

**City of Leawood
Planning Commission Minutes**

**March 27, 2007
Meeting – 6:00 p.m.
Leawood City Hall Council Chambers
4800 Town Center Drive**

CALL TO ORDER/ROLL CALL: Henderson, Roberson, Conrad, Rohlf, Munson, Williams, Reynolds. Jackson and Elkins were absent.

APPROVAL OF THE AGENDA: Rohlf called for a motion. **A motion to approve the agenda was made by ____ and seconded by ____.** Motion approved unanimously.

APPROVAL OF THE MINUTES:

Approval of the minutes from the February 20, 2007 meeting. **A motion to approve the February 20, 2007 minutes with a few minor stenographic corrections was made by Henderson and seconded by ____.** Motion approved unanimously.

Approval of the minutes from the February 27, 2007 meeting.

Henderson: I have one humorous comment. In one of the paragraphs on page three, it states the water source, in case of a d-r-a-u-g-h – draft condition, I think it meant draught condition, but I applaud the humor that's imbedded in overflow and detention of the draft condition. **A motion to approve the February 27, 2007 minutes with a few minor stenographic corrections was made by Henderson and seconded by ____.** Motion approved unanimously.

Approval of the minutes from the March 13, 2007 meeting. **A motion to approve the March 13, 2007 minutes with a few minor stenographic corrections was made by Williams and seconded by ____.** Motion approved unanimously.

CONTINUED TO THE APRIL 10, 2007 MEETING:

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CASE 23-07 PARKWAY PLAZA – SUMO RESTAURANT Request for approval of a preliminary site plan. Located north of 135th Street and west of Roe Avenue, within the Parkway Plaza development. **Public hearing**

CONTINUED TO THE APRIL 24, 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**

CONTINUED TO THE MAY 22, 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**

NEW BUSINESS:

CASE 24-07 LEABROOKE Request for approval of a final site plan. Located at 14701 Norwood.

Staff Presentation:

Klein: This is CASE 24-07 Leabrooke Sports Court. The applicant is requesting the approval of a final site plan for the construction of a sport court within the Leabrooke subdivision. The sport court will be primarily used for tennis and basketball but could possibly be used for other sports as well, including volleyball and badminton.

This subdivision has actually been approved through the Planning Commission and the City Council and a number of the plats have already received final site plan approval. This is within a platted piece of property and it's located directly to the east of where the future clubhouse is supposed to be. The original plan showed actually two tennis courts and a volleyball court located within this tract of land and which contains an easement where the overhead power lines run through. The applicant is proposing to substitute this for a single sport court. It will have sport court surfacing on it, it will have a fence that goes around it. The fence will be approximately 12 feet in height and will be PVC coated, except for a portion of it that will be only five feet in height, the opening on the south side of the sport court.

Staff is recommending approval with the stipulations stated in the staff report and we'll be happy to answer any questions.

Rohlf: Can you explain further why we would be seeing this tonight, why it wouldn't be a consent agenda item?

Klein: The reason is because there was a change from what was previously there and just to make sure that the Planning Commission understood as far as what was previously proposed. I did put a plan where I zoomed out as far as what was currently proposed – the two tennis courts and the volleyball court – but nothing more than just to make the Planning Commission aware.

Lamers: Madam Chair, when I was appointed interim planning director by the City Council, they expressed a deep concern over plans being submitted to get approvals and then having the plans downgraded through subsequent amendments. I consider this to be one of those situations, where they are taking three dedicated sport facilities and combining them into one. It was my decision that this would require going back through the final plan process so you would have the opportunity to say whether or not you agree with that or not, rather than making an administrative decision or putting it on the consent agenda.

Rohlf: But other than that, Mark, you don't have any concerns?

Klein: Other than the Planning Commission, as Scott was saying, as far as going from the two tennis courts and volleyball court, just to make sure the Planning Commission is aware that there is a change. I passed out, as far as the surfacing of the sport court, and that's what's up there, and that's the three colors they proposed using. Actually, it will be a concrete pad that they are proposing. That will be sport court surfacing that will go on there. They are interlocking and the reason for it is to allow kind of safety factor. Those do have some give to it. It allows if somebody falls or that kind of thing, it would supposedly act as a court. I'm sure the applicant can address any other technical aspects you would like to hear about.

Rohlf: I'm not sure, Mark, if we've seen anything on our plans to indicate what would happen to the rest of that space where the other sport court and volleyball court were going to put in.

Klein: You can ask the applicant further, but I believe this is intended to replace that. There is a trail that is shown on the original plan that kind of goes through that tract and heads off to the east and up to the north. The applicant has stated that that trail will still be constructed. Most of that trail is actually within a portion of the property that has not been platted yet as far as a final plat, and therefore it would be completed at that time. In fact, that's one of the stipulations that's in the staff report.

Henderson: Assuming one court and playing tennis, basketball, volleyball and badminton perhaps, I'm assuming someone knows that these are in different seasons, they're not all the same season, and someone is monitoring who gets the court when, or which kind of sport is being played when.

Klein: That would be a good question for the applicant.

Munson: Any restriction on the hours of operation? Also, is there any lighting on this particular facility?

Klein: Actually, there isn't any lighting that's proposed with the sport court currently here. There is some adjacent single-family to the north of it and also some townhomes to the south and east. Staff is recommending that additional landscaping be provided between the sport court and those on the north and south side. No lighting.

There were no other questions of staff; Chairman Rohlf called for the applicant to come forward.

David McIntyre, Applicant, 9241 West 143rd Terrace, Overland Park, Kansas, appeared before the Planning Commission and made the following comments:

Mr. McIntyre: The primary reason that I felt like the sport court was an upgrade from just a tennis court and a sand volleyball court. The two tennis courts kind of crowded the side a little bit and were unusable for a short period of time. The main reason we went with the sport court, which is quite a bit more expensive than just an asphalt tennis court, is the safety factor. You've got samples of the tile that fits on the surface. The court is graded so that the concrete under pad will drain and the tile is lifted; I'm not going to say ice or snow won't accumulate; it will accumulate on it. However, as it melts off, you won't have the factor of the black ice on top of the tennis court. It will be under there. And when you fall on the tile, it's much safer, and your footing is much safer. We are a multi-generational community there. We have single-family homes that have kids in them and we have villas with the Boomers in them, and we have townhomes with some "Golden Year" there. I'm not saying all these people will use this court, but it will be much more useable than just a tennis court.

Henderson: How would you moderate the use by seasons for the different sports on the court?

Mr. McIntyre: I think the tennis court, we'll have to set hours when you can play tennis and hours when you can play basketball. That's one of the reasons we did not light it. I didn't want a bunch of basketball playing going on late at night. That would be my concern about basketball. I think tennis players will probably be early people. The net comes up and down easily; it's on a reel. That won't be a problem, and we'll set hours for tennis players in the morning and we can have basketball in the afternoons and weekends.

Henderson: Will the sports adjust to the size of the court? How much will the different sports be adjusted to accommodate the size?

Mr. McIntyre: The court is not a regulation court.

Mike Runski (?), representative of Sport Court, 11420 South Gleason, Olathe, Kansas, appeared before the Planning Commission and made the following comments:

Mr. Runski: Regulation tennis, as you may know, is 60 x 120. We went with 55 x 110. That extra out-of-bounds, unless it's very competitive tennis, is not needed on this. The lines will be regulation and they will be painted on there. The basketball ball will be width-wise over the 55 foot space; it will be a very small full court on one side of the tennis court. So, most basketball is played, as we have determined, is one person out there, maybe two or two-on-two, so you could get a couple groups of people there playing basketball at the same time. And when tennis is being played, that will be regulation lines and nobody would be able to play basketball at that time.

Henderson: My concern is that the court will be well used by your people. The purists will sometimes not play on courts unless they have "regulation size." There would be nothing worse than to build a nice court and have folks say it's not exactly the right dimensions and they won't play on it.

Mr. Runski: That's a good point. For tennis, we have installed the 55 x 110 for former professional players. We've asked them if that works well; they've said no problem. The tennis is regulation. Basketball – the free throw lane and the three-point arc will all be regulation, so they'll basically feel like two regulation half-courts there instead of a full court.

Munson: I assume this is intended wholly for the residents – Is that correct?

Mr. McIntyre: Yes. We're asking for a black-and-white lettered sign that states it's for use of residents of Leabrooke only.

Munson: As the developer, Mr. McIntyre, you'll be in charge of the homes association – or whatever you call it – until the build-out. Is that correct?

Mr. McIntyre: That's correct.

Munson: And after build-out, you'll set up an entity to oversee the facility, etc.?

Mr. McIntyre: Yes. We already have an LLC set up called Leabrooke Homes Association, LLC, to monitor accepting the dues, reserving the clubhouse, and scheduling court times, etc.

Conrad: Is this adhered in any way to the concrete slab?

Mr. Runski: On courts this size and even half this size, it is not adhered. It's all interlocked so it's basically floating on there, so there's a little bit of lateral give and vertical give on this. When we go to the smaller courts – 30 x 30 – we do anchor them on one side because the weight will shift that. This just floats because there's a little bit of expansion and contraction on this, and on something this size, there's a lot of weight. They do not break apart.

Conrad: A little of my concern was with mischievous people who may decide a 10 x 10 section would look good somewhere – I know it's the applicant's responsibility, but...

Mr. Runski: That's a good question. It's very interesting that it doesn't happen. We've done parks and recs with that, you know, and the vandals maybe aren't smart enough to know that they could peel that off. It's never been a problem.

Conrad: The issue was permanency and not to have something that was not functional.

Reynolds: I assume there are people in the association that bought, maybe thinking they were going to get two tennis courts and so forth. Have they been notified of the change?

Mr. McIntyre: The people who have already bought are very anxious to see the sport court rather than just a tennis court. The other reason I'm pressing ahead with this is because at the current time, there's no residents within about 800 feet of this sport court. I want to get it in there. There are some townhomes to the south of it that will be within 130 feet and there will be some villas to the north of it that will be within about 100 feet, and I want everybody to know what they're getting. So, if they buy a home or a unit there, it was there, they can see what is right there, and we'll make sure they know what's going on ahead of time.

I'll go ahead and address the trail. The reason we're not doing the trail at this time is because we have an application in on Fifth Plat that is getting approved to start some streets and sewers in there. It would be tearing up the area up, so we're going to wait until that is done to put the trails in.

Henderson: Since this is under the power lines, I assume the power lines are 40-60 feet above where one would hit a volleyball, a tennis ball? How far up in the air are the power lines?

Mr. McIntyre: I believe the low drop on the power line is 65 feet.

A motion to approve CASE 24-07 was made by Munson and seconded by Williams. Motion approved unanimously.

CASE 25-07 AT&T VRAD CABINET – 13668 KENNETH ROAD. Request for approval of a special use permit. Located at 13668 Kenneth Road. **Public Hearing.**

Staff Presentation:

Klein: This is CASE 25-07, AT&T VRAD cabinet. The applicant is requesting approval of a special use permit to install a VRAD cabinet. They will also install an at-grade hand-hold, which will be six feet away from the curb and will have a fiberglass lid that goes over it. Staff is recommending approval of this application with the stipulations stated in the staff report.

Rohlf: Mark, this is a brand-new location for this cabinet, right?

Klein: Right. Actually, there's already a couple boxes out there. Two are owned by KCP&L and this is a VRAD cabinet that would be added by AT&T. The cabinet is proposed to be 43.5 inches wide, 50 inches in length, and 63 inches in height. It will sit on a concrete pad that is about 5 feet x 5 feet. The applicant is also proposing some landscaping that will be around the three boxes, more or less. One of the stipulations is that they provide higher landscaping on the street side of those cabinets. They have provided a revised landscape plan of that area in which they have provided some upright junipers that will be about six feet in height. The applicant can show you the landscape plan.

Another one of the stipulations is that they also landscape along another box that AT&T owns that is about 350 feet to the north. They will provide us with a revised landscape plan for that.

Rohlf: And this is consistent with previous applications that we've approved...?

Klein: Yes. Actually, you saw about seven of these, I believe, at the end of the last year. This is very similar. They are not requesting any changing of the boxes on the existing cabinets at all, so if there is an existing box, for instance, on the one to the north, they're not proposing that they will replace the box around it.

Rohlf: I have a question for Mr. Lee. I noticed in your memo there were two ways you would see this happening concerning the right-of-way. Do you have a preference? Have you discussed that with the applicant?

Mr. Lee: Our preference is for them to have an easement and that's where they plan on locating it. These are just standard stipulations that we add to each one. If there's some reason they can't install it within that easement, our stipulation for the right-of-way would stick.

Rohlf: You don't foresee any problem with that?

Mr. Lee: No.

Henderson: This is to David Lee also. Assuming that 137th Street will tie in to Kenneth Road, after this cabinet is erected, I assume staff feels there is ample space between the conjunction of the road and this cabinet.

Mr. Lee: That's correct. 137th Street will actually tie in where Kenneth Road meets State Line, so that intersection will stay in the same location.

Rohlf: Anything else from staff? If not, we will proceed to the applicant.

Chris Carroll, Director of External Affairs for AT&T, 8900 Indian Creek Parkway, Overland Park, appeared before the Planning Commission and made the following comments:

Mr. Carroll: This is simply an extension of our network upgrades in the community of Leawood to provide a competitive alternative to Time Warner Cable's video service. You might recall, we were here before you late last year for seven similar applications. This is just one additional site that we're building and expanding our network here in the city of Leawood. You might have heard or read last Tuesday, AT&T launched our AT&T U-Verse video product; it's an IP/TV/Internet/Protocol-based TV service. This will enable us to expand that network into this area about 137th and Kenneth. I have read and concur with the stipulations that staff has reported. There are two existing cabinets there owned and operated by Kansas City Power & Light. We will landscape around not only our cabinet, but those two existing cabinets as well. Also, about 350 feet to the north, we have an existing cabinet we will landscape as recommended by staff.

Munson: Is there any possibility that these could be constructed so they're not so obtrusive? In other words, down in the ground as opposed to the way they are? This is big.

Mr. Carroll: It's a 63-inch-tall cabinet. It's identical to the ones we put in earlier, the seven sites that were approved by you and the governing body late last year. Those are in and installed. We do landscape with taller landscape shrubs to hide that. Again, as I said, there's two existing cabinets today that are not landscaped that will be landscaped, so I think the aesthetics will be improved once we get that in. But to answer your question directly, Commissioner, we operate across the country and we have suppliers that provide these cabinets, and they are of a certain footprint. Putting them in the ground is not advisable. Electronics and moisture don't mix very well and it would cause outage problems, so we need to keep them above the ground. We pour a 5 foot x 5 foot slab because we have to keep the electronics dry.

Munson: Is there any possibility they could be placed on the back sides of the lots as opposed to the street side?

Mr. Carroll: We have done that on occasion, absolutely. We try to place them where they are not as visible, we try to hide them when they are with landscaping. We work closely with staff; your staff has been wonderful to work with. There are occasions where we can place them in locations that are not off the main thoroughfare in utility easements, but many of these will be in rights-of-way.

Munson: The City has, particularly in new construction, a subdivision requirement to place cables and electrical wires, etc., underground for aesthetic purposes, and also, apparently, for safety purposes. Are you telling me this is not going to happen, it's not possible, you can't do it? I'm really concerned. I think one day I counted between Roe and State line about 19 of these boxes. I'm concerned about that. I know there's landscaping, but there are still big

boxes out on the street. I'm just doing some editorial comments right now. I'm really concerned about that. We brought this up several years ago. I've seen them get bigger as opposed to smaller, etc.

Rohlf: Any other questions for the applicant? Thank you. This does require a public hearing. Is there anyone who wishes to speak about this case?

Seeing no hands, a motion to close the public hearing was made by Henderson and seconded by Roberson. Motion approved unanimously.

Rohlf: If no one has any additional comments, I will entertain a motion.

A motion to approve CASE 25-07 was made by Williams and seconded by Elkins. Motion approved with a vote of 7-1. (Munson)

Comment [RJE1]: Was counted absent during roll call....

CASE 29-07 WARD PARKWAY SHOPPING CENTER PARKING LOT Request for approval of a special use permit. Located south of 86th Terrace and west of Nall Avenue. **Public Hearing.**

Staff Presentation:

Mr. Klein: The applicant is requesting approval of a special use permit to allow offsite overflow parking of up to 300 new for-sale cars. The lot is currently used for overflow parking for patrons and employees of the Ward Parkway Center. Currently the parking lot is existing and contains about 993 parking spaces. The applicant is requesting to allow overflow parking of new cars for sale for a dealership that's actually over on the Missouri side.

As far as the distance from the north where current residents are located, it would be about 350 feet from where they plan on parking the cars. The cars would be parked within the five southern-most interior portions of the parking lot. There are 49 parking spots that are evidently reserved for the 8700 office building to the south. Staff is not making a recommendation with regard to this request but would be happy to answer any questions.

Rohlf: I'm curious as to what the history is of this parking lot. How have these cars appeared on the lot and then a special permit requested? How did that happen?

Lamers: They just appeared with the misunderstanding that approval through [*inaudible*] was necessary. We didn't bother getting into the details of whether he said/he said the situation was. So, given the fact that the cars were there, I issued an administrative special use permit for the vehicles to remain in place while the special use permit application was going through the process. The reason is twofold. One, the parking lot is functioning as a parking lot in this case, although it is for the storage of new cars. Secondly, it gives everyone an opportunity to view what the proposed land use is proposing to do, and so you have a very unique opportunity as opposed to relying on drawings and renditions that tend to be very spin-able. You can see the actual use, both for the Planning Commission and City Council and residents. That was the basis for my decision.

Rohlf: I know this happened quite a long time ago as far as the building of the parking lot. Was there any contingency in the original agreements to do away with this parking lot if it wasn't needed?

Lamers: The problem is that Kansas City, Missouri has to give them permission in order to vacate the parking lot, and to date, that has not been forthcoming. We have met with several developers who wish to develop this into a variety of uses and we have been supportive of many of them to go forward, but they've not been able to solve the problem on the other side of State Line in Kansas City, Missouri, about getting their release of these parking lots.

Conrad: Help me with the special use permit – Is this for overflow parking?

Lamers: It would be specifically for parking of new cars for the dealership. They wouldn't be able to bring in new cars, another dealership wouldn't be able to use it. It would be very specific. The timeframe of it is very specific and the use is very specific. They can't use it to market the cars, to have sales over there, or anything like that. It is simply storage that would be allowed per the permit. The special use permit gives us the ability to impose terms of conditions that they have to meet, and failure to do so then gives us the vehicle by which we can have them come before the Planning Commission and City Council and possibly reconsider or revoke the SUP for failure to comply.

Williams: Scott, what's the enforcement vehicle? How do the stipulations and the comments you just made get enforced? Somebody drive by every once in a while and check the operation and make sure there's not new car customers there on the lot?

Lamers: Yes, code enforcement people, as well as planning. We are continually out there monitoring special use compliance throughout the city. This one would be very straightforward; if there was any appearance at all of sales

activity, that would call the issue into question. Certainly having someone park out there and just walking through and seeing them would probably not constitute an active part on the part of the dealership to sell those vehicles. But on our part, we would limit the number of vehicles, we'd limit where they can be, and make sure there is no sales activity going on during the special use period.

Elkins: Where is the dealership located that these new cars are associated with?

Klein: That's a good question for the applicant. I know it's on the Missouri side.

Elkins: Mark, can you enlighten me a little bit why staff is not making a recommendation one way or another?

Lamers: I'll take the heat. Quite frankly, it's a situation where the city of Leawood is being asked to provide a parking facility for a business that is not in Kansas, and really the long-term benefit for us is to see this property develop into a much more contemporary use. Having this lease out there could have a chilling affect on that, although the lease terms are very limited in terms of the timeframe. So, that's the reason for it. Quite frankly, if there's an opportunity to point to Kansas businesses gaining a benefit from it and the City being a good corporate citizen could recognize that. But we do have the precedent at 104th Street, where there is a special use permit that has expired that will be coming back, where there are cars being stored there as well. That's a little different in that where it's located is not having near the impact; the property cannot be used for anything else. The owner did go in and put in a paved surface on that, put a decorative fence around it, and that is functioning as it should. This does not fall under that category, but it's taking it to the next step.

Munson: Add one more thing to the Molle thing. The difference in that and this particular one we're looking at tonight is, they came in ahead of time and asked for permission to do that. They didn't put their cars there first. Correct?

Lamers: I'll say correct, but as I recall, there was some storage going in on the street area periodically that we'd have to chase them off because the cars were not tagged, so they were illegal. So, they weren't on where they're at, but they were using the side street over there as an overflow parking. It was a cat-and-mouse game for a while. However, everything that they said they would do as part of their SUP, they have done, and I'm not aware of any problems with that location at this point.

Klein: Also, I placed on the dais a couple letters from residents regarding this case. In opposition.

Rohlf: We will go ahead and hear from the applicant at this time.

Chase Simmons, Polsinelli Law Firm, Applicant's representative, 6201 College Boulevard, Overland Park, appeared before the Planning Commission and made the following comments:

Mr. Simmons: Let me start by addressing a question or comment that came up, and also taking us back to the long-term history of the project. When DDR purchased the Ward Parkway Center several years ago – as far back as five years – we came down and talked to Diane Binkley (?), who was the director of Planning at that point, to try and determine what the zoning of this rather unusual lot over on State Line that no one ever seemed to use was, and how it was related to the mall from the standpoint of the City of Leawood. She informed it that the underlying zoning is actually an office zoning. It used to be a CPO zoning, and I guess now it would be a SDO type zoning with the change in your code. Also, there was a special use permit going back decades, allowing for offsite parking for this Kansas City, Missouri, commercial use.

That being said, and I won't tell you that I did a legal analysis of this before the cars got parked there, when the cars were first parked there, the thought was, it's a parking lot, it's allowed for offsite parking for commercial uses, it will be okay. We parked the cars there, immediately got some comments from the neighbors and the City, and again discussed with staff the proper avenues to go through to bring us to full compliance in the eyes of the City. Legally, I think an argument could be made that we have the right to do this. It is not our intent to push forward with that at all. The intent with regard to this property is to get a special use permit for a year and ultimately develop the property. Since the development aspect of it came up, it has been very difficult and it's taken us a number of years to unwind this parking lot from the purview of Kansas City, Missouri. When the mall was built, both the zoning stipulations of the mall and some deed restrictions that ran to the City of Kansas City, Missouri, encumbered this particular property in the city of Leawood simply for use as a parking lot to serve the mall. We're about 99% of the way through resolving that. Kansas City, Missouri, has signed off on it, the zoning has been taken care of, and through the years because of that deed restriction, some of the leases need to be worked out as well to finally clear this parking lot. We hope within the next year we'll be able to come back before this body and start exploring alternative uses, which would be something we discussed with the City and I assume would be in compliance with the City's plans for this property.

So, that's kind of the overall history of the property. The proposal is a one-year special use permit. It's 300 cars, which is less than one-third of the parking lot. We've tried to put the cars in an area that would be furthest away from our neighboring residential property owners. We do have an agreement with the office user to the south that we reserve some parking on our lot clear from this use, so we're respecting that as well. I want to make sure, as Mark indicated, that that becomes part of the record as we move forward.

It is Jay Wolfe Honda at 103rd or 104th Street in Kansas, City, Missouri. It's those cars. There will be 24-hour surveillance of the parking by the mall. We understand there will also be some additional security by the dealership, but they have agreed they will only move the cars very infrequently during business hours. There won't be sales out there. There will not be test drives. Again, it's a pretty straightforward application and something we feel is consistent with what's been out there for a long time. Zoning and the use of that property is for a parking lot. Now, it's rarely used. That picture right there is from December 26, the day after Christmas, which is one of the busiest days of the year at a mall, and you can see that there's no one on this particular parking lot.

We had an interact meeting and I've turned in a summary of that. We did hear from neighbors. I would acknowledge that there was some opposition to it. I've also spoken to some folks on the phone. I did not have the benefit of seeing those letters, so if I could get a copy of those, I'd appreciate it.

With that, we would stand for questions. We ask for your support on this and we look forward to seeing you again in the next year with a more permanent proposal for something other than car storage.

Henderson: Where do you now park these up to 300 cars?

Mr. Simmons: They are on site right now.

Henderson: Where were they before they were on site?

Mr. Simmons: They are Jay Wolfe's cars, but for a limited period of time they were on site on the Kansas City, Missouri, side at the mall, and because of some lease restrictions, we were required to move them. We had a binding commitment that the lessee objected to, said it was taking up their parking and we needed to move them off site.

Henderson: And the mall security will provide the security for these cars?

Mr. Simmons: The mall security will provide part of this. This is revenue for the mall from the lease and it will be handled by the mall. There's been a multi-million dollar renovation of that mall, which is ongoing. It has been a real upgrade and a lot of success out there. This is simply a way to raise some operating revenue while they finish that renovation and determine what to do with this particular property.

Henderson: The mall security are accountable to the mall security office in Ward Parkway but not to Leawood – Is that correct? The mall security force does not report to Leawood City Hall?

Mr. Simmons: I'm going to let Chuck Oglesby respond to that. He knows exactly how mall security interacts with Leawood Police.

Chuck Oglesby, Regional Manager, Developers Diversified Realty, 14204 Bradshaw, Overland Park, appeared before the Planning Commission and made the following comments:

Mr. Oglesby: In response to the security question, the Leawood portion of the parking facility is on a regular rotation of our mobile patrol units, of which we currently have two at any given time. That fluctuates up and down depending on circumstances. Our security force is a third-party contract force, IPC International. They report to Ward Parkway's management office but they also interact with Leawood Police Department and with Kansas City, Missouri, Police Department when appropriate, depending up on the location that they're responding to. So, if there is an incident in the Leawood lot, there would obviously be interaction with the Leawood police department.

Henderson: Who would be the jurisdictional officer in that case if there were some problem?

Mr. Oglesby: If it were in the city of Leawood, it would be the Leawood police department.

Henderson: Not the mall security?

Mr. Oglesby: Well, the mall security provides the service from the standpoint of monitoring only. We do not have jurisdiction for arrest or prosecution.

Henderson: So how can you monitor it if you don't have jurisdiction, sir? How would you be able to monitor the behavior of possible conflict in this parking lot if, in fact, the mall security has no jurisdiction there.

Mr. Oglesby: Let me restate that. They have jurisdiction from the standpoint of review and driving the property, and if there was an incident or something that appears to be inappropriate in nature, at that point in time, they would then contact the Leawood Police Department and Leawood PD would respond accordingly. At the same time, the Kansas City, Missouri, jurisdiction would respond, too. That's just the relationship between the third-party security contract company that we have with both of those police forces.

Mr. Simmons: That's the same protocol that's followed at the mall. It's the same security force. If there's an incident, they contact Kansas City, Missouri, and typically both Kansas City, Missouri, and Leawood police are involved. They don't want the private security force taking matters into its own hands.

Roberson: Is this parking lot currently lit at night?

Mr. Simmons: It is currently lit and we're not changing the lighting whatsoever. I would note that we talked about that at the neighborhood meeting and discussed whether it would be a benefit to add some fencing or anything like that. The answer we heard back was no additional structures on the facility would be something the neighbors would like to see.

Reynolds: On the security, the interact notes said something about once an hour would be a schedule for a security person to monitor that. Is that accurate, or is that just the residents' comment?

Mr. Oglesby: That actually came up in the interact meeting. I hesitate to divulge our specific security procedures; obviously that's not something that anyone would want to make completely public. The norm would be, yes, patrols should be anticipated to go through that lot on a regular rotation on an hourly basis. That having been said, depending up circumstances for response at any given time, if we're responding to an incident on the Missouri side, whatever the case, it's very possible that those rotations could be interrupted. So, for me to stand in front of this commission and guarantee that someone will be on that lot every hour on the hour, I cannot do that.

Rohlf: Is Jay Wolfe expanding dealership? Where would these cars go back to? Or are you just hoping they all sell.

Mr. Simmons: I don't know if they are expanding their dealership. Here's what I do know what I know about car dealers, and the Molle example was brought up – and by coincidence, I was involved with that – dealers around the area regularly have overflow. If you go to many office complexes you will find pods of cars parked at strange hours of the night because dealers are shuffling the cars around. There are certain periods of the year where they have an overflow. What Jay Wolfe does if we can't provide the parking to them, I don't know. I guess that's something they would have to work out. That's not our relationship with them. We told them we would come before you, we thought we had the right to allow them to park there, we told you we'd come before you and apply for it, and that's the extent of our relationship.

Rohlf: So you don't have a very good idea of the frequency in and out of this parking lot. I mean, do two salesmen go down there, one gets out and hops in a car and brings it back?

Mr. Simmons: Other than what we've told them, the protocol needs to be it would simply be for storage of cars, that they would only move cars during regular office hours, and that they wouldn't be selling from this lot.

Rohlf: I think it's hard to say the frequency at which the dealer comes in and out of there, getting these cars. Are they always going to have a 300-car inventory sitting there? Of if they have a great Saturday, 50 cars move off the lot, do they move in 50 more?

Mr. Oglesby: I can't specify as to the rotation and what it's going to be. I can tell you that 300 cars is a maximum number. It's very probable that that number could fluctuate anywhere from 185 cars to as many as 300, depending on the delivery dates for new orders that they may have coming in. We did specify that no cars were to be shuffled or moved or dealt with outside of the hours of 8:00 a.m. to 5:00 p.m., so we're operating within business hours. The other thing that has been presented to us is that when the salesmen are at the lot or if they are moving a bulk of cars, obviously there has to be some communication with the shopping center, or our security officers are making calls to the Leawood police department because it's movement without notification.

Rohlf: I can tell you it's working. I went and looked at it on Sunday and they were there in about two minutes. But back to you, Mr. Simmons, I think one of the things we typically find with SUPs is they come back. This is for one year. Since we really don't have answer on what we're going to do with those cars, I guess my concern would be that if we're not expanding the dealership or they're not planning on relocating their new cars to a more permanent site,

my fear is when you're talking about coming back before us with another plan, I'm a little concerned that there will be some change to this plan to accommodate the cars.

Mr. Simmons: Well, this is an important application for us. We wouldn't spend the time to come forward. It is some revenue for the mall with the millions of dollars that they're putting in the mall. Having said that, the absolute goal here is to get that property developed, and we're not going to let a temporary storage of cars stand in the way of that. As soon as we can get everything cleared up with KCMO and the leases, which we believe is going to be this year for sure, we'll be back before you. Developers have been in, I've actually come in over the last couple of years and talked with the City Administrator about potential uses for the property. So, this is not going to stand in the way of development. This is purely a temporary use and we can make that commitment to you. Boy Scouts honor. And that's the other thing – Are we doing what we say we're going to do out there and the commitments we make? We are going to be back before you on this particular property. The developer for the site also owns Leawood Towne Center, so they are a corporate citizen in this area, and we talked about, well, is it any sort of benefit to the city of Leawood? I would submit that they have a rather large benefit to the city of Leawood and it's a two-way street. They enjoy being in the city of Leawood with Leawood Towne Center, but it is a good corporate citizen. It's not like we are just a KCMO use. That's why we feel we have the ability to work through this issue.

Munson: If this were to be denied, where would the cars go?

Mr. Simmons: If this was denied, we'd go to city council, and if it's ultimately denied there, they won't go on Ward Parkway. Jay Wolfe will have to determine where those go.

Munson: Then if it's denied, does this have any affect on the plan you're referring to in getting this property developed?

Mr. Simmons: No, I think only from a revenue standpoint. If this is denied and we can't get the lease revenue, it's more money out of the pro forma for these properties, but other than that, it's no impact on the overall development.

Munson: Is Leawood getting any revenue out of this operation?

Lamers: The operation, no. The property is subject to taxation at its zoned rate, so as it sits there or if the special use goes forward, that probably would not have any significant impact on it given the temporary nature of it. So, whatever revenue is being generated through property tax would probably remain the same.

Reynolds: I'm a frequent user and I assume you're aware that the parking lot south of Dillard's is virtually empty every day of week and hour of the day that I see it.

Mr. Simmons: Yes, we are aware of that, and as I indicated, these cars were originally being stored on site and there was an objection from one of the lessees, and they had the legal right, even though we may think the parking is not necessary, they did have rights over that parking. None of the lessees are very interested in this lot because it's simply never used.

Henderson: Mr. Simmons, you indicate that the cars come and go on some sort of schedule. This lot will accommodate at least 1,000 with 42-48 reserved for a business next door. Here with 300 max, it would not be possible to put up a "Lot is Full" sign, would it? How many ways can you get in and out of this lot?

Mr. Simmons: I believe the only way is through the parking lot of the office building to the south and then out on State Line, and the tunnel.

Henderson: Do you have some way of counting people as they come and go? I don't know, if you have several ingresses and egresses, how you keep up with 300 max. I don't know how you say, this is your responsibility, this happened down here on this corner. It sounds like you just want to place parked cars and you're hoping that we'll not look too carefully at the structure, both of the parking of cars up to 300 max, or to the security aspect. I'm somewhat puzzled by all that.

Mr. Simmons: Commissioner, we're not hoping anything, other than you'll consider the application. Again, we come in good faith. This is a good corporate citizen in the city of Leawood and we believe at the outset – and we're not going to push this – that it's a parking lot for cars and it's been used that way for many years, albeit very infrequently.

With regard to 300 cars, that's parking of new cars by Jay Wolfe. If for some reason December 26th comes around again, or the day after Thanksgiving, and there's two or three cars up there in the corner, that's what the parking lot is for, notwithstanding what this body may do tonight, that's what it is currently used and approved for in

the city. So, yes, that may happen a little bit, but this is one car dealer that reports to us as they move cars and they've made commitments to us as to how many cars will be there.

Williams: You talked about access to the parking lot being through the tunnel and through the driveway of the adjacent property. Is there any agreement with them to use their property as access for these 300 cars?

Mr. Simmons: There is cross access, yes, and that property owner is aware of this. I've spoken to him on the phone, at the neighborhood meeting, and have received some correspondence from him, and it does not appear that we have any problem. I don't know if he's here tonight. So long as we leave that area clear; there's also an easement, and some sort of rights for him to park on this property, I believe he is in support of this request, or at least not opposed to it.

Williams: To get the cars to the lot, are they coming by transport carriers or being driven one by one? Or combinations thereof?

Mr. Ogelsby: No, they are not coming in on transport carriers; they are being brought in individually through the Ward Parkway Center tunnel on that side of the shopping center. The property access does not lend itself to bring in transport trailers.

Public Hearing:

Tom Laird, 8731 High Drive, appeared before the Planning Commission and made the following comments:

Mr. Laird: I've resided in Leewood for 30 years in the same house, directly adjacent to the parking lot, exactly to the southwest of the parking lot. The line of trees that lined the lower parking lot is the Dikes Branch Creek. High Drive runs directly along Dikes Branch Creek. Where the 300 cars are going to be parked are directly in eye sight of High Drive. From my dining room window I can probably count half of them. They are putting them on the south side to accommodate the vantage point of the residents that live on the north side, but on High Drive, we have a vantage point of the corners. I wish to voice my objection to the special use permit. We have invested a great deal of time and money maintaining our property value. We do not wish to have a sea of cars.

I am in the transportation business and it reminds me of the holding lot at Claycomo or at the General Motors Plant in Fairfax. If you would like to have a view of that out your dining room window, then vote yes. Thank you.

Carol Barnickel, 2011 West 86th Terrace, appeared before the Planning Commission and made the following comments:

Ms. Barnickel: My property is right in back of where the parking lot is, on the north side. There have been several things brought up during this hearing. It became evident to us that this was happening and I called Mark and explained that all of a sudden, there were these cars in the parking lot that never moved. It was obvious they weren't being used for the shopping center. When I talked to Mark, he said at that time that they had become aware of it and they were contacting the shopping center with regard to them needing a special permit in order to do that. We asked that the cars not be parked right in back of our homes. It's my understanding that, with complete disregard, the attitude was, "Well, I don't understand why they care." Well, I know Bev Wolfe and I know Cindy Choosey (?) who own Jay Wolfe Honda, and I'm sure neither of them would want parking of cars behind their property.

We, too, are good citizens. We pay taxes, so our voices should be heard as well. For a very long time, I have been concerned, as have my neighbors, about what is happening at Ward Parkway Shopping Center. The fact that this parking lot is never used is somewhat indicative of the fact that Ward Parkway Shopping Center simply does not attract a large group of individual who wish to shop there. It's unfortunate, because I've lived in my location for about 38 years, and when that shopping center was originally developed, it was an excellent shopping center. It's truly – as callous as it sounds – not our problem that Ward Parkway cannot attract good merchants to come, and then have a necessity for this parking lot to be used. That has been this way for a very, very long time. I am concerned and have been for a long time that this will become another Indian Creek shopping center. It's not a Town Centre, but it could be a very nice shopping center. And that's not what we're here to talk about anyway. But I think that to just assume that we're not going to care that there are cars parked in back of us is not right, and as far as safety is concerned, Ward Parkway has the occasion for crime. And I know you're saying there is security, but what a perfect opportunity for crime to occur in that parking lot, to have these cars just sitting there.

Another thing is, when they talk about security, I can't tell you how many times in the winter, when there's snow on the ground and ice, that parking lot has become a skating rink for kids to go back there and do their wheelies in. And you've got a year, it's going to be up in December, it's probably going to snow before there, so they go back there and they use the facility.

I don't see a whole lot of patrolling going on back there. I'm just voicing my opinion, that I would like for you to reject it. Thank you.

John Staes, 2007 West 86th Terrace, appeared before the Planning Commission and made the following comments:

Mr. Staes: I get to look at those headlights across my patio, by dining room, kitchen window. I'd like to say that if there is this kind of policing of the parking lot, as has been said, I question that the dealers are not. They are spending time out there. The car alarms are going off, which indicates that either someone is out there bumping the cars or trying to get into the cars with keys don't match; something has caused the alarm to go off. Now, this happens two or three times a day. I can't quite see whether those are dealers out there, or if they are prospective customers, or what they are. I've been living at this residence for 41 years. That's always been a fairly quiet area back there in back of our houses. We've enjoyed the tranquility of having an office building across the parking lot. Now we've got a lot of activity out there that we would not like to see happen. We'd like to see you reject this request. Thank you.

Julie Laird, 8731 High Drive, appeared before the Planning Commission and made the following comments:

Mrs. Laird: My husband already spoke, and the only thing I want to add is that this is strictly a money-making project for the shopping center. In spite of the reference to Town Centre, which was loosely connected, I don't see that there is any reason for Leawood to subsidize this. One example that Commissioner Henderson brought up is, if there is an altercation, the city of Leawood would be involved, which means police time, which means money to pay for that. And I don't see any benefit to our neighborhood or to the city. Thank you.

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

Conrad: When I first read this application, what came to my mind was some of the discussions that we've had in the past about exterior storage and warehousing of product at retail facilities. So, that was the context that I began to think about this, and then I realized it wasn't adjacent to a retail facility. I wondered why, if it would be any other product besides a car, that there would be any reason that we would allow people to store product offsite. I thought about the similar situation down at 104th Street. I believe that facility is secured with a fence and a gate. It is in what would probably be called a light industrial surrounding and setting. I think this lot is in a much more residential and office setting. I think we had a similar situation where there were some tractor trailers that were parking overnight in Ranchmart (?) shopping center; it might have been a case on the bank in that lot. So, I guess I view this, from a planning standpoint, as exterior storage and warehousing of product, and I don't think that is something we have tried to encourage or have approved in the past. So, I'm probably not inclined to support this application.

Reynolds: Just a clarification with Mark – This is zoned for planned office. If it was developed like that, typically we would see a significant landscape buffer between the adjacent residential uses and the office development?

Klein: There are requirements between residential and commercial.

Reynolds: And likewise our parking lots, when they're developed under our zoning and ordinances, require significant open space and landscaping within those parking lots?

Mr. Klein: Correct.

Reynolds: So this is clearly not a typical situation of cars parking next to residential that we see in our typical developments.

Mr. Klein: Right, this is an existing parking lot before most of those regulations.

Munson: To me, this becomes what I call an "attractive nuisance" – it attracts problems, the problems that would be a burden on Leawood's police department to solve, and also for our taxpayers to pay for. It's a convenience for the dealer but it's at the discomfort of Leawood residents who have lived there a long time and expect some protection. Quite frankly, I've seen too many special use reports in my 12 years on the planning commission that don't stop at one year. They keep on going. I'm really reluctant to even grant the first one.

A motion to deny CASE 29-07 was made by Conrad and seconded by Munson. Motion to deny approved unanimously.

