that in residential. If the Commission were to pass this change tonight, then we are saying to Council that we approve of not having those restrictions or guidelines in the LDO. Rohlf stated they should not re-write what staff has suggested. Williams agreed and stated this is not the time or place to do that. He then suggested recommending approval of the change with a comment to Council that the Commission would like to see further debate on residential guidelines. Rohlf stated she believes Council is looking at those issues with the task force. Williams stated he was part of a task force to address some of the issues raised tonight and there were lots of ideas but nothing in a package to be brought to the Commission or Council. As a design professional who has dealt with these issues, he has taken residential projects to architectural review boards and to homes associations. Some of these concerns are subjective and that has been his experience. Mission Hills has had an architectural review board that has been in place for many years. Lambers stated more than 50 years. Williams stated every time he went before that board he never knew what to expect because someone for some reason would find something they did not like and would kill it or put such stipulations on it that the project could not go forth. The whole idea of having an ARB was to maintain the architectural character and integrity of the City. To a large extent, they probably have achieved that but if you drive through there today you will see a substantial amount of projects that things have gone through that he did not think they would ever allow in terms of remodel. They have also approved a tear-down of a ranch and rebuild of a two-story home that looks like it should be in south Leawood. He believes it is a difficult road to go.

Conrad stated it is terribly subjective. In respect to the ordinance change, in order for him to vote for approval of it he believes paragraph A in 16-2-10.1 should be copied into 16-2-10.2. He thinks when a professional architect reads this as he begins a design, there is a lot in these paragraphs that should give some direction to how he is going to design his project. He understands that is no solution as to how it would be enforced. There could be some that would be best for residential but he thinks the content would be the same. Elkins asked if he would include number seven into the residential portion. Conrad stated he would include all seven items. Jackson stated she believes the reason the Commission is being asked to look at this is because there is not a current system in place to enforce those guidelines on the residential. If you were to leave that in on the residential side then it would not substantially change anything. Conrad stated they would be removing

a requirement if this is approved as proposed. The seven items are currently in the LDO. Williams stated they are not being enforced.

Elkins asked if the Commission has the ability to propose changes to the LDO. Lambers stated the Commission does have the ability to make changes. If the intent is that you believe the City should go further than what is currently being done, that is fine. The Commission should not be concerned about enforcement. That is a Council-level decision. He would question whether A 7 is appropriate to be included in the residential portion. The rest might be workable. Rohlf asked if this should still be separated out under residential and commercial even though we would be basically duplicating the words. Lambers stated, yes, he believes it still needs to be separated out. If the Commission is not comfortable amending it, then a statement to Council of what the Commission would be willing to consider would be appropriate. Munson stated he would be in favor of the changes suggested by Conrad. Henderson stated he would want to say more to encourage the Council to continue their work towards finding an appropriate statement on residential design. Rohlf stated by keeping that language in the residential portion we are looking at something to change. Either this needs to be enforced or revised. Williams stated he thinks there is a need to have some of this in the LDO, but a lot of this is still very subjective and also conflicting to some degree. He would be hesitant to just copy that text and plant it into the LDO, versus passing the changes that are proposed and having an amendment to look at these issues and have them potentially added to the LDO at a later time. Conrad stated we have struggled with this for years. He would rather have it addressed at least the way it was in the past rather than not addressing it at all. It is not going to be simple, but we need to figure out how to refine it and how to enforce it.

Lambers stated it is clear that what the Commission is experiencing is what the Council would be going through as well. He thinks it would be beneficial to the Council to allow the Commission to have this dialogue, but tonight is probably not the night. The Commission is just getting into the complexity of the matter. It is not time-sensitive. Lambers then suggested discussing this at the work session for the second Tuesday in September and then voting on it during the fourth Tuesday in September. It would be beneficial to Council to have that dialogue, rather than trying to rush this through. It is important and will not go away. Staff would be administering most of this and it would only come before the Commission if there were an issue.

A motion was made by Williams to continue this case to the September 26th meeting in order to have an opportunity at the September 12th work session to discuss the issues of building massing and scale and how best to incorporate those into the LDO. Munson seconded the motion. Motion to continue approved unanimously.

Conrad asked if the task force could be a part of the September 12th meeting. Lambers stated it is a Planning Commission item right now, so it would only be appropriate for the Planning Commission at this time. The task force has done its first mission and is waiting to get direction from the Governing Body if they are to proceed to meet again. The work session would be public, so the public could attend, but typically does not participate.

CASE 62-06 LDO AMENDMENT SECTION 16-4-3 SPECIAL USE PROVISIONS Request for approval of an amendment to the Leawood Development Ordinance.

Staff presentation: Presentation by Mark Klein. This is a proposal for an amendment to the LDO sections 16-4-3.2 and 16-4-3.6. Both of these sections speak to special use permits. The way the ordinance is currently written, a special use permit will not transfer to a future property owner unless it is specifically stipulated within the special use permit. There is also language in section 16-4-3.6 that special use permits will automatically expire in a period of 20 years and that they would need to be renewed before that. Staff is recommending an amendment that would allow a special use permit to run with the land, therefore be transferable, and also allow remove the 20-year limitation. An example for the reason for the change would be where there is a business that has acquired a special use permit and at some point in time they were purchased by another company. That other business could run the business the exact same way as the previous business, however, the way it is currently written the special use permit would not be transferable to that second owner. If something were to change with the new owner with regard to the site plan or architecture, then they would be required to come before the Planning Commission and City Council if the changes were substantial enough. Staff is recommending approval of the amendments.

Conrad asked if a special use permit is a zoning. Klein stated, no, however it does follow the same procedures as a rezoning. Conrad asked if there would be a sunset clause. Lambers stated, no. The special use permit is designed to allow the integrity of the underlying zoning to remain in place when a use that would not be consistent may be appropriate but you do not want that use to have a zoning change to trigger a domino effect other properties around it. It should run with the land and should be transferable. Conrad asked what would require a special use permit. Klein stated we currently require a special use permit for assisted living, independent living, churches and those types of uses.

Henderson asked what would trigger that it does not run with the land. Klein stated special use permits are very specific as far as the use they allow, therefore if it was determined that the use was not the same, then the special use permit will not be valid. Lambers stated if someone was buying the property they would know if a special use permit was attached to that land. Henderson asked how that would be enforced. Lambers stated he would find it hard to believe that someone would buy a tract of land and a building and try to sneak by the City. Elkins asked if the enforcement would be that if there is a non-conforming use then the City enforcement would challenge it in a non-conforming way. Lambers stated, no, because it was never an allowed use in the first place. Typically, a non-conforming use is when something already exists prior to the City putting a zoning category on the land. It would be an illegal activity.

Munson asked how special use permits are recorded. Klein stated it is recorded with the City Clerk and signed by the Mayor.

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

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

Meeting adjourned.

Lisa K. Rohlf, Chair