

City of Leawood Planning Commission Minutes

February 13, 2007
Meeting - 6:00 p.m.
Leawood City Hall Council Chambers
4800 Town Center Drive

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

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

APPROVAL OF THE MINUTES: Approval of the minutes from the December 19, 2006 meeting.

A motion to approve the December 19, 2006 minutes was made by Roberson and seconded by Williams. Motion approved unanimously.

CONTINUED TO THE FEBRUARY 20, 2007 MEETING:

CASE 03-07 SIENA Request for approval of a final plan and final plat. Located south of 137th Street and east of Mission Road.

REMANDED FROM COUNCIL TO THE FEBRUARY 20, 2007 MEETING:

CASE 53-06 LDO AMENDMENT – SECTION 16-2-5.7 (RP-4 DISTRICT) Request for approval of an amendment to the Leawood Development Ordinance. **Public hearing**

CASE 55-06 LDO AMENDMENT – SECTION 16-2-5.2 (RP-A5 DISTRICT) Request for approval of an amendment to the Leawood Development Ordinance. **Public hearing**

CASE 56-06 LDO AMENDMENT – SECTION 16-2-5.3 (R-1 DISTRICT) Request for approval of an amendment to the Leawood Development Ordinance. **Public hearing**

CASE 57-06 LDO AMENDMENT – SECTION 16-2-5.4 (RP-1 DISTRICT) Request for approval of an amendment to the Leawood Development Ordinance. **Public hearing**

CASE 58-06 LDO AMENDMENT – SECTION 16-2-5.5 (RP-2 DISTRICT) Request for approval of an amendment to the Leawood Development Ordinance. **Public hearing**

CONTINUED TO THE FEBRUARY 27, 2007 MEETING:

CASE 01-07 CAPITAL IMPROVEMENTS PROGRAM Request for approval of the Capital Improvements Program for 2008-2012. **Public hearing**

CASE 11-07 VILLAS OF HIGHLANDS RANCH Request for approval of a revised preliminary plan and final site plan. Located north of 138th Street and east of Chadwick. **Public hearing**

CONTINUED TO THE MARCH 13, 2007 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**

CASE 04-07 ST. MICHAEL THE ARCHANGEL Request for approval of a final site plan. Located north of 143rd Street and east of Nall Avenue.

OLD BUSINESS:

CASE 09-07 CENTENNIAL PARK – LOTS 18 & 19 Request for approval of a final plat and final site plan. Located south of 141st Terrace and east of Overbrook Road within the Bi-State Business Park development.

Staff presentation: Presentation by Jeff Joseph. This case was continued from the January 23rd meeting due to some outstanding issues. The applicant has submitted revised plans. A roof plan has been submitted identifying the location of plumbing and vent stacks on the roof. A line of sight drawing has been submitted to identify various views of the roof from different locations within the property. The applicant is proposing the same roofing material. Staff is recommending approval of this case with the stipulations stated in the staff report.

Rohlf asked if staff had an opportunity to discuss the roofing material with the applicant. Joseph stated we had a meeting with the applicant and they chose this material and do not want to change.

Williams asked if the joint pattern would be discussed. Joseph stated the applicant has a sample to show the Commission what the seams would look like.

Applicant presentation: Presentation by Dr. Brad Vince. They took the comments to heart from the last meeting. They did some line of sight drawings to see how much of a potential issue there would be regarding visibility. There was an error made at the last meeting. The sample they showed was a white color roof and that is not accurate. *Vince showed an example of the proposed roofing material.* It is a material that will blend in with the color of the building. There is no black backing. It will not be able to be seen. The closest line of sight is 400 ft. away. This will no longer be an issue.

Williams stated he believes the issue is not so much the lap of seam, but typically on membrane roofs the adhesives that are used are sometimes sloppy and it catches every kind of debris and it eventually shows up. Vince stated that is a concern that he does not want to take lightly, but at the same time he wants to be realistic. This is backing up to their detention area. The only visibility will be at such a distance that they could spray paint some areas pink and you would still not be able to see it. He has no concerns with it. He does not want to have a negative detractor in this business park. He thinks the white color could potentially be more distracting. Williams asked if Vince knows the manufacturer of the product. Vince stated, no. He can get that information tomorrow morning.

Rohlf asked if that material has been used elsewhere in the City. Joseph stated he is not aware of any. Most flat roofs cannot be seen from the ground. Williams stated it is likely there are similar products in the City but it is not an issue because you cannot see those.

Elkins arrived.

Presentation by Norm Holtz with RH Sailors and Company. The roofing membrane material is heat sealed together. There is no adhesive. *Holtz described the sight lines that were given to the Commission in their packets.* The beer distributorship might have a slight view from over 400 ft. away. The street is over 900 ft. away and will be blocked by another building in the future. There are very few places where one will be able to see the top of the roof. They did not do a seaming plan because the architect said that the seams will not be visible. There will be three seams. It is not an issue that needs to be discussed.

Henderson asked how far the houses to the north would be from this roof. Holtz stated he would guess about 1,500 feet, maybe more. Henderson asked how far the land falls from those homes to this site. Holtz stated there is some fall, but according to their engineer they would not be able to see the top of the roof because of the way it slopes. Henderson stated he believes it will be visible. Vince stated one would not be able to see the roof from the homes to the north. They would only see the parapet.

Conrad asked if there would be a gutter along the low edge of the roof. Holtz stated, yes. Conrad asked how they would be enclosed. Holtz and Vince stated they are in agreement with all of the staff stipulations, including the stipulation that all downspouts will be enclosed.

Reynolds asked if there is any rooftop equipment. Vince stated, no, just vent stacks. Reynolds asked if the overhead doors will be matching or contrasting the façade. Vince stated they would prefer to have them shown on the drawings, but they would comply with the Commission's choice.

Munson stated he does not like the architecture. He then asked if there are any design guidelines for the development. Joseph stated there are no design guidelines for this development. There are already a couple of buildings built, so it is too late to have design guidelines at this point. Henderson stated it seems to him that we should not acquiesce to buildings that are in existence in a space and accede to the fact that we will sometimes be striving towards the lowest common denominator. He thinks it is okay to pass design guidelines now and if the existing buildings do not meet them, then they could be grandfathered in with the understanding that we expect henceforth a specific set of expectations. Rohlf stated it is normally the developer who creates the design guidelines. Holtz stated the developer is in the process of developing design guidelines for the rest of the park. There are recorded design guidelines for the property already. Vince stated he wants to make sure they are open-minded and get guidance from the Commission. The current guidelines need to be re-worked for the long-term viability of the development. Henderson asked when the final draft would be given to staff to review. Vince stated as the buildings start to tie in together. Henderson stated the City continually updates ordinances and wants to be a City of distinction.

Conrad stated when they first saw this there was a lot of future consideration for windows and such and the applicant has responded to the Commission's concerns. The roof needs to be done the way it is shown in the drawings. He is still concerned about stipulation number 5. He is not sure how the water will be collected on the downside of the roof with concealed downspouts and gutters. It could be a challenge in the future.

A motion to approve was made by Conrad and seconded by Jackson. Motion approved 7-1. Munson against.

NEW BUSINESS:

CASE 82-06 WIRELESS TELECOMMUNICATIONS TOWER Request for approval of a special use permit. Located north of 135th Street and west of Briar.

Staff presentation: Presentation by Jeff Joseph. This is a request for renewal of a special use permit for the existing wireless tower located close to 135th Street and Nall Avenue. The applicant is Global Signal. The applicant is requesting approval of a 5-year extension of a special use permit for the wireless tower. This tower is located within the Parkway Plaza development. There are five wireless carriers located on this tower. They are Sprint/Nextel, Cricket, Cingular, Verizon and T-Mobile. The special use permits for all of them have expired and all have applied for renewal of the special use permit except for Sprint/Nextel. There are no changes proposed for this project except for some additional landscaping along the perimeter of the screen walls. Staff is recommending approval of this case with the stipulations stated in the staff report.

Rohlf asked the reason for additional landscaping. Joseph stated they currently do not have any landscaping on the south side, so staff asked them to add some landscaping there. Rohlf asked if staff is overlooking the height requirement because the special use permit has expired. Joseph stated since the pole is already there, they comply with all of the regulations. Rohlf asked if the length of time for the permit should change. Joseph stated staff wants to look at these every five years, in case technology changes and there may be something else they can do about the size of the antennae.

Munson asked why there is a delay in this application, because it expired in September. Joseph stated there were some issues with the access from Parkway Plaza. Munson asked if the delay was due to the applicant. Joseph stated the City asked them to continue the case.

Henderson asked why the applicant held the meeting at the same time as the Cingular Wireless Antenna. Joseph stated for convenience.

Conrad asked if having a generator is common. Joseph stated the applicant could better answer that question. They are not changing anything to the site.

Applicant presentation: Presentation by Greg Czaplowski, with Planning Works, representing Global Signal. The applicant is in agreement with all of staff's stipulations. This is just a renewal at this point. There is no additional equipment being installed in the compound.

Conrad asked if generators are typically installed in these locations. Stacey Mathis, of Global Signal, stated Global Signal only operates the tower and the compound. Typically, in an area like this where there is a storage yard nearby, if there is a power outage they can bring in generators and run those during those times. This compound does not have any generators on site.

Henderson asked if there would be any such time in the future where they would anticipate any change in the coverage area. Mathis stated you get greater coverage the higher up the antenna is on the tower. In regard to technology changing, only time will tell. As that tower gets more calls coming through it and into their system, there may be a time where they need to add another antenna somewhere to offload some of that traffic. As time goes on, there may be a possibility that the tower could be shortened, but that would be determined by the market forces. Henderson asked staff what would happen if two of the antennae want to trade places. Joseph stated the City would not look at the individual locations on the pole, but they would need to come back for a special use permit if they are making a change.

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

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

CASE 75-06 CRICKET COMMUNICATIONS WIRELESS ANTENNA Request for approval of a special use permit. Located north of 135th Street and west of Briar.

Staff presentation: Presentation by Jeff Joseph. This is a request for a renewal of a special use permit for the antenna that is placed on the tower. The applicant is proposing no change. Staff is recommending approval of this case with the stipulations stated in the staff report.

Williams asked if there is a wall around the compound right now. Joseph stated, yes, there is a screen wall.

Applicant presentation: Presentation by Caroline Boyd, with Telecom Realty Consultants, on behalf of Cricket Wireless. In addition to the five cellular antennae, there are also fire and police antennae from the City on this tower as well.

Henderson asked if Boyd agrees with staffs' comments in regard to propagation. Boyd stated she agrees with what Stacey stated. No one knows what will happen in the future. The tower is still needed.

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

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

CASE 87-06 VERIZON WIRELESS ANTENNA Request for approval of a special use permit. Located north of 135th Street and west of Briar.

Staff presentation: Presentation by Jeff Joseph. This is a renewal of a special use permit for the existing wireless communication antenna. The applicant is proposing no changes. Staff is recommending approval of this case with the stipulations stated in the staff report.

Rohlf asked if the stipulation regarding the radiation certificate has been satisfied. Joseph stated that has been provided and copies of the letter have been placed on the dais.

Applicant presentation: Clifford Turner with Selective Site Consultants, on behalf of Verizon Wireless, stated he was available for questions.

Henderson asked if the applicant agrees that since they met at the same time and place as another applicant, that there was no collusion. Turner stated it was at a different time, even though they were at the same location. The meetings were on different days.

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

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

CASE 02-07 T-MOBILE ANTENNA Request for approval of a special use permit. Located north of 135th Street and west of Briar.

Staff presentation: Presentation by Jeff Joseph. This is a request for renewal of a special use permit. The existing facilities will remain the same with no changes proposed. Staff is recommending approval of this case with the stipulations stated in the staff report.

Applicant presentation: Clifford Turner with Selective Site Consultants, on behalf of T-Mobile, stated he was available for questions.

Rohlf stated it appears we have received the certification required in stipulation number 2.

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

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

CASE 12-07 CINGULAR WIRELESS ANTENNA Request for approval of a special use permit. Located north of 135th Street and west of Briar.

Staff presentation: Presentation by Jeff Joseph. The applicant is requesting a renewal of a special use permit. In this case, staff was misled by the site plan. Initially they proposed a generator and after the staff reports were sent out, the applicant has since stated there is no generator. Staff is recommending approval of this case with the stipulations stated in the staff report.

Applicant presentation: Matt Austin with Polsinelli law firm, on behalf of Cingular, stated he was available for any questions.

Conrad asked if there is a generator on this site. Austin stated, no.

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

A motion to approve was made by Conrad and seconded by Jackson. Motion approved unanimously.

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. The Planning Commission heard this case at the November 7, 2006 meeting. These amendments were designed to separate out the architectural standards for residential versus commercial. Currently it is written so that a couple of sections blend the two and it doesn't clearly distinguish the commercial from residential. In some cases, some of the standards that are listed should only apply to one or the other. Primarily, we go through Planning Commission final site plan review for commercial development and the single-family residential development does not. There was some discussion at the November 7th meeting regarding additional regulations regarding mass and height in the residential district. Attached to the staff report is a memo from Scott Lambers written to the Governing Body explaining what was said regarding having the Planning Commission take a role in that. Staff is recommending approval of this amendment.

Rohlf clarified that the Commission spoke about this amendment at a September 12th work session.

Lambers stated the building task force and these amendments will both go to Council at the same time and the building task force will be dissolved and the issues listed in the memo will be redirected to the Commission to consider further examination. Rohlf asked if the Governing Body has seen the memo. Lambers stated, no.

Jackson asked why we only allow licensed roofing contractors. She then asked if the homeowner can put shingles on their house themselves. Klein stated homeowners can put shingles on their own house. The reason contractors need to be licensed is to make

sure there is a certain level of quality maintained. Jackson asked if the language should be changed in the ordinance. Lambers stated there is a general exception that there are certain activities that an individual can do on their own home. It is implied that if a contractor is doing the work then they need to be licensed.

Roberson stated he does not know what the ramifications are with respect to this change. Lambers stated we have separated out the commercial and residential provisions into two separate chapters. We are then removing any of the residential components so as to not give any indication that the City engages in any type of architectural review for single-family residences. The portions that were merged together had references to residential construction and we are taking all of those out. There will be no architectural review on the part of the City in regard to single-family residences. Staff is proposing the City Council adopt the ordinances, separating them out. The Planning Commission, with staff, will regroup in a series of work sessions to see what items they would like included in the residential portion. Lambers is recommending that initial effort be focused on height and massing of residential structures. If someone were to propose a tear-down or significant remodel they would have parameters they would need to meet based on the surrounding homes. Roberson asked if all we are doing is separating the residential from commercial. Lambers stated, yes. There are things in the ordinance that could be misunderstood as an architectural review component and that will not be in the ordinance that is ultimately adopted.

Williams stated on paragraph A, item 1, of the commercial section, the sentence reads, "no flat vertical surface projections will be allowed above the building roofline". He then asked what they are intending on preventing. Klein stated he would assume that they are talking about a parapet wall that extends above the roofline. This was in the original ordinance. It has not changed. Williams stated a number of buildings that come through have parapet walls. He then stated paragraph B, regarding shading devices, states, "buildings shall provide a means for solar shading at all fenestrations." He then asked if all buildings that come through have shading devices. Klein stated they do not. It is encouraged, especially when calculating bonuses. Williams asked if that needs to be reworded. Lambers stated that can be amended tonight, since the public hearing has been noticed for this ordinance. In regard to the vertical surface projection, he would want to look at that further to see what the intent is. Elkins stated this might be a way of describing a billboard. Maybe this was from a 50's or 60's ordinance where people were taking issue with billboards on top of a commercial building. Klein stated in the past an applicant came in with a shed roof but then indicated they wanted signage and in order to have signage they would need to create a signage band by projecting a vertical piece. Maybe it's not defined well enough to separate out parapet walls. Village of Seville and Nall Valley Shops have parapet walls and the roof lines vary quite a bit. In a lot of cases it looks pretty nice. Rohlf asked if they could have it subject to approval of the City. Klein stated that is typically done. Maybe there needs to be some language that indicates, "upon review" or "discouraged". Williams stated he is reluctant to take it out. He would like to see some change in wording, but should take some study to see what that wording should be.

Conrad stated concern about totally removing the residential scaling from the ordinance. There was a study done to help some guidelines. Lambers stated he provided some examples of what to take into account, such as a zone of influence. The next step would be to have the Commission work with staff at a work session to see what is reasonable. We need an objective basis to establish sight lines and square footage amounts that everyone can agree to. He does not want to get into a subjective analysis that could lead to litigation. Conrad stated he is concerned with removing it and starting from ground zero. Lambers stated his hope is by removing it and the Commission wanting to look at it again, the Governing Body will find that acceptable. He hopes to complete this process within the next 6 months. Once we create an ordinance to be adopted, we would have the Home Builders Association and homes associations commenting on it. His goal is to get this in place by January of next year. Conrad stated he is concerned with passing something that has nothing for the residential. Lambers stated there is nothing being enforced right now on the residential side. Rohlf asked what would be the downside of leaving it the way it is. She thinks some of the homes associations are relying on the language. Lambers stated the homes associations can rely on the language as part of their own private enforcement. The City Attorney has serious concerns with the City trying to get into this endeavor. We need to try to get away from subjective analysis as to what is permitted within the City in regard to single-family homes. The concerns that people have expressed in the northern part of the City have been the height, massing and architecture and his proposal is to look at the height and massing. He does not believe there is a consensus to proceed in the direction of an architectural review board.

Reynolds asked if there is currently no mechanism to implement the existing architectural standards in the ordinance. Lambers stated we would need to establish a division in the City that would combine a legal and architectural presence, with possibly a legal secretary as well, and there would need to be between three and four positions and having an appeal process to view objections to this committee, beyond that allowing it to go to district court. Reynolds asked if we do not currently have a mechanism to enforce. Lambers stated there is nothing in place. Once the ordinance is amended for residential, it needs to be measurable and not subjective. Reynolds stated he looks forward to this coming back to the Commission at a work session.

Rohlf asked what would happen with some of these problem homes up north between now and the time that this is finalized. She then asked if it is left to the homes association's to deal with. Lambers stated, yes. He does not know what recommendation the Governing Body will give. We have not had that conversation at the Council level yet. He believes it needs to happen, particularly as it relates to architectural review.

Jackson asked if there is any method the homes associations could try to utilize to require the City to enforce the ordinance as it is written. Marcano stated the homes associations would need to discuss that with their own attorneys. Rohlf stated the people speaking at the public hearing are active members of their homes associations, so they may want to speak to that. Lambers stated if this ordinance goes forward, then that issue becomes moot.

Public hearing: Meg Gilmore, 9010 High Drive, vice-president of the Leawood Estates homes association. She is on the deeds restrictions committee and they review plans for remodeling and rebuilds. She is disturbed by the idea that we are creating a more adversarial relationship. She did not realize that the City was separate than the homes association in the feeling of community. She is confused about the amendment process and where the ordinance stands as far as the position of the City Council on the exploration of some of the issues that Lambers has presented and where discussed at the September 12th work session. At that meeting the Commission used a memo that was sent on August 7th from Lambers that details several points. She feels this is wonderful progress for the City and the homes associations and the neighborhoods. Her understanding after that work session was that information was going to go to the City Council and would be brought back to the Commission with a recommendation for further exploration. What is now happening is that the Commission will decide tonight whether or not this ordinance is to be changed and if the language for the single-family residential will be dropped. She believes that is premature. We need to explore other options. The ordinance that is in place is a carrot to get this taken care of more quickly. If this language is taken out then there will be nothing to be done with single-family residential requirements. She believes that it should remain as it stands until that research is done and get a new ordinance organized. She asked that the language not be taken out, but send it to Council for their recommendation.

Bruce North, 8025 Lee Boulevard, chair of the architectural review committee for the Leawood Homes Association. He was in the September 12th work session and it appeared that there was a fairly positive discussion that there was a need at the City level to have some architectural review standards and that the Commission was going to proceed along those lines. His concern is that approval of this change without revising the guidelines and having them in place will undermine the responsibilities that have just been given to the homes associations with the new ordinance. North Leawood has about 3,000 homes. He strongly requested that the Commission not pull this until there is something else in place. It is undermining the homes associations' abilities, particularly in regard to massing and scaling, which is what most of the disagreements are about between the home owner and the association. Having this ordinance in place gives them a bit of support from the City. If the Commission does decide to present this to Council, he requests that the City not issue any building permit until they have approval in writing from the homes association, during the interim.

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

Reynolds stated it is his understanding that we are tidying up the paperwork until a more thorough answer can be established in the next nine months. He then questioned if the current ordinance is actually helping the homes association in their activities. Henderson asked if the current ordinance has been helpful in stopping the issues of building mass and height. Reynolds stated there is no current mechanism to apply the current ordinance to residential. He then asked the homes association representatives if they feel that the current ordinance is having any affect on what they are doing. Gilmore stated her homes association does use it as a basis for their building requirements. They do discuss what is in the City ordinance. Williams asked for elaboration as to how they use the ordinance. Gilmore stated primarily it has been roof lines and people putting in varying roof lines. The first part of that ordinance is that the roof lines must be similar or the same. It helps keep people from combining various roof lines that make the house look odd. Another item they have used is the unrelieved side walls on the house. Her homes association has made requests of contractors to put in windows on the side walls so that it is not an unrelieved side wall for the neighbors to look at. The current ordinance details the unrelieved sides.

Reynolds asked staff's opinion on a building permit moratorium for homes association's approval. Lambers stated we cannot grant building permit approval contingent upon the enforcement of a private deed restriction. That is why the process we have in place simply provides that the homes associations will be notified. After a period of time we will go through the normal process of a building permit. The homes association reaction is independent of what we do. We make record that they were notified of such application. Elkins asked if the City requires notification from the homes association. Lambers stated, for those homes associations who have signed up to be notified, we provide notification and once the time period has passed, we go through the normal building permit process. Reynolds asked if that has been in place for a long time. Lambers stated it is new. The task force will meet to see

how the process is going. Reynolds stated the homes associations are a separate action from the City. Lambers stated some homes associations are starting to get more active than they have been in the past, as a result of the change. Reynolds stated by modifying this ordinance, he does not feel we are having any impact on the homes associations in terms of a legal impact. They can point to any document as a set of guidelines and use those. Lambers stated the guidelines they adopt are their personal guidelines for which they enforce and have liability for. Reynolds stated there have been seven tear downs and three extensive remodels within a five minute walk of his house in the past several years. He is glad we are moving forward as quickly as possible. He is comfortable with this amendment.

Henderson asked the Commission's opinion on the requested change in relation to deed restrictions. Elkins stated it is his understanding that if the process were to end with this amendment being passed by the Governing Body, it would make it clear that the deed restrictions are the sole basis for homes association's enforcement of architectural standards. The discussion Henderson is speaking about would be the next step after this amendment, which is to have a work session with the Commission and Governing Body as to what architectural standards should be for the City. He would argue for a minimal standard to be imposed by the City. He feels it should remain a matter of private enforcement. Munson stated the challenge is that the homes associations face a situation where in order to enforce their deed restrictions they have to get an attorney and pay legal fees. Elkins stated he believes ultimately the residents will be forced to hire an attorney. It shifts the burden from the homes association to the home owner.

North stated it is not the onus on the resident to proceed with any kind of legal action. The requirement is on the home owners association, because the homeowner can get a building permit and start building. There is nothing stopping them if they want to build a home too large for the lot, unless the homes associations take legal action.

Elkins stated he is concerned and intrigued by the question raised by the public about taking away what is in the ordinance. Apparently they believe it is of some assistance to them. He then asked for staff's opinion about an amendment that would put in place the same massing and scale restrictions for the residential side as they are currently for the commercial side. Lambers stated the Governing Body has not made a definitive statement as to the specifics. They do cause legal problems. That is why he has proposed to strip out the residential so the Council can vote on this. The Council did not give any response on it. Because it is an LDO amendment, it needs to go to the Planning Commission. His recommendation is that the ordinance before the Commission tonight is in the City's best legal interest. We are not enforcing this. The Council did not say that it should be enforced. He knows the residents would like to tell their builders that they need to comply, but the City is not enforcing this. Gilmore mentioned the relief of a wall, and that is not something the City wants to look at for single-family residents.

Henderson asked if by passing the ordinance it would invalidate the work that would go on. Rohlf stated she believes Council is looking for this amendment the way it has been proposed. She believes that if the language was left as-is, it would be more of a motivating factor to get it changed, but she understands the direction that was given.

Roberson asked if they could set a deadline as to coming up with the additional items that need to be looked at. Rohlf stated she believes the Commission can give an opinion to the Governing Body as to when it needs to be seen. Lambers stated this will be on the April City Council agenda. The timing on it will be back on the Commission on how quickly you can obtain a consensus through work sessions. Rohlf asked if the Council could pass this amendment and be done with it. Lambers stated he has not had that dialogue. He will bring back their direction to the Commission.

Elkins stated he understands the dilemma the City sees in terms of potential litigation the way the ordinance is written right now. He hears the homes association's problem when enforcing their deed restrictions and private enforcement of architectural review. He does not know how he will vote.

Munson stated he is part of the building task force. One group that has a lot of interest in this is the builders and contractors. He thinks the best course of action is to get the amended ordinance approved and take it to Council for discussion.

Jackson stated the private market is the best place to make these decisions. If the ordinance passes the way it is proposed today it would inspire the homes associations to look at what it is they want in a new ordinance and they could come back and give us input on that. Perhaps there is some way to get some architects that are willing to review the buildings on a voluntary basis who would suggest to the builders that they would get more home value by keeping the home within the guidelines and style that is currently there. The impetus to change is not there and the impetus for the homes associations to come up with something new is not there either, until we pass this amendment.

Reynolds stated there are a lot of creative and innovative ways to look at this. We can provide help to private citizens to address this issue without legal concerns for the City.

Williams stated he hopes by passing this tonight and bringing it to Governing Body and with the comments provided tonight and at the public hearing this will force the Council to give direction as to where they want to go. He shares the concern that there may be a little bit of protection for the homes associations the way it is written today. It is not enforced by the City.

A motion to approve was made by Williams with a change to ordinance 16-2-10.1, paragraph B, the first sentence to read, "buildings shall be encouraged to provide a means for solar shading at all fenestrations". Motion seconded by Munson. Motion approved 6-1. Conrad against. Roberson abstained.

CASE 16-07 LDO AMENDMENT – SECTION 16-4-8.3, RECONSTRUCTION OF CERTAIN LAWFUL NONCONFORMING STRUCTURES Request for approval of an amendment to the Leawood Development Ordinance.

Staff presentation: Presentation by Mark Klein. Currently, the ordinance states that if you have a legal nonconforming structure, all residential buildings, up to and including four units, would be allowed to be constructed as they were before. However, commercial development, and any residential unit that exceeded four units, if it were destroyed by more than 50% would have to come into conformance with the current ordinance. This ordinance amendment would allow the BZA to provide an exception for these commercial buildings to seek relief to build within the same building footprint; however, they would still need to meet any current building and safety codes.

Roberson asked the basis of this amendment. Klein stated it provides a situation for the City to look at an individual case and if the City feels an individual case meets the criteria to where it does not have any adverse impacts on the adjoining properties, then that development could be rebuilt as it was previously. Lambers stated there is a situation up north that in order to secure financing they need to have some assurance that they could rebuild the structure. Currently, if it were destroyed by more than 50%, it could not be rebuilt. The City Council was made aware of this situation and City Council instructed staff to create an amendment to the LDO.

Henderson asked if a tornado destroys a building that has been added to significantly, but not 50% worth, how this would apply. Lambers stated the calculation would be based on the structure at the time of destruction. Henderson asked what would happen if the building were roughly 50 percent new and 50 percent old. Lambers stated that would not be looked at. This issue we are having with this building is that because of all of the setback requirements the building could not be rebuilt. Henderson asked if "building" refers to a single-family residence. Lambers stated it is a residential structure that is being used a commercial building. Marcano stated the proposed amendment allows for an additional exception through the BZA for any other structure that does not fit into the residential category.

Conrad asked if reconstruction would allow nonconformance just to the footprint and setback. Lambers stated height could come into play.

Henderson asked why the BZA has the priority placement on the page that makes it appear it is an appeal mechanism rather than a policy about lawful nonconforming structures. Marcano stated the intent is to allow a mechanism for structures to have relief from the ban on reconstruction of legal nonconforming uses. Lambers stated we are dealing with a very limited number of structures. Staff will not object to BZA granting approval for it. Henderson stated if there are to be deviations, all that is needed is BZA approval. If there is another section regarding BZA, why give it placement in this portion? It seems to be an unwarranted focus on appeal. Marcano stated the intent is to keep the current ordinance in place, while allowing a place for relief. This is typical of how exceptions are given in the LDO.

Jackson asked where the building in question is located. Lambers stated it is near Somerset and Lee. It is a residence that was the original home for the Kroh Brothers. It is now a commercial endeavor. There is a planning company that wishes to acquire that building and use it as an office. Given the current requirements of the City, if it were to be destroyed by a natural disaster, it could not be replaced. Given the setbacks that are there, they could possibly provide an extension on the southern end of the shopping center adjacent and the rest would be parking lot. Given that the building has functioned in that capacity since the beginning of the City's history, it does not seem unreasonable to allow it to remain and allow it to be restored should something happen to it. It still maintains the integrity of the residential structures that are adjacent.

Public hearing: Bruce Peschoff of Planning Works. His company has initiated this discussion. *Peschoff showed an aerial of the building.* The building has always been a commercial use. It was built by the Kroh Brothers to look like a home. Since that time there have been a couple of amendments to the LDO. The most current version identifies a 75-ft. business to residential setback. If that were applied to this small lot there would be no place for rebuilding or construction to occur. They realized this could be a problem if something unfortunate were to happen. One concern his company has with the ordinance as it has been drafted is sub-item one that states, "The non-conforming site improvement is the only non-conforming situation pertaining to the property." They think that should be deleted from this ordinance amendment. There are still four other nonconforming issues with this building. Typically, if there is one non-conforming issue, it will involve more than one. The issue should be if a building should be reconstructed and it would be to the BZA to make that determination. The intent is to protect the building.

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

Henderson asked the value of number one as it is written. Marcano stated the intent was to give a mechanism for the BZA to look at all of the issues with the property and if they felt there were too much nonconformity with the property it would give them the opportunity to not grant the variance. Lambers asked Bruce if that stipulation causes any problems for his specific parcel of land. Bruce stated, no, just the setbacks. Lambers suggested leaving it as-is and if there is another application that needs relief then we could amend it again. The idea is that they will be looked at on a case-by-case basis.

Conrad asked if there is any other way to make this happen for one property. Lambers stated we are establishing a procedure so that a party has a clear path of litigation. The BZA is the simplest procedure to handle this. Conrad asked the current zoning of the property in question. Lambers stated it is commercial.

Henderson asked the interpretation of "within 6 months". Marcano stated that would mean less than 6 months.

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

CASE 73-06 LDO AMENDMENT – SECTION 16-4-10.1 HOME OCCUPATIONS Request for approval of an amendment to the Leawood Development Ordinance.

Staff presentation: Presentation by Jeff Cantrell, Neighborhood Services Administrator. This is going to help us address some of the growth issues that we are seeing with some of our home occupations. This will also address the vehicles that have signs completely enveloping them.

Roberson asked if there is an issue with this. Cantrell stated there are numerous proponents of the amendment. Roberson asked if there have been numerous complaints. Cantrell stated, yes, from homes associations and individual property owners.

Henderson asked how 3.5 square feet is determined. Cantrell stated it is a size that is not out of the norm of what has been seen for magnetic door signs. Some of the other cities use that size.

Rohlf asked if there is some sort of notification process if this amendment gets approved. Lambers stated the enforcement department would give out courtesy notifications to make people aware of it.

Roberson asked if a pink Mary Kay Cadillac would count. Cantrell stated it would not apply to the color of the car.

Conrad asked if any consideration was given to trailers or towed, non-powered, machines. Cantrell stated it was not the specific intent of this ordinance to address those. Lambers stated if that becomes an issue it will come before the Commission for another amendment.

Williams asked if this would only allow one car with a 3.5 sq. ft. sign. Cantrell stated you could have more than one, but only one would be allowed outside of the garage.

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

Williams asked if this is strictly for a home-based occupation. Lambers stated that is the target. Williams asked if he owned a business, but it was not run out of his home, if all of his vehicles could have the name of his business. Lambers stated, no. There is only one business sign per property at any one time. Most of the complaints have been with home-based businesses.

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

Meeting adjourned.

Lisa K. Rohlf, Chair